

LAWS OF KENYA



THE PUBLIC FINANCE MANAGEMENT ACT

CHAPTER 412A

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CHAPTER 412A**THE PUBLIC FINANCE MANAGEMENT ACT***Commencement: 27th August, 2012**9th March 2013 — Provisions relating to county governments under this Act*

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

[Act No. 18 of 2012, Act No. 34 of 2013, Act No. 6 of 2014, Act No. 15 of 2014, Act No. 16 of 2014, Act No. 38 of 2016, Act No. 15 of 2017, Act No. 18 of 2018, Act No. 12 of 2019, Act No. 1 of 2020, Act No. 13 of 2020, Act No. 16 of 2020, Act No. 9 of 2021, Act No. 17 of 2022, Act No. 12 of 2023, Act No. 3 of 2024.]

PART I – PRELIMINARY**Short title and commencement.**

1. (1) This Act shall be cited as the Public Finance Management Act.
- (2) *Spent.*

Interpretation.

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

“accounting officer” means—

- (a) an accounting officer of a national government entity referred to in section 67;
- (b) an accounting officer of a county government entity referred to in section 148;
- (c) in the case of the Judiciary, the Chief Registrar of the Judiciary; or
- (d) in the case of the Parliamentary Service Commission—
 - (i) the Clerk of the Senate in respect of the Senate;
 - (ii) the Clerk of the National Assembly in respect of the National Assembly; and
 - (iii) such other officer in the parliamentary service in respect of any other office in the parliamentary service as the Cabinet Secretary shall, upon resolution by the Commission, designate, within fourteen days of the resolution;

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

“appropriation” means—

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

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

“authorised officer”—

- (a) in relation to the National Treasury, means any of its members or officers authorised by the National Treasury in accordance with section 13; or
- (b) in relation to a County Treasury, means any of its officers authorised by the County Treasury in accordance with section 105;

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

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

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to finance;

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

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

“collector of revenue”—

- (a) in relation to the national government, means a person authorised under section 76 to be a collector of revenue for the national government;
- (b) in relation to a county government, means a person authorised under section 158 to be a collector of revenue for that county government;

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

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

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

“County Emergency Fund” means a Fund established under section 110;

“County Exchequer Account” means a County Exchequer Account referred to in section 109;

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

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

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

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

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

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

“County Treasury” means a County Treasury established under section 103;

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

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

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

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

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

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

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

- (a) the financial statements referred to in Part III and Part IV of this Act; and
- (b) the financial statements prescribed by the Accounting Standards Board;

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

- (a) the principles of fiscal responsibility referred to in section 15, in relation to national government; and
- (b) the principles of fiscal responsibility referred to in section 107, in relation to a county government;

“Government to government loan” means any loan that is negotiated with or covered by any government or national government entity including any government Export Credit Agency (ECA) or investment insurance agency or financial

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

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

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

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

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

“medium enterprise” means a firm, trade, service, industry or business activity—

- (a) whose annual turnover is between five million shillings and one hundred million shillings;
- (b) which employs between fifty one and two hundred and fifty employees;
- (c) whose total assets and financial investment shall be as determined by the Cabinet Secretary from time to time and includes—
 - (i) the manufacturing sector, where the investment in plant and machinery or the registered capital of the enterprise does not exceed two hundred and fifty million shillings; and
 - (ii) the service sector and farming enterprises, where the investment in equipment or registered capital of the enterprise does not exceed one hundred and twenty-five million shillings;

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

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

“National Exchequer Account” means the National Exchequer Account referred to in section 17;

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

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

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

“National Treasury” means the National Treasury established by section 11;

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

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

“public money” includes—

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

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

- (a) the general nature of the document; and
- (b) how and where it may be accessed and read by members of the public;

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

- (a) publishing the document in a newspaper, *Government Gazette* or other publication of general circulation in Kenya; or
- (b) publication of an abridged or summary versions of the documents without losing the core content of the document; or
- (c) making the document available for reference at public libraries or offices of national government entities or in archives of those institutions; or
- (d) posting the document on the internet on a Government website; or
- (e) if the document relates only to a county government or any of its entities—
 - (i) publishing the document in a newspaper or other publication of general circulation in the County;
 - (ii) making the document available for reference at public libraries or offices of the county government or those entities; or
 - (iii) posting the document on the Internet on a county government website;

“receiver of revenue”—

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

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

“recurrent expenditure”—

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

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

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

“regulations” means regulations made under this Act;

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

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

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

“Treasury Single Account”—

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

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

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

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

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

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

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

Object of this Act.

3. The object of this Act is to ensure that—

- (a) public finances are managed at both the national and the county levels of government in accordance with the principles set out in the Constitution; and
- (b) public officers who are given responsibility for managing the finances are accountable to the public for the management of those finances through Parliament and County Assemblies.

Declaration of entities as national government entities.

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

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

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

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

Declaration of entities as county government entities.

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

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

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

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

Act to prevail in certain matters.

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

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

- (b) preparation and submission of accounts for audit, including the time for doing so;
- (c) borrowing, lending and loan guarantees;
- (d) raising of revenue and making of expenditures;
- (e) banking arrangements, including opening of bank accounts and investment of moneys;
- (f) establishment and management of public funds; and
- (g) establishment and dissolution of state corporations.

PART II – PARLIAMENTARY OVERSIGHT OF NATIONAL FINANCES

Responsibilities of Committees of Parliament

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

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

- (a) discuss and review the Budget Policy Statement and budget estimates and make recommendations to the National Assembly;
- (b) provide general direction on budgetary matters;
- (c) monitor all budgetary matters falling within the competence of the National Assembly under this Act and report on those matters to the National Assembly;
- (d) monitor adherence by Parliament, the Judiciary and the national government and its entities to the principles of public finance and others set out in the Constitution, and to the fiscal responsibility principles of this Act;
- (e) review the Division of Revenue Bill presented to Parliament and ensure that it reflects the principles under Articles 187(2)(a), 201 and 203 of the Constitution;
- (f) examine financial statements and other documents submitted to the National Assembly under Part III of this Act and make recommendations to the National Assembly for improving the management of Kenya's public finances;
- (g) in accordance with Articles 114, 218 and 221 of the Constitution—
 - (i) make recommendations to the National Assembly on “money Bills”, after taking into account the views of the Cabinet Secretary; and
 - (ii) table in the National Assembly a report containing the views of the Cabinet Secretary in subparagraph (i); and
- (h) introduce the Appropriations Bill in the National Assembly.

Responsibilities of the Senate budget committee in public finance matters.

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

- (a) present to the Senate, subject to the exceptions in the Constitution, the proposal for the basis of allocating revenue among the Counties and consider any bill dealing with county financial matters;
- (b) review the County Allocation of Revenue Bill and the Division of Revenue Bill in accordance with Article 218(1)(b) of the Constitution at least two months before the end of the financial year;
- (c) examine financial statements and other documents submitted to the Senate under Part IV of this Act, and make recommendations to the Senate for improving the management of government's public finances; and
- (d) monitor adherence by the Senate to the principles of public finance set out in the Constitution, and to the fiscal responsibility principles of this Act.

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

*Parliamentary Budget Office***Parliamentary Budget Office continued.**

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

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

Responsibilities of the Parliamentary Budget Office.

10. (1) The Parliamentary Budget Office shall—

- (a) provide professional services in respect of budget, finance, and economic information to the committees of Parliament;
- (b) prepare reports on budgetary projections and economic forecasts and make proposals to Committees of Parliament responsible for budgetary matters;
- (c) prepare analyses of specific issues, including financial risks posed by Government policies and activities to guide Parliament;
- (d) consider budget proposals and economic trends and make recommendations to the relevant committee of Parliament with respect to those proposals and trends;

- (e) establish and foster relationships with the National Treasury, county treasuries and other national and international organisations, with an interest in budgetary and socio-economic matters as it considers appropriate for the efficient and effective performance of its functions;
- (f) subject to Article 35 of the Constitution, ensure that all reports and other documents produced by the Parliamentary Budget Office are prepared, published and publicised not later than fourteen days after production; and
- (g) report to the relevant committees of Parliament on any Bill that is submitted to Parliament that has an economic and financial impact, making reference to the fiscal responsibility principles and to the financial objectives set out in the relevant Budget Policy Statement; and
- (h) propose, where necessary, alternative fiscal framework in respect of any financial year.

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

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

Establishment of the National Treasury

Establishment of the National Treasury.

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

(2) The National Treasury shall comprise of—

- (a) the Cabinet Secretary;
- (b) the Principal Secretary; and
- (c) the department or departments, office or offices of the National Treasury responsible for economic and financial matters.

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

General responsibilities of the National Treasury.

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

- (a) formulate, implement and monitor macro-economic policies involving expenditure and revenue;
- (b) manage the level and composition of public debt, guarantees and other financial obligations of government within the framework of this Act and develop a framework for sustainable debt control;
- (c) formulate, evaluate and promote economic and financial policies that facilitate social and economic development in conjunction with other national government entities;

- (d) mobilise domestic and external resources for financing national and county government budgetary requirements;
- (e) design and prescribe an efficient financial management system for the national and county governments to ensure transparent financial management and standard financial reporting as contemplated by Article 226 of the Constitution:

Provided that the National Treasury shall prescribe regulations that ensure that operations of a system under this paragraph respect and promote the distinctiveness of the national and county levels of government;
- (f) in consultation with the Accounting Standards Board, ensure that uniform accounting standards are applied by the national government and its entities;
- (g) develop policy for the establishment, management, operation and winding up of public funds;
- (h) within the framework of this Act and taking into consideration the recommendations of the Commission on Revenue Allocation and the Intergovernmental Budget and Economic Council, prepare the legislative proposals on annual Division of Revenue and County Allocation of Revenue;
- (i) strengthen financial and fiscal relations between the national government and county governments and encourage support for county governments in terms of Article 190(1) of the Constitution in performing their functions; and
- (j) assist county governments to develop their capacity for efficient, effective and transparent financial management in consultation with the Cabinet Secretary responsible for matters relating to intergovernmental relations.

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

- (a) promote transparency, effective management and accountability with regard to public finances in the national government;
- (b) ensure proper management and control of, and accounting for the finances of the government and its entities in order to promote the efficient and effective use of budgetary resources;
- (c) co-ordinate the preparation of annual appropriation accounts and other statutory financial reports by the national government and its entities;
- (d) prepare annual estimates of revenue of the national government, and co-ordinate the preparation of the budget of the national government;
- (e) consolidate reports of annual appropriation accounts and other financial statements of the national government and county governments and their entities;

- (f) report every four months to the National Assembly on the implementation of the annual national budget on areas not reported on by the Controller of Budget;
- (g) be the custodian of an inventory of national government assets except as may be provided by other legislation or the Constitution;
- (h) monitor the management of the finances of public enterprises and investments by the national government and its entities;
- (i) monitor the financial aspects of risk management strategies and governance structures for the national government and national government entities;
- (j) monitor the financial performance of state corporations; and
- (k) issue guidelines to national government entities with respect to financial matters and monitoring their implementation and compliance.

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

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

Powers of the National Treasury.

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

- (a) with prior notification to the entity, access any system of public financial management and control of national government entity;
- (b) where reasonably necessary in the execution, of its functions, access the premises of any national State Organ or other public entity and inspect the entity's records and other documents relating to financial matters after giving notice;
- (c) require national government entities to comply with any specified applicable norms or standards regarding accounting practices and budget classification systems;
- (d) require any public officer in the national government to provide information and if necessary, explanations with respect to matters concerning public finance:

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

- (e) provide any County Treasury with any information as it may require to carry out its responsibilities under the Constitution and this Act; and
- (f) perform any other act as the Cabinet Secretary may consider necessary including power to intervene where a state entity or state organ fails

to operate a financial system that complies with requirements provided for under this Act or is in serious material breach under this Act or in accordance with Articles 190 and 225 of the Constitution.

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

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

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

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

Secondment of public officers by National Treasury to County Treasury.

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

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

The National Treasury to enforce fiscal responsibility principles.

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

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

- (a) over the medium term a minimum of thirty percent of the national and county governments budget shall be allocated to the development expenditure.
- (b) the national government's expenditure on wages and benefits for its public officers shall not exceed a percentage of the national government revenue as prescribed by regulations;
- (c) over the medium term, the national government's borrowings shall be used only for the purpose of financing development expenditure and not for recurrent expenditure;
- (d) public debt and obligations shall be maintained at a sustainable level as approved by Parliament for the national government and the county assembly for county government;

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

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

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

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

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

National government deviation from financial objectives.

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

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

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

- (a) the reasons for and the implications of the deviation;
- (b) proposals to address the deviation;
- (c) the period the deviation is estimated to last; and
- (d) the status of development projects initiated by the national government and if any project has been stopped, the reasons for doing so.

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

Responsibilities of the National Treasury with respect to national public funds

The National Treasury to administer the Consolidated Fund.

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

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

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

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

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

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

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

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

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

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

The National Treasury to administer the Equalisation Fund.

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

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

- (a) transfer into that Equalisation Fund all revenues payable into the Fund under Article 204(1) of the Constitution; and
- (b) transfer from that Equalisation Fund, without undue delay, all money for purposes specified in Article 204(2) of the Constitution.

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

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

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

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

Source of the Contingencies Fund.

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

Cabinet Secretary to administer the Contingencies Fund.

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

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

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

- (a) into that account all monies appropriated to the Contingencies Fund by an appropriation Act; and
- (b) from the Contingencies Fund, without undue delay, all advances made under section 21.

Advances from the Contingencies Fund.

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

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

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

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

- (a) threatens serious damage to human life or welfare;
- (b) threatens serious damage to the environment; and
- (c) is meant to alleviate the damage, loss, hardship or suffering caused directly by the event.

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

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

- (b) homelessness or damage to property;
- (c) disruption of food, water or shelter; or
- (d) disruption to services, including health services.

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

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

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

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

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

Financial statements in respect of the Contingencies Fund.

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

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

- (a) the date and amount of each payment made from that Contingencies Fund;
- (b) the person to whom the payment was made;
- (c) the purpose for which the payment was made;
- (d) if the person to whom the payment was made has spent the money for that purpose, a statement to that effect;
- (e) if the person to whom the payment was made has not yet spent the money for that purpose, a statement specifying the reasons for not having done so; and
- (f) a statement indicating how the payment conforms to section 21.

Establishment of Parliamentary Fund and other national government public funds.

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

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

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

- (a) Parliamentary Mortgage (Members) Scheme Fund;
- (b) Parliamentary Mortgage (Staff) Scheme Fund;
- (c) Parliamentary Car Loan (Members) Scheme Fund;
- (d) Parliamentary Car Loan (Staff) Scheme Fund; and
- (e) Parliamentary Catering Fund.

for purposes of Parliament or a House of Parliament.

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

- (a) establish procedures and systems for proper and effective management of the monies and property of the Fund;
- (b) establish accounting procedures and systems for the Commission to properly account for the monies and property;
- (c) superintend the expenditure of the monies of the Fund to ensure that the monies are properly accounted for;
- (d) prepare and submit accounts for each financial year in accordance with the written law for the time being relating to audit for audit by the Auditor-General; and
- (e) ensure that accounts prepared under paragraph (d) comply with the provisions of this Act.

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

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

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

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

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

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

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

- (b) the Cabinet Secretary shall pay any deficit in the fund from funds of the national government in the National Exchequer Account with the approval of the National Assembly; and
- (c) the Cabinet Secretary shall submit a final statement of accounts to Parliament.

(10) The administrator of a national public fund—

- (a) shall prepare financial statements for the fund for each financial year in a form specified by the Accounting Standards Board; and
- (b) not later than three months after the end of each financial year, submit those statements to the Auditor-General and deliver a copy of the statements to the National Treasury, Commission on Revenue Allocation and the Controller of Budget.

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

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

(13) In this section—

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

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

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

Responsibilities of the National Treasury with respect to the Budget process

National Treasury to prepare annual Budget Policy Statement.

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

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

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

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

- (a) an assessment of the current state of the economy and the financial outlook over the medium term, including macro-economic forecasts;
- (b) the financial outlook with respect to Government revenues, expenditures and borrowing for the next financial year and over the medium term;
- (c) the proposed expenditure limits for the national government, including those of Parliament and the Judiciary and indicative transfers to county governments; and

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

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

- (a) the Commission on Revenue Allocation;
- (b) county governments;
- (c) Controller of Budget;
- (d) the Parliamentary Service Commission;
- (e) the Judicial Service Commission;
- (f) the public; and
- (g) any other interested persons or groups.

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

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

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

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

National Treasury to prepare Budget Review and Outlook Paper.

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

- (a) actual fiscal performance in the previous financial year compared to the budget appropriation for that year;
- (b) updated macro-economic and financial forecasts with sufficient information to show changes from the forecasts in the most recent Budget Policy Statement;
- (c) information on how actual financial performance for the previous financial year may have affected compliance with the fiscal responsibility principles or the financial objectives in the latest Budget Policy Statement; and
- (d) the reasons for any deviation from the financial objectives together with proposals to address the deviation and the time estimated to do so.

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

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

- (a) submit the Paper to the Budget Committee of the National Assembly to be laid before each House of Parliament; and
- (b) publish and publicise the Paper not later than fifteen days after laying the Paper before Parliament.

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

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

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

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

- (a) detail all election related spending including—
 - (i) direct election expenses such as those for the Independent Electoral and Boundaries Commission for costs of elections and election materials;
 - (ii) indirect election expenses such as allocations to police and security forces for the election year; and
 - (iii) any other expenses related to the election specified in regulations or instructions; and
- (b) be accompanied by a statement signed by the Principal Secretary stating that the economic and fiscal updates include—
 - (i) all policy decisions with material economic or fiscal implications that the national government made before the day on which the contents of the economic and fiscal updates were finalised;
 - (ii) all other circumstances with material economic or fiscal implications of which the National Treasury was aware before those days; and
 - (iii) a confirmation that the economic and fiscal updates were prepared using the best professional judgment and information available before the economic and fiscal updates were finalised.

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

*Other responsibilities of the National Treasury***Banking arrangements for national government entities.**

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

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

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

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

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

- (a) the Cabinet Secretary may impose by regulations; or
- (b) any other relevant authority may impose under the provisions of any other legislation.

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

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

Management of cash at the national government level.

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

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

- (a) the National Treasury in a form and manner and relating to such periods directed by that Treasury; and
- (b) the Controller of Budget.

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

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

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

(6) Except as otherwise provided by legislation—

- (a) interest received from investments made under subsection (5); and
- (b) money received from the redemption or maturity of those investments, and from the sale or conversion of securities relating to them, is payable into the National Exchequer Account.

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

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

Procurement of goods and services.

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

Cabinet Secretary to report on all loans.

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

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

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

- (a) the names of the parties to the loan;
- (b) the amount of the loan and the currency in which it is expressed and in which it is repayable;
- (c) the terms and conditions of the loan, including interest and other charges payable and the terms of repayment;
- (d) the amount of the loan advanced at the time the report is submitted;
- (e) the purpose for which the loan was used and the perceived benefits of the loan; and such other information as the Cabinet Secretary may consider appropriate.

Cabinet Secretary to report on national government guarantees.

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

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

- (a) names of the parties to the loan that is guaranteed;
- (b) principal amount of that loan;
- (c) terms and conditions applicable to that loan, including—
 - (i) interest and other charges that are payable in respect of that loan; and
 - (ii) terms of its repayment.

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

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

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

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

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

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

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

- (a) the total stock of debt as at the date of the statement;
- (b) the sources of loans made to the national government and the nature of guarantees given by the national government;
- (c) the principal risks associated with those loans and guarantees;
- (d) the assumptions underlying the debt management strategy; and
- (e) an analysis of the sustainability of the amount of debt, both actual and potential.

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

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

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

National government budget process

Stages in the budget process.

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

- (a) integrated development planning process which shall include both long term and medium term planning;
- (b) planning and determining financial and economic policies and priorities at the national level over the medium term;
- (c) preparing overall estimates in the form of the Budget Policy Statement of national government revenues and expenditures;
- (d) adoption of Budget Policy Statement by Parliament as a basis for future deliberations;
- (e) preparing budget estimates for the national government;
- (f) submitting those estimates to the National Assembly for approval;
- (g) enacting the appropriation Bill and any other Bills required to implement the National government's budgetary proposals;
- (h) implementing the approved budget;
- (i) evaluating and accounting for, the national government's budgeted revenues and expenditures; and
- (j) reviewing and reporting on those budgeted revenues and expenditures every three months.

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

Cabinet Secretary to manage budget process at national level.

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

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

(3) The circular shall include—

- (a) a schedule for preparation of the budget indicating key dates by which various exercises are to be completed;
- (b) the procedures for the review and projection of revenues and expenditures;
- (c) key policy areas and issues that are to be taken into consideration when preparing the budget;
- (d) procedures setting out the manner in which members of the public shall participate in the budget process;
- (e) the format in which budget information and documents shall be submitted; and
- (f) any other information that, in the opinion of the Cabinet Secretary, may assist the budget process.

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

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

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

Submission of budget estimates and related documents for approval.

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

- (a) the budget estimates and other documents supporting the budget; and
- (b) the draft Bills required to implement the national budget.

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

- (a) the budget estimates excluding those for Parliament and the Judiciary;
- (b) documents supporting the submitted estimates; and
- (c) any other Bills required to implement the national government budget.

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

- (a) submit to the National Assembly the budget estimates for Parliament, including proposed appropriations; and
- (b) provide the National Treasury with a copy of those documents.

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

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

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

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

- (a) shall ensure that members of the public are given an opportunity to participate in the preparation process; and
- (b) may make and publish rules to be complied with by those who may wish to participate in the process.

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

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

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

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

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

Submission of other budget documents to the National Assembly.

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

- (a) a budget summary that includes—
 - (i) a summary of budget policies including policies on revenue, expenditure, debt and deficit financing;
 - (ii) an explanation of how the budget relates to the fiscal responsibility principles and to the financial objectives; and
 - (iii) a memorandum by the Cabinet Secretary explaining how the resolutions adopted by the National Assembly on the Budget Policy Statement under section 25(7) have been taken into account.
- (b) the format of the budget estimates shall include—
 - (i) a list of all entities that are to receive funds appropriated from the budget of the national government;
 - (ii) estimates of revenue allocated to, and expenditures projected from, the Equalisation Fund over the medium term, with an explanation of the reasons for those revenue allocations and expenditures and how these estimates comply with the policy developed by the

- Commission on Revenue Allocation under Article 216(4) of the Constitution;
- (iii) all revenue allocations to county governments from the national government's share in terms of Article 202(2) of the Constitution, including conditional and unconditional grants;
 - (iv) all estimated revenue by broad economic classification;
 - (v) all estimated expenditure, by vote and by programme, clearly identifying both recurrent and development expenditures; and
 - (vi) an estimate of any budget deficit or surplus for the financial year and medium term and the proposed sources of financing;
- (c) information regarding loans made by the national government, including an estimate of principal, interest and other charges to be received by the national government in the financial year in respect of those loans;
 - (d) information regarding loans and guarantees made to and by the national government, including an estimate of principal, interest and other charges to be paid by the national government in the financial year in respect of those loans;
 - (e) information regarding any payments to be made and liabilities to be incurred by the national government for which an appropriation Act is not required which shall include the constitutional or national legislative authority for any such payments or liabilities; and
 - (f) a statement by the National Treasury specifying the measures taken by the national government to implement any recommendations made by the National Assembly with respect to the budget for the previous financial year or years.

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

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

- (a) is accurate, precise, informative and pertinent to budget issues; and
- (b) clearly identifies the appropriations by vote and programme.

National Assembly to consider budget estimates.

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

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

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

- (a) an increase in expenditure in a proposed appropriation is balanced by a reduction in expenditure in another proposed appropriation; or
- (b) a proposed reduction in expenditure is used to reduce the deficit.

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

- (a) the Division of Revenue Act;
- (b) Article 114 of the Constitution; and
- (c) any increase in expenditure in a proposed appropriation is balanced by a reduction in expenditure in another proposed appropriation or any proposed reduction in expenditure is used to reduce the deficit.

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

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

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

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

[Act No. 12 of 2019, Sch.]

Submission, consideration and passing of Finance Bill.

39A. (1) The Cabinet Secretary shall submit to the National Assembly, on or before 30th April, the Finance Bill setting out the revenue raising measures for the National Government.

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

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

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

- (a) ensure that the total amount of revenue raised is consistent with the approved fiscal framework;
- (b) take into account the principles of equity, certainty and ease of collection;
- (c) consider the impact of the proposed changes on the composition of the tax revenue with reference to direct and indirect taxes;
- (d) consider domestic, regional and international tax trends;
- (e) consider the impact on development, investment, employment and economic growth;
- (f) take into account the recommendations of the Cabinet Secretary as provided under Article 114 of the Constitution; and
- (g) take into account the taxation and other tariff arrangements and obligations that Kenya has ratified, including taxation and tariff arrangements under the East African Community Treaty.

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

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

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

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

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

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

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

- (a) ensure that the total amount of revenue raised is consistent with the approved fiscal framework and the Division of Revenue Act;
- (b) take into account the principles of equity, certainty and ease of collection;
- (c) consider the impact of the proposed changes on the composition of the tax revenue with reference to the direct and indirect taxes;
- (d) consider domestic, regional and international tax trends;
- (e) consider the impact on development, investment, employment and economic growth;

- (f) take into account the recommendations of the Cabinet Secretary as provided under Article 114 of the Constitution; and
- (g) take into account the taxation and other tariff agreements and obligations that Kenya has ratified, including taxation and tariff agreements under the East African Community Treaty.

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

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

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

Consideration by Parliament of Bills allocating revenue and additional allocations.

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

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

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

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

- (a) the funds are appropriated for transfer to another government entity or person;
- (b) the funds are appropriated for capital expenditure except to defray other capital expenditure;
- (c) the reallocation of funds is from wages to non-wages expenditure; or
- (d) the transfer of funds may result in contravention of fiscal responsibility principles.

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

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

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

National government to submit supplementary budget to Parliament.

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

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

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

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

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

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

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

Overall responsibility of Cabinet Secretary.

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

- (a) oversee the formulation of macro-economic and financial policies of the Government;
- (b) by agreement, assist national government entities and county governments in building capacity for efficient, effective and transparent financial management;
- (c) where applicable, support the efforts of national government entities and county governments to avert or resolve their financial problems.

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

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

- (a) seek views from county governments on the proposed macro-economic and financial policies using the Intergovernmental Budget and Economic Council established under this Act;
- (b) share with national government entities and county governments any findings that may assist national government entities and county governments in improving their financial management; and

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

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

47. (1) In this section and section 48—

- (a) “donation” means a gift or a contribution;
- (b) “grant” means financial or other assistance by a development partner which is not repayable and—
 - (i) under which public money is paid to or used by a grant recipient;
 - (ii) which is intended to finance or facilitate the development of projects or delivery of services or otherwise assist the grant recipient to achieve goals that are consistent with the policy objectives of the national government; and
 - (iii) under which the grant recipient is required to act in accordance with any terms or conditions specified in a grant agreement.
- (c) “grant recipient” means the national government or a national government entity authorised to control or spend money under this Act or an incorporated or unincorporated body not otherwise authorised to control or spend money under this Act;
- (d) “intended beneficiaries” means the people of Kenya whom the projects or public services financed by a grant are intended to benefit;
- (e) “third party” means any other person other than a public officer.

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

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

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

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

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

- (a) the required funding has been appropriated in accordance with this Act or is authorised by other legislation; or
- (b) the Cabinet Secretary has given a written authorisation for the project to start.

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

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

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

- (a) government financial accounting and auditing laws and, administrative procedures; or
- (b) any financial accounting rules and procedures for money specified in the agreement between the recipient and the development partner.

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

Regulations on grant administration.

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

- (a) procedures to ensure that grants are spent on the basis of the integrated national development plan;
- (b) procedures for the allocation and disbursement of the grants;
- (c) requiring that grants be used only to finance programmes within the integrated development plan;
- (d) the publication of transparent criteria for the allocation of grants;
- (e) requiring specific terms and conditions in agreements to which grant recipients are subjected;
- (f) procedures for the budgeting, financial management, accounting and reporting of grants by grants recipients;
- (g) procedures under which a third party may be authorised to receive, control or pay public money as a grant; and
- (h) measures to ensure that a third party authorised to receive, control or pay public money as a grant, or responsible for any other aspect of administration of a grant, is subject to the same obligations as a public officer under this Act.

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

- (a) timely public disclosure to intended beneficiaries of the allocation and disbursement of grants to grant recipients;
- (b) timely public disclosure by grant recipients to intended beneficiaries of expenditure and performance achieved in relation to the grant;
- (c) measures to facilitate intended beneficiaries to participate in the design and management of projects or public services financed by the grant;
- (d) measures allowing intended beneficiaries to report instances of non-compliance with the regulations or grant agreement;

- (e) sanctions to be imposed on grant recipients for non-compliance with grant conditions by any grant recipient; and
- (f) obligations of a public officer or third party authorised to receive, control or pay public money as grants.

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

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

Authority for borrowing by the national government.

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

- (a) the fiscal responsibility principles and the financial objectives set out in the most recent Budget Policy Statement; and
- (b) the debt management strategy of the national government over the medium term.

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

Obligations and restrictions on national government guaranteeing and borrowing.

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

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

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

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

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

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

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

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

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

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

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

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

- (a) paid into the Consolidated Fund;
- (b) paid into any other public fund established by the national government or any of its entities as the Cabinet Secretary may determine in accordance with regulations approved by Parliament;
- (c) disbursed directly to the suppliers where the loan is a government to government loan and is raised for the purpose of financing goods and services provided by a supplier outside Kenya; or
- (d) in the case of an external loan or external government security, applied, in part, to pay at closing, pre-negotiated expenses associated solely and exhaustively with the borrowing, including but not limited to, the fees, commissions and expenses of lenders, financial arrangers, managers and book runners, fiscal agents, trustees, paying agents, exchange and information agents, syndicate agents, counsel, clearing systems, listing agents, and stock exchanges, rating agencies and other expenses of a similar nature arising from the external loan or external government security.

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

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

- (a) appoint advisers, agents and underwriters for the purpose of raising loans and issuing, managing or redeeming national government securities; and
- (b) enter into agreements with the advisers, agents and underwriters appointed under paragraph (a) on the role to be undertaken by them and the remuneration to be paid to them.

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

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

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

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

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

Borrowing by national government entities.

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

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

- (a) over the medium term; and
- (b) for the forthcoming financial year, prior to the beginning of that financial year.

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

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

Persons authorized to execute loan documents at national government.

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

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

- (a) the accounting officer responsible for the entity; or
- (b) any other specified officer authorised by legislation to execute such documents on behalf of the entity.

Issuance of securities by national government.

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

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

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

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

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

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

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

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

- (a) the Cabinet Secretary;
- (b) a delegate appointed by the Cabinet Secretary; or
- (c) a borrowing agent appointed for the purposes of this Act.

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

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

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

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

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

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

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

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

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

Issuance of external securities by national government.

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

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

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

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

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

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

- (a) the Cabinet Secretary;
- (b) a delegate appointed by the Cabinet Secretary, in writing; or
- (c) a borrowing agent appointed in accordance with section 50(9) of this Act.

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

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

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

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

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

Exemption from stamp duty.

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

Establishment of the office of Registrar of national government securities.

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

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

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

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

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

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

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

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

- (a) as soon as practicable after the security is issued;
- (b) at least once during each year the security is held; and
- (c) immediately after the security is redeemed.

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

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

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

Power of national government to enter into derivative transactions.

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

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

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

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

- (a) on the Consolidated Fund; or
- (b) on some other public fund established for the purpose of making such payments, if the Cabinet Secretary determines so.

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

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

Power of national government to lend money.

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

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

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

- (a) accept money payable under the loan in any currency considered appropriate by the Cabinet Secretary in consultation with the Central Bank of Kenya; and
- (b) agree at any time to revise upwards any security given in respect of that loan.

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

- (a) from an appropriation for development expenditure; or
- (b) from some other authority approved by Parliament for the purpose for which the loan is made.

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

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

Power of Cabinet Secretary to guarantee loans.

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

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

- (a) the loan is for a capital project;
- (b) the borrower is capable of repaying the loan, and paying any interest or other amount payable in respect of it;
- (c) in the case of a private borrower, there is sufficient security for the loan;
- (d) the financial position of the borrower over the medium term is likely to be satisfactory;
- (e) the terms of the guarantee comply with the fiscal responsibility principles and financial objectives of the national government;
- (f) where Parliament has passed a resolution setting a limit for the purposes of this section—
 - (i) the amount guaranteed does not exceed that limit; or
 - (ii) if it exceeds that limit, the draft guarantee document has been approved by resolution of both Houses of Parliament;
- (g) the Cabinet Secretary takes into account the equity between the national government's interests and the county government's interests so as to ensure fairness;
- (h) the borrower complies with any conditions imposed by the Cabinet Secretary in accordance with the regulations;

- (i) the Cabinet Secretary has taken into account the recommendation of the Intergovernmental Budget and Economic Council in respect of any guarantee to a county government; and
 - (j) the loan is made in accordance with provisions of this Act and any regulations made thereunder.
- (3) Parliament may approve a draft loan guarantee document as provided by subsection (2)(f)(ii) only if satisfied that—
- (a) the guarantee is in the public interest;
 - (b) the borrower's financial position is strong enough to enable the borrower to repay the loan proposed to be guaranteed and to pay interest or other amounts payable in respect of the loan; and
 - (c) the loan is geared towards stimulating economic growth in a county government.
- (4) To enable Parliament to decide whether or not to approve a draft loan guarantee document as provided by subsection (3), the Cabinet Secretary shall prepare and submit to each of the House of Parliament a paper that—
- (a) gives details of the loan that is proposed to be guaranteed, including the amount of the loan, the terms of repayment, and the details of the interest or any other amount payable under the loan;
 - (b) specifies the national government's total contingent liability under guarantees given under this section; and
 - (c) specifies any other information that the Cabinet Secretary considers relevant.
- (5) Notwithstanding the provisions of subsection (2) (c), the Cabinet Secretary may guarantee credit which is extended to a private borrower, for enterprise development or such other purpose as the Cabinet Secretary may prescribe, where the borrower does not have sufficient security.
- (6) The Cabinet Secretary may only guarantee credit which is extended to a borrower under subsection (5), if the borrower—
- (a) is a micro, small or medium enterprise;
 - (b) is registered as a business or company under the relevant laws;
 - (c) is a registered taxpayer and is in compliance with the relevant tax laws;
 - (d) is registered by a county government and holds a valid business permit or trade licence;
 - (e) is not part of any group or related to any enterprise which would otherwise not be eligible for credit guarantee under this section; and
 - (f) agrees in writing to comply with the provisions of this Act and any conditions that may be imposed by the Cabinet Secretary.
- (7) A guarantee for credit extended to a micro, small or medium enterprise under subsection (5) shall be for a portion of the credit.

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

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

- (a) the institutions that shall be eligible to extend credit to micro, small or medium enterprises for which guarantees may be given under subsection (5);
- (b) enterprises that shall be eligible to be given a guarantee under subsection (5);
- (c) the conditions for a grant of guarantee for credit extended to a micro, small or medium enterprise under subsection (5);
- (d) the proportion of security for the credit that a micro, small or medium enterprise shall provide before being granted a guarantee under subsection (5);
- (e) the types of credit extended to micro, small or medium enterprises that shall be eligible for guarantees under subsection (5);
- (f) the periods for which guarantees for credit to micro, small and medium enterprises shall be applicable;
- (g) the circumstances under which a credit guarantee shall be liquidated or varied if a borrower defaults on credit that was guaranteed under subsection (5);
- (h) the maximum percentage of the Scheme funds which may be used to guarantee any individual borrower;
- (i) mechanisms to ease access to credit guarantees by enterprises owned by women, youth and persons with disabilities;
- (j) mechanisms for recovering the money from the borrower where the credit guarantee is liquidated;
- (k) a limit on the period of default to a maximum of six months; and
- (l) any other relevant matter.

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

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

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

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

- (b) containing details of—
 - (i) the guarantee, including the name and other particulars of the borrower whose loan is guaranteed;
 - (ii) the duration and nature of the guarantee;
 - (iii) a risk assessment in respect of the guarantee; and
 - (iv) any other information prescribed by regulations for the purposes of this subsection.

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

59A. (1) The Cabinet Secretary shall prepare a statement of the credit guarantees granted under section 58(5) and a summary thereon in such detail as the Cabinet Secretary may determine.

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

- (a) the total value of credit guarantees given during that period;
- (b) the total value of credit guarantees liquidated during that period;
- (c) the total value of outstanding credit guarantees on the date of the report;
- (d) the risk assessment of the credit guarantees or classes of guarantees;
- (e) information on the total value of credit guarantees, disaggregated into the number of enterprises owned by women, youth and persons with disabilities which have been guaranteed;
- (f) information on the total value of credit guarantees, disaggregated into the number of micro, small and medium enterprises guaranteed and by the respective regions; and
- (g) any other relevant information prescribed by regulations for the purposes of this section.

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

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

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

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

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

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

- (a) details of the guarantee;
- (b) the circumstances giving rise to the payment;

- (c) reasons why the borrower failed to pay; and
- (d) such further information as the Cabinet Secretary may consider relevant.

Recovery of amounts paid on a guarantee.

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

- (a) be a debt due to the national government from the borrower whose loan was guaranteed; and
- (b) be recoverable from the borrower as a debt due to the national government by—
 - (i) proceedings brought in a court of competent jurisdiction; or
 - (ii) withholding a transfer of money in terms of Article 225 of the Constitution, if the borrower receives appropriations.

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

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

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

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

The Public Debt Management Office

Establishment and objectives of the Public Debt Management Office.

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

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

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

- (a) minimise the cost of public debt management and borrowing over the long-term taking account of risk;
- (b) promote the development of the market institutions for Government debt securities; and
- (c) ensure the sharing of the benefits and costs of public debt between the current and future generations.

Functions of the Public Debt Management Office.

63. The functions of the Public Debt Management Office shall include—

- (a) carrying out the government's debt management policy of minimising its financing cost over the long-term taking account of risk;
- (b) maintaining a reliable debt data base for all loans taken by the national government, county governments and their entities including other loans guaranteed by the national government;
- (c) prepare and update the annual medium-term debt management strategy including debt sustainability analysis;
- (d) prepare and implement the national government borrowing plan including servicing of outstanding debts;
- (e) acting as the principal in the issuance of Government debt securities on behalf of the National Treasury;
- (f) monitor and evaluate all borrowing and debt-related transactions to ensure that they are within the guidelines and risk parameters of the debt management strategy;
- (g) process the issuance of loan guarantees including assessment and management of risks in national government guarantees.
- (h) transact in derivative financial instruments in accordance with best international practices benchmarked to the debt management offices of other governments that are internationally respected for their practices.

Role of Cabinet Secretary in Public Debt Management Office.

64. (1) The Cabinet Secretary shall—

- (a) develop the policy and financial framework in accordance with Constitutional principles within which the Public Debt Management Office operates;
- (b) delegate to the Head of the Public Debt Management Office the operational decisions on borrowing and debt management and the day-to-day management of the Office;
- (c) ensure that the Public Debt Management Office has the resources and skills to manage the debt and borrowing according to international best practices for liability management; and
- (d) be accountable to Parliament for the work of the Public Debt Management Office.

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

- (a) the Medium Term Debt Management Strategy consistent with the Budget Policy Statement;
- (b) the government borrowing plan for the approved Annual Budget;
- (c) the statistical and analytical reports on debt and borrowing; and

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

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

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

Relationship with county treasuries in debt management.

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

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

The Judiciary, Parliament, Constitutional Commissions and Independent Offices

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

66.

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

- (a) the promotion and enforcement of transparency, effective management and accountability with regard to the use of public finances;
- (b) ensuring that accounting standards are applied;
- (c) the implementation of financial policies in relation to public finances;
- (d) ensuring proper management and control of, and accounting for, their finances in order to promote the efficient and effective use of budgetary resources;
- (e) the preparation of annual estimates of expenditures;
- (f) acting as custodian of the entity's assets, except where provided otherwise by any other legislation or the Constitution;
- (g) monitoring the management of public finances and their financial performance;
- (h) making quarterly reports to the National Assembly on the implementation of their budget; and

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

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

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

Designation of accounting officers for national government.

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

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

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

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

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

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

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

- (a) ensure that all expenditure made by the entity complies with subsection (1);
- (b) ensure that the entity keeps financial and accounting records that comply with this Act;
- (c) ensure that all financial and accounting records the entity keeps in any form, including in electronic form are adequately protected and backed up;
- (d) ensure that all contracts entered into by the entity are lawful and are complied with;
- (e) ensure that all applicable accounting and financial controls, systems, standards, laws and procedures are followed when procuring or disposing of goods and services and that, in the case of goods, adequate arrangements are made for their custody, safeguarding and maintenance;
- (f) bring any matter to the attention of the Cabinet Secretary responsible for the entity, or the Chief Justice or the Speaker of the National Assembly if, in the accounting officer's opinion, a decision or policy or proposed decision

or policy of the entity may result in resources being used in a way that is contrary to subsection (1);

- (g) prepare a strategic plan for the entity in conformity with the medium term fiscal framework and fiscal policy objectives of the national government;
- (h) prepare estimates of expenditure and revenues of the entity in conformity with the strategic plan referred to in paragraph (g);
- (i) submit the estimates of the public entity which is not a state corporation to the Cabinet Secretary;
- (j) submit the estimates of a public entity which is a state corporation to the Cabinet Secretary responsible for that state corporation who, after approving it, shall forward it to the Cabinet Secretary;
- (k) prepare annual financial statements for each financial year within three months after the end of the financial year, and submit them to the Controller of Budget and the Auditor-General for audit, and in the case of a national government entity, forward a copy to the National Treasury;
- (l) take appropriate measures to resolve any issues arising from audit which may remain outstanding;
- (m) provide information on any fraud, losses, or any violation of subsection (1) and explanation for the actions taken to prevent a similar problem in future;
- (n) provide the National Treasury and any other office, where relevant, with any information it may require to fulfil its functions under this Act; and
- (o) in case of a national government entity, carry out such other functions as may be specified by the Cabinet Secretary.

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

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

- (a) prepare a report on actions taken by the entity to implement any recommendations made in the committee's report as adopted by the National Assembly; and
- (b) submit the report to the National Assembly and in case of a national government entity, copy to the National Treasury and the Controller of Budget.

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

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

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

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

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

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

Spending authority of accounting officer.

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

Accounting officer for national government entity may make cash advances.

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

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

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

- (a) the documents used to apply for or authorise the advance;
- (b) regulations prescribed for the purpose of this section; and
- (c) any written notice given to the officer by the accounting officer.

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

- (a) the amount of the advance not accounted for or not returned becomes a debt owed by the officer;
- (b) the debt becomes subject to the payment of interest at a rate prescribed by regulations for the purpose of this subsection; and
- (c) the debt, including the interest on it, is recoverable by that entity by making a deduction from any salary or other amount that is payable to the officer.

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

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

- (a) be responsible for the management of the entity's assets and liabilities; and
- (b) manage those assets in a way which ensures that the national government entity achieves value for money in acquiring, using and disposing of those assets.

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

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

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

National government entity to maintain internal auditing arrangements.

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

- (a) has appropriate arrangements in place for conducting internal audit according to the guidelines of the Accounting Standards Board; and
- (b) where any regulations are in force under subsection (2), those regulations are complied with.

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

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

- (a) reviewing the governance mechanisms of the entity and mechanisms for transparency and accountability with regard to the finances and assets of the entity;
- (b) conducting risk-based, value-for-money and systems audits aimed at strengthening internal control mechanisms that could have an impact on achievement of the strategic objectives of the entity;
- (c) verifying the existence of assets administered by the entity and ensuring that there are proper safeguards for their protection;
- (d) providing assurance that appropriate institutional policies and procedures and good business practices are followed by the entity; and

- (e) evaluating the adequacy and reliability of information available to management for making decisions with regard to the entity and its operations.

(4) A national government entity shall ensure that internal audits in respect of the entity are conducted in accordance with international best practices.

(5) Every national government public entity shall establish an audit committee whose composition and functions shall be as prescribed by the regulations.

Disciplinary measures against public and accounting officers.

74. (1) Subject to the Constitution, the Public Officers Ethics Act (Cap. 185B) and the Public Service codes of ethics or any other relevant laws, if an accounting officer reasonably believes that a public officer employed by a national government entity is engaging in, or has engaged in improper conduct within the meaning of subsection (4) in relation to the resources of the entity, the accounting officer shall—

- (a) take appropriate measures to discipline the public officer in accordance with regulations; or
- (b) refer the matter to the relevant office or body in terms of the statutory and other conditions of appointment or employment applicable to that public officer.

(2) If a Cabinet Secretary reasonably believes that an accounting officer is engaging in or has engaged in improper conduct within the meaning of subsection (4), the Cabinet Secretary shall—

- (a) take such measures as may be provided in regulations; or
- (b) refer the matter to the relevant office or body in terms of the statutory and other conditions of appointment or employment applicable to that accounting officer.

(3) The measures referred to in subsection (2)(a) include revoking the position as accounting officer.

(4) For the purposes of this section, a public officer or accounting officer engages in improper conduct in relation to a national government entity if the officer—

- (a) contravenes or fails to comply with this Act, including their accounting responsibilities;
- (b) undermines any financial management procedures or controls that apply to the entity;
- (c) makes or permits expenditure that is unlawful or has not been authorised by the entity; or
- (d) fails, without reasonable excuse, to pay eligible and approved bills promptly in circumstances where funds are provided for.

(5) Disciplinary measures under this section may not be taken against a public officer or accounting officer under subsection (1)(a) or (2)(a) unless the officer has been given an opportunity to be heard in relation to the alleged improper conduct.

*Receivers and collectors of national government revenue***Receivers and collectors of national government.**

75. (1) The Cabinet Secretary shall, in writing, designate persons as receivers of national government revenue under Article 209(1), (2) and (4) of the Constitution and who shall be responsible for receiving and accounting for such national government revenue provided in any law or in regulations as the Cabinet Secretary may specify in the letter of appointment.

(2) A receiver of national government revenue is responsible to the Cabinet Secretary for the collection of revenue for which he or she is responsible and such revenue shall be separately accounted for in accordance with Articles 206(1) and 209(1), (2) and (4) of the Constitution.

Receiver may authorise a public officer to be collector of national government revenue.

76. (1) A receiver of the national government revenue may authorise a public officer employed by the national government or any of its entities to be a collector of revenue for the national government and remit it to the receiver.

(2) Any public officer, other than a receiver or collector of revenue for the national government, who collects revenue for that national government shall, not later than three days after receiving it, deliver the revenue to a receiver or collector of revenue for the national government.

(3) A receiver of revenue for the national government shall provide monthly statements to the National Treasury and the Commission on Revenue Allocation.

Powers of the Cabinet Secretary to waive or vary tax, fees or charges.

77. The Cabinet Secretary may waive a national tax, a fee or charge imposed by the National Government and its entities in accordance with criteria prescribed in regulations provided that—

- (a) the National Treasury shall maintain a public record of each waiver together with the reason for the waiver and report on each waiver in accordance with Section 82 of this Act;
- (b) such a waiver or variation has been authorised by an Act of Parliament; and
- (c) a State Officer may not be excluded from payment of a tax, fee or charge by reason of the office of the State Officer or the nature of work of the State Officer.

Kenya Revenue Authority to be collector of national government revenue.

78. The Kenya Revenue Authority, shall be the collector of national government revenue for the purposes of this Part.

*Obligations of public officers***Public officers to comply with laws relating to national government resources.**

79. (1) Every public officer employed in a national government state organ or public entity shall comply with the Constitution and all laws relating to the conduct

of public officers when carrying out a responsibility or exercising a power under this Act.

(2) Without prejudice to provisions under subsection (1), a public officer employed in a national government state organ or public entity shall—

- (a) comply with the provisions of this Act so far as they are applicable to the officer; and
- (b) ensure that the resources within the officer's area of responsibility are used in a way which—
 - (i) is lawful and authorised; and
 - (ii) is effective, efficient, economical and transparent;
- (c) within the officer's area of responsibility—
 - (i) ensure that adequate arrangements are made for the proper use, custody, safeguarding and maintenance of public property; and
 - (ii) use the officer's best efforts to prevent any damage from being done to the financial interests of the national government.

Financial reporting by the National Treasury and national government entities

The National Treasury to prepare consolidated annual financial statement.

80. (1) At the end of each financial year, the National Treasury shall prepare for the national government, clear and comprehensible annual financial statements that consolidate the financial statements prepared by all national government entities, in accordance with formats prescribed by the Accounting Standards Board.

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

- (a) a statement of all monies paid into and out of the National Exchequer Account;
- (b) a summary of—
 - (i) the appropriation accounts and statements prepared by accounting officers under section 81; and
 - (ii) the statements prepared by receivers of revenue under section 82;
- (c) a statement of payments made out of the National Exchequer Account that are authorised by legislation other than an Appropriation Act;
- (d) a statement of the total amount of debt of national government that is outstanding at the end of the financial year;
- (e) a statement of any waivers under Article 210 of the Constitution; and
- (f) such other statements as the National Assembly may require.

(3) The National Treasury shall ensure that the statements and summaries referred to in subsection (2) are in a form that complies with the relevant accounting standards prescribed and published by the Accounting Standards Board.

(4) Not later than four months after the end of the financial year, the National Treasury shall—

- (a) submit the financial statements and summaries referred to in subsection (1) to the Auditor-General and a copy to the Controller of Budget and the Commission on Revenue Allocation; and
- (b) publish and publicise the statements.

Annual reporting by accounting officers.

81. (1) At the end of each financial year, the accounting officer for a national government entity shall prepare financial statements in respect of the entity.

(2) The accounting officer shall include in the financial statement—

- (a) appropriation accounts, showing—
 - (i) the services for which the appropriated money was spent;
 - (ii) the actual amount spent on each service;
 - (iii) the status of each vote compared with the appropriation for the vote;
 - (iv) a statement explaining any variations between the actual expenditure and the sums voted; and
 - (v) any other information specified by the National Treasury;
- (b) a statement of the entity's debt which is outstanding at the end of the financial year;
- (c) a statement of the entity's debt guaranteed by the national government as at the end of the financial year;
- (d) a statement of the entity's assets and liabilities as at the end of the financial year in respect of the recurrent Vote, development Vote and funds and deposits;
- (e) a statement of the accounting policies followed in preparing the financial statement; and
- (f) a statement of the national government entity's performance against predetermined objectives.

(3) The accounting officer shall prepare the financial statements in a form that complies with the relevant accounting standards prescribed and published by the Accounting Standards Board from time to time.

(4) Not later than three months after the end of each financial year, the accounting officer for the entity shall—

- (a) submit the entity's financial statements to the Auditor-General and a copy of the statement to the Controller of Budget, the National Treasury and the Commission on Revenue Allocation; and
- (b) publish and publicise the financial statements.

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

for matters relating to that corporation who shall, upon approving it submit a copy to the Cabinet Secretary.

Annual reporting by receivers of revenue.

82. (1) At the end of each financial year, a receiver of revenue for the national government shall prepare an account in respect of the revenue received and collected by the receiver during that financial year.

(2) An account prepared under subsection (1) shall include—

- (a) a statement of receipts and disbursements in such form as the National Treasury may direct; and
- (b) a statement of arrears of revenue.

(3) Not later than three months after the end of the financial year, the receiver of revenue for the national government shall—

- (a) submit the accounts to the Auditor-General and a copy to the National Treasury, Controller of Budget and the Commission on Revenue Allocation; and
- (b) publish and publicise the financial statements.

(4) Not later than three months after the end of each financial year, a receiver of revenue for the national government shall submit to the Auditor-General a report with respect to all waivers and variations of taxes, fees or charges granted by the receiver or collector during that year.

(5) The receiver shall include in the report under subsection (4) the following details in respect of each waiver or variation—

- (a) the full name of each person benefitting from the waiver or variation;
- (b) the amount of tax, fee or charge affected by the waiver or variation;
- (c) the year to which the waiver or variation relates;
- (d) the reasons for waive or variation; and
- (e) the law in terms of which the waiver was granted.

(6) The reports referred to in subsection (4) shall be published and publicised.

Accounting officer to prepare quarterly reports for national government entity.

83. (1) An accounting officer for a national government entity shall prepare a report for each quarter of the financial year in respect of the entity.

(2) In preparing a quarterly report for a national government entity, the accounting officer shall ensure that the report—

- (a) contains information on the financial and non-financial performance of the entity; and
- (b) is in a form that complies with the standards prescribed and published by the Accounting Standards Board from time to time.

(3) Not later than fifteen days after the end of each quarter, the accounting officer shall submit the quarterly report to the Cabinet Secretary responsible for the entity and the National Treasury.

(4) The Cabinet Secretary responsible for an entity shall forward a copy of the report to the Cabinet Secretary and Controller of Budget.

(5) Not later than forty five days after the end of each quarter, the National Treasury shall—

- (a) consolidate the quarterly reports and submit them to the National Assembly with copies of the reports to the Controller of Budget, Auditor-General and the Commission on Revenue Allocation; and
- (b) publish and publicise the reports.

(6) In the case of an entity that is a state corporation, the accounting officer for the corporation shall submit the quarterly report to the Cabinet Secretary responsible for the corporation who shall, upon approving it, forward a copy to the Cabinet Secretary.

Administrators of national public funds to prepare annual financial statements.

84. (1) The administrator of a national public fund established by the Constitution or an Act of Parliament shall prepare financial statements for the fund for each financial year in a form prescribed by the Accounting Standards Board.

(2) In preparing a financial statement for a national public fund, the administrator shall ensure that the report contains information on the financial and non-financial performance of the national public fund.

(3) Not later than three months after the end of each financial year, the administrator of a national public fund shall submit the financial statements prepared under this section to the Auditor-General.

(4) The administrator shall submit a copy of the report to the Cabinet Secretary responsible for the fund.

Quarterly reporting by administrators of national public funds.

85. The administrator of a national public fund established by the Constitution or an Act of Parliament shall prepare quarterly financial statements for the national public fund in a form prescribed by the Accounting Standards Board.

Establishment and dissolution of state corporations and additional requirements for state corporations and government-linked corporations

Establishment and dissolution of a state corporation.

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

(2) Regulations shall prescribe the criteria to be used in establishing or dissolving state corporations and the regulations shall be tabled in Parliament for approval.

Restrictions on national government investing in government-linked corporations.

87. The national government or national government entity may not invest—

- (a) in a state corporation; or
- (b) in a government-linked company,

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

Cabinet Secretary in charge of state corporation to monitor its performance.

88. (1) The respective Cabinet Secretary responsible for matters relating to a state corporation is responsible for monitoring—

- (a) the financial performance of that state corporation and government-linked corporations; and
- (b) the performance of that state corporation and the activities affecting its financial performance; and

reporting to the Cabinet on the financial performance of the state corporation.

(2) The Cabinet Secretary shall—

- (a) analyse financial and other reports that are required to be prepared by a state corporation under the State Corporations Act (Cap. 446) or any other relevant Act;
- (b) report to the Cabinet on the financial performance of those state corporations; and
- (c) make recommendations to the Cabinet as to how a particular state corporation or government-linked corporation could improve its financial performance.

Annual reporting by the Cabinet Secretary responsible for matters relating to public investments.

89. (1) The Cabinet Secretary responsible for matters relating to public investments shall prepare and submit to the National Assembly, not later than four months after the end of each financial year, a consolidated report summarising the extent of national government involvement or investment in, or funding of, all state corporations and government-linked corporations for that financial year.

(2) The report under subsection (1) shall include information on—

- (a) the date of incorporation and objects of the corporation;
- (b) the amount of national government shareholding, directly or indirectly, in the state corporation;
- (c) any changes in the shareholding of the state corporation during the financial year;

- (d) the amount of any funding in the form of grants or subsidies provided by the national government to the state corporation or government-linked state corporations, excluding profit-making state corporation, during the financial year;
- (e) the amount of any loans made by the national government to the state corporation, and the amount of any guarantees issued by the national government in respect of the state corporation, during the financial year;
- (f) the cumulative amount of undischarged loans and guarantees in respect of the state corporation;
- (g) the amount of the profit or loss of the state corporation for the financial year;
- (h) the amount of any revenue received by the national government from the state corporation during the financial year, including dividends, interest and proceeds from any divestiture of assets of the state corporation;
- (i) the amount of payments made, or losses incurred, by the national government to meet contingent liabilities as a result of loans or guarantees during the financial year, including payments made in respect of guarantees, loan write-offs or waiver of interest on loans; and
- (j) an assessment of the financial and related non-financial performance of the state corporation for the financial year.

(3) Once every three years, the Cabinet Secretary responsible for matters relating to public investments shall prepare a report on the assessment of the national government's continued involvement or investment in, or funding of, the state corporation or government linked corporation.

(4) The Cabinet Secretary responsible for matters relating to public investments shall submit copies of the reports referred to in subsections (2) and (3) to the Cabinet Secretary, the Controller of Budget, the Commission on Revenue Allocation and to the Auditor-General.

Parliament may extend time limit.

90. Any House of Parliament may, by resolution, extend the time limit, other than a time limit set in the Constitution, for submitting a statement or other document required to be submitted to it under this Act.

Definitions for purposes of sections 86, 87, 88 and 89.

91.

For the purposes of sections 86, 87, 88 and 89—

- (a) **“government-linked corporation”** means a corporation in which the national government or national government entity is a shareholder with less than fifty percent of the share capital of the corporation; and
- (b) **“invest”** means any form of funding provided to a state corporation, including providing share capital, loans, guarantees, grants or subsidies.

*Resolution of operational and financial problems of
national government entities and county governments*

Responsibility for avoiding, identifying and resolving financial problems.

92. (1) A State organ or other public entity is primarily responsible for foreseeing, identifying, avoiding and resolving financial problems in that State organ or public entity.

(2) A State organ or other public entity shall ensure that the conduct of financial management is in accordance with the Constitution and this Act.

(3) If a State organ or other public entity encounters a serious financial problem or anticipates serious challenges in performing its financial function or meeting its financial commitments, it shall immediately—

- (a) seek solutions to resolve the financial problems;
- (b) notify the Cabinet Secretary or the County Executive Committee member for finance where the State organ is a county government organ;
- (c) notify the Controller of Budget and the Commission on Revenue Allocation; and
- (d) inform the Intergovernmental Budget and Economic Council, of the nature of the financial problem and proposed remedial measures it proposes to put in place.

Assessment of the need for intervention in accordance with Article 225 of the Constitution.

93. (1) If the Cabinet Secretary becomes aware of financial problems in a State organ or other public entity, the Cabinet Secretary shall promptly—

- (a) ascertain the seriousness of the problem and the proposed remedial measures or solution to the financial problem by the State organ or public entity; and
- (b) determine whether the situation constitutes a serious material breach or persistent material breach requiring stopping of transfer of funds under Article 225(3) of the Constitution.

(2) In the case of a State organ which is a national government entity, if the financial problem has been caused by or resulted in a failure by the national government entity—

- (a) to perform its functions of comply with obligations imposed under the Constitution or any other Act; or
- (b) to meet its financial commitments, the Cabinet Secretary shall, guided by regulations, consider whether or not to take action under Article 225(3) of the Constitution and in terms of this Act.

(3) In the case of a State organ which is a county government or county government entity, if it—

- (a) does not operate a financial management system that complies with the requirements prescribed in this Act and the financial problem has met conditions for intervention in terms of Article 190(3) of the Constitution; or
- (b) is unable to meet its financial commitments as set out in the Constitution or this Act, this shall constitute a serious material breach or persistent material breach for purposes of stopping transfer of funds under Article 225(3) of the Constitution.

(4) When determining whether the conditions for the Cabinet Secretary to stop transfer of funds referred to in Article 225(3) of the Constitution are met, all relevant facts shall be considered before the Cabinet Secretary acts.

Additional indicators of serious or persistent material breach.

94. (1) The following factors, singly or in combination, may further indicate that a State organ or public entity is in serious material breach or persistent material breach of the measures established under this Act—

- (a) the State organ or public entity—
 - (i) has failed to make any payments as and when due;
 - (ii) has defaulted on financial obligations for financial reasons;
 - (iii) had an operating deficit in excess of a percentage of revenue in the most recent financial year for which financial information is available as prescribed in regulations; or
 - (iv) is more than sixty days late in submitting its annual financial statements to the Auditor-General in accordance with this Act or any other legislation;
- (b) the State organ or public entity has failed to make any other payment as and when due, which individually or in the aggregate is more than an amount as may be prescribed or, if none is prescribed, more than two percent of the State organ's or public entity's budgeted operating expenditure;
- (c) the Controller of Budget has raised material issues in their quarterly report;
- (d) the Auditor-General has withheld an opinion or issued a disclaimer due to inadequacies in the financial statements or records of the State organ or public entity or has issued an opinion which identifies a serious financial problem in the State organ or public entity; or
- (e) recurring or continuous failure by a State organ or public entity to meet its financial commitments which substantially impairs the State organ's or public entity's ability to procure goods, services or credit on usual commercial terms.

(2) Provisions of this sections shall not apply with respect—

- (a) disputed obligations which are subject to litigation in a court of law, provided such litigation is not instituted to avoid an intervention; or
- (b) obligations explicitly waived by creditors.

Stoppage of funds process in national government entity.

95. Where the Cabinet Secretary finds a State organ which is a national government entity to be in serious or persistent material breach of its obligations or financial commitments, the Cabinet Secretary shall—

- (a) determine the reasons for the breach; and
- (b) assess the national government entity's financial state.

Stoppage of funds process in county government.

96. (1) Where the. Cabinet Secretary finds a State organ which is a county government entity to be in serious or persistent material breach of its obligations or financial commitments, the Cabinet Secretary shall, in accordance with Article 225 of the Constitution, immediately stop the transfer of funds.

(2) Within seven days of stopping the transfer of funds under subsection (1), the Cabinet Secretary shall inform—

- (a) the accounting officer, of the State organ or public entity; or
- (b) the Cabinet Secretary responsible for matters relating to intergovernmental relations;
- (c) County Executive Committee member responsible for finance;
- (d) the Controller of Budget;
- (e) the Commission on Revenue Allocation; and
- (f) Intergovernmental Budget and Economic Council.

(3) The Cabinet Secretary shall in the alternative promptly—

- (a) inform the County Executive Committee member responsible for finance; and
- (b) request the Auditor-General to—
 - (i) determine the reasons for the breach;
 - (ii) assess the county government financial state; and
 - (iii) submit to the Cabinet Secretary and County Executive member for finance a report within thirty days from the date of the request.

(4) The Cabinet Secretary may prescribe regulations in relation to the process of stoppage of transfer of funds.

Procedure for stoppage of funds.

97. (1) Where the Cabinet Secretary makes a decision to stop the transfer of funds to a State organ or public entity in accordance with Article 225(3) of the Constitution

and provisions of this Act, the Cabinet Secretary shall stop the payment and inform the Controller of Budget in respect of—

- (a) the date from when the stoppage of transfer of funds takes effect; and
- (b) the nature of serious material breaches, or persistent material breaches, committed by the State organ or public entity.

(2) Not later than seven days after the date of the decision to stop the transfer of funds, the Cabinet Secretary shall seek approval from Parliament.

(3) Within fourteen days after the decision to stop the transfer of funds under subsection (1), the Controller of Budget shall investigate the matter and submit a report to Parliament in accordance with Article 225(7) of the Constitution.

(4) Parliament shall, within thirty days of the decision by the Cabinet Secretary to stop the transfer of funds, approve or renew the decision of the Cabinet Secretary to stop the transfer of funds and the Cabinet Secretary shall abide by the decision of Parliament.

(5) The Cabinet Secretary may not stop the transfer of more than fifty percent of funds due to a county government.

(6) Any person may exercise his or her right to petition Parliament in terms of Article 119 of the Constitution in respect of the action taken to stop the transfer of funds.

Renewal of decision to stop funds and termination of stoppage.

98. (1) Where the Cabinet Secretary has applied to Parliament to renew a decision to stop the transfer of funds for a period beyond the sixty days, a time allowed by the Constitution, as soon as practicable but not later than fourteen days after being informed of the decision to renew the period, the Controller of Budget shall prepare a report on the matter to Parliament.

(2) The report referred to in subsection (1) shall provide an independent opinion on findings on details of the material breach or persistent material breaches in such a manner as to allow Parliament to make a decision within thirty days on whether or not to approve the renewal of the decision to stop the transfer of funds.

(3) An intervention based on Article 225(3) of the Constitution and provisions of this Act shall end when—

- (a) the serious or persistent material breach in the State organ's or public entity's financial affairs has been resolved;
- (b) the State organ's or public entity's ability to meet its obligations to provide basic services or its financial commitments is secured; or
- (c) Parliament has declined to renew the Cabinet Secretary's decision to stop transfer of funds.

(4) Where Parliament has not renewed a decision in terms of Article 225(6) of the Constitution to stop the transfer of funds, all funds held during the period of the stoppage shall be released within a period not exceeding fifteen days.

Provision for a recovery plan.

99. (1) If as a result of an assessment using criteria provided for under this Act, the Cabinet Secretary determines that there is a serious or persistent material breach or that a county government is unable to perform its functions, the Cabinet Secretary shall—

- (a) notify the county government and the Cabinet Secretary responsible for matters relating to intergovernmental relations, of the finding and the intention to intervene;
- (b) consult the county governor to obtain the county government's cooperation in the development and implementation of a recovery plan, including the approval of a budget and legislative measures giving effect to the recovery plan;
- (c) in consultation with the county government, prepare an appropriate recovery plan for the county government; and
- (d) notify the Controller of Budget, Senate, the Joint Intergovernmental Technical Committee and the Auditor-General of the findings and the content of the recovery plan.

(2) The approved recovery plan by the Joint Committee shall form the basis for releasing funds withheld during the period of stoppage and the release of subsequent transfers to a state organ or public entity.

(3) The purpose of the recovery plan referred to in subsection (1) shall be to secure the county government's ability to meet its obligations to provide basic services or its financial commitments.

(4) The recovery plan under this section shall—

- (a) identify the financial problems;
- (b) be designed to place the county government in a sound and sustainable financial condition as quickly as possible;
- (c) state the principal objectives of the plan and ways and means for achieving those objectives;
- (d) provide budget parameters which bind the county government for a specified period or until stated conditions have been met;
- (e) identify specific revenue raising measures that are necessary for financial recovery, including the rates at which tariffs should be set to achieve financial recovery;
- (f) set out a specific strategy for addressing the entity's problems, including a strategy for reducing wasteful expenditure and increasing the collection of revenue, as may be necessary;
- (g) identify the human resources and the source of those resources;
- (h) describe the anticipated time frame for the recovery, and the milestones to be achieved; and

- (i) identify what actions are necessary for the implementation of the plan, distinguishing between actions to be taken by the entity and actions to be taken by other parties.

(5) In addition to provisions under subsection (4), the recovery plan may—

- (a) provide for the liquidation of specific assets, excluding those needed for the provision of the minimum level of basic services;
- (b) provide for special measures to prevent unauthorised irregular and wasteful expenditure and other losses; and
- (c) identify any actual and potential sources of revenue.

(6) The intervention shall adhere to the values and principles of the Constitution and provisions of any other relevant law.

Establishment of the Joint Intergovernmental Technical Committee.

100. (1) There is established a committee to be known as the Joint Intergovernmental Technical Committee thereafter referred to as “Joint Committee”) and shall comprise of—

- (a) the Cabinet Secretary;
- (b) the Cabinet Secretary responsible for matters relating to intergovernmental relations;
- (c) a representative of the county government or county government entity concerned;
- (d) a representative of the Intergovernmental Budget and Economic Council; and
- (e) a representative of the Commission on Revenue Allocation.

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

(3) the Joint Committee shall meet at least once every three months to review any action of intervention referred to in this Part, and establish—

- (a) the progress on resolving the county government’s financial problems and the recovery plan; and
- (b) the effectiveness of the recovery plan.

(4) The Joint Committee shall, every four months, submit progress reports and, where appropriate, a final report on the intervention to the Cabinet Secretary, the County Executive Committee member for finance, the relevant county Assembly, the Intergovernmental Budget and Economic Council and the Senate.

Termination of intervention.

101. (1) An intervention based on Article 190(3)(b) of the Constitution shall end—

- (a) if it is terminated in terms of Article 190(5) of the Constitution where there has been a breach of the procedure prescribed in the regulations approved by the Senate; or
- (b) where the Joint Committee is satisfied that the county government is able and willing to fulfil its obligation in terms of legislation or the Constitution that gave rise to the intervention; and
- (c) when the Joint Committee determines that the financial problem which caused the failure by the county government to comply with its obligation is resolved; and
- (d) when the Joint Committee finds that the county government is operating a financial management system that complies with legislation.

(2) At the end of an intervention, the Joint Committee shall notify—

- (a) Parliament;
- (b) the relevant County Assembly; and
- (c) the Controller of Budget.

(3) The Joint Committee shall publish and publicise the end of the intervention.

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

County government responsibilities in public finance.

102. (1) Each county government shall ensure adherence to—

- (a) the principles of public finance set out in Chapter Twelve of the Constitution;
- (b) the fiscal responsibility principles provided in section 107 under this Act;
- (c) national values set out in the Constitution; and
- (d) any other requirements of this Act.

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

(3) In making decisions a county assembly shall take cognisance of Article 216(2) of the Constitution.

Establishment of county treasuries.

103. (1) There is established for each county government, an entity to be known as County Treasury.

(2) The County Treasury shall comprise—

- (a) the County Executive Committee member for finance;

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

(3) The County Executive Committee member for finance shall be the head of the County Treasury.

Responsibilities and powers of a County Treasury

General responsibilities of a County Treasury.

104. (1) Subject to the Constitution, a County Treasury shall monitor, evaluate and oversee the management of public finances and economic affairs of the county government including—

- (a) developing and implementing financial and economic policies in the county;
- (b) preparing the annual budget for the county and co-ordinating the preparation of estimates of revenue and expenditure of the county government;
- (c) co-ordinating the implementation of the budget of the county government;
- (d) mobilising resources for funding the budgetary requirements of the county government and putting in place mechanisms to raise revenue and resources;
- (e) managing the county government's public debt and other obligations and developing a framework of debt control for the county;
- (f) consolidating the annual appropriation accounts and other financial statements of the county government in a format determined by the Accounting Standards Board;
- (g) acting as custodian of the inventory of the county government's assets except where provided otherwise by other legislation or the Constitution;
- (h) ensuring compliance with accounting standards prescribed and published by the Accounting Standards Board from time to time;
- (i) ensuring proper management and control of, and accounting for the finances of the county government and its entities in order to promote efficient and effective use of the county's budgetary resources;
- (j) maintaining proper accounts and other records in respect of the County Revenue Fund, the County Emergencies Fund and other public funds administered by the county government;
- (k) monitoring the county government's entities to ensure compliance with this Act and effective management of their funds, efficiency and transparency and, in particular, proper accountability for the expenditure of those funds;

- (l) assisting county government entities in developing their capacity for efficient, effective and transparent financial management, upon request;
- (m) providing the National Treasury with information which it may require to carry out its responsibilities under the Constitution and this Act;
- (n) issuing circulars with respect to financial matters relating to county government entities;
- (o) advising the county government entities, the County Executive Committee and the county assembly on financial matters;
- (p) strengthening financial and fiscal relations between the national government and county governments in performing their functions;
- (q) reporting regularly to the county assembly on the implementation of the annual county budget; and
- (r) taking any other action to further the implementation of this Act in relation to the county.

Powers of a County Treasury.

105. (1) A County Treasury has such powers as are necessary to enable it to carry out its functions and responsibilities under this Act including—

- (a) with prior notice, access any system of public financial management used by any of the county government entities and the internal controls used to monitor the system;
- (b) taking appropriate measures, including the stoppage of funds, to deal with any failure of a county government entity to comply with this Act;
- (c) with prior notice, accessing the premises of a county government entity and inspecting all records and other documents relating to the financial affairs of that county government entity, kept by that entity;
- (d) requiring county government entities to comply with all applicable norms or standards regarding accounting practices, budget classification systems and other public financial management systems as prescribed by the Accounting Standards Board;
- (e) requiring any public officer employed by a county government or county government entity to provide explanations, information and assistance in respect to matters relating to the county government's public finances:

Provided that a person providing the information shall not be liable if at the time of providing the information, that person, in writing, objected to providing such information on grounds that the information may incriminate him or her;
- (f) issuing guidelines to accounting officers for the county government entities, or public officers employed by those entities, with respect to the financial affairs of that Government or those entities, and monitoring compliance with those guidelines; and

- (g) ensuring that county government entities operate a financial management system that complies with national standards as prescribed by the Accounting Standards Board.

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

(3) When carrying out a responsibility, or exercising a power, on behalf of a County Treasury, an authorised officer shall, if requested to do so by the person in relation to whom the responsibility or power is being carried out or exercised, produce the officer's authorisation for inspection and failure to comply with such a request invalidates any subsequent action purporting to be taken under the authority of the authorisation.

(4) An authorisation given under subsection (3) remains in force for such period as is specified in it or, if no such period is specified, until it is revoked by the County Treasury concerned.

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

Secondment of public officers by a County Treasury to the National Treasury.

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

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

County Treasury to enforce fiscal responsibility principles.

107. (1) A County Treasury shall manage its public finances in accordance with the principles of fiscal responsibility set out in subsection (2), and shall not exceed the limits stated in the regulations.

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

- (a) the county government's recurrent expenditure shall not exceed the county government's total revenue;
- (b) over the medium term a minimum of thirty percent of the county government's budget shall be allocated to the development expenditure;
- (c) the county government's expenditure on wages and benefits for its public officers shall not exceed a percentage of the county government's total revenue as prescribed by the County Executive member for finance in regulations and approved by the County Assembly;
- (d) over the medium term, the government's borrowings shall be used only for the purpose of financing development expenditure and not for recurrent expenditure;
- (e) the county debt shall be maintained at a sustainable level as approved by county assembly;

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

(2A) Pursuant to Articles 201 and 216 of the Constitution and notwithstanding subsection (2), the Commission on Revenue Allocation shall recommend to the Senate the budgetary ceilings on the recurrent expenditures of each county government.

(3) For the purposes of subsection (2)(d), short term borrowing shall be restricted to management of cash flows and shall not exceed five percent of the most recent audited county government revenue.

(4) Every county government shall ensure that its level of debt at any particular time does not exceed a percentage of its annual revenue specified in respect of each financial year by a resolution of the county assembly.

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

[Act No. 15 of 2014, s. 12.]

County government deviation from financial objectives.

108. (1) A county government may, with the approval of its county assembly, deviate from the financial objectives in the relevant County Fiscal Strategy Paper, but only on a temporary basis and only if the deviation is required because of a major natural disaster or some other significant unforeseen event.

(2) If there is a change of county government, the new county government may deviate from the financial objectives in a County Fiscal Strategy Paper, but may not deviate from the fiscal responsibility objectives.

(3) The County Treasury shall also provide a report to the county assembly regarding the deviation and its implication and shall include in the report—

- (a) information on the reasons and implication for the deviation;
- (b) proposals to address the deviation;
- (c) the time the deviation is estimated to last; and
- (d) the status of development projects initiated by the county government and if any projects have been stopped, the reasons for doing so.

(4) The County Treasury shall publish and publicise the report not later than fifteen days after it has been submitted to the county assembly.

Responsibilities of a County Treasury with respect to County Public Funds

Establishment of a County Revenue Fund for each county government.

109. (1) There is established, for each county a County Revenue Fund in accordance with Article 207 of the Constitution.

(2) The County Treasury for each county government shall ensure that all money raised or received by or on behalf of the county government is paid into the County Revenue Fund, except money that—

- (a) is excluded front payment into that Fund because of a provision of this Act or another Act of Parliament, and is payable into another county public fund established for a specific purpose;
- (b) may, in accordance with other legislation, this Act or County legislation, be retained by the county government entity which received it for the purposes of defraying its expenses; or
- (c) is reasonably excluded by an Act of Parliament as provided in Article 207 of the Constitution.

(3) The County Treasury shall administer the County Revenue Fund and ensure that the county government complies with the provisions of Article 207 of the Constitution.

(4) The County Treasury shall—

- (a) arrange for the County Revenue Fund to be kept in the Central Bank of Kenya or a bank approved by the County Executive Committee member responsible for finance and shall be kept in an account to be known as the “County Exchequer Account”; and
- (b) ensure that all money authorised to be paid by the county government or any of its entities for a public purpose is paid from that account without undue delay.

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

(6) The County Treasury shall obtain the written approval of the Controller of Budget before withdrawing money from the County Revenue Fund under the authority of—

- (a) an Act of the county assembly that appropriates money for a public purpose;
- (b) an Act of Parliament or county legislation that imposes a charge on that Fund; or
- (c) this Act in accordance with sections 134 and 135.

(7) The approval of the Controller of Budget to withdraw money from the County Revenue Fund, together with written instructions from the County Treasury requesting for the withdrawal, is sufficient authority for the approved bank where the County Exchequer Account is held to pay amounts from this account in accordance with the approval and the instructions.

(8) Any unutilised balances in the County Revenue Fund shall not lapse at the end of the financial year but shall be retained for the purposes for which it was established.

(9) Financial reports shall be submitted to the Commission on Revenue Allocation with a copy to the Controller of Budget.

County Government Executive Committee may establish county government Emergency Fund.

110. (1) A County Executive Committee may, with the approval of the county assembly, establish an emergency fund for the county government under the name “..... County Emergency Fund” and the fund shall consist of money from time to time appropriated by the county assembly to the Fund by an appropriation law.

(2) The purpose of an Emergency Fund is to enable payments to be made in respect of a county when an urgent and unforeseen need for expenditure for which there is no specific legislative authority arises.

County Executive Committee member for finance to administer the Emergency Fund.

111. (1) The County Executive Committee member for finance shall administer the county government Emergency Fund for the county government in accordance with a framework and criteria approved by the county assembly.

(2) The County Executive Committee member for finance shall establish and maintain a separate account into which all money appropriated to the Emergency Fund shall be paid.

Power of County Executive Committee member to make payments from Emergency Fund.

112. (1) Subject to section 113, the County Executive Committee member for Finance may make payments from the county government’s Emergency Fund only if he or she is satisfied that there is an urgent and unforeseen need for expenditure for which there is no legislative authority and shall be in accordance with operational guidelines made under regulations approved by Parliament and the law relating to disaster management.

(2) For the purposes of subsection (1), there is an urgent and unforeseen event for expenditure if the County Executive Committee member for finance, guided by regulations and relevant laws, establishes that—

- (a) payment not budgeted for cannot be delayed until a later financial year without harming the general public interest;
- (b) payment is meant to alleviate the damage, loss, hardship or suffering which may be caused directly by the event; and
- (c) the damage caused by the event is on a small scale and limited to the county.

(3) For the purposes of subsection (1), the unforeseen event is one which—

- (a) threatens damage to human life or welfare; or
- (b) threatens damage to the environment.

Limitation on power of County Executive Committee member for finance to make payments from Emergency Fund.

113. The County Executive Committee member for finance may not, during a financial year, make a payment from the Emergency Fund under section 112

exceeding two per cent of the total county government revenue as shown in that county government's audited financial statements for the previous financial year, except for the first year.

County Executive Committee member for finance to seek approval for payments from Emergency Fund.

114. (1) The County Executive Committee member for finance shall seek approval of the county assembly within two months after payment is made from the Emergency Fund.

(2) If the county assembly is not sitting during the period referred to in subsection (1), or soon thereafter, the County Executive Committee member for finance shall seek the approval for the payment within fourteen days after the County Assembly next sits.

(3) As soon as practicable after the county assembly has approved the payment, the County Executive Committee member for finance shall cause a draft of the appropriation Bill to be introduced in the county assembly for the appropriation of the money paid and for the replenishment of the county government's Emergency Fund to the extent of the amount of the payment.

County Treasury to submit a report to Auditor-General in respect to Emergency Fund.

115. (1) Where an Emergency Fund has been established for a county government in accordance with section 110, the County Treasury shall, not later than three months after the end of each financial year, prepare and submit to the Auditor-General, financial statements in respect of the Emergency Fund for that year.

(2) The County Treasury shall include in the financial statements made under subsection (1)—

- (a) the date and amount of each payment made from that Fund;
- (b) the person to whom the payment was made;
- (c) the purpose for which the payment was made;
- (d) whether the person to whom the payment was made has spent the money for that purpose, and a statement made to that effect;
- (e) if the person to whom the payment has been made has not yet spent the money for that purpose, a statement specifying the reasons for not having done so; and
- (f) a statement indicating how the payment conforms to section 112 of this Act.

Power to establish other county public funds.

116. (1) A County Executive Committee member for finance may establish other public funds with the approval of the County Executive Committee and the county assembly.

(2) For every county public fund established, the County Executive Committee member for finance shall designate a person responsible for administering that fund.

(3) The administrator of a county public fund shall ensure that the earnings of, or accruals to a county public fund are retained in the fund, unless the County Executive Committee member for finance directs otherwise.

(4) The administrator of a county public fund shall ensure that money held in the fund, including any earnings or accruals referred to in subsection (3) is spent only for the purposes for which the fund is established.

(5) The County Executive Committee member for finance may wind up a county public fund with the approval of the county assembly.

(6) On the winding up of a county public fund—

- (a) the administrator of the fund shall pay any amount remaining in the fund into the County Exchequer Account; and
- (b) the County Executive Committee member for finance shall, with the approval of the county assembly, pay any deficit in the fund from the County Exchequer Account.

(7) The administrator of a county public fund shall—

- (a) prepare accounts for the fund for each financial year;
- (b) not later than three months after the end of each financial year, submit financial statements relating to those accounts to the Auditor-General; and
- (c) present the financial statements to the county assembly.

(8) The administrator of a county public fund shall ensure that the accounts for the fund and the annual financial statements relating to those accounts comply with the accounting standards prescribed and published by the Accounting Standards Board from time to time.

(9) Regulations may provide for the establishment, management, operation or winding-up of county public funds under this section.

(10) This section does not apply to the County Revenue Fund established under section 109 of this Act.

(11) The funds and usage of money through the funds shall be published and publicised.

(12) In this section—

“administrator”, in relation to a county public fund, means a person designated by the County Executive Committee member for finance under subsection (2) to administer the fund;

“County public fund” means a public fund established under subsection (1).

Responsibilities of county government with respect to the County Budget process

County Treasury to prepare County Fiscal Strategy Paper.

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

shall submit the approved Fiscal Strategy Paper to the county assembly, by the 28th February of each year.

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

(3) In preparing the County Fiscal Strategy Paper, the County Treasury shall specify the broad strategic priorities and policy goals that will guide the county government in preparing its budget for the coming financial year and over the medium term.

(4) The County Treasury shall include in its County Fiscal Strategy Paper the financial outlook with respect to county government revenues, expenditures and borrowing for the coming financial year and over the medium term.

(5) In preparing the County Fiscal Strategy Paper, the County Treasury shall seek and take into account the views of—

- (a) the Commission on Revenue Allocation;
- (b) the public;
- (c) any interested persons or groups; and
- (d) any other forum that is established by legislation.

(6) Not later than fourteen days after submitting the County Fiscal Strategy Paper to the county assembly, the county assembly shall consider and may adopt it with or without amendments.

(7) The County Treasury shall consider any recommendations made by the county assembly when finalising the budget proposal for the Financial year concerned.

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

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

118. (1) A County Treasury shall—

- (a) prepare a County Budget Review and Outlook Paper in respect of the county for each financial year; and
- (b) submit the paper to the County Executive Committee by the 30th September of that year.

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

- (a) the details of the actual fiscal performance in the previous year compared to the budget appropriation for that year;
- (b) the updated economic and financial forecasts with sufficient information to show changes from the forecasts in the most recent County Fiscal Strategy Paper;

- (c) information on—
 - (i) any changes in the forecasts compared with the County Fiscal Strategy Paper; or
 - (ii) how actual financial performance for the previous financial year may have affected compliance with the fiscal responsibility principles, or the financial objectives in the County Fiscal Strategy Paper for that financial year; and
- (d) reasons for any deviation from the financial objectives in the County Fiscal Strategy Paper together with proposals to address the deviation and the time estimated for doing so.

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

(4) Not later than seven days after the County Budget Review and Outlook Paper is approved by the County Executive Committee, the County Treasury shall—

- (a) arrange for the Paper to be laid before the County Assembly; and
- (b) as soon as practicable after having done so, publish and publicise the Paper.

Other responsibilities of County Treasury

Banking arrangements for county government and its entities.

119. (1) The County Treasury is responsible for authorising the opening, operating and closing of bank accounts for the county government and its entities, except as otherwise provided by other legislation and in accordance with regulations made under this Act.

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

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

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

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

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

- (a) the County Executive Committee member for finance may impose under section 156; or

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

Management of cash at the county government level.

120. (1) A County Treasury shall manage its cash within a framework established by the county assembly and by regulations.

(2) Every county government entity shall submit an annual cash flow plan and forecasts to the County Treasury in a form and manner directed by County Treasury, and shall send a copy to the Controller of Budget.

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

(4) Except as otherwise provided by other legislation, the following are payable into the County Exchequer Account—

- (a) all interest received from investments made under subsection (3);
- (b) all money received from the redemption or maturity of the investments, and from the sale or conversion of securities relating to the investments.

(5) The County Treasury may incur costs, charges and expenses in connection with negotiating, placing, managing, servicing, or converting any investment entered into under subsection (3).

(6) Any costs, charges or expenses incurred under subsection (5) are payable from the County Exchequer Account.

Procurement for county government entities.

121. For the purposes of this Act, all procurement of goods and services and disposal of assets, required for the purposes of the county government or a county government entity are to be carried out in accordance with Article 227 of the Constitution and the Public Procurement and Disposal Act (Cap. 412C).

County Treasury to maintain record of county government loans.

122. (1) The County Treasury shall maintain a record of all loans made to the county government and make the record available to the county assembly within seven days of request.

(2) The County Treasury shall include in the record under subsection (1), the following information—

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

(3) The county treasury shall maintain the following additional information with respect to every such loan—

- (a) the names of the parties to the loan;
- (b) the amount of the loan and the currency in which it is expressed and in which it is repayable;
- (c) the terms and conditions of the loan, including interest and other charges payable and the terms of repayment;
- (d) the amount of the loan advanced at the time the report under subsection (3) is submitted;
- (e) the purpose for which the loan was used and the perceived benefits of the loan; and
- (f) any other information that the county assembly requests.

(4) The County Treasury shall submit both quarterly and annual reports of all loans made to the county government to the county assembly.

County Treasury to submit county government debt management strategy to county assembly.

123. (1) On or before the 28th February in each year, the County Treasury shall submit to the county assembly a statement setting out the debt management strategy of the county government over the medium term with regard to its actual liability and potential liability in respect of loans and its plans for dealing with those liabilities.

(2) The County Treasury shall include the following information in the statement—

- (a) the total stock of debt as at the date of the statement;
- (b) the sources of loans made to the county government;
- (c) the principal risks associated with those loans;
- (d) the assumptions underlying the debt management strategy; and
- (e) an analysis of the sustainability of the amount of debt, both actual and potential.

(3) As soon as practicable after the statement has been submitted to the county assembly under this section, the County Executive Committee member for finance shall publish and publicise the statement and submit a copy to the Commission on Revenue Allocation and the Intergovernmental Budget and Economic Council.

County Treasury to provide county assembly with additional reports when required.

124. On being requested to do so by the county assembly, the County Treasury shall prepare and submit to the county assembly a report on any matter relating to its responsibilities within fourteen days of the request.

*County government budget process***Stages in county government budget process.**

125. (1) The budget process for county governments in any financial year shall consist of the following stages—

- (a) integrated development planning process which shall include both long term and medium term planning;
- (b) planning and establishing financial and economic priorities for the county over the medium term;
- (c) making an overall estimation of the county government's revenues and expenditures;
- (d) adoption of County Fiscal Strategy Paper;
- (e) preparing budget estimates for the county government and submitting estimates to the county assembly;
- (f) approving of the estimates by the county assembly;
- (g) enacting an appropriation law and any other laws required to implement the county government's budget;
- (h) implementing the county government's budget; and
- (i) accounting for, and evaluating, the county government's budgeted revenues and expenditures.

(2) The County Executive Committee member for finance shall ensure that there is public participation in the budget process.

County government to prepare development plan.

126. (1) Every county government shall prepare a development plan in accordance with Article 220(2) of the Constitution, that includes—

- (a) strategic priorities for the medium term that reflect the county government's priorities and plans;
- (b) a description of how the county government is responding to changes in the financial and economic environment;
- (c) programmes to be delivered with details for each programme of—
 - (i) the strategic priorities to which the programme will contribute;
 - (ii) the services or goods to be provided;
 - (iii) measurable indicators of performance where feasible; and
 - (iv) the budget allocated to the programme;
- (d) payments to be made on behalf of the county government, including details of any grants, benefits and subsidies that are to be paid;
- (e) a description of significant capital developments;

- (f) a detailed description of proposals with respect to the development of physical, intellectual, human and other resources of the county, including measurable indicators where those are feasible;
- (g) a summary budget in the format required by regulations; and
- (h) such other matters as may be required by the Constitution or this Act.

(2) The County Executive Committee member responsible for planning shall prepare the development plan in accordance with the format prescribed by regulations.

(3) The County Executive Committee member responsible for planning shall, not later than the 1st September in each year, submit the development plan to the county assembly for its approval, and send a copy to the Commission on Revenue Allocation and the National Treasury.

(4) The County Executive Committee member responsible for planning shall publish and publicise the annual development plan within seven days after its submission to the county assembly.

County government to prepare cash flow projections.

127. (1) Not later than the 15th June of each financial year, every county government shall prepare an annual cash flow projection for the county for the next financial year, and submit the cash flow projection to the Controller of Budget with copies to the Intergovernmental Budget and Economic Council and the National Treasury.

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

County Executive Committee member for finance to manage budget process at county government level.

128. (1) The County Executive Committee member for finance shall manage the budget process for the county.

(2) Not later than the 30th August in each year, the County Executive Committee member for finance shall issue a circular setting out guidelines to be followed by all of the county government's entities in the budget process.

(3) The County Executive Committee member for finance shall include in the circular—

- (a) a schedule for preparation of the budget, specifying the key dates by which the various processes are to be completed;
- (b) the methodology for the review and projection of revenues and expenditures;
- (c) key policy areas and issues to be taken into consideration when preparing the budget;
- (d) the procedures to be followed by members of the public who wish to participate in the budget process;

- (e) the format in which information and documents relating to the budget are to be submitted;
- (f) the information to be in conformity with standard budget classification systems as prescribed by regulations; and
- (g) any other information relevant to the budget process.

(4) A county government entity shall comply with the guidelines and, in particular, shall adhere to the key dates specified in the schedule referred to in subsection (3)(a).

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

129. (1) A County Executive Committee member for finance shall submit to the County Executive Committee for its approval—

- (a) the budget estimates and other documents supporting the budget of the county government, excluding the county assembly; and
- (b) the draft Bills at county level required to implement the county government budget, in sufficient time to meet the deadlines prescribed by this section.

(2) Following approval by the County Executive Committee, the County Executive Committee member for finance shall—

- (a) submit to the county assembly the budget estimates, supporting documents, and any other Bills required to implement the budget, except the Finance Bill, by the 30th April in that year; and
- (b) ensure that the estimates submitted in subsection (a) are in accordance with the resolutions adopted by county assembly on the County Fiscal Strategy Paper.

(3) Each county assembly clerk shall prepare and submit to the county assembly the budget estimates for the county assembly and a copy shall be submitted to the County Executive Committee member for finance.

(4) The County Executive Committee member for finance shall prepare and present his or her comments on the budget estimates presented by the county assembly clerk.

(5) The County Executive Committee member for finance shall ensure that the budget process is conducted in a manner and within a timeframe sufficient to permit the participants in the process to meet the requirements of the Constitution and this Act.

(6) As soon as is practicable after the budget estimates and other documents have been submitted to the County Assembly under this section, the County Executive Committee member for finance shall publish and publicise the documents.

(7) Upon approval of the budget estimates by the county assembly, the County Executive Committee member for finance shall prepare and submit a County Appropriation Bill to the county assembly of the approved estimates.

County Executive Committee member for finance to submit budget documents to county assembly.

130. (1) The County Executive Committee member for finance shall submit to the county assembly the following documents in respect of the budget for every financial year—

- (a) a budget summary that includes—
 - (i) a summary of budget policies including revenue, expenditure, debt and deficit financing; and
 - (ii) an explanation of how the budget relates to the fiscal responsibility principles and the financial objectives;
 - (iii) a memorandum by the County Executive Committee member for finance explaining how the resolutions adopted by the county assembly on the budget estimates have been taken into account;
- (b) budget estimates that include—
 - (i) a list of all county government entities that are to receive funds appropriated from the budget of the county government;
 - (ii) estimates of revenue projected from the Equalisation Fund over the medium term;
 - (iii) all revenue allocations from the national government over the medium term, including conditional and unconditional grants;
 - (iv) all other estimated revenue by broad economic classification;
 - (v) all estimated expenditure, by Vote, and by programme, clearly identifying both recurrent and development expenditures;
 - (vi) information regarding loans made to the county government, including an estimate of principal, interest and other charges to be paid by that county government in the financial year in respect of those loans;
- (c) information relating to any payments and liabilities to be made or incurred by the county government for which an appropriation is not included in an Appropriation Act, together with the constitutional or national legislative authority for any such payments or liabilities; and
- (d) a statement by the County Executive Committee member for finance specifying the measures taken by the county government to implement any recommendations made by the county assembly with respect to the budget for the previous financial year.

(2) In preparing the annual Appropriation Bill to put before the County Assembly, the County Executive Committee member for finance shall ensure that the expenditure appropriations in the Bill are in a form that—

- (a) is accurate, precise, informative and pertinent to budget issues; and
- (b) clearly identifies the appropriations by Vote and programme.

(3) In preparing the annual appropriation Bill under subsection (2), the county executive committee member responsible for finance shall include, in the allocation

to the county assembly any unspent funds that had been appropriated to the county assembly in the immediate preceding financial year.

(4) Where an Appropriation Bill is passed before the beginning of the financial year to which it relates and does not contain unspent funds allocated to the county assembly in the immediate preceding financial year, the county executive committee member for finance shall prepare and submit to the county assembly a Supplementary Appropriation Bill allocating the unspent funds.

(5) A Bill prepared under subsection (4) shall be introduced in the county assembly within two months of the commencement of the financial year.

(6) Failure by the county executive committee member for finance to prepare a Supplementary Appropriation Bill under subsection (4) shall constitute an additional indicator of a serious or persistent material breach under section 94.

[Act No. 9 of 2021, s. 11.]

County Assembly to consider budget estimates.

131. (1) The county assembly shall consider the county government budget estimates with a view to approving them, with or without amendments, in time for the relevant appropriation law and any other laws required to implement the budget to be passed by the 30th June in each year.

(2) Before the county assembly considers the estimates of revenue and expenditure, the relevant committee of the county assembly shall discuss and review the estimates and make recommendations to the county assembly, and in finalising the recommendations to county assembly, the committee shall take into account the views of the County Executive Committee member for finance and the public on the proposed recommendations.

(3) An amendment to the budget estimates may be made by the county assembly only if it is in accordance with the resolutions adopted regarding the County Fiscal Strategy Paper and if—

- (a) any increase in expenditure in a proposed appropriation, is balanced by a reduction in expenditure in another proposed appropriation; and
- (b) any proposed reduction in expenditure is used to reduce the deficit.

(4) Where a Bill originating from a member of a county assembly proposes amendments after the passing of budget estimates and the Appropriations Bill by the county assembly, the county assembly may proceed in accordance with the resolutions adopted regarding the County Fiscal Strategy Paper and ensure—

- (a) an increase in expenditure in a proposed appropriation is balanced by a reduction in expenditure in another proposed appropriation; or
- (b) a proposed reduction in expenditure is used to reduce the deficit.

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

(6) The County Executive Committee member for finance shall take all reasonably practicable steps to ensure that the approved budget estimates are

prepared and published in a form that is clear and easily understood by, and readily accessible to, members of the public.

Submission and consideration of the revenue raising measures in the county assembly.

132. (1) Each financial year, the County Executive member for finance shall, with the approval of the County Executive Committee, make a pronouncement of the revenue raising measures for the county government.

(2) The County Executive Committee member for finance shall, on the same date that the revenue raising measures are pronounced, submit to the county assembly the County Finance Bill, setting out the revenue raising measures for the county government, together with a policy statement expounding on those measures.

(3) Any recommendations made by the relevant committee or adopted by the county assembly on revenue matters shall—

- (a) ensure that the total amount of revenue raised is consistent with the approved fiscal framework and the County Allocation of Revenue Act;
- (b) take into account the principles of equity, certainty and ease of collection;
- (c) consider the impact of the proposed changes on the composition of tax revenue with reference to direct and indirect taxes;
- (d) consider domestic, regional and international tax trends;
- (e) consider the impact on development, investment, employment and economic growth; and
- (f) take into account the taxation and other tariff agreements and obligations that Kenya has ratified, including taxation and tariff agreements under the East African Community Treaty.

(4) The recommendation of the County Executive Committee member for finance shall be included in a report and tabled in the county assembly.

Approval of the Finance Bill.

133. Not later than ninety days after passing the Appropriation Bill, the county assembly shall consider and approve the Finance Bill with or without amendments.

Action to be taken in case of delay in enacting County Appropriation Bill.

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

(2) Money withdrawn under subsection (1)—

- (a) may be used only for the purpose of meeting expenditure necessary to carry on the services of the county government during the financial year concerned until such time as the relevant appropriation law is passed; and
- (b) may not exceed, in total, one-half of the amount included in the estimates of expenditure submitted to the county assembly for that year.

(3) The Speaker of the county assembly shall, within seven days, communicate the authorisation in subsection (1) to the County Executive Committee member for finance.

(4) The money withdrawn under subsection (1) shall be included in the appropriation law, under separate Votes, for the services for which it is withdrawn.

County government to submit to county assembly supplementary budget in certain circumstances.

135. (1) A county government may spend money that has not been appropriated if the amount appropriated for any purpose under the County Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act, or money has been withdrawn from the county government Emergency Fund.

(2) A county government shall submit a supplementary budget in support of the additional expenditure for authority for spending under subsection (1).

(3) In complying with subsection (2), a county government shall describe how the additional expenditure relates to the fiscal responsibility principles and financial objectives.

(4) Except as provided by subsection (5), the approval of the county assembly for any spending under this section shall be sought within two months after the first withdrawal of the money.

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

(6) When the county assembly has approved spending under subsection (2), a supplementary Appropriation Bill shall be introduced for the appropriation of the money spent.

(7) In any financial year, the county government may not spend under this section more than ten percent of the amount appropriated by the county assembly for that year unless that county assembly has, in special circumstances, approved a higher percentage.

Appropriation of money for county government purpose to lapse if unspent.

136. (1) Subject to any other legislation, an appropriation that has not been spent at the end of the financial year for which it was appropriated lapses immediately at the end of that financial year.

(2) If, at the end of a financial year, a county government entity is holding appropriated money that was withdrawn from the County Exchequer Account but has not been spent, it shall repay the unspent money to the County Exchequer Account and prepare a refund statement which shall be forwarded to the Controller of Budget.

*Establishment of Forum for consultation by county governments***Establishment of County Budget and Economic Forum for county budget consultation process.**

137. (1) As soon as practicable after the commencement of this Act, a county government shall establish a forum to be known as the (Name of the County) County Budget and Economic Forum.

(2) The County Budget and Economic Forum shall consist of—

- (a) the Governor of the county who shall be the chairperson;
- (b) other members of the county executive committee;
- (c) a number of representatives, not being county public officers, equal to the number of executive committee members appointed by the Governor from persons nominated by organisations representing professionals, business, labour issues, women, persons with disabilities, the elderly and faith-based groups at the county level.

(3) The purpose of the Forum is to provide a means for consultation by the county government on—

- (a) preparation of county plans, the County Fiscal Strategy Paper and the Budget Review and Outlook Paper for the county; and
- (b) matters relating to budgeting, the economy and financial management at the county level.

(4) In addition to the above, consultations shall be in accordance with the consultation process provided in the law relating to county governments.

*Responsibilities of County Executive Committee Member for finance and functions of the county government in respect to public finances***Conditions for receiving grants and donations by county government or its entities or third parties.**

138. (1) In this section and section 139—

- (a) “donation” means a gift or a contribution;
- (b) “grant” means the provision of financial or other assistance by a development partner which is not repayable and—
 - (i) where public money is paid to or used by a grant recipient;
 - (ii) which is intended to finance the development of projects or delivery of services or otherwise assist the grant recipient to achieve goals that are consistent with the policy objectives of the county government; and
 - (iii) where the grant recipient is required to act in accordance with any terms or conditions specified in a grant agreement;
- (c) “grant recipient” means the county government or a county government entity authorised to control or spend money under this Act or an

incorporated or unincorporated body not otherwise authorised to control or spend money under this Act;

- (d) “intended beneficiaries” means the people of the county whom the projects or public services financed by a grant are intended to benefit;
- (e) “third party” means any other person other than a public officer.

(2) Subsections (3) to (9) apply to the county government and county government entities.

(3) A county government or county government entity may receive a grant or donation from a development partner with the approval of the County Executive Committee member for finance and only as provided by this section.

(4) As soon as practicable after receiving the grant or donation, the recipient shall notify the County Executive Committee member for finance and the Cabinet Secretary of the receipt.

(5) Funds received in the form of grants or donations shall only be spent in accordance with Article 224 of the Constitution.

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

- (a) the required funding has been appropriated in accordance with this Act or is otherwise authorised by legislation; or
- (b) the County Executive Committee member for finance has given a written authorisation for the project to begin.

(7) The County Executive Committee member for finance shall inform the county assembly of the authorisation given under subsection (6)(b).

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

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

- (a) financial and accounting practices laid down under an Act of Parliament, rules and regulations; and
- (b) administrative, accounting and auditing procedures, including financial accounting rules and procedures for accounting for the receipt or expenditure of money specified or referred to, in any agreement between the recipient and the development partner.

Regulations on grant administration.

139. (1) Regulations approved by the county assembly shall provide for the administration, control and management of grants, including—

- (a) procedures for the allocation and disbursement of grants, including requiring the publication of transparent criteria for the allocation of grants;

- (b) requirements for grant agreements binding on grant recipients that specify the terms and conditions to which the grant is subject;
- (c) procedures for the budgeting, financial management, accounting and reporting of grants by grants recipients;
- (d) procedures under which a third party may be authorised to receive, control or pay public money as a grant; and
- (e) measures to ensure that any third party that is authorised to receive, control or pay public money as a grant, or is responsible for any other aspect of administration of a grant, is subject to the same obligations as a public officer under this Act.

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

- (a) timely public disclosure to intended beneficiaries of the allocation and disbursement of grants to grant recipients;
- (b) timely public disclosure by grant recipients to intended beneficiaries of expenditure and performance achieved in relation to the grant;
- (c) measures that allow the intended beneficiaries to participate in the design and management of the projects or public services financed by the grant;
- (d) measures that allow the intended beneficiaries to report instances of non-compliance with the regulations or grant agreement;
- (e) sanctions that may be imposed on grant recipients in response to instances of non-compliance by one or more grant recipients; and
- (f) the obligations of any public officer or third party authorized to receive, control or pay public money as grants.

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

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

Authority for borrowing by county governments.

140. (1) A County Executive Committee member for finance may, on behalf of the county government, raise a loan for that Government's purposes, only if the loan and the terms and conditions for the loan are set out in writing and are in accordance with—

- (a) Article 212 of the Constitution;
- (b) sections 58 and 142 of this Act;
- (c) the fiscal responsibility principles and the financial objectives of the county government set out in its most recent County Fiscal Strategy Paper; and

- (d) the debt management strategy of the county government over the medium term.

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

Obligations and restrictions with respect to county government borrowing.

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

(2) A county government may borrow money only in accordance with this Act or any other legislation and shall not exceed the limit set by the county assembly.

(3) A county government may borrow money in accordance with section 58, and only for purposes that are prescribed by regulations made under this subsection.

(4) A public debt incurred by a county government is a charge on the County Revenue Fund, unless the County Executive Committee member for finance determines that all or part of the public debt that would otherwise be a charge on that Fund shall be a charge on another public fund established by that county government or any of its entities.

(5) The County Executive Committee member for finance shall pay the proceeds of any loan raised under this Act into the County Revenue Fund or into any other public fund established by the county government or as the County Executive Committee member for finance may determine.

(6) A County Executive Committee member for finance may establish such sinking fund or funds for the redemption of loans raised under this Act for the purposes of the county government or any of its entities as the County Executive Committee member for finance considers necessary.

(7) A County Executive Committee member for finance may in accordance with national legislation on public procurement and disposal of assets—

- (a) appoint advisers, agents and underwriters for the purposes of raising loans; and
- (b) enter into agreements with those advisers, agents and underwriters as to the role to be undertaken by them and the remuneration to be paid to them.

(8) Any expenses incurred in connection with borrowing by a county government shall be a charge—

- (a) on the County Revenue Fund; or
- (b) on such other county public fund established by the county government or any of its entities as the County Executive Committee member for finance may determine in accordance with regulations approved by the county assembly.

(9) The costs, interests and principal payments made by the national government on behalf of the county concerning loans to the county government shall, together with the principal amount, be reimbursed to the national government by the county government.

Borrowing by county government entities.

142. (1) The County Assembly may authorise short term borrowing by county government entities for cash management purposes only.

(2) Any borrowing under subsection (1) may not exceed five percent of the most recent audited revenues of the entity.

(3) A county government entity that has any such borrowing shall ensure that the money borrowed is repaid within a year from the date on which it was borrowed.

Persons who are authorised to execute loan documents at county government level.

143. (1) The County Executive Committee member for finance or any person designated by the County Executive Committee member for finance in writing is authorised to execute loan documents for borrowing by the county government.

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

- (a) the accounting officer responsible for the entity; and
- (b) any other specified office holder authorised by legislation to execute such documents on behalf of an entity.

County government may issue securities only if authorised by this Act.

144. (1) The county government may issue securities, whether for money that it has borrowed or for any other purpose, only in one or more series and only in accordance with this Act and regulations.

(2) The County Executive Committee member for finance may issue securities on behalf of the county government, for money borrowed by the county government in accordance with the criteria prescribed by regulations made for the purpose of this subsection.

(3) Subject to the provisions of section 141 of this Act, the authority of the County Executive Committee member for finance to borrow money includes the authority to borrow money by issuing county government securities in accordance with the regulations.

(4) Any county government securities issued by the County Executive Member for finance under this section shall be within the borrowing limits set out by the county assembly under section 141(2) of this Act.

(5) A county government securities—

- (a) may be issued in one or more series; and
- (b) may be issued in accordance with loan agreements entered into in accordance with regulations developed by the County Executive Committee member for finance and approved by the County Assembly.

(6) An agreement to obtain a loan by a county government entity made under subsection (5), may be amended from time to time and where the amendment results in further indebtedness or prejudice to the entity that borrowed, the amendment shall be approved by the county assembly.

(7) The County Executive Committee member for finance shall ensure that every county government security issued under this section is given in the name of that County.

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

- (a) the County Executive Committee member for finance;
- (b) a delegate appointed by the County Executive Committee member for finance; or
- (c) a borrowing agent appointed for that purpose under this Act.

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

(10) At the request of the holder of a county government security, the County Executive Committee member for finance—

- (a) may authorise the principal, or any interest payable in respect of the principal, to be paid at a place in Kenya or elsewhere different from the place otherwise provided; and
- (b) may revoke such an authorisation and substitute thereof.

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

(12) The County Executive Committee member for finance may authorise in writing the issue of a duplicate county government security to replace a county Government security that is lost, damaged, or destroyed, but only if the County Executive Committee member for finance is satisfied that loss, damage or destruction has occurred.

(13) Subject to this Act or any other legislation, secondary trading of county government securities may be carried out only in such manner as may be prescribed by regulations made for the purposes of this subsection and in accordance with the provisions of this Act.

(14) In this section, “secondary trading” means any activity leading to a change in the ownership of a county government security before its redemption date.

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

(16) If the proceeds of a county government security have not been collected by, or cannot be paid to, the holder of the security because the whereabouts of the holder or, if the holder has died, the whereabouts of the holder’s personal representatives, are unknown, the County Executive Committee member for finance shall arrange for the County Treasury to credit the amount of money due to the holder to an interest free account for the holder’s benefit.

(17) If, after six years from the redemption date of a county government security, the proceeds of the security have not been collected by, or paid to, the holder or the holder’s personal representatives, the County Executive Committee member for

finance shall return the uncollected amount to the County Exchequer Account to form part of the County Revenue Fund in accordance with regulations.

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

(19) The County Executive Committee member for finance shall publish and publicise annually all payments made in terms of subsection (17).

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

County government authorised to lend money.

145. (1) A county government entity may lend money in accordance with this Act or any county legislation.

(2) The County Executive Committee member for finance may, in relation to any money lent by the county government under this section—

- (a) accept, in consultation with the Central Bank of Kenya, all money payable under the loan in any currency the County Executive Committee member for finance considers appropriate; and
- (b) agree at any time to the variation of any security given in respect of the loan.

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

- (a) from an appropriation for development expenditures; or
- (b) from some other authority approved by the county assembly for the purpose for which the loan is made.

(4) The County Executive Committee member for finance shall ensure that a security given in respect of a loan under this section is given in the name of the county government.

(5) The County Executive Committee member for finance may, on behalf of the county government, carry out any of the responsibilities, and exercise any of the powers, of the county government with respect to securing a loan granted by that county government.

County government joint infrastructure investment.

146. (1) Regulations approved by Parliament shall prescribe financial relations with respect to joint infrastructure investments undertaken by counties and any joint infrastructure investments undertaken by counties shall be done in terms of those regulations.

(2) The Intergovernmental Budget and Economic Council may agree on regulations with guidelines for county government joint infrastructure investments.

*Responsibilities of an accounting officer of a
county assembly in management of public finances*

Role of accounting officers in management of public finances.

147.

Subject to the Constitution, the accounting officer of a county assembly shall monitor, evaluate and oversee the management of their public finances, including—

- (a) promoting and enforcing transparency, effective management and accountability with regard to the use of their finances;
- (b) ensuring that accounting standards are applied;
- (c) implementing financial policies in relation to their finances;
- (d) ensuring proper management and control of, and accounting for, their finances in order to promote the efficient and effective use of budgetary resources;
- (e) preparing annual estimates of expenditures;
- (f) acting as custodian of the entity's assets except as may be provided by other legislation or the Constitution;
- (g) monitoring the management of their finances and their financial performance;
- (h) reporting regularly to the county assembly on the implementation of their budget; and
- (i) take such other action, not inconsistent with the Constitution, as will further the implementation of this Act.

*Responsibilities of accounting officers of county
governments and county government entities*

Designation of accounting officers for county government entities by the County Executive Committee Member for finance.

148. (1) A County Executive Committee member for finance shall, except as otherwise provided by law, in writing designate accounting officers to be responsible for managing the finances of the county government entities as is specified in the designation.

(2) Except as otherwise stated in other legislation, the person responsible for the administration of a county government entity, shall be the accounting officer responsible for managing the finances of that entity.

(3) A County Executive Committee member for finance shall ensure that each county government entity has an accounting officer in accordance with Article 226 of the Constitution.

(4) The Clerk to the county assembly shall be the accounting officer of the county assembly.

(5) A county government may, in order to promote efficient use of the county resources, adopt, subject to approval by the county assembly, a centralised county financial management service.

Responsibilities of accounting officers designated for county government entities.

149. (1) An accounting officer is accountable to the county assembly for ensuring that the resources of the entity for which the officer is designated are used in a way that is—

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

(2) In carrying out a responsibility imposed by subsection (1), an accounting officer shall, in respect of the entity concerned—

- (a) ensure that all expenditure made by the entity complies with subsection (1);
- (b) ensure that the entity keeps financial and accounting records that comply with this Act;
- (c) ensure that all financial and accounting records that the entity keeps in any form including in electronic form are adequately protected and backed up;
- (d) ensure that all contracts entered into by the entity are lawful and are complied with;
- (e) ensure that all applicable accounting procedures are followed when acquiring or disposing of goods and services and that, in the case of goods, adequate arrangements are made for their custody, safe guarding and maintenance;
- (f) bring a matter to the attention of the County Executive Committee member responsible for the entity if, in the accounting officer's opinion a decision or policy or proposed decision or policy of the entity may result in resources being used in a way that is contrary to subsection (1);
- (g) prepare a strategic plan for the entity in conformity with the medium term fiscal framework and financial objectives of the county government;
- (h) prepare estimates of expenditure of the entity in conformity with the strategic plan referred to in paragraph (g);
- (i) submit the estimates of an entity, which is not a county corporation, to the County Executive Committee member for finance;
- (j) submit the estimates of an entity, which is a county corporation, to the executive committee member responsible for the entity who, after approving it, shall forward it to the County Executive Committee member for finance;
- (k) not later than three months after the end of each financial year, prepare annual financial statements for that financial year and submit them to the Auditor-General for audit, with a copy to the County Treasury;

- (l) try to resolve any issues resulting from an audit that remain outstanding;
- (m) manage the assets of the entity to ensure that it receives value for money when acquiring, using or disposing of its assets;
- (n) dispose of assets at the most competitive price and at the lowest possible cost ensuring that the proceeds from all asset disposals are deposited in a bank account of the entity;
- (o) ensure that the respective county government entity has adequate systems and processes in place to plan for, procure, account for, maintain, store and dispose of assets, including an asset register that is current, accurate and available to the relevant County Treasury or the Auditor-General;
- (p) provide the County Treasury with any information it requires to fulfil its functions under this Act;
- (q) provide information on any frauds, losses, or any violations of subsection (1) and provide explanations for the actions taken to prevent similar conduct in future; and
- (r) carry out such other responsibilities as may be specified in regulations by the County Executive Committee member for finance.

(3) Not later than three months after the county assembly has adopted a report by a committee of the county assembly with respect to a report submitted by the Controller of Budget under Article 228(6) of the Constitution, an accounting officer shall, for each entity for which the officer is designated—

- (a) prepare a report on actions taken by the entity to implement any recommendations made in the committee's report as adopted by the county assembly; and
- (b) submit the report to the county assembly with a copy to the County Treasury.

(4) Not later than one month after receiving a report by an accounting officer under subsection (3), the County Treasury shall submit to the county assembly the accounting officer's report and any comments on the report by the County Treasury.

(5) The report referred to in subsection (3) shall be published and publicised.

Accounting officer of a county government entity may write off any loss.

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

(2) An accounting officer for a county government entity, may with the approval of the County Executive Committee member for finance, write off a loss exceeding the amount referred to in subsection (1) but not exceeding a further amount, and in circumstances prescribed by the regulations approved by Parliament.

(3) The County Executive Committee member for finance may with the approval of County Executive Committee authorise an accounting officer to write off a loss exceeding the further amount referred to in subsection (2).

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

(5) Any loan write off is to be done in accordance with regulations approved by Parliament.

Spending authority of accounting officer.

151. If a county government entity has expenditures that are charged on the County Revenue Fund under the Constitution or an Act of Parliament or county legislation, the accounting officer who has responsibility for that entity has the authority to spend the money in accordance with the purposes specified in legislation without an appropriation.

Power of accounting officers for county entities to make cash advances.

152. (1) An accounting officer for a county government entity may authorise payment of cash advances to public officers employed in the entity to be used to enable those officers to make payments for the entity or in the course of their duties.

(2) The power to authorise cash advances is subject to any limitations imposed by the regulations.

(3) A public officer to whom a cash advance is made shall account for the use of the advance within a reasonable time.

(4) A public officer shall return the balance of the cash advance together with signed supporting documents for the cash expended in accordance with any requirement set out in any of the following—

- (a) the documents used to apply for or authorise the advance;
- (b) any regulation prescribed for the purpose of this section; or
- (c) a written notice given to the officer by the accounting officer.

(5) If a public officer to whom a cash advance has been made under subsection (1) fails to account for the use of the advance, or fails to return it as required by subsection (4)—

- (a) the amount of the advance not accounted for or not returned becomes a debt owed by the officer;
- (b) the debt becomes subject to the payment of interest at a rate prescribed by the regulations made for the purpose of this subsection; and
- (c) the debt, including the interest on it, is recoverable by that entity by making a deduction from any salary or other amount that is payable to the officer.

Accounting officer to be responsible for managing assets and liabilities of county government entity.

153. (1) The accounting officer for a county Government entity—

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

- (b) shall manage those assets in such a way as to ensure that the county government entity achieves value for money in acquiring, using or disposing of those assets.

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

Limited power of accounting officer to reallocate appropriated funds.

154. (1) An accounting officer shall not authorise the transfer of an amount that is appropriated—

- (a) for transfer to another county government entity or person;
- (b) for capital expenditure except to defray other capital expenditure; or
- (c) for wages to non-wage expenditures.

(2) An accounting officer for a county government entity may reallocate funds between programs, or between Sub-Votes, in the budget for a financial year, but only if—

- (a) provisions made in the budget of a program or Sub-Vote are available and are unlikely to be used;
- (b) a request for the reallocation has been made to the County Treasury explaining the reasons for the reallocation and the County Treasury has approved the request; and
- (c) the total of all reallocations made to or from a program or Sub-Vote does not exceed ten percent of the total expenditure approved for that program or Sub-Vote for that year.

(3) Regulations approved by the county assembly may prescribe requirements for the reallocation of funds within Sub-votes or programs.

County government entity to maintain internal auditing arrangements.

155. (1) A county government entity shall ensure that it complies with this Act and—

- (a) has appropriate arrangements for conducting internal audit according to the guidelines issued by the Accounting Standards Board; and
- (b) if any regulations are in force under subsection (2), those regulations are complied with.

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

(3) The arrangements for the conduct of internal auditing for a county government entity include—

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

- (b) conducting risk-based, value-for-money and systems audits aimed at strengthening internal control mechanisms that could have an impact on achievement of the strategic objectives of the entity;
- (c) verifying the existence of assets administered by the entity and ensuring that there are proper safeguards for their protection;
- (d) providing assurance that appropriate institutional policies and procedures and good business practices are followed by the entity; and
- (e) evaluating the adequacy and reliability of information available to management for making decisions with regard to the entity and its operations.

(4) A county government entity shall ensure that the arrangements for conducting internal audits in respect of the entity are in accordance with international best practices for internal auditing.

(5) A county government entity shall establish an internal auditing committee whose composition and functions are to be prescribed by the regulations.

Disciplinary measures against public and accounting officers.

156. (1) If an accounting officer reasonably believes that a public officer employed by a county government entity has engaged in improper conduct in relation to the resources of the entity, the accounting officer shall—

- (a) take appropriate measures to discipline the public officer in accordance with regulations; or
- (b) refer the matter to be dealt in terms of the statutory and other conditions of employment applicable to that public officer.

(2) If the County Executive Committee Member for finance reasonably believes that an accounting officer has engaged in improper conduct within the meaning of subsection (4), the County Executive Committed member for finance shall—

- (a) take appropriate measures to address the matter in accordance with laid down procedures; or
- (b) refer the matter to be dealt with in terms of the statutory and other conditions of employment applicable to that public officer.

(3) The measures referred to in subsection (2)(a) include the County Executive Committee member for finance revoking the designation as accounting officer.

(4) For the purposes of this section, a public officer or accounting officer engages in improper conduct if the officer—

- (a) contravenes or fails to comply with this Act or any regulation in force;
- (b) undermines any financial management procedures or controls;
- (c) makes or permits an expenditure that is unlawful or has not been properly authorised by the entity concerned; or
- (d) fails without reasonable cause to pay eligible and approved bills promptly in circumstances where funds are provided for.

(5) Disciplinary measures under this section may not be taken against a public officer or accounting officer under subsection (1)(a) or (2)(a) unless the officer has been given an opportunity to be heard in relation to the alleged improper conduct concerned.

Receivers and collectors of county government revenue

Designation of receivers of county government revenue.

157. (1) The County Executive Committee member for finance shall, in writing, designate persons to be responsible for collecting, receiving and accounting for such county government revenue as the County Executive Committee member for finance may specify in their letters of designation.

(2) A receiver of county government revenue is responsible to the County Executive Committee member for finance for ensuring that the revenue for which the receiver is responsible is collected or recovered, and is accounted for.

Receiver may authorise public officer to be collector of revenue.

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

(2) Any other public officer, other than a receiver of revenue or collector of revenue for a county government, who collects revenue for that Government shall, not later than three days after receiving it, deliver the revenue to a receiver or collector of revenue for that county government.

(3) A receiver of revenue for a county government shall provide quarterly statements to the County Treasury with copies to the National Treasury and the Commission on Revenue Allocation.

Powers of County Executive Committee member for finance to waive or vary tax, fees or charges.

159. The County Executive Committee member for finance may waive a county tax, fee or charge imposed by the county government and its entities in accordance with criteria prescribed in regulations provided that—

- (a) the County Treasury shall maintain a public record of each waiver together with the reason for the waiver and report on each waiver in accordance with section 164 of this Act;
- (b) a State Officer may not be excluded from payment of a tax, fee or charge by reason of the office of the State Officer or the nature of work of the State Officer; and
- (c) such waiver or variation has been authorised by an Act of Parliament or county legislation.

Kenya Revenue Authority may be appointed collector.

160. The County Executive Committee member for finance may authorise the Kenya Revenue Authority or appoint a collection agent to be a collector of county

government revenue for the purposes of this Part on such terms and conditions as may be agreed in writing in accordance with regulations.

County government revenue raising measures to conform to Article 209(5) of the Constitution.

161. In imposing a tax or other revenue raising measure, a county government shall ensure that the tax or measure conforms to Article 209(5) of the Constitution and any other legislation, and before imposing any tax or revenue raising measures under this Article, shall seek views of the Cabinet Secretary and the Commission on Revenue Allocation.

Obligations of County Public Officers

Obligations of public officers with respect to county government resources.

162. (1) Every public officer employed in or by the county government shall comply with the Constitution and all laws relating to conduct of public officers when carrying out a responsibility imposed, or exercising a power conferred, by this Act.

(2) Every public officer shall also—

- (a) comply with the provisions of this Act so far as they are applicable to the officer;
- (b) ensure that the resources within the officer's area of responsibility are used in a way that—
 - (i) is lawful and authorised; and
 - (ii) effective, efficient, economical and transparent; and
- (c) within the officer's area of responsibility—
 - (i) ensure that adequate arrangements are made for the proper use, custody, safeguarding and maintenance of public property; and
 - (ii) use the officer's best efforts to prevent any damage from being done to the financial interests of the county government.

Financial reporting by county government entities

County government to prepare annual financial statement.

163. (1) At the end of each financial year, the County Treasury shall, for the county government, consolidate the annual financial statements in respect of all the county government entities in formats to be prescribed by the Accounting Standards Board.

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

- (a) a statement of all money paid into and paid out of the County Exchequer Account;
- (b) a summary of—
 - (i) the appropriation accounts and statements prepared by accounting officers under section 164; and
 - (ii) the statements prepared by receivers of revenue under section 165;

- (c) a statement of payments, if any, made out of the County Exchequer Account that are authorised by legislation other than an Appropriation Act;
- (d) a statement of the total amount of debt of the county government that is outstanding at the end of the financial year;
- (e) a statement of the debt guaranteed by the national government at the end of the financial year;
- (f) such other statements as the county assembly may require; and
- (g) a statement on the summary of the accounts from the county assembly.

(3) The County Treasury shall ensure that the statements and summaries referred to in subsection (2) are in a form that is in accordance with the accounting standards prescribed and published by the Accounting Standards Board from time to time.

(4) Not later than four months after the end of each financial year, the County Treasury shall—

- (a) submit the financial statements and summaries referred to in subsection (1) to the Auditor-General; and
- (b) deliver a copy to the National Treasury, Controller of Budget and the Commission on Revenue Allocation.

Annual reporting by accounting officers.

164. (1) At the end of each financial year, the accounting officer for a county government entity shall prepare financial statements in respect of the entity in formats to be prescribed by the Accounting Standards Board.

(2) The accounting officer shall include in the financial statements—

- (a) appropriation accounts, showing—
 - (i) the services for which the appropriated money was spent;
 - (ii) the amounts actually spent on each service; and
 - (iii) the status of each Vote compared with the appropriation for the Vote; and
 - (iv) a statement explaining any variations between the actual expenditure and the sums Voted; and
 - (v) any other information specified by the County Treasury;
- (b) a statement of the entity's debt that is outstanding at the end of the financial year;
- (c) a statement of the entity's debt guaranteed by the national government as at the end of the financial year;
- (d) a statement of the entity's assets and liabilities as at the end of the financial year in respect of—
 - (i) each Vote, clearly identifying between recurrent and development expenditure; and
 - (ii) funds and deposits;

- (e) a statement of the accounting policies followed in preparing the financial statement; and
- (f) a statement of the county government entity's performance against predetermined objectives.

(3) The accounting officer shall prepare the financial statements in a form that complies with relevant accounting standards prescribed and published by the Accounting Standards Board from time to time.

(4) Within three months after the end of each financial year, the accounting officer for an entity shall—

- (a) submit the entity's financial statements to the Auditor-General; and
- (b) deliver a copy of the statements to the relevant County Treasury, the Controller of Budget, and the Commission on Revenue Allocation.

(5) In the case of an entity that is a County corporation, the accounting officer shall submit a copy of the county corporation's financial statements to the County Executive Committee member responsible for that corporation who shall approve and forward the statements to the County Executive Committee member for finance.

Annual reporting by receivers of revenue.

165. (1) At the end of each financial year, a receiver of revenue for a county government shall prepare an account in respect of the revenue collected, received and recovered by the receiver during that financial year.

(2) The account under subsection (1) shall include—

- (a) a statement of receipts and disbursement in a form prescribed by the Accounting Standards Board from time to time; and
- (b) a statement of arrears of revenue.

(3) Not later than three months after the end of the financial year, the receiver of revenue for the county government shall—

- (a) submit the accounts to the Auditor-General; and
- (b) deliver a copy to the National Treasury, the Controller of Budget, County Treasury, and the Commission on Revenue Allocation.

(4) Not later than two months after the end of each financial year, a receiver of revenue for the county government shall submit to a county assembly a report with respect to all waivers and variations of taxes, fees or charges granted by the receiver during that year.

(5) The receiver shall include in the report the following details in respect of each waiver or variation—

- (a) the full name of each person benefiting from the waiver or variation;
- (b) the amount of tax, fee or charge affected by the waiver or variation;
- (c) the year to which the waiver or variation relates;
- (d) the reasons for waiver or variation; and

- (e) the legislation in terms of which the waiver was authorised.

Accounting officer to prepare quarterly reports for county government entity.

166. (1) An accounting officer for a county government entity shall prepare a report for each quarter of the financial year in respect of the entity.

(2) In preparing a quarterly report for a county government entity, the accounting officer shall ensure that the report—

- (a) contains information on the financial and non-financial performance of the entity; and
- (b) is in a form determined by the Accounting Standards Board.

(3) Not later than fifteen days after the end of each quarter, the accounting officer shall submit the quarterly report to the County Treasury.

(4) Not later than one month after the end of each quarter, the County Treasury shall—

- (a) consolidate the quarterly reports and submit them to the county assembly;
- (b) deliver copies to the Controller of Budget, National Treasury and the Commission on Revenue Allocation; and
- (c) publish and publicise them.

(5) In the case of an entity that is a county corporation, the accounting officer for the corporation shall also submit a copy of the quarterly report to the County Executive Committee member responsible for the corporation, who, upon approving it, shall submit a copy to the County Treasury.

Annual reporting by Administrators of county public funds.

167. (1) The administrator of a county public fund established by the Constitution, an Act of Parliament or county legislation shall prepare financial statements for the fund for each financial year in a form prescribed by the Accounting Standards Board.

(2) In preparing a financial statement for a county public fund, the administrator shall ensure that the report contains information on the financial and non-financial performance of the fund.

(3) Not later than three months after the end of each financial year, the administrator of a county public fund shall submit the financial statements prepared under this section to the Auditor General.

(4) The administrator shall submit a copy of the report to the County Executive Committee member responsible for the fund.

Quarterly reporting by administrators of county public funds.

168. (1) The administrator of a county public fund established by the Constitution, an Act of Parliament or county legislation, shall prepare quarterly financial statements for the fund in a form prescribed by the Accounting Standards Board.

(2) In preparing a quarterly financial statement for a county public fund, the administrator shall ensure that the report contains information on the financial and non-financial performance of the fund.

(3) Not later than fifteen days after the end of each quarter, the administrator shall submit the quarterly report to the County Treasury and a copy to the Controller of Budget.

Financial management in urban areas and cities

Application of this part to urban areas and cities.

169. (1) This part applies to urban areas and cities as defined in the Urban Areas and Cities Act, 2011.

(2) For purposes of this Act, all provisions of this Act that apply to county government entities shall apply to urban areas and cities, unless expressly stated otherwise.

Accounting Officer of urban area or city.

170. The accounting officer for an urban area or city shall be designated as provided in section 148 of this Act, and as accounting officer shall—

- (a) exercise the functions and powers assigned to an accounting officer in terms of this Act; and
- (b) be responsible and accountable to the county assembly for the financial management and administration of the urban area or city.

Urban area or city accounting officer responsibilities in revenue management.

171. (1) The accounting officer of an urban area or city is responsible for the management of the revenue received by that urban area or city in accordance with section 172.

(2) The accounting officer shall—

- (a) for the purposes of collection systems consistent with this Act and the Urban Areas and Cities Act, manage, the urban area or city's credit control and debt collection policy;
- (b) immediately inform the County Executive Committee member for finance of any payments due to the urban area or city by a State organ in respect of city or urban area tax, or services, if such payments are regularly in arrears for periods of more than thirty days; and
- (c) take all reasonable steps to ensure that any funds collected by the urban area or city on behalf of another organ of state is transferred to that organ of state within three days and that such funds are not used for purposes of the city or urban area.

Financing of urban areas or cities.

172. Subject to the Constitution and any other Act of Parliament, and with the approval of the County Assembly, an urban area or city may be funded through any of the following sources—

- (a) revenue arising from rates, fees, levies, charges and other revenue raising measures which is retained by the urban area or city for the purpose of defraying its costs for providing services;
- (b) revenue allocated by the county government to the urban area or city;
- (c) investment income;
- (d) grants and donations; or
- (e) borrowing as provided for under section 140 of this Act.

Criteria for allocating funds to urban areas or cities by county governments.

173. (1) In allocating funds to the urban areas or cities under section 172(b), the county government shall use objective criteria reflecting the service demand and responsibilities of the urban area or city.

(2) The objective criteria to be prescribed in county legislation, may include, among others, adjustments for—

- (a) the proportional population, calculated as the population of the urban area or city divided by the total population of the county;
- (b) the relative area, calculated as the area of the urban area or city divided by the total county area;
- (c) the relative poverty levels based on objective measures of relative poverty;
- (d) the relative per capita revenue collection estimated as urban area or city per capita revenue collection divided by the County per capita revenue collection;
- (e) an objective measure to account for price differentials in providing similar services in the urban area and city relative to the rural areas of the county;
- (f) a minimum amount to ensure effective delivery of essential services and responsibilities assigned to the urban area or city; and
- (g) incentives to encourage urban areas and cities to exercise prudent financial management as well as transparency and accountability in public financial management.

(3) In approving the criteria in subsection (2), the County Assembly will seek the recommendations of the Commission on Revenue Allocation.

Principles to be observed by urban areas or cities in managing public finances.

174. The accounting officer of an urban area or city shall observe the following principles in managing public finances of that entity—

- (a) the actual expenditure on the personnel shall not exceed a percentage of their allocation to be prescribed by the County Assembly;

- (b) on an annual basis the urban area's or city's recurrent expenditure shall not exceed its revenue;
- (c) in the medium term, the recurrent expenditure may not exceed a percentage of total revenue, which will be approved by the county assembly;
- (d) an urban area's or city's debts are maintained at a sustainable level; and
- (e) over the medium term, the proceeds of borrowing by an urban area or city are used only for purposes of financing development expenditure and not recurrent expenditure.

Budget and budget process for urban areas or cities.

175. (1) An urban area or city shall develop a strategic plan based on the integrated development plan that is consistent with the County Fiscal Strategy Paper.

(2) The strategic plan along with any further guidelines from the County Treasury on the county budget process shall form a basis for development of the urban area's or city's budget proposals.

(3) No later than the 30th August of every year, the County Treasury shall issue budget instructions to the urban areas or cities.

(4) The instructions shall prescribe the manner, form and timing in which the budget requests shall be submitted and subsequently reported on.

(5) The urban area or city shall on the basis of the instructions in subsections (3) and (4) prepare and submit budget requests to the County Treasury upon approval by the Board in sufficient time, in the case of cities and municipalities, for their approval as part of the annual county Appropriation Bill.

(6) The budget estimates in subsection (5) shall include the current services budget, representing the cost of maintaining the urban area or city services at current levels.

(7) The budget submission shall also contain new services requests, covering one-time expenditures for the construction and maintenance of facilities in the urban area' or city.

(8) The County Treasury shall evaluate the budget proposal and make recommendations to the urban area or city to enable the preparation of the itemized annual budget for consideration and approval by its Board.

(9) In preparing the strategic plan in subsection (1) and the annual budget estimates in subsection (5), the accounting officer of an urban area or city—

- (a) shall ensure that the public is given an opportunity to participate in the preparation process as outlined in the second schedule of the Urban Areas and Cities Act, 2011; and
- (b) for that purpose, may publish guidelines for public participation.

- (10) The Accounting Officer of each urban area or city shall—
- (a) publish and publicise the strategic plan within seven days following its adoption; and
 - (b) publish and publicise the annual budget estimates within twenty one days after the county assembly has approved the budget estimates.

Response to delays in approval of annual budgets by urban areas or cities.

176. (1) If the annual County Appropriation Act for the financial year has not been assented to or is not likely to be assented to by the beginning of the financial year, the relevant county assembly may authorise the withdrawal of funds from the County Revenue Fund for the purpose of meeting expenditure of an urban area or city in accordance with subsection (2).

- (2) Funds withdrawn under subsection (1)—
- (a) may only be used to meet expenditure necessary to carry on the services of the urban area or city during the financial year concerned using the estimates submitted to the county assembly for approval; and
 - (b) may not exceed in total one-half of the amount included in the estimates of expenditure submitted to the county assembly for approval.

Borrowing by urban areas or cities.

- 177.** (1) An urban area or city may borrow only—
- (a) from the county government;
 - (b) through its county government; or
 - (c) by way of a bank overdraft.

(2) Any borrowing by an urban area or city shall be subject to such terms and conditions as the county assembly may impose, and in the case of paragraph (b), in accordance with the provisions of section 140 of this Act.

Conditions in which urban areas or cities may receive grants.

178. (1) An urban area or city may receive a grant or donation from a development partner only with the approval of the County Executive Committee member for finance concerned, and only as provided under section 138 of this Act.

(2) The grants referred to in subsection (1) shall be expended in accordance with the strategic plan as provided for under section 175.

(3) As soon as possible after receiving the grant or donation, the recipient shall notify the County Executive Committee member for finance and the Cabinet Secretary of the receipt.

(4) If a project that is being financed by a grant or donation from a development partner requires county government funding, the project may only be started when—

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

- (b) the County Executive Committee member for finance has given a written authorisation for the project to begin.

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

(6) Subject to Article 229(4) of the Constitution, the recipient of a grant or donation from a development partner shall administer and account for the grant or donation by using government financial and accounting laws, rules and regulations and, administrative procedures, accounting and auditing procedures, or any of its financial accounting rules and procedures for accounting for the receipt or expenditure of money that are specified in, or referred to, in any agreement between the recipient and the development partner.

(7) The County Executive Committee member for finance may in addition to the audit above, permit a donor of a grant to audit such funds on the basis of its own financial accounting rules.

Urban areas or cities bank accounts.

179. (1) An urban area or city shall open and maintain a bank account in the name of the Urban Area or City, and with the approval of the respective County Executive Committee member for finance.

(2) All money received by an urban area or city shall be paid into its bank account or accounts, and this shall be done promptly and in accordance with this Act and any requirements that may be prescribed.

Reporting by urban areas or cities.

180. (1) The Board of an urban area or city shall ensure that the urban area or city follows the guidelines prescribed by the Accounting Standards Board.

(2) The Accounting Officer of an urban area or city shall prepare an annual report including accounts in accordance with the provisions of the Urban Areas and Cities Act, 2011 and other reports as required by this Act.

(3) The annual report of an urban area or city shall contain such additional information as is necessary to enable an informed assessment of the activities of the urban area or city.

Transitional arrangements.

181. All directions, resolutions, orders and authorizations on financial management given or issued by local authorities established under the Local Government Act (Repealed) and subsisting or valid immediately before the commencement of this Act shall be deemed to have been given, issued or made pursuant to the Urban Areas and Cities Act (Cap. 275) and this Act as the case may be, until the expiry, amendment or repeal of these Acts.

Establishment and dissolution of County Corporations and additional requirements for County Corporations and county government-linked corporations

Establishment and dissolution of county corporations.

182. (1) A county corporation may be established or dissolved only with the prior approval of the County Executive Committee, which may be given only after taking into account any recommendations of the County Treasury regarding the financial implications of establishing or dissolving the county corporation.

(2) The regulations shall prescribe the criteria to be used in establishing or dissolving county corporations and the regulations shall be tabled in the county assembly for approval.

Restrictions on county government investing in county government-linked corporations.

183. (1) The county government or county government entity may not invest—

- (a) in a county corporation; or
- (b) in a county government-linked company,

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

Responsibility for monitoring financial performance of county corporations.

184. (1) The County Executive Committee member for that entity is responsible for monitoring—

- (a) the financial performance of County corporations and county government-linked corporation; and
- (b) the performance of any functions or activities that affect the financial performance of those county corporations.

(2) The responsibilities of the County Executive Committee member for that entity under subsection (1) shall include in particular—

- (a) analysing financial and other reports that are required to be prepared by a county corporation under any Act or county legislation;
- (b) reporting to the County Executive Committee on the performance of those county corporations; and
- (c) making recommendations to the County Executive Committee as to how a particular county corporation or county government-linked corporation could improve its performance.

Annual reporting by the County Treasury on county corporations.

185. (1) Not later than four months after the end of each financial year, the County Treasury shall prepare and submit to the county assembly a consolidated report summarising the extent of county government involvement or investment in, or funding of, all county corporations and county government-linked corporations for the financial year.

- (2) The report in subsection (1) shall include information on—
- (a) the date of incorporation and objects of the county corporation;
 - (b) the amount of county government shareholding, directly or indirectly, in the county corporation;
 - (c) any changes in the shareholding of the county corporation during the financial year;
 - (d) the amount of any funding in the form of grants or subsidies provided by the county government to the county corporation or public entity, excluding profit making entities, during the financial year;
 - (e) the amount of any loans made by the government to the county corporation, during the financial year;
 - (f) the cumulative amount of undischarged loans in respect of the corporation;
 - (g) the amount of profit or loss of the County corporation for the financial year;
 - (h) the amount of any revenue received by the county government from the county corporation during the financial year, including dividends, interest and proceeds from any divestiture of assets of the county corporation;
 - (i) the payments made, or losses incurred, by the county government to meet contingent liabilities as a result of loans during the financial year, including payments made in respect of loan write-offs or waiver of interest on loans; and
 - (j) an assessment of the financial and related non-financial performance of the county corporation for the financial year.

(3) Once every three years, the County Executive Committee member responsible for matters relating to public investments shall prepare a report on the need for the county government continued involvement in, or funding of, the County Corporation or county government-linked company.

(4) Copies of the reports prepared in subsections (1) and (3) shall be submitted to the Controller of Budget, the Commission on Revenue Allocation and the Auditor-General.

Definitions for purposes of sections 182, 183 and 184.

186. For the purposes of sections 182, 183 and 184—

- (a) **“county government-linked corporation”** means a county corporation in which the county government is a shareholder with less than fifty percent of the share capital of the corporation; and
- (b) **“invest”** means any form of funding, or potential funding, provided to a County corporation, including providing share capital, loans, grants or subsidies.

**PART V – RELATIONS BETWEEN NATIONAL AND COUNTY
GOVERNMENTS ON BUDGET AND ECONOMIC MATTERS**

Establishment of the Intergovernmental Budget and Economic Council

Establishment, purpose and composition of the Intergovernmental Budget and Economic Council.

187. (1) There is established a council to be known as the Intergovernmental Budget and Economic Council comprising—

- (a) the Deputy President who shall be the Chairperson;
- (b) the Cabinet Secretary;
- (c) a representative of the Parliamentary Service Commission;
- (d) a representative of the Judicial Service Commission;
- (e) the Chairperson of the Commission on Revenue Allocation or a person designated by the Chairperson;
- (f) the Chairperson of the Council of County Governors;
- (g) every County Executive Committee member for finance; and
- (h) the Cabinet Secretary responsible for intergovernmental relations.

(2) The purpose of the Council is to provide a forum for consultation and cooperation between the national government and county governments on—

- (a) the contents of the Budget Policy Statement, the Budget Review and Outlook Paper and the Medium-Term Debt Management Strategy;
- (b) matters relating to budgeting, the economy and financial management and integrated development at the national and county level;
- (c) matters relating to borrowing and the framework for national government loan guarantees, criteria for guarantees and eligibility for guarantees;
- (d) agree on the schedule for the disbursement of available cash from the Consolidated Fund on the basis of cash flow projections;
- (e) any proposed legislation or policy which has a financial implication for the counties, or for any specific county or counties;
- (f) any proposed regulations to this Act; and
- (g) recommendations on the equitable distribution of revenue between the national and county governments and amongst the county governments as provided in section 190; and
- (h) any other matter which the Deputy President in consultation with other Council members may decide.

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

(4) The National Treasury shall provide secretariat services to the Council and assign or appoint such support staff as may be necessary for the Council to effectively perform its functions.

(5) The Council shall meet at least twice a year and the Deputy President shall decide the time and agenda for meetings of the Council in consultation with the other members of the Council.

(6) In the absence of the Chairperson from any meeting of the Council, the Cabinet Secretary shall chair the meeting.

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

(8) The Council may invite other persons to attend any of its meetings.

Vacation of office by a member.

188. A member of the Intergovernmental Budget and Economic Council shall cease to be a member if that person ceases to hold office by virtue of which he or she became a member to the Council.

The process of sharing revenue

The process of sharing revenue.

189. The process of sharing revenue raised by the national government between the national and county governments, and among the county governments, shall be in accordance with the Constitution and this Act.

Recommendations of the Commission on Revenue Allocation.

190. (1) At least six months before the beginning of the financial year, or at a later date agreed between the Cabinet Secretary and the Commission on Revenue Allocation, the Commission shall submit to the Senate, the National Assembly, the County Assembly, the National Executive and the County Executives, recommendations for the following financial year regarding—

- (a) an equitable division of revenue raised nationally, among the national and county levels of government; and
- (b) the determination of each county's equitable share in the county share of that revenue.

(2) When making its recommendations, the Commission shall take into account the criteria listed in Article 203(1) of the Constitution.

Bills allocating revenue and additional allocations.

191. (1) Each year when the Budget Policy Statement is introduced, the Cabinet Secretary shall submit to Parliament a Division of Revenue Bill, a County Allocation of Revenue Bill and a County Governments Additional Allocations Bill prepared by the National Treasury as provided in this Act for the financial year to which that Budget relates.

(2) The Division of Revenue Bill shall specify the share of each level of government of the revenue raised nationally for the relevant financial year.

(3) The County Allocation of Revenue Bill shall specify—

- (a) each county's share of that revenue under subsection (2);
- (b) *deleted by Act No. 17 of 2022, s. 9(a)(iii).*

(3A) A Bill making allocations under Article 202(2) of the Constitution shall specify any other allocations to the counties from the National Government's share of that revenue and any conditions to which those allocations shall be made.

(4) Before the submission of the legislative proposals on the Division of Revenue and County Allocation of Revenue, the Cabinet Secretary shall notify—

- (a) the intergovernmental Budget and Economic Council; and
- (b) the Commission on Revenue Allocation.

(5) When the legislative proposal on the Division of Revenue and County Allocation of Revenue is submitted, it shall be accompanied by a memorandum which explains—

- (a) how the Bill takes into account the criteria listed in Article 203(1) of the Constitution;
- (b) the extent of the deviation from the Commission on Revenue Allocation's recommendations;
- (c) the extent, if any, of deviation from the recommendations of the Intergovernmental Budget and Economic Council; and
- (d) any assumptions and formulae used in arriving at the respective shares mentioned in subsections (2) and (3).

[Act No. 6 of 2014, s. 9, Act No. 17 of 2022, s. 9(a).]

Intergovernmental agreements.

191A. (1) The National Treasury shall enter into an agreement with the respective county government for the transfer of the respective conditional allocation made to the county government pursuant to this Act.

(2) An agreement under subsection (1) shall set out any conditions that may be attached to the conditional allocations made under this Act.

(3) Where a county government intends to enter into an agreement under subsection (1), the county executive committee member shall submit the agreement to the respective County Assembly for approval.

(4) The County Assembly shall, within fourteen days of submission of an agreement under subsection (3), approve or reject the agreement.

(5) Where a County Assembly fails to consider an agreement under subsection (3) within fourteen days, the agreement shall be deemed to be approved.

(6) An agreement under subsection (1) shall set out all conditions attached to an allocation made under this Act.

(7) The respective county government shall forward the agreement approved under this section to the Controller of Budget within seven days of approval.

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

Public participation.

191B. The county executive committee member shall facilitate public participation on any agreement made pursuant to section 191A.

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

Execution of agreement for conditional allocation.

191C. An agreement under section 191A shall be—

- (a) signed by an authorized person or officer; and
- (b) published in the *Kenya Gazette* within a period of seven days of the agreement.

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

Submission to Senate.

191D. (1) The National Treasury shall, within seven days of entering into an agreement under section 191A, submit to the Senate and the Controller of Budget, the agreement together with any other documents relating to the agreement.

(2) The National Treasury shall publish and publicize all agreements entered into pursuant to section 191A.

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

Requisition of funds.

191E. Requisition of funds from the county revenue fund for the purposes of a conditional grant shall be supported by the intergovernmental agreement approved under section 191A.

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

PART VI – PUBLIC SECTOR ACCOUNTING STANDARDS BOARD

Establishment of the Board.

192. There is established a Public Sector Accounting Standards Board which shall perform the functions set out in this Part.

Composition of the Board.

193. (1) The Accounting Standards Board shall consist of a representative of each of the following bodies who shall serve on a part-time basis—

- (a) the National Treasury;
- (b) the Controller of Budget;
- (c) the Intergovernmental Budget and Economic Council;
- (d) the Auditor-General;
- (e) the Institute of Certified Public Accountants of Kenya;

- (f) the Association of Professional Societies of East Africa;
- (g) the Capital Markets Authority;
- (h) the Institute of Internal Auditors; and
- (i) the Institute of Certified Public Secretaries of Kenya.

(2) The Cabinet Secretary shall appoint a chairperson of the Board from members nominated under subsection (1).

(3) In making nominations to the Board, the respective organisations shall ensure that their nominees are certified members in good standing of a professional body in accounting or finance recognised by law in Kenya.

(4) Members of the Board except *ex-officio* members shall be appointed by the Cabinet Secretary and serve for a term of three years, renewable once for a further and final term of three years.

(5) The National Treasury shall provide secretariat services to the Board and assign or appoint such support staff as may be necessary for the Board to effectively perform its functions.

(6) The Board may establish and regulate its own operating procedures.

[Act No. 38 of 2016, s. 59.]

Functions of the Board.

194. (1) The Accounting Standards Board shall provide frameworks and set generally accepted standards for the development and management of accounting and financial systems by all State organs and public entities, and shall in particular perform the following functions—

- (a) set generally accepted accounting and financial standards;
- (b) prescribe the minimum standards of maintenance of proper books of account for all levels of Government;
- (c) prescribe internal audit procedures which comply with this Act;
- (d) prescribe formats for financial statements and reporting by all state organs and public entities;
- (e) publish and publicise the accounting and financial standards and any directives and guidelines prescribed by the Board;
- (f) in consultation with the Cabinet Secretary on the effective dates of implementation of these standards, *Gazette* the dates for application of the standards and guidelines; and
- (g) perform any other functions related to advancing financial and accounting systems management and reporting in the public sector.

(2) In setting the standards under subsection (1), the Board shall take into account any relevant factors including—

- (a) best international accounting practices; and
- (b) the capacity of the relevant entity to comply with the standards.

(3) The Board may set different standards for different categories of entities to which these standards apply including to develop content, structure and format of county frameworks and accounting and financial guidelines which are in line with the setting of county standards.

(4) The Board shall monitor the adherence to the standards by all State organs and public entities.

(5) The standards set by the Board shall promote transparency and other Constitutional values and principles in effective, prudence and efficient management of revenue, expenditure, assets and liabilities of the institutions to which these standards apply.

Vacation of office and remuneration of Board members.

195. (1) A member of the Accounting Standards Board, other than an *ex-officio* member, may—

- (a) at any time resign from the Board by notice in writing to the chairperson;
- (b) be removed from the Board if the member—
 - (i) has been absent from three consecutive meetings of the Board without the permission of the chairperson;
 - (ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his or her creditors;
 - (iii) is convicted of an offence involving dishonesty or fraud;
 - (iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding one hundred thousand shillings;
 - (v) is incapacitated by prolonged physical or mental illness or is deemed unfit to discharge his or her duties as a member of the Board; or
 - (vi) ceases to be a member by virtue of the withdrawal of his or her nomination to the Board by the nominating institution.

(2) The remuneration payable to members of the Board shall be determined by the Salaries and Remuneration Commission.

PART VII – ENFORCEMENT PROVISIONS

Offences by public officers.

196. (1) A public officer shall not spend public money otherwise than authorized by the Constitution, an Act of Parliament or County legislation.

(2) A public officer shall not raise revenues other than in accordance with the Constitution, an Act of Parliament or an Act of a County Assembly.

(3) A public officer shall not enter into any obligation that has financial implications for the national government budget or a county government budget unless the obligation is authorised by the Constitution, an Act of Parliament or an Act of a County Assembly.

(4) A public officer shall not borrow money, issue a guarantee, indemnity or security or enter into any other transaction that binds or may bind the national

government entity or a county government entity to any future financial obligation, unless the borrowing, guarantee, indemnity, security or other transaction is authorised by this Act or by any other written law and, in the case of loans or guarantees, is within the limits provided under this Act.

(5) A public officer shall not direct another public officer to do an act that constitutes a contravention of, or a failure to comply with, this Act, the Constitution or any other written law.

(6) A public officer who contravenes this section commits an offence and on conviction is liable to a term of imprisonment not exceeding two years or to a fine not exceeding one million shillings, or to both.

(7) Where a national government entity or a county government entity—

- (a) engages in an action that it is prohibited from doing by this Act; or
- (b) fails to comply with an obligation imposed on it by this Act,

a public officer who assisted or facilitated the act, or who was a party to, or contributed to, the failure, commits an offence and on conviction is liable to a term of imprisonment not exceeding two years or to a fine not exceeding one million shillings, or to both in addition to provisions under Article 226(5) of the Constitution.

Offences of financial misconduct.

197. A public officer employed by the national government or a national government entity commits an offence of financial misconduct if, without lawful authority, the officer—

- (a) issues public government securities, or varies their terms and conditions;
- (b) opens a bank account in the name of the government;
- (c) lends money on behalf of the Government;
- (d) issues guarantees or indemnities on behalf of the Government;
- (e) issues securities for loans made to the government;
- (f) disposes of property belonging to or under the control of, that government or entity;
- (g) fails to pay into a government bank account any public money entrusted to the officer or received by the officer for or on behalf of that government or that entity;
- (h) incurs expenditure or makes a commitment on behalf of that government or entity;
- (i) incurs wasteful expenditure on behalf of that government or entity;
- (j) fails to deliver to that government or entity a gift or donation made on a public or official occasion in accordance with the Public Officers Ethics Act (Cap. 185B);
- (k) fails to provide any information in the officer's possession, or under the officer's control, in relation to the financial management, financial

- performance, or banking activities of that government or entity or in relation to the management or control of an asset or liability of that government or entity when required to do so, except where such refusal or failure is required or authorised by this Act or any other written law;
- (l) fails to keep proper records or conceals, or wrongfully destroys, information that is required to be recorded;
 - (m) intentionally or recklessly obstructs or hinders a person while that person is acting in the performance or exercise of the person's functions or powers under this Act;
 - (n) makes any statement or declaration, or gives any information or certificate, lawfully required by or under this Act knowing it to be false or misleading in a material respect;
 - (o) for the purpose of procuring for the public officer or any other person or organisation—
 - (i) makes improper payment of public money belonging to or entrusted to that government or entity; or
 - (ii) makes improper use of any public property of that government or entity; or
 - (p) fails to remit revenue received contrary to the provisions of sections 76(2) and 158(2) of this Act.

Other offences by public officers.

198. (1) A public officer commits an offence if that officer—

- (a) takes possession of public funds or assets without lawful authority;
- (b) misappropriates public funds or assets;
- (c) conceals information on public finances to obtain a financial benefit either for the officer or another person; or
- (d) engages in a corrupt act.

(2) In this section, “corrupt act” includes soliciting or receiving an inducement.

Penalties for offences.

199. Except as otherwise provided by this Act, a person who is found guilty of committing an offence under this Act for which no other punishment is given, that person is liable on conviction to a term of imprisonment not exceeding five years or to a fine not exceeding ten million shillings, or to both.

Duty of Principal Secretary to report suspected offences to relevant law enforcement authority for investigation.

200. (1) If the Principal Secretary suspects that an offence may have been committed under this Act, that Secretary shall take all practicable steps to report the matter to the relevant law enforcement authority to enable that authority to investigate the suspected offence and, if evidence of the offence is discovered, institute proceedings to prosecute any person who is alleged to have committed it.

(2) If the Principal Secretary fails to report a suspected offence as required by subsection (1), that Principal Secretary is liable to disciplinary action in accordance with—

- (a) the terms and conditions of that Principal Secretary's appointment or employment; and
- (b) any provisions prescribed by regulations for the purposes of this section.

Duty of County Chief Officer to report suspected offences.

201. (1) If the County Chief Officer suspects that an offence may have been committed under this Act, he or she shall notify the County Executive Committee member for finance and take all practicable steps to report the matter to the relevant law enforcement authority to enable that authority to investigate the suspected offence and, if evidence of the offence is discovered, to institute proceedings to prosecute any person who is alleged to have committed it.

(2) If the County Chief Officer fails to report a suspected offence as required by subsection (1), that County Chief Officer is liable to disciplinary action in accordance with—

- (a) the terms and conditions of that Chief Officer's appointment or employment; and
- (b) any provisions prescribed by regulations for the purposes of this section.

Liability of public officer for certain losses sustained by national government.

202. (1) A public officer is personally liable for any loss sustained by the national government that is attributable to—

- (a) the fraudulent or corrupt conduct, or negligence, of the officer; or
- (b) the officer's having done any act prohibited by section 196, 197 and 198.

(2) The National Treasury may, by civil proceedings brought in a court of competent jurisdiction, recover damages from a public officer for any loss for which the officer is liable under subsection (1).

Liability of public officer for certain losses sustained by county government.

203. (1) A public officer is personally liable for any loss sustained by a county government that is attributable to—

- (a) the fraudulent or corrupt conduct, or negligence, of the officer; or
- (b) the officer's having done any act prohibited by sections 196, 197 and 198.

(2) The County Treasury may, by civil proceedings brought in a court of competent jurisdiction, recover damages from a public officer for any loss for which the officer is liable under subsection (1).

Cabinet Secretary may impose institutional sanctions on national government entities.

204. (1) The Cabinet Secretary may apply sanctions to a national government entity that—

- (a) approves the contracting of debt beyond any debt limits provided under this Act;
- (b) defaults on a loan;
- (c) provides inaccurate information to public officers regarding financial matters;
- (d) issues a guarantee without proper authorisation;
- (e) issues a guarantee for an amount in excess of any limits set under this Act;
- (f) creates liabilities in excess of its ability to finance those liabilities;
- (g) fails to address issues raised by the Auditor-General to the satisfaction of the Auditor-General; or
- (h) contravenes section 196.

(2) The Cabinet Secretary may apply any of the following sanctions to a national government entity that has done, or failed to do, anything referred to in subsection (1)—

- (a) impose on the entity reporting requirements additional to those required by this Act or any other written law;
- (b) suspend the ability of the entity to reallocate funds;
- (c) withhold from the entity funds to which the entity would otherwise be entitled under the Constitution or this Act;
- (d) suspend the entity's authority to borrow money;
- (e) treat any accumulated liabilities as a charge on the entity's future revenues;
- (f) appoint one or more administrators to administer the entity's financial affairs for such period as may be specified in the appointment.

PART VIII – MISCELLANEOUS PROVISIONS**Powers of the Cabinet Secretary to make regulations.**

205. (1) The Cabinet Secretary may make regulations, not inconsistent with this Act respecting any matter that is necessary or convenient to be prescribed under this Act or for the carrying out or giving effect to this Act.

(2) In making regulations under this Act, the Cabinet Secretary shall consult the Intergovernmental Budget and Economic Council.

(3) A provision of a regulation may—

- (a) apply generally or be limited in its application;
- (b) apply differently according to different factors;

- (c) authorise any matter or thing to be done from time to time; or
- (d) do any combination of those things.

(3A) Despite the generality in subsection (1), the Cabinet Secretary may make regulations for raising money by issuing a *Sukuk* bond which shall specify the purpose for which money may be raised.

(3B) Money raised through a *Sukuk* bond may be raised within or outside Kenya in Kenya shillings or in any other currency or medium of exchange.

(4) Regulations under subsection (1) shall not take effect unless approved by a resolution passed by Parliament.

(5) Regulations approved under subsection (4) shall take effect on the day after the date on which both Houses approved them or, if a later date is specified in the regulations, on that later date.

(6) If a House of Parliament does not make a resolution either approving or rejecting any regulations within fifteen sitting days after submission to it for approval, the House shall be deemed to have approved those regulations.

[Act No. 15 of 2017, s. 48.]

Protection of public officers from liability.

206. Nothing done by any authorised person or public officer working under the instructions of the National Treasury or County Treasury, if done in good faith, for the purposes of executing the powers, functions or duties of the National Treasury or County Treasury under the Constitution or this Act, renders that person or public officer personally liable for any action, claim or demand.

Public participation.

207. (1) Regulations may provide for participatory governance for purposes of this Act.

(2) Regulations made under this section may provide for the following matters—

- (a) structures for participation;
- (b) mechanisms, processes and procedures for participation;
- (c) receipt, processing and consideration of petitions, and complaints lodged by members of the community;
- (d) notification and public comment procedures;
- (e) public meetings and hearings;
- (f) special needs of people who cannot read or write, people with disabilities, women and other disadvantaged groups;
- (g) matters with regard to which community participation is encouraged;
- (h) the rights and duties of members of community; and
- (i) any other matter that enhances community participation.

Repeal of certain Acts.

208. The following Acts are repealed—

- (a) the Fiscal Management Act (No. 5 of 2009);
- (b) the Government Financial Management Act (No. 5 of 2004);
- (c) the Internal Loans Act (Cap. 420);
- (d) the Contingencies Fund and County Emergency Funds Act (No. 17 of 2011);
- (e) the National Government Loans Guarantee Act (No. 18 of 2011); and
- (f) the External Loans and Credits Act (Cap. 422).

209. *Spent.*

Savings and transitional provisions.

210. The savings and transitional provisions specified in the Second Schedule have effect.

heading 1	heading 2
cell 1	cell 2
cell 3	cell 4

FIRST SCHEDULE
CONSEQUENTIAL AMENDMENTS TO OTHER ACTS

(s. 209)

Spent

SECOND SCHEDULE
SAVINGS AND TRANSITIONAL PROVISIONS

(s. 210, Act No. 15 of 2014, s. 13.)

1. Deployment of staff to county government

On the commencement of this Act, and in line with Article 262(15) of the Constitution, the National Treasury shall prior to the establishment of the county government, deploy such staff to that county as may be necessary to support the county in—

- (a) carrying out its responsibilities under this Act; and
- (b) performing its functions under the Constitution relating to matters of public finance.

2. Performance of functions of Accounting Standards Board

On the commencement of this Act, and pending the establishment of the Accounting Standards Board, the functions of the Board as provided for under this Act shall continue to be performed by the relevant National Treasury department.

3. Abolition of Treasury

- (1) On the commencement of this Act—
 - (a) the office known as the Treasury, as in existence immediately before that commencement, is abolished; and
 - (b) subject to this Act, the National Treasury becomes responsible for any matter for which the Treasury was responsible but which was not completed before that commencement.
- (2) On the commencement of this Act, all public officers employed in the Treasury as in existence immediately before that commencement, become public officers employed in the National Treasury on the same terms and conditions as those on which they were employed immediately before that commencement.
- (3) Any reference to the Treasury in a written law is to be read as a reference to the National Treasury.

4. Principal Secretary to the National Treasury

(1) On the commencement of this Act, any reference to the Principal Secretary to the National Treasury in a written law is to be read as a reference to the Permanent Secretary to the Treasury until the first election held under the Constitution.

5. Accounting officers

A person holding office as an accounting officer shall continue in office until the Cabinet Secretary designates otherwise.

6. Receivers of revenue

A person holding office as a receiver of revenue continues in office until the Cabinet Secretary designates otherwise.

7. Contingencies Fund

(1) On the commencement of this Act—

- (a) the Civil Contingencies Fund in operation under the Civil Contingencies Fund Act (Cap. 425) is abolished; and
- (b) any money held in that Fund is payable into the Contingencies Fund established by Article 208 of the Constitution.

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

8. Guarantee limit

Despite the repeal of the National Government Guarantee (Loans) Act (No. 18 of 2011) by this Act, the limit of contingent liability established by resolution of the National Assembly on the 16th June 2011 under that Act continues in effect, until such time as the National Assembly sets a financial limit under section 51 of this Act.

9. Existing public funds

Any public fund that was established before the coming into operation of this Act and was in existence immediately before the coming into operation of this Act is continued as a public fund under this Act.

10. Existing regulations

Any regulations, directions or instructions that were made or issued under legislation that is repealed by this Act and that were in force immediately before the coming into operation of this Act shall, so far as not inconsistent with this Act, remain in force until regulations or instructions under this Act come into force.

11. Power to make savings and transitional regulations

- (1) The regulations may contain provisions of a savings or transitional nature, not inconsistent with this Schedule, consequent on the enactment of this Act.
- (2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.
- (3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the *Gazette*, the provision does not operate so as—
 - (a) to affect, in a manner prejudicial to any person (other than the national government or any of its entities or a county government or any of

its entities), the rights of that person existing before the date of its publication; or

- (b) to impose liabilities on any person (other than the national government or any of its entities or a county government or any of its entities) in respect of anything done or omitted to be done before the date of that publication.

12. Timeline for implementation of program budget

The implementation of programme budgets shall commence in 2013/14 financial year for the national government and in the 2015/16 financial year for the county governments constituted under Chapter eleven of the Constitution.

13. Issues relating to repeal of the Local Government Act

All issues that may arise on the repeal of the Local Government Act (Cap. 265) by the County Government Act, that are related to this Act, shall be dealt with and discharged by the body responsible for matters relating to transition.

14. Cash disbursement to county governments

For the period in between the first general elections under the Constitution and the end of the first financial year following the first general elections, cash disbursements to the county governments shall be on quarterly basis and in accordance with the transfer of functions to county governments.

15. Existing public offices of the Accountant-General and Internal Auditor-General

On the commencement of this Act, the public service offices of the Accountant-General and the Internal Auditor-General established under the Government Financial Management Act (No. 5 of 2004) (*now repealed*) shall continue in existence as offices of the National Treasury established under section 11(2)(c) of this Act.

16. Existing debt limit

Despite the repeal of the External Loans and Credit Act (Cap. 422) by this Act, the debt limit set by the National Assembly as in existence at the commencement of this Act, shall continue in effect until such time as the National Assembly sets another debt limit under section 50(2) of this Act.

CHAPTER 412A

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Declaration under section 4(1)**THE DECLARATION OF THE NATIONAL GOVERNMENT ENTITIES (STATE ORGANS)**

[L.N. 33/2015]

IN EXERCISE of the powers conferred by section 4(1) of the Public Finance Management Act (Cap. 412A), and regulation 211 of the Public Finance Management (National Government) Regulations, the Cabinet Secretary for finance declares the following entities set out in the Schedules to be national government entities—

SCHEDULE I

<i>National Government Entities (State Organs)</i>				
No.	<i>National Government Entities</i>	<i>Enabling Legislation</i>	<i>Mandate</i>	<i>Sector</i>
1.	The Presidency.	The Constitution and Presidential circular on Government Structure.	Head of state and head of Government of Kenya. The President leads the executive branch of the Government of Kenya and is the Commander-in-Chief of the Kenya Defence Forces.	National government.
2.	Ministry of Interior and Coordination of National Government.	The Constitution and Presidential circular on Government Structure.	Coordinating the overall Government business, maintenance of law and order, campaign against drug abuse, provide printing services to the Kenya Government, State visits coordination, establishing, implementing good-policies and providing administrative and leadership service.	National government.
3.	Ministry of Devolution and Planning.	The Constitution and Presidential circular on Government Structure.	To provide effective leadership and coordination in devolution and planning, policy formulation and tracking results for a globally competitive and prosperous nation.	National government.
4.	Ministry of Foreign Affairs and International Trade.	The Constitution and Presidential circular on Government Structure.	Management of Kenya's Foreign Policy, Management of Bilateral and Multilateral Relations, Liaison with International and Regional Organizations, Management of Kenya's Missions and Embassies abroad , liaison with foreign missions in Kenya, ratification of Treaties, Conventions and Agreements, Management of Diplomatic Privileges and Immunities, Co-ordination of State and Official Visits, Handling of Protocol Matters.	National government.

[Subsidiary]

5.	Ministry of Education, Science and Technology.	The Constitution and Presidential circular on Government Structure.	Inspection and supervision of education institutions, teacher education and management, schools administration and programmes, Registration of Education and Training Institutions, Curriculum Development, Examinations and Certification, School Equipment, Early Childhood Education, Care and Development, Primary and Secondary Education, Special Education, University Education.	National government.
6.	The National Treasury.	The Constitution and Presidential circular on Government Structure and Public Finance Management Act.	To pursue prudent economic, fiscal, and monetary policies and effectively coordinate government financial operations for rapid and sustainable development of Kenya.	National government.
7.	Ministry of Health.	The Constitution and Presidential circular on Government Structure.	Health Policy, Sanitation Policy, Preventive and Promotive Health Services, HIV/AIDS Programme and other Sexually Transmitted Infections (STIs) Treatment and Management, Health Education, Family Planning, Food and Food Handling, Health Inspection and other Public Health Services, Quarantine Administration, Overall Sanitary Services, Insanitary Nuisances, Curative Services, Clinics, Dispensaries, Health Centres and Hospitals, Registration of Doctors and Para Medicals, Maternity Services, Nurses and Midwives.	National government.
8.	Ministry of Transport and Infrastructure.	The Constitution and Presidential circular on Government Structure.	Transport Policy, Railways, Sea Ports, Airports, Ferry Services, National Shipping Line, Road Safety, Transport Licensing, Registration and Insurance of Motor Vehicles, Vehicle Inspection, Civil Aviation, Maritime, Transport infrastructure Development.	National government.
9.	Ministry of Environment, Water and Natural Resources.	The Constitution and Presidential circular on Government Structure.	The mandate of the ministry is to monitor, protect, conserve and manage the environment and natural resources through sustainable exploitation for socio-economic development aimed at eradication of poverty, improving living standards and ensuring that a clean environment is sustained now and in the future.	National government.
10.	Ministry of Lands, Housing and Urban Development.	The Constitution and Presidential circular on Government Structure.	Formulate and implement land policy, undertake physical planning, register land transactions, undertake land surveys and mapping, land adjudication and settlement, land valuation and administration of state and trust land.	National government.

11.	Ministry of Information, Communications and Technology.	The Constitution and Presidential circular on Government Structure.	The mandate of the ministry includes Information and Broadcasting Corporation, News Agency, Mass Communication, Film Classification, Postal Services and as an Appeal Tribunal.	National government.
12.	Ministry of Sports, Culture and Arts.	The Constitution and Presidential circular on Government Structure.	To develop, promote, preserve and disseminate Kenya's diverse cultural and national heritage through formulation and implementation of policies to build national pride. Promote sports and develop sports facilities to improve livelihood of the Kenyan people.	National government.
13.	Ministry of Labour, Social Security and Services.	The Constitution, Presidential circular and various Acts of Parliament.	Enforce labour laws, maintain industrial peace, industrial training and promote safety and health of employees; develop and coordinate implementation of policies and strategies for human resource development, micro and small enterprise sector and productivity improvement.	National government.
14.	Ministry of Agriculture, Livestock and Fisheries.	The Constitution and Presidential circular on Government Structure.	The mandate of the Ministry of Agriculture is to promote and facilitate production of food and agricultural raw materials for food security and incomes; advance agro based industries and agricultural exports; and enhance sustainable use of land resources as a basis for agricultural enterprises.	National government.
15.	Ministry of Energy and Petroleum.	The Constitution and Presidential circular on Government Structure.	The mandate of the Ministry of Energy is to facilitate the provision of clean, secure, sustainable and affordable energy services for social-economic development while protecting the environment.	National government.
16.	Ministry of Industrialization and Enterprise Development.	The Constitution and Presidential circular on Government Structure	The mandate of the Ministry of Industrialization and Enterprise Development is to promote and facilitate Industrialization in the country and to transform Kenya into a globally competitive, regional industrial hub in line with the Kenya Vision 2030.	
17.	Ministry of East African Affairs, Commerce and Tourism.	The Constitution and Presidential circular on Government Structure.	Responsible for the formulation, co-ordination and administration of policy in respect to the tourism sector, trade development policy, promotion of retail and wholesale markets, fair trade practices and consumer protection promotion of trade domestically, regionally and internationally through creation of an enabling business and investment environment.	National government.
18.	Ministry of Mining.	The Constitution and Presidential circular on Government Structure.	The Ministry is mandated with the formulation of mining policy, mineral exploration and mining.	National government.

[Subsidiary]

19.	Ministry of Defence	The Constitution and Presidential circular on Government Structure	The Ministry is mandated with the formulation of foreign defence policy.	National Government.
20.	Office of the Attorney-General and Department of Justice.	The Constitution, the Office of the Attorney-General's Act (Cap. 6A) and Presidential circular on Government Structure.	The Office of the Attorney-General has the overall responsibility of providing legal advice to the Government and its agencies. In execution of this function, the Office is responsible for providing efficient and professional legal services to the government and the public for the purposes of facilitating, promoting and monitoring the rule of law, the protection of human rights and democracy.	National government.
21.	Parliament.	The Constitution	Parliament is established and derives its mandate of making legislation from the Chapter eight of Constitution of Kenya.	National government.
22.	The Judiciary.	The Constitution.	Judiciary is established and derives its mandate as a dispute resolution organ from Chapter Ten of the Constitution.	National government.
23.	Commission on Revenue Allocation (CRA).	The Constitution.	The Commission on Revenue Allocation is established under Article 215 of the Constitution and derives its mandate from Article 216 of Constitution. The powers and functions of the Commission on Revenue Allocation is to make recommendations concerning the basis for the equitable sharing of revenue raised by the national government, between the national governments and among the county governments.	National government.
24.	Salaries and Remuneration Commission (SRC).	The Constitution and the Salaries and Remuneration Commission Act (Cap. 412D).	The Salaries and Remuneration Commission is established and derives its mandate from Article 230 of Constitution and section 11 of the Salaries and Remuneration Commission Act (Cap. 412D). The powers and functions of Salaries and Remuneration Commission are to set and regularly review the remuneration and benefits of all State Officers and advice the national government on the remuneration and benefits of all public officers.	National government.
25.	Controller of Budget (CoB).	The Constitution.	The Controller of Budget is established and derives its mandate from Article 228 of Constitution. The powers and functions of the Controller of Budget is to oversee the implementation of the budgets of the national governments by authorising withdrawals from public funds under Articles 204, 206, and 207 of the Constitution.	National government.

26.	The Commission for Implementation of the Constitution (CIC).	The Constitution.	The Commission for Implementation of the Constitution is established and draws its mandate of monitoring, facilitating and overseeing the development and administrative procedures required to implement the Constitution under section 5(6) of the Sixth Schedule of Constitution.	National government.
27.	National Intelligence Service (NIS).	The Constitution and the National Intelligence Act (Cap. 206).	The National Intelligence Service is established and derives its mandate from Article 242 of Constitution and section 5 of the National Intelligence Service Act (Cap. 206). The National Intelligence Service is responsible for security intelligence and counter intelligence to enhance national security.	National government.
28.	Kenya National Commission on Human Rights and Equality Commission.	The Constitution and the Kenya National Commission on Human Rights Act (Cap. 7I).	The Kenya National Commission on Human Rights and Equality Commission is established and derives its mandate to promote respect for human rights and develop a culture of human rights in the Republic from Article 59 of Constitution, and section 8 of the Kenya National Commission on Human Rights Act (Cap. 7I).	National government.
29.	Teachers Service Commission (TSC).	The Constitution and the Teachers Service Commission Act (Cap. 2I2)	The Teachers Service Commission is established and derives its mandate of, among others, reviewing the standards of education and training of persons entering the teaching service from Article 237 of Constitution and section 11 of the Teachers Service Commission Act (Cap. 2I2).	National government.
30.	Ethics and Anti-Corruption Commission.	The Ethics and Anti-Corruption Commission Act (Cap. 7H).	The Commission is established under section 3 of the Ethics and Anti-Corruption Commission Act (Cap. 7H) and it is mandated under section 11 of the Act to combat and prevent corruption through enforcement of the law, educating the public and enlisting their support against corruption and providing preventive services through promotion and development of good practices to seal opportunities and loop holes that facilitate corruption.	National government.
31.	Directorate of Public Prosecutions.	The Constitution and the Office of the Director of Public Prosecutions Act (Cap. 6B).	The Office of Director of Public Prosecutions is established and draws its state powers of prosecution under Article 157 of the Constitution and section 5 of the Office of the Director of Public Prosecutions Act (Cap. 6B)	National government.

[Subsidiary]

32.	Independent Electoral and Boundaries Commission.	The Constitution and the Independent Electoral and Boundaries Commission Act (Cap. 7C).	The Independent Electoral and Boundaries Commission is established and derives its mandate under Article 88 of the Constitution and section 4 of the Act. The Commission is responsible for conducting or supervising referenda and elections to any elective body or office established by the Constitution, and any other elections as prescribed by an Act of Parliament and, in particular, for— the continuous registration of citizens as voters; the regular revision of the voters' roll; the delimitation of constituencies and wards in accordance with the Constitution; among others.	National government.
33.	Public Service Commission.	The Constitution, the Public Service Commission Act (Cap. 185) and Presidential circular on Government Structure.	The Public Service Commission is established under Article 233 of the Constitution. The Commission derives its mandate of administration of the public service under Article 234 of the Commission and section 11 of the Public Commission Act.	National government.
34.	Auditor-General.	The Constitution and Presidential circular on Government Structure.	Article 229 of the Constitution authorises the nomination and appointment of the Auditor-General with mandate to authorization of issues from exchequer account, audit of all government accounts, audit of local authorities accounts, audit of State Corporations, Statutory Boards, Courts, Commissions and Bodies.	National government.
35.	National Cohesion and Integration Commission.	The National Cohesion and Integration Act (Cap. 7N).	The Commission is established under section 15 of the Act with general mandate to facilitate and promote equality of opportunity, good relations, harmony and peaceful co-existence between persons of the different ethnic and racial communities of Kenya, and to advise the Government on all aspects thereof.	National Cohesion and Integration Commission
36.	Police Oversight Authority.	The Independent Police Oversight Act.	The Authority is established under section 3 of the Act with general objectives of— (a) holding the Police accountable to the public in the performance of their functions; (b) giving effect to the provision of Article 244 of the Constitution that the Police shall strive for professionalism and discipline and shall promote and practice transparency and accountability; and (c) ensuring independent oversight of the handling of complaints by the Service.	Police Oversight Authority.

37.	The Betting Control and Licencing Board.	The Betting, Lotteries and Gaming Act. (Cap. 131).	Betting Control and Licencing Board is established under section 3 of Act with mandate— (a) to issue licences and permits in accordance with this Act and any regulations made thereunder; (b) during the subsistence of a licence or permit, to vary, or for good cause to suspend or cancel it with conditions; and (c) to inquire into complaints against licensees or permit-holders.	The Betting Control and Licencing Board.
38.	The National Police Service Commission.	The Constitution and the National Police Service Commission Act (Cap. 85)	The National Police Service Commission is established under Article 246 (1) of the Constitution. Its general mandate under Article 246(3) and section 10 of the Act is to recruit and appoint persons to hold or act in offices in the service, confirm appointments, and determine promotions and transfers within the National Police Service and observe due process, exercise disciplinary control over and removal of persons holding or acting in offices within the service.	The National Police Service Commission.
39.	The Transition Authority.	The Transition to Devolved Government Act, 2012.	The Authority is established under section 4 of the Act and is charged with the responsibility of overseeing the implementation of devolution under the Constitution through policy and legal advisory, resource mobilization, oversight, capacity building and coordination.	The Transition Authority.
40.	The Non-Governmental Organizations Co-ordination Board.	The Non-Governmental Organizations Co-ordination Act. (Cap. 134).	The Non-Governmental Organizations Co-ordination Board is established under section 3 of the Act with general mandate for the registration and co-ordination of Non-Governmental Organizations in Kenya.	The Non-Governmental Organizations Co-ordination Board.

SCHEDULE II

	National Government Entities (Government Owned Enterprises Operating on the Basis of Commercial Principles)
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[Subsidiary]

No.	National Government Entities	Enabling Legislation	Mandate	Sector
41.	Agricultural Finance Corporation.	The Agricultural Finance Corporation Act. (Cap. 323)	The Corporation is established under section 3 of the Act for development of agriculture and agricultural industries by making loans to farmers, groups and other persons engaging in agriculture or agricultural industries.	The National Treasury
42.	Industrial and Commercial Development Corporation.	The Industrial and Commercial Development Corporation Act (Cap. 445)	Established under section 3 of the Act for facilitating the industrial and economic development of Kenya.	The National Treasury
43.	Miwani Sugar Company Ltd (Under Receivership)	The Companies Act (Cap. 486)	Responsible for crushing sugar cane and manufacture of sugar and related products.	Agriculture, Livestock and Fisheries.
44.	Agro-Chemical and Food Company	The Companies Act (Cap. 486)	Responsible for carrying on all or any other businesses of manufacturing related to alcohol, export and importation.	Agriculture, Livestock and Fisheries.
45.	Kenya Meat Commission (KMC)	The Kenya Meat Commission Act (Cap. 363)	Responsible for operating abattoirs and purchasing and processing of meat products.	Agriculture, Livestock and Fisheries.
46.	Muhoroni Sugar Company Ltd (Under Receivership).	The Companies Act (Cap. 486)	Responsible for production of sugar and related products.	Agriculture, Livestock and Fisheries.
47.	South Nyanza Sugar Company Limited.	The State Corporations Act. (Cap. 446).	Responsible for production of sugar and related products.	Agriculture, Livestock and Fisheries.
48.	Chemilil Sugar Company Ltd.	The Companies Act (Cap. 486)	Responsible for production of sugar and related products.	Agriculture, Livestock and Fisheries.
49.	Nzoia Sugar Company Ltd.	The Companies Act (Cap. 486)	Responsible for production of sugar and related products.	Agriculture, Livestock and Fisheries.
50.	Kenya National Trading Corporation (KNTC).	The Companies Act (Cap. 486).	Promoting and growing wholesale and retail trade through efficiently trade in quality products and services to ensure balance of supply and demand in the Country's distribution networks, while promoting e-commerce and global trade with an aim to maximizing stakeholder's value.	East African Affairs, Commerce and Tourism.
51.	Kenyatta International Convention Centre.	The Tourism Act (Cap. 381)	Established under section 40 of the Act to promote business of meetings, conferences and exhibitions.	East African Affairs, Commerce and Tourism.

52.	Kenya Safari Lodges and Hotels Ltd.	The Companies Act (Cap. 486).	Responsible for provision of premium hotel and lodge accommodation, current conference and business meeting venues, customized beach and safari experiences as well as high value niche products.	East African Affairs, Commerce and Tourism.
53.	Bomas of Kenya.	The Companies Act (Cap. 486)	Mandated to preserve, maintain and promote the rich diverse cultural values of various ethnic groups of Kenya.	East African, Commerce and Tourism.
54.	Jomo Kenyatta Foundation.	The Companies Act (Cap. 486)	Mandated to advance education and knowledge for poverty alleviation through quality publishing and provision of scholarships.	Education, Science and Technology.
55.	Kenya Literature Bureau (KLB)	The Kenya Literature Bureau Act (Cap. 209)	Established under section 3 of the Act for, among others, carrying on the business of publishing, printing and distributing literary, educational, cultural and scientific books, periodicals, journals, magazines, digital and electronic material.	Education, Science and Technology.
56.	University of Nairobi Enterprises Ltd.	The Companies Act (Cap. 486)	The commercial arm of the University of Nairobi charged with the responsibility of promoting and coordinating income-generating activities in the University.	Education, Science and Technology.
57.	East African Portland Cement.	The Companies Act (Cap. 486)	Responsible for manufacture of cement and related products.	Industrialization and Enterprise Development.
58.	Kenya Wine Agencies Ltd (KWAL).		Mandated to produce and distribute wines and spirits to both domestic and international markets.	Industrialization and Enterprise Development.
59.	New Kenya Co-operative Creameries.	The Companies Act (Cap. 486)	Responsible for milk processing and production of dairy products.	Industrialization and Enterprise Development.
60.	National Housing Corporation.	The Housing Act (Cap. 117).	Mandated to play a principal role in the implementation of the Government's Housing Policies and Programs.	Lands, Housing and Urban Development.
61.	Kenya Post Office Savings Bank	The Kenya Post Office Savings Bank Act (Cap. 493B)	Mandated to encourage and facilitate personal saving among Kenyans.	The National Treasury.
62.	Consolidated Bank of Kenya	The Companies Act (Cap. 486)	Responsible for providing banking services.	The National Treasury.
63.	Kenya National Assurance Co. (2001) Ltd. (in Liquidation)	The Companies Act (Cap. 486).	A Life assurance company mandated to take over the assets and liabilities of the Closed Life Fund of the Kenya National Assurance Company Limited (under Liquidation).	The National Treasury.
64.	Kenya Reinsurance Corporation Ltd.	The Kenya Reinsurance Corporation Act, (Cap. 487).	Mandated to undertake and transact in any manner of reinsurance and insurance business in and out of Kenya.	The National Treasury.
65.	National Bank of Kenya.	The Companies Act (Cap. 486)	Mandated to help Kenyans get access to credit and control their economy.	The National Treasury.

[Subsidiary]

66.	Kenya National Shipping Line.	The Companies Act (Cap. 486)	Responsible for the provision of ocean freight between Kenya and global world.	Transport and Infrastructure.
67.	Kenya Broadcasting Corporation	The Kenya Broadcasting Corporation Act (Cap. 221)	The Corporation is established under section 3 of the Act to provide, among others, independent and impartial broadcasting services of information, education and entertainment in Kenya and outside world.	Information, Communication and Technology.
68.	Postal Corporation of Kenya	The Postal Corporation Act (Cap. 411)	The Corporation is established under section 3 and is responsible for provision of postal service in Kenya and to encourage and facilitate personal saving.	Information, Communication and Technology.
69.	Kenya Airports Authority (KAA)	The Kenya Airports Authority Act (Cap. 395)	The Authority is established under section 3 of the Act to facilitate, develop and operate infrastructure for aviation in Kenya.	Transport and Infrastructure.
70.	National Cereals and Produce Board (NCPB).	The National Cereals and Produce Board Act (Cap. 338)	The Board is established under section 3 of the Act to provide for market stabilization, famine relief and strategic grain reserve in the country.	Agriculture, Livestock and Fisheries.
71.	Agricultural Development Corporation.	Agricultural Development Corporation Act (Cap. 444).	The Corporation is established under section 3 of the Act to, among others, promote the production of Kenya's essential agricultural inputs such as seeds and pedigree and high grade livestock including, hybrid seed maize, cereal seed, potato seed, pasture seed, vegetable seed, pedigree and high grade cattle, sheep, goats, pigs, poultry and bees, and related functions.	The National Treasury.
72.	Kenya Electricity Generating Company (KENGEN)	The Companies Act (Cap. 486)	Responsible for provision of electric power generation.	Energy and Petroleum.
73.	Kenya Electricity Transmission Company (KETRACO)	The Companies Act (Cap. 486)	Responsible for the development of high voltage electricity transmission infrastructure forming the backbone of the National Transmission Grid.	Energy and Petroleum.
74.	Kenya Pipeline Company (KPC)	The Companies Act (Cap. 486)	Responsible for the provision of transporting and storing petroleum products.	Energy and Petroleum.
75.	Kenya Ports Authority (KPA)	The Kenya Ports Authority Act (Cap. 391)	The Authority is established under section 3 of the Act to provide for a coordinated system of ports and facilities relating thereto.	Transport and Infrastructure.
76.	Kenya Power and Lighting Company (KPLC)	The Companies Act (Cap. 486)	Mandated to transmit, distribute and retail electricity to customers throughout Kenya.	Energy and Petroleum.
77.	Kenya Railways Corporation (KRC)	The Kenya Railways Corporation Act (Cap. 397)	The Corporation is established under section 3 of the Act. Its mandate is to provide rail and inland waterways transport.	Transport and Infrastructure.

78.	Kenya Seed Company (KSC)	The Companies Act (Cap. 486)	The Company is responsible for the production and marketing of top quality seeds. It also manages the Government seed bank.	Agriculture, Livestock and Fisheries.
79.	National Social Security Fund.	National Social Security Fund Act (Cap. 258)	The Fund is established under section 3 of the Act to provide for contributions to and the payment of benefits out of the Fund.	Labour, and Social Security Services.
80.	National Oil Corporation of Kenya	The Companies Act (Cap. 486)	It is charged with participation in all aspects of the petroleum industry.	Energy and Petroleum.
81.	Numerical Machining Complex	The Companies Act (Cap. 486)	It is charged with the commercial production of steel, engineering design, and development of machinery and components.	Industrialization and Enterprise Development.
82.	Kenya Investment Authority.	The Investment Promotion Act (Cap. 485)	Its mandate is to advice the government on ways to increase investment and economic growth and to promote co-operation between the public and private sector.	Industrialization and Enterprise Development.
83.	Nyayo Tea Zones Development Corporation.	The State Corporations Act (Cap. 446) Nyayo Tea Zones Development Corporation Order [LN. 30/2002]	The Corporation is mandated to promote forest conservation by providing buffer zones of tea and assorted tree species to check human encroachment into forestland.	Agriculture, Livestock and Fisheries.
84.	Geothermal Development Company (GDC).	The Companies Act (Cap. 486)	<ul style="list-style-type: none"> • Its mandate is to promote rapid development of geothermal resources in Kenya through surface exploration and drilling for steam; • to avail steam to power plant developers for electricity generation; to manage the geothermal reservoirs to ensure constant supply of steam for power generation; and • to promote alternative uses of geothermal resources other than electricity generation. 	Energy and Petroleum.

SCHEDULE III

National Government Entities (Regulatory Agencies)				
No.	Agencies	Enabling Legislation	Mandate	Sector
85.	Central Bank of Kenya (CBK).	The Constitution and the Central Bank of Kenya Act (Cap. 491)	Mandated under Article 231 of the Constitution with, among others, the formulation of monetary policy, promotion of price stability, issuance of currency in addition to other functions provided for under the Act.	The National Treasury.

[Subsidiary]

86.	Agricultural, Fisheries and Food Authority.	The Agriculture, Fisheries and Food Authority Act (Cap. 317)	The Authority is generally mandated with the regulation and promotion of agriculture in the Country.	Agriculture, Livestock and Fisheries.
87.	Kenya Leather Development Council.	The State Corporations Act (Cap. 446) The Kenya Leather Development Council Order [L.N. 114/2011]	The Council is charged with the promotion, direction, coordination and harmonization of all activities in the leather subsector.	Agriculture, Livestock and Fisheries.
88.	National Bio-safety Authority.	The Bio-safety Act (Cap. 320).	The Authority is established under section 5 of the Act to exercise general supervision and control over the transfer, handling and use of genetically modified organisms (GMOs).	Agriculture, Livestock and Fisheries.
89.	National Irrigation Board.	The Irrigation Act. (Cap. 347)	The Board is established under section 3 of the Act for the development, control and improvement of national irrigation schemes in Kenya.	Agriculture, Livestock and Fisheries.
90.	Public Benefits Organizations Regulatory Authority.	The Public Benefits Organizations Act, 2013. (No. 18 of 2013)	The Authority is established under section 34 of the Act to register public benefit organizations, maintain a register of the organizations and interpret the national policy on public benefit organizations so as to assist in its smooth implementation and observance by government ministries, departments and agencies.	Devolution and Planning.
91.	Tourism Regulatory Authority.	The Tourism Act (Cap. 381)	The Authority is established under section 4 of the Act with mandate to regulate the tourism sector.	East African Affairs, Commerce and Tourism.
92.	Commission for University Education	Universities Act (Cap. 210)	The Commission is established under section 4 of the Act with mandate for establishment, accreditation and governance of universities.	Education, Science and Technology.

93.	National Commission for Science Technology and Innovation.	The Science, Technology and Innovation Act (Cap. 511).	The National Commission established under section 3 of the Act is mandated to determine priorities in science, technology and innovation, give advice, coordinate and promote research, science and technology activities for Kenya's development.	Education, Science and Technology.
94.	Energy Regulatory Commission.	The Energy Act (Cap. 314)	The Commission is established under section 4 of the Act to regulate the energy sector.	Energy and Petroleum.
95.	Kenya Nuclear Electricity Board.	The State Corporation Act. (Cap. 446) The Kenya Nuclear Electricity Board Order [L.N. 131/2012]	The Board mandated to promote and expedite the development of nuclear electricity in Kenya.	Energy and Petroleum.
96.	National Environmental Management Authority (NEMA).	The Environmental Management and Coordination Act (Cap. 387)	The Authority is established under section 7 of the Act with mandate to exercise general supervision and co-ordination over all matters relating to the environment.	Environment, Water and Natural Resources.
97.	Kenya Medical Laboratory Technicians and Technologists Board.	The Medical Laboratory Technicians and Technologists Act (Cap. 253A)	The Board is established under section 3 with mandate to exercise general supervision and control over the training, business, practice and employment of laboratory technicians and technologists in Kenya and to advise the Government in related matters.	Health.
98.	Anti-Counterfeit Agency.	The Anti-Counterfeit Act (Cap. 510)	The Agency is established under section 3 of the Act with mandate to combat trade in counterfeit goods.	Industrialization and Enterprise Development.
99.	Kenya Bureau of Standard (KBS).	The Standards Act. (Cap. 496)	It is established under section 3 of the Act with mandate to promote the standardization of the specification of commodities, and codes of practice.	Industrialization and Enterprise Development.

[Subsidiary]

100.	Kenya National Accreditation Service.	The State Corporations Act (Cap. 446) The Kenya Accreditation Service Order [L.N. 55/2009]	The Kenya National Accreditation Service is established under paragraph 3 of the Kenya Accreditation Service Order for the regulation of accreditation of conformity assessment bodies.	Industrialization and Enterprise Development.
101.	Communications Authority of Kenya	The Kenya Information and Communications Act. (Cap. 411A)	The Authority is established under the Act to license and regulate postal, information and communication services in Kenya.	Information, Communication and Technology.
102.	National Authority for the Campaign Against Alcohol and Drug Abuse	The National Authority for the Campaign Against Alcohol and Drug Abuse Act (Cap. 122)	The Authority is established under section 4 of the Act to control alcohol and drug abuse.	Interior and Coordination of National Government.
103.	National Construction Authority.	The National Construction Authority Act (Cap. 118)	The Authority is established under section 3 of the Act to regulate and coordinate the construction industry for sustainable social and economic development.	Lands, Housing and Urban Development.
104.	Competition Authority	The Competition Act (Cap. 504)	The Authority is established under section 7 of the Act to promote and safeguard competition in the national economy, and to protect consumers from unfair and misleading market conduct.	The National Treasury.
105.	Public Procurement Oversight Authority.	Public Procurement and Disposal Act (Cap. 412C)	The Oversight Authority is established under Section 8 of the Act to ensure procurement procedures are complied with as established under the Act, and Regulations made thereunder and monitor the overall functioning of the public procurement system including accountability and documentation of the procured items.	The National Treasury.
106.	Council for Legal Education	The Legal Education Act (Cap. 168)	The Council is established under section 4 of the Act with mandate to regulate and license legal education providers and any related issues.	Office of the Attorney-General and Department of Justice.

107.	Kenya Copyright Board.	The Copyright Act (Cap. 130)	The Board is established under section 3 of the Act with mandate to oversee provision for copyright in literary, musical and artistic works, audio-visual works, sound recordings, broadcasts and related issues.	Office Of The Attorney-General and Department Of Justice.
108.	Kenya Film Classification Board.	Films and Stage Plays Act. (Cap. 222)	The Board is established under section 11 of the Act to regulate and control the making, possession, exhibition and distribution of cinematograph films, for the licensing of stage plays, theatres and cinemas.	Sports, Culture and the Arts.
109.	Kenya Maritime Authority.	State Corporations Act. (Cap. 446) Kenya Maritime Authority Order [L.N. 79/2004]	The Authority is established under paragraph 2 of the Order with mandate to regulate, co-ordinate and oversee maritime affairs.	Transport and Infrastructure.
110.	National Transport and Safety Authority.	The National Transport and Safety Authority Act (Cap. 404).	The Authority is established under section 3 of the Act with mandate to plan, manage and regulate the road transport system in Kenya.	Transport and Infrastructure.
111.	Export Processing Zones Authority (EPZA).	The Export Processing Zones Act (Cap. 517)	It is established under section 3 of the Act with mandate to promote and facilitate the export oriented investments and the development of enabling environment for such investment.	Trade and Industrialization.
112.	Export Promotion Council (EPC).	The Companies Act (Cap. 486)	The Council's mandate is to develop and promote Kenya's exports trade.	Trade and Industrialization.
113.	Capital Markets Authority.	The Capital Markets Act (Cap. 485A)	It is established under section 5(1) of the Act and is mandated to promote, regulate and facilitate the development of an orderly, fair and efficient capital market in Kenya.	The National Treasury.
114.	Insurance Regulatory Authority.	The Insurance Act (Cap. 487)	It is established under section 3 of the Act to regulate the insurance industry in Kenya.	The National Treasury.

[Subsidiary]

115.	Retirement Benefits Authority.	The Retirement Benefits Act (Cap. 197)	The Authority is established under section 3 of the Act to regulate and supervise management of retirement benefit schemes.	The National Treasury.
116.	Sacco Societies Regulatory Authority.	The Sacco Societies Act (Cap. 490B)	The Authority is established under section 4 of the Act to license and supervise Deposit Taking Sacco Societies in Kenya.	The National Treasury.

SCHEDULE 4

<i>National Government Entities (Executive Agencies, Research Institutions, Public Universities, Public Tertiary Education and Training Institutions, National Referral Health Facilities, Boards and Commissions [Financed through the Exchequer], Fund Management Corporations, any other Entity Established to Perform any other Public Functions</i>				
No.	Agencies	Enabling Legislation	Mandate	Sector
117.	Agricultural Development Corporation.	The Agricultural Development Corporation Act. (Cap. 444).	The Corporation is established under section 3 of the Act and is responsible for the promotion and execution of agricultural schemes and reconstruction in Kenya by initiating, assisting or expansion of agricultural undertaking in lands and enterprises.	Agriculture, Livestock and Fisheries
118.	Brand Kenya Board.	The State Corporations Act (Cap. 446) Brand Kenya Board Order [L.N. 38/2008]	The Board is established under paragraph 3 of the Order with mandate to co-ordinate initiatives for marketing the country in order to maximize their efficiency, and create and maintain the Kenya brand to identify and distinguish Kenyan products, services and concepts.	East African Affairs, Commerce and Tourism.
119.	Industrial Development Bank.	The Companies Act (Cap.486)	Established as a Development Finance Institution (DFI) with mandate to further the economic development of Kenya by assisting in establishment, expansion and modernisation of medium and large scale enterprises.	The National Treasury.
120.	Kenya Industrial Estates (KIE).	The Companies Act (Cap. 486)	Established to address indigenization of businesses, capital formation, regional dispersion of wealth, and exploitation of local resources through provision of industrial sheds, subsidized credit and improvement of entrepreneurial skills to indigenous owned Micro, Small and Medium industries (MSMIs) with special focus on rural industrial development.	Industrialization and Enterprise Development.

121.	Genetics Resource Centre.	Kenya Agricultural and Livestock Act (Cap. 319)	The Centre is established under section 31 of the Act to advise on and develop appropriate systems to promote balanced, diversified and sustained agricultural development and to optimise agricultural production through adaptive and investigative research.	Agriculture, Livestock and Fisheries
122.	Kenya Tsetse and Trypanosomiasis Eradication Council.	The State Corporations Act (Cap. 446) Kenya Tsetse and Trypanosomiasis Eradication Council Order [L.N. 77/2012]	The Council is established under paragraph 3 to advise the Government on the policy on tsetse and trypanosomiasis eradication in Kenya and its implementation.	Agriculture, Livestock and Fisheries
123.	Kenya Veterinary Vaccine Production Institute.	The State Corporations Act (Cap. 446) Kenya Veterinary Vaccines Production Institute Order [L.N. 223/1990]	The Institute is established under paragraph 2 of the Order to produce safe, efficacious and affordable veterinary vaccines through undertaking research, providing information, marketing and distribution for improvement of the livestock industry.	Agriculture, Livestock and Fisheries.
124.	Kenya Dairy Board.	The Dairy Industry Act (Cap. 336)	The Board is established under section 4 of the Act and is responsible for improvement and control of the dairy industry and its products.	Agriculture, Livestock and Fisheries.
125.	LAPSSET Corridor Development Authority.	The State Corporations Act (Cap. 446) The LAPSSET Corridor Development Authority, Order [L.N. 58/2013]	The Authority is established under paragraph 3 of the Order to, among others, plan, co-ordinate and sequence LAPSSET Corridor projects in collaboration with Implementing ministries and agencies.	Cabinet Affairs Office/Transport and Infrastructure
126.	Tourism Regulatory Authority.	The Tourism Act (Cap. 381)	The Authority is established under section 4 of the Act to promote and market Kenya as a tourist destination both locally and internationally.	Ministry of East African Affairs, Commerce and Tourism.
127.	Konza Technopolis Authority.	The State Corporations Act (Cap. 446) Konza Technopolis Development Authority Order [L.N. 23/2012]	The Authority is established under paragraph 3 of the Order to plan, develop, regulate and manage Konza Techno City as a world class, mixed use and sustainable city.	Information, Communication and Technology.

[Subsidiary]

128.	Small and Micro Enterprises Authority	The Micro and Small Enterprises Act (Cap. 499C)	The Authority is established under section 29 of the Act for promotion, development, and regulation of micro and small enterprises.	Trade and Industrialization.
129.	Kenya Ordinance Factories Corporation.	The State Corporations Act (Cap. 446) The Kenya Ordinance Factories Corporation Order [L.N. 125/1997]	The Corporation is established under paragraph 2 of the Order to manufacture military hardware, Machinery and Equipment.	Defence.
130.	Drought Management Authority.	The State Corporations Act (Cap. 446) The National Drought Management Authority Order [L.N. 171/2011]	The Authority is established under paragraph 3 of the Order to, on its own or in association with other authorities or persons, establish mechanisms to ensure that drought does not become famine and the impacts of climate change are sufficiently mitigated.	Devolution and Planning.
131.	Kenya National Bureau of Statistics.	The Statistics Act (Cap. 112)	The Bureau is established under section 3 of the Act 4 as the principal agency of the Government for collecting, analysing and disseminating statistical data in Kenya and the custodian of official statistical information.	Devolution and Planning.
132.	National Council for Population and Development.	The State Corporations Act (Cap. 446) The National Council for Population and Development Order [L.N. 120/2004]	The Council is established under paragraph 3 of the Order with mandate to develop policies relating to population and develop population programs and assess their impact.	Devolution and Planning.
133.	South -South Centre	The State Corporations Act (Cap. 446) The South-South Centre Order [L.N. 120/2012]	The South-South Centre is established under paragraph 3 to initiate, organize and manage South-South activities and projects in consultation with the Government, civil society organizations or private sector institutions.	Devolution and planning.
134.	Higher Education Loans Board.	The Higher Loans Education Loans Board Act (Cap. 213A).	The Board is established under section 3(1) of the Act and is responsible for the management of a Fund to be used for granting loans to assist Kenyan students to obtain higher education at recognized institutions within and outside Kenya.	Education, Science and Technology.

135.	Kenya Institute of Curriculum Development.	The Kenya Institute of Curriculum Development Act (Cap. 112A)	The Institute is established under section 3 of the Act with mandate to advise the Government on matters pertaining to curriculum development, and implement the policies relating to curriculum development in basic and tertiary education and training.	Education, Science and Technology.
136.	Kenya National Commission for UNESCO.	The Kenya National Commission For UNESCO Act (Cap. 215)	The Commission is established under section 3 with authority to liaise with UNESCO and implement UNESCO activities and budgeted programs.	Education, Science and Technology.
137.	Kenya National Examination Council (KNEC).	The Kenya National Examinations Council Act (Cap. 214A).	The Council is established under section 3(1) of the Act with mandate to conduct examinations at basic and tertiary levels.	Education, Science and Technology.
138.	Kenya Universities and Colleges Central Placement Service.	The Universities Act (Cap. 210)	The Service is established under section 55 of the Act with mandate to uphold equity and balanced access to University and College education and develop suitable criteria to promote affirmative action, and other strategies as may be approved the by Government.	Education, Science and Technology.
139.	Technical and Vocational Education Training Authority	The Technical And Vocational Education And Training Act (Cap. 210A)	The Authority is established under section 6 of the Act and whose mandate is the governance and management of institutions offering technical and vocational education and training and to provide for coordinated assessment, examination and certification.	Education, Science and Technology.
140.	Rural Electrification Authority.	The Energy Act (Cap. 314)	The Authority is established under section 66 of the Act with the responsibility to accelerate the pace of rural electrification in order to promote sustainable socio-economic development.	Energy and Petroleum.
141.	Athi Water Services Board.	The Water Act (Cap. 372)	The Board is responsible for efficient and economical provision of water services within the Nairobi and Athi Basin/Region	Environment, Water and Natural Resources.
142.	Coast Water Services Board.	The Water Act (Cap. 372)	The Board is responsible for efficient and economical provision of water services within the Coast Region.	Environment, Water and Natural Resources.

[Subsidiary]

143.	Kenya Forest Service	The Forests Act, 2005 (No. 7 of 2005)	The Service is established under section 4 of the Act for the purposes of the establishment, development and sustainable management, including conservation and rational utilization, of forest resources for the socio-economic development of the country.	Environment, Water and Natural Resources.
144.	Kenya Wildlife Service (KWS)	The Wildlife (Conservation and Management) Act (Cap. 376)	The Service is established under section 6 of the Act for the conservation, management and utilization of all types of fauna (not being domestic animals) and flora in the Country.	Environment, Water and Natural Resources.
145.	Lake Victoria North Water Service Board.	The Water Act (Cap. 372)	Established for provision of water and sanitation services.	Environment, Water and Natural Resources
146.	Lake Victoria South Water Service Board.	The Water Act (Cap. 372)	Established for provision of water and sanitation services.	Environment, Water and Natural Resources.
147.	National Water Conservation and Pipeline Corporation.	The State Corporations Act (Cap. 446) National Water Conservation and Pipeline Corporation Order, 1988. [L.N. 270/1988]	Mandated for development of water infrastructure and supply of water.	Environment, Water and Natural Resources.
148.	Northern Water Services Board.	The Water Act (Cap. 372)	Mandated to provide water and sanitation services.	Environment, Water and Natural Resources.
149.	Rift Valley Water Services Board	The Water Act (Cap. 372)	Mandated to provide water and sanitation services.	Environment, Water and Natural Resources
150.	Tana Water Services Board.	The Water Act, (Cap. 372)	Mandated to provide water and sanitation services.	Environment, Water and Natural Resources
151.	Tanathi Water Services Board.	The Water Act (Cap. 372)	Mandated to provide water and sanitation services.	Environment, Water and Natural Resources
152.	Water Resources Management Authority.	The Water Act (Cap. 372)	The Authority is established under section 7(1) of the Act to be the lead agency in water resources management.	Environment, Water and Natural Resources.
153.	Water Services Regulatory Board.	The Water Act (Cap. 372)	The Board is established under section 46(1) for the promotion and regulation of water provision services.	Environment, Water and Natural Resources.

154.	Coast Development Authority.	The Coast Development Authority Act (Cap. 449).	The Authority is established under section 3 of the Act to plan and co-ordinate the implementation of development projects in whole of the Coast Province and the exclusive economic zone.	Environment, Water and Natural Resources
155.	Ewaso Ng'iro North Development Authority	The Ewaso Ng'iro North River Basin Development Authority Act (Cap. 448)	The Authority is established under section 3 of the Act to plan and co-ordinate the implementation of development projects in the Ewaso Ng'iro North River Basin and catchment areas.	Environment, Water and Natural Resources.
156.	Ewaso Ng'iro South Development Authority.	The Ewaso Ng'iro South River Basin Development Authority Act (Cap. 447)	The Authority is established under section 3 of the Act to plan and co-ordinate the implementation of development projects in the Ewaso Ng'iro South River Basin and catchment areas.	Environment, Water and Natural Resources
157.	Kerio Valley Development Authority.	The Kerio Valley Development Authority Act (Cap. 441)	The Authority is established under section 3 of the Act to maintain a liaison between the institutions (KVDA), Government, private sector and other agencies on matters of development in the area in view of limiting duplication of activities and ensuring best use of technical, financial, human and natural resources.	Environment, Water and Natural Resources
158.	Lake Basin Development Authority.	The Lake Basin Development Authority Act (Cap. 442)	The Authority is established under section 3 of the Act to carry out integrated sustainable development planning, implement development programs and projects, coordinate development programs and activities, promote management and conservation of natural resources.	Environment, Water and Natural Resources
159.	Tana and Athi Rivers Development Authority.	The Tana and Athi Rivers Development Authority Act (Cap. 443).	The Authority is established under section 3 of the Act to plan and co-ordinate the implementation of development projects in the TRDA areas.	Environment, Water and Natural Resources
160.	Kenya Medical Supplies Authority.	The Kenya Medical Supplies Authority Act (Cap. 260).	The Agency is established under section 3 of the Act with general mandate to procure, warehouse and distribute drugs and medical supplies in the country.	Health.
161.	Kenyatta National Hospital.	The State Corporations Act (Cap. 446) The Kenyatta National Hospital Board Order [L.N. 109/1987]	The Hospital's mandate is to provide specialized healthcare, facilitate training and research and participate in National Health Planning and Policy for the benefit of the nation and the region at large.	Health.

[Subsidiary]

162.	Moi Teaching and Referral Hospital	The State Corporations Act (Cap. 446) The Moi Teaching and Referral Hospital Order [L.N. 78/1998]	It is responsible for provision of quality healthcare, training and research.	Health.
163.	National Aids Control Council.	The State Corporations Act (Cap. 446). The National Aids Control Council Order, 1999 [L.N. 170/1999]	The Council is established under paragraph 2 and is mandated to coordinate stakeholders in the multi-sectorial response to HIV and AIDS in Kenya.	Health.
164.	National Hospital Insurance Fund.	The National Hospital Insurance Fund Act, 1998 (No. 9 of 1998)	The Fund is established under section 3 of the Act with mandate to provide health insurance to Kenyans over the age of 18 years.	Health.
165.	National Quality Control Laboratory.	The Pharmacy and Poisons Act (Cap. 244)	It is established to be used as a facility for, among others, examination and testing of drugs and any material or substance from or with which and the manner in which drugs may be manufactured, processed or treated and ensuring the quality control of drugs and medicinal substances.	Health.
166.	Kenya Industrial Property Institute.	The Industrial Property Act, 2001 (No. 3 of 2001).	The Institute is established under section 3 of the Act to, among others, consider applications for and grant industrial property rights and provide to the public, industrial property information for technological and economic development.	Industrialization and Enterprise Development
167.	Kenya Information Communications and Technology Board.	The State Corporations Act (Cap. 446) The Kenya Information Communications and Technology Board Order	The Corporation is established to advise the Government on all relevant matters pertaining to the development, co-ordination and promotion of information and communications technology industries in the country.	Information, Communication and Technology.
168.	Kenya Yearbook Editorial Board.	The State Corporations Act (Cap. 446) The Kenya Yearbook Order [L.N. 187/2007]	The Board is established under paragraph 3 of the Order for facilitating Government communication services through the publication of the Kenya Yearbook.	Information, Communication and Technology.

169.	Kenya Citizens and Foreign Nationals Management Service	The Kenya Citizens and Foreign Nationals Management Service Act (Cap. 171)	The Authority is established under section 3 of the Act to implement policies, laws and other matters relating to immigration, births, deaths, identification and registration of persons including issue of passports.	Interior and Coordination of National Government.
170.	National Council for Persons with Disabilities.	The Persons with Disability Act (Cap. 133)	The Council is established under section 3 of the Act to formulate and implement policies that are geared towards mainstreaming persons with disabilities in to the national economy.	Labour and Social Security Services.
171.	National Industrial Training Authority.	The Industrial Training Act (Cap. 237)	The Authority is established under section 3 of the Act to, among others, assess industrial training, testing occupational skills and awarding certificates including Government trade test certificates.	Labour and Social Security Services.
172.	The National Social Security Assistance Authority.	Social Assistance Act (Cap. 258A)	The Authority is established under section 3 of the Act to, among others, identify and provide social assistance to persons in need of social assistance.	Labour, Social Security and Services
173.	Kenya Deposit Protection Authority.	The Kenya Deposit Insurance Act (Cap. 487)	The Authority is established under section 4 of the Kenya Deposit Insurance Act (Cap. 487), to provide a deposits insurance system and for the receivership and liquidation of deposit taking institutions.	The National Treasury.
174.	Financial Reporting Centre.	The Proceeds of Crime and Anti-Money Laundering Act (Cap. 59A)	The Centre is established under section 21 of the Act to assist in the identification of the proceeds of crime and the combating of money laundering.	The National Treasury.
175.	Kenya Accountants and Secretaries National Examination Board (KASNEB)	The Accountants Act (Cap. 531)	The Board is established under section 14 of the Act to, among other mandate, prepare syllabuses for professionals' and technicians' examinations in accountancy and company secretarial practice and related disciplines.	The National Treasury.
176.	Kenya Institute of Supplies Examination Board.	The Supplies Practitioners Management Act (Cap. 537)	The Board is established under section 12 of the Act to, among others, prescribe and regulate syllabuses of instruction for professional supplies certification for persons seeking registration under the Act.	The National Treasury.
177.	Kenya Revenue Authority (KRA).	The Kenya Revenue Authority Act (Cap. 469)	The Authority is established under section 3 of the Act to, under the general supervision of the Cabinet Secretary for Finance, be an agency of the Government for the collection and receipt of all revenues.	The National Treasury.

[Subsidiary]

178.	Kenya Trade Network Agency	The State Corporations Act (Cap. 446) Kenya Trade Network Agency Order [L.N. 6/2011.]	The Agency is established under paragraph 3 to implement, operationalize and manage the Kenya Electronic Single Window System and to facilitate trade in Kenya.	The National Treasury.
179.	Privatization Commission.	The Privatization Act (Cap. 485C)	The Commission is established under section 3 of the Act to formulate, manage, and implement the Privatization Program.	The National Treasury.
180.	Unclaimed Financial Assets Authority.	The Unclaimed Financial Assets Act (Cap. 494)	The Commission is established under section 39 of the Act with mandate to administer unclaimed financial assets.	The National Treasury.
181.	Kenya Law Reform Commission	The Kenya Law Reform Commission Act (Cap. 3)	The Commission is established under section 4 of the Act with powers to review all the law and recommend its reform.	Office of the Attorney-General and Department Of Justice.
182.	National Council for Law Reporting	The National Council for Law Reporting Act (Cap. 19A)	The Council is established under section 2 of the Act with mandate to publish the Kenya Law Reports and related publications and to revise, consolidate and publish the Laws of Kenya.	Office of the Attorney-General and Department of Justice.
183.	Kenya Academy of Sports.	The Sports Act (Cap. 223)	The Academy is established under section 33 of the Act with mandate to establish and manage sports training academies in Kenya.	Sports, Culture and the Arts.
184.	National Museums of Kenya.	The National Museums and Heritage Act (Cap. 216)	It is established under section 3 of the Act to collect, preserve, study, document and present Kenya's past and present cultural and natural heritage for the purposes of enhancing knowledge, appreciation, respect and sustainable utilization of these resources for the benefit of Kenya and the world, for now and posterity.	Sports, Culture and the Arts.
185.	National Youth Council.	The National Youth Council Act (Cap. 132)	The Council is established under section 3 to, among other functions, regulate and co-ordinate activities and initiatives relating to the youth being undertaken by youth groups, youth focused community-based organizations, non-governmental organizations, civil society movements and other organizations.	Sports, Culture and the Arts
186.	Kenya National Library Service (KNLS).	The Kenya National Library Services Board Act (Cap. 225)	It is established under section 3 of the Act to, among other functions, promote, establish, equip, manage, maintain and develop libraries in Kenya as a national library service.	Sports, Culture and the Arts.

187.	Sports Kenya.	The Sports Act (Cap. 223)	It is established under section 3 of the Act and is responsible for the establishment of sports institutions and facilities.	Sports, Culture and the Arts
188.	Kenya Film Commission.	The State Corporations Act (Cap. 446) Kenya Film Commission Order [L.N. 10/2005]	It is established under section 3 of the Act and is responsible for the development, and promotion of the film industry in Kenya.	Sports, Culture and the Arts.
189.	National Youth Service.	The National Youth Service Act. (Cap. 208)	It is established under section 3 of the Act with mandate to train young citizens to serve the Nation and the employment of its members in tasks of national importance.	Devolution and Planning.
190.	Kenya Ferry Services Ltd (KFS).	The Companies Act (Cap. 486)	Established and mandated to carry on a ferry boat service.	Transport and Infrastructure.
191.	Kenya National Highways Authority (KeNHA).	The Kenya Roads Act (Cap. 408)	The Authority is established under section 3 of the Act for Management, development, rehabilitation and maintenance of national roads.	Transport and Infrastructure.
192.	Kenya Roads Board (KRB).	The Kenya Roads Board Act (Cap. 408A)	The Board is established under section 4 of the Act to oversee the road network in Kenya and coordinate the maintenance, rehabilitation and development funded by the Fund and to advise the Cabinet Secretary on all matters related thereto.	Transport and Infrastructure.
193.	Kenya Rural Roads Authority.	The Kenya Roads Act (Cap. 408)	The Authority is established under section 6 of the Act and is charged with the responsibility for the management, development, rehabilitation and maintenance of rural roads.	Transport and Infrastructure.
194.	Kenya Institute of Special Education.	The Basic Education Act (Cap. 211) Education (Kenya Institute Of Special Education) Order [L.N. 17/1986]	The Institute is established and mandated to conduct teacher training courses for teachers of children with special needs and disabilities.	Education, Science and Technology.

SCHEDULE IV

	Public Entities (Executive Agencies, Research Institutions, Public Universities, Public Tertiary Education and Training Institutions, National Referral Health Facilities, Boards and Commissions [Financed Through the Exchequer], Fund Management Corporations, any other Entity Established to Perform any other Public Functions)
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[Subsidiary]

No.	National Government Entities	Enabling Legislation	Mandate	Parent Ministry (Sector)
195.	Bukura Agricultural College.	The Bukura Agricultural College Act, 1999. (No. 5 of 1999).	The College is established under section 3 of the Act to provide education in agriculture and other auxiliary subjects.	Agriculture, Livestock and Fisheries.
196.	Kenya Agricultural and Livestock Research Organization.	The Kenya Agricultural and Livestock Act (Cap. 319)	It is established under section 3 of the Act to undertake research in agriculture and allied areas.	Agriculture, Livestock and Fisheries.
197.	Fisheries and Marine Research Institute.	The Kenya Agricultural and Livestock Act (Cap. 319)	Established under section 31 of the Act to advise on and develop appropriate systems to promote balanced, diversified and sustained agricultural development and to optimise agricultural production through adaptive and investigative research.	Agriculture, Livestock and Fisheries.
198.	Kenya School of Government.	The Kenya School of Government Act, 2012. (No. 9 of 2012).	The School is established under section 3 to provide learning and development programmes to build capacity for the Public Service.	Devolution and Planning.
199.	Kenya Institute of Public Policy Research and Analysis (KIPPRA).	Kenya Institute for The Public Policy Research and Analysis Act, 2006. (No. 15 of 2006)	The Institute is established under section 3 of the Act with mandate to develop capacities in public policy, research and analysis and to assist the government in the process of policy formulation and implementation.	Devolution and Planning.
200.	Kenya Utalii College (KUC)	The Tourism Act, 2011 (No. 28 of 2011)	The College is established under section 17 of the Act with mandate in training qualified professionals for the hospitality and tourism industry and capacity building in the tourism sector.	East African Affairs, Commerce and Tourism.
201.	Tourism Research Institute.	The Tourism Act (Cap. 381)	The Institute is established under section 51 of the Act with mandate to undertake and co-ordinate tourism research and analysis in accordance with the provisions of the Act.	East African Affairs, Commerce and Tourism.
202.	Chuka University	The Universities Act (Cap. 210) The Chuka University College Order, 2007.	Established to provide and advance university education and training.	Education, Science and Technology
203.	Cooperative University College	The Universities Act (Cap. 210) The Co-operative University College Order, 2011.	Established to provide and advance university education and training.	Education, Science and Technology

204.	Dedan Kimathi University	The Universities Act (Cap. 210) The Kimathi University College of Technology Order, 2007.	Established to provide and advance university education and training.	Education, Science and Technology.
205.	Egerton University	The Universities Act (Cap. 210)	Established to provide and advance university education and training.	Education, Science and Technology.
206.	Embu University College.	The Universities Act (Cap. 210)	Established to provide and advance university education and training.	Education, Science and Technology.
207.	Garissa University College	The Universities Act (Cap. 210)	Established to provide and advance university education and training.	Education, Science and Technology.
208.	Jaramogi Oginga Odinga University of Science and Technology.	The Universities Act (Cap. 210) The Bondo University College Order, 2009	Established to provide and advance university education and training.	Education, Science and Technology.
209.	Jomo Kenyatta University of Agriculture And Technology	The Universities Act (Cap. 210)	Established to provide and advance university education and training.	Education, Science and Technology.
210.	Karatina University	The Universities Act (Cap. 210) The Karatina University College Order, 2009	Established to provide and advance university education and training.	Education, Science and Technology.
211.	Kenya Multi-Media University	The Universities Act (Cap. 210) The Multimedia University College of Kenya Order, 2008.	Established to provide and advance university education and training.	Education, Science and Technology.
212.	Kenyatta University	The Universities Act (Cap. 210)	Established to provide and advance university education and training.	Education, Science and Technology.
213.	Kibabii University College.	The Universities Act (Cap. 210)	Established to provide and advance university education and training.	Education, Science and Technology.
214.	Kirinyaga University College	The Universities Act (Cap. 210)	Established to provide and advance university education and training.	Education, Science and Technology.
215.	Kisii University	The Universities Act (Cap. 210) The Kisii University College Order, 2007	Established to provide and advance university education and training.	Education, Science and Technology.

[Subsidiary]

216.	Laikipia University.	The Universities Act (Cap. 210) The Laikipia University College Order, 2009.	Established to provide and advance university education and training.	Education, Science and Technology.
217.	Maasai Mara University.	The Universities Act (Cap. 210) The Narok University College Order, 2008.	Established to provide and advance university education and training.	Education, Science and Technology
218.	Machakos University College	The Universities Act (Cap. 210)	Established to provide and advance university education and training.	Education, Science and Technology
219.	Maseno University	The Universities Act (Cap. 210)	Established to provide and advance university education and training.	Education, Science and Technology.
220.	Masinde Muliro University of Science and Technology.	The Universities Act (Cap. 210)	Established to provide and advance university education and training.	Education, Science and Technology.
221.	Meru University of Science and Technology	The Universities Act (Cap. 210) The Meru University College of Science and Technology Order, 2008	Established to provide and advance university education and training.	Education, Science and Technology.
222.	Moi University	The Universities Act (Cap. 210)	Established to provide and advance university education and training.	Education, Science and Technology.
223.	Murang'a University College	The Universities Act (Cap. 210)	Established to provide and advance university education and training.	Education, Science and Technology.
224.	Pwani University	The Universities Act (Cap. 210) The Pwani University College Order, 2007	Established to provide and advance university education and training.	Education, Science and Technology.
225.	Rongo University College		Established to provide and advance university education and training.	Education, Science and Technology
226.	South Eastern Kenya University	The Universities Act (Cap. 210) The Eastern University College Order, 2008.	Established to provide and advance university education and training.	Education, Science and Technology.
227.	TaitaTaveta University College	The Universities Act (Cap. 210)	Established to provide and advance university education and training.	Education, Science and Technology

228.	Technical University of Mombasa.	The Universities Act (Cap. 210)	Established to provide and advance university education and training.	Education, Science and Technology
229.	The Technical University of Kenya.	The Universities Act (Cap. 210) The Kenya Polytechnic University College Order, 2007	Established to provide and advance university education and training.	Education, Science and Technology
230.	University of Eldoret	The Universities Act (Cap. 210)	Established to provide and advance university education and training.	Education, Science and Technology.
231.	University of Kabianga.	The Universities Act (Cap. 210) The Kabianga University College Order, 2009.	Established to provide and advance university education and training.	Education, Science and Technology.
232.	University of Nairobi	The Universities Act (Cap. 210)	Established to provide and advance university education and training.	Education, Science and Technology.
233.	Kenya Water Institute.	The Kenya Water Institute Act, 2001. (No.1 of 2001)	Established under section 3 of the Act to provide, directly or in collaboration with other institutions of higher learning, services in human resource development, consultancy, research and development in the water sector.	Environment, Water and Natural Resources.
234.	Forest and Environment Research Institute.	The Kenya Agricultural and Livestock Act (Cap. 319)	Established under section 31 of the Act to advise on and develop appropriate systems to promote balanced, diversified and sustained agricultural development and to optimise agricultural production through adaptive and investigative research.	Environment, Water and Natural Resources.
235.	Kenya Medical Training College (KMTTC).	Kenya Medical Training College Act, (Cap. 261)	The College is established in section 3 of the Act with mandate to provide training and consultancy in the health sector and related areas.	Health.
236.	Kenya Medical Research Institute (KEMRI).	The Science, Technology and Innovation Act (Cap. 511). (No. 28 of 2013)	Mandated to conduct medical research.	Health.
237.	Kenya Industrial Research and Development Institute.	The Science, Technology and Innovation Act (Cap. 511).	Mandated to carry out research in the fields of Civil Engineering, Mechanical Engineering, Textile Technology, Electrical Engineering, Mining, Power Resources, Chemical Engineering, Industrial Chemistry, Food Technology, Ceramics and Clay Technology.	Industrialization and Enterprise Development.

[Subsidiary]

238.	Kenya Institute of Mass Communication.	State Corporations Act, (Cap. 446). Kenya Institute of Mass Communication Order (L.N. 197/2011)	The Institute is established under paragraph 3 of the Order for training in communication and the cinematic-arts.	Information, Communication and Technology.
239.	Kenya School of Law	The Kenya School of Law Act (Cap. 16C)	The School is established under section 3 of the Act being a public legal education provider responsible for the provision of professional legal training as an agent of the Government.	Office of the Attorney-General and Department of Justice
240.	Kisumu Polytechnic	The Technical and Vocational Education and Training Act, 2013. (No. 29 of 2013).	Established to provide for technical and vocational training.	Education, Science and Technology.
241.	National Crime Research Centre	The National Crime Research Act (Cap. 62)	Established to carry out research into causes of crime and its prevention and to disseminate research findings and recommendations to agencies of Government concerned with administration of criminal justice with a view to assisting them with their policy formulation and planning.	Office of the Director of Public Prosecutions.

SCHEDULE V

No.	<i>Public Funds (Within the Administration of A State Department or any other National Government Entity)</i>			
242.	Youth Enterprises Development Fund.	The State Corporations Act (Cap. 446) Youth Enterprise Development Fund Order [L.N. 63/2007]	Established to, among others, provide funding and business development services to youth owned or youth focused enterprises.	Devolution and Planning.
243.	Constituency Development Fund.	The Constituencies Development Fund Act (Cap. 414)	Established by the Act to ensure that a specific portion of the national annual budget is devoted to the constituencies for purposes of infrastructural development, wealth creation and in the fight against poverty at the constituency level.	Devolution and Planning

244.	Water Services Trust Fund	The Water Act. (Cap. 372)	The Fund is mandated to provide financial support for improved access to water and sanitation in areas without adequate services including supporting capacity building activities and initiatives that aim at enabling communities to plan, implement, manage, operate and sustain water services-by creating awareness and disseminating information regarding community management of water services, and encouraging their active participation in implementation and management.	Environment, Water and Natural Resources
245.	Local Authorities Provident Fund.	Local Authorities Provident Fund Act (Cap. 272)	Established under section 4 of the Act to provide pension fund certain employees of Local Authorities.	Devolution and Planning.
246.	Policy Holders Compensation Fund.	Insurance Act (Cap. 487) The Insurance (Policyholders Compensation Fund) Regulations, 2010.	Established to protect policy holders of an insolvent insurance company by providing them with compensation for unsettled claims.	The National Treasury
247.	Women Enterprise Fund.	The Public Finance Management Act (Cap. 412A) The Government Financial Management (Women Enterprise Fund) Regulations.	The Fund is established under regulation 3 to provide loans to individual women and groups for expansion and growth of Small and Medium enterprises.	Devolution and Planning.
248.	Micro and Small Development Fund.	The Micro and Small Enterprises Act (Cap. 499C)	The Fund is established under section 51 to finance the promotion and development of small and micro enterprises.	The National Treasury.
249.	Local Government Loans Authority.	Local Government Loans Act (Cap. 270)	The Authority is established under section 3 to facilitate borrowing by Local Government Authorities of money for Capital Development.	Devolution and Planning.
250.	Local Authority Transfer Fund.	Local Authority Transfer Fund Act, 1998 (No. 8 of 1998)	The Fund is established under section 3 of the Act to act as a finance base in funding various Local Authorities expenses.	
251.	Consolidated Fund.	The Constitution.	The Consolidated Fund is established under Article 206 of the Constitution into which is deposited all moneys raised or received on behalf of national government.	The National Treasury.
252.	Civil Contingencies Fund	The Constitution.	The Fund is established under Article 208 to cater for urgent and unforeseen need for expenditure which were not budgeted for.	The National Treasury.
253.	Judiciary Fund.	The Constitution.	The Fund is established under Article 173 of the Constitution to provide funds to be used for administrative expenses of the Judiciary.	Judiciary.

[Subsidiary]

254.	Equalization Fund.	The Constitution	The Fund is established under Article 204 of the Constitution into which is deposit one half percent of all revenues collected by nation government each year.	The National Treasury.
255.	Treasury Main Clearance Fund.	The National Treasury circular under the Exchequer and Audit Act. (Cap. 412)	The Fund is established to facilitate overseas payments in foreign current in respect of government imports and pension payments through Crown Agents in United Kingdom.	The National Treasury.
256.	Contractors and Builders Retention Fund	The National Treasury circular.	The Fund is established for payment of retention fee for contractors and builders	The National Treasury.
257.	Government Clearance Agency Fund	The National Treasury circular.	To facilitate clearing and forwarding of import goods coming into the Country.	The National Treasury.
258.	Rural Development Fund	The Exchequer and Audit Act (Cap. 412)	To finance rural development (the fund is dormant)	The National Treasury.
259.	The Provident Fund	The Provident Fund Pension Act. (Cap. 191)	Established under section 3 to provide terminal benefits to government employees who were not covered under the Pension Act (Cap. 189).	The National Treasury.
260.	The Asiatic Widows and Orphans Pension Fund.	The Asiatic Widows and Orphans Pension Act. (Cap. 193).	The Fund is established to provide pensions funds for Asian widows and Children of the deceased Asian officers who worked for Government.	The National Treasury.
261.	Asian Officers Family Pension Fund.	The Asian Officers Family Pension Act. (Cap.194)	The Fund is established under section 5 to provide pensions funds for Asian widows and Children of the deceased Asian officers who worked for Government.	The National Treasury.
262.	European Widows and Orphans Pension Fund.	The Widows and Orphans Pension Act 192 of 1921.	To provide pensions funds for European widows and Children of the deceased European officers who were working for Government.	The National Treasury.
263.	District Cash Fund.	Established through Treasury Circular no 7/2001 under the Exchequer and Audit Act. (Cap. 412).	To provide float for the Ministries and departments operating through the District Treasuries. (the fund is dormant)	The National Treasury
264.	Pre-shipment Inspection Fund.		The is established to facilitate pre-shipment inspection transactions for imported goods and services at the point of entry (the fund is dormant)	The National Treasury
265.	Civil Servants Accident Claim, Fund	Directorate of Personnel Management Circular of 1974	Established to carter for compensation to deceased and injured civil servants in the course of duty.	The National Treasury
266.	Alcoholic Drink Control Fund.	The Alcoholic Drink Control Act, 2010. (No. 4 of 2010)	Provide regulations of the production sale and consumption of alcoholic.	NACADA

267.	Higher Education Loan Fund.	The Higher Education Loans Board Act. (No. 6 of 2006).	Established under section 11 for the purposes of granting loans to assist Kenyan students to pursue higher education.	Education, science and Technology.
268.	Provincial Administration Cash Fund.	Established through Treasury Circular under the Exchequer and Audit Act. (Cap. 412)	To provide float for the Ministries and departments operating through the District Treasuries. (the fund is dormant)	The National Treasury.
269.	Government Press Fund	The Exchequer and Audit Act (Cap. 412) The Exchequer and Audit (Government Press Fund) Regulations, 1988	To procure supplies of raw material for undertaking production by government printer of various printing and publishing works obtainable from government press.	The Office of the President.
270.	Prisons Industries Fund.	The Exchequer and Audit Act (Cap. 412) The Exchequer and Audit Prison Industries Fund Fund) Regulations, 1988.	The Fund is mandated to train and rehabilitate prisoners and inmates and procure necessary raw materials, tools, plants and equipment required thereof, and offer for sale finished products in the open market.	Department of Prison.
271.	Prisons Farms Revolving Fund	Exchequer and Audit Act (Cap. 412) The Exchequer and Audit (Prison Farms Revolving Fund) Regulations 1993.	To provide funds required for development and running of prison farms for training and rehabilitation of prisoners and inmates.	Department of Prison.
272.	Housing Fund	The Housing Act. (Cap. 117)	Established under section 6 of the Act for construction of dwellings within the area of approved schemes.	National Housing Corporation.
273.	Demonstration Farms Fund	The Exchequer and Audit Act Cap 412 The Exchequer and Audit (Demonstration Farms Fund) Regulations, 1990	Established to provide requirements for development and running of demonstration farms at farmers training centres.	Agriculture
274.	Agricultural Information Resource Centre Revolving Fund.	The Exchequer and Audit Act. (Cap. 412) The Exchequer and Audit (Agricultural Information Resource Centre Revolving Fund) Regulations 1993.	Established to provide for development of Agricultural information centres to meet the demand for agricultural training and media materials within and outside the Ministry of Agriculture.	Agriculture.
275.	Medical Supplies Fund.	The Exchequer and Audit Act. (Cap.412). The Exchequer and Audit (Medical Supplies Fund) Regulations, 1987 [L.N. 11/1987]	Established to finance Medical Supplies in the Country.	Health.

[Subsidiary]

276.	Veterinary Services Development Fund.	The Exchequer and Audit Act. (Cap. 412) The Exchequer And Audit (Veterinary Services Development Fund) Regulations, 1996 [L.N. 109/1996]	To provide for the development and delivery of veterinary services.	Livestock Development
277.	Management Supervisions and Liquidation Fund.	The Cooperative Societies Act. (Cap. 490). The Co-operative Societies Rules, 1998 [L.N. 157/1998]	Established under rule 16 of the Societies Rules for management and supervisions and liquidation of Cooperative Societies.	Co-operatives.
278.	Petroleum Development Levy Fund.	The Petroleum Development Levy Fund Act, 1991 (No. 4 of 1991)	The Fund is established to finance programmes necessary to supplement fuel distribution in areas inadequately served by oil marketing Companies and for development of Petroleum Industry.	Energy.
279.	Training Fund	Petroleum Act (Cap.308) Petroleum (Exploration and Production) (Training Fund) Regulations [L.N. 132/2006]	Established under regulation 3 to finance the training of Kenyans in petroleum operations.	Energy.
280.	Kenya Energy Sector Environment and Social Responsibility Programme Fund.	Petroleum Act (Cap. 308)	For energy sector environment and social responsibility programme.	Energy.
281.	Car Loan Scheme for Electoral Commissioners Fund	The Public Finance Management Act (Cap. 412A) The Government Financial Management (Members and Staff Of The Electoral Commission Car Loan Scheme Fund) Regulations, 2007.	Funds for car loans for Interim Independent Electoral Commissioners.	Electoral Commission.
282.	Political Parties Fund	Political Parties Act, 2011. (No. 11 of 2011).	The Fund is established under section 23 of the Act to promote representation in Parliament and County Assembly.	Electoral Commission.
283.	Strategic Grain Reserve Trust Fund.	Exchequer and Audit Act. (Cap.412)	To finance strategic grain reserves.	Agriculture.
284.	Humanitarian Fund.		For disaster management.	Devolution and Planning.
285.	FAZA Fire disaster Fund.		For disaster management.	Devolution and Planning.

286.	Nakumatt/ Molo Fire Victims Fund.		For disaster management for Nakumatt and Molo fire victims	Devolution and Planning.
287.	Township, Roads and drainage Fund.		For maintenance of township roads and drainage.	Lands
288.	Civil Servants Housing Scheme Fund.	The Housing Act. (Cap. 117) The Civil Servants (Housing Scheme Fund) Regulations, 2004 [L.N. 98/2004.]	To finance Civil servants housing scheme	Housing
289.	Kenya Slums Upgrade, low cost housing and infrastructure Trust Fund		To finance slums upgrade	Housing
290.	Intelligence Service Development Fund.	The Exchequer and Audit Act. (Cap. 412)	To facilitate the operations of the Intelligence Service	National Intelligence Service.
291.	Stores and Services Fund- Supplies Branch Fund Account.	The Exchequer and Audit Act. (Cap. 412)	To procure goods and services centrally for the Government.	Works
292.	Universal Service Fund.	The Kenya Information and communication Act. (Cap. 411)	To support widespread access to capacity building and promote innovation in information and communication technology service.	Communication Authority of Kenya.
293.	Rehabilitation Fund.	The Narcotic Drugs and Psychotropic Substance Control Act. (Cap. 245)	Control of the possession of trafficking narcotic drugs and Psychotropic substances.	Health.
294.	Reserve Fund.		For making good any loss or deficiency which may occur in the course of business of the Corporation.	Housing
295.	Pension Trust Fund	Pension Trust Fund Act No 17 of 1977	Sets out the obligations for the two governments of Kenya and the United Kingdom relating to the British citizens who served in Kenya.	The National Treasury.
296.	Compensation Fund	Prevention of Fraud (Investment) Act. Cap 1 1977	To provide cushion investor against loss of their investment.	Office of Director of Public Prosecutions.
297.	Community Development Trust Fund	CDTF is established under Legal Notice No. 303 dated 26th March 1996	The mandate is to contribute to poverty reduction efforts in Kenya by offering support, in the form of grants, to community-based projects which address social, economic and environmental priorities	Ministry of Devolution and Planning

[Subsidiary]

298.	Humanitarian Fund	The Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities Act, 2012	The mandate of the Fund is to provide for the capital and recurrent expenditure relating to the protection and assistance to internally displaced persons and the provision of a durable solution to them	Ministry of Devolution and Planning.
299.	Local Authority Provident Fund Cap 272	Local Authorities Provident Fund Act (Cap.272)	To provide for contributions to the fund by such employees of local authorities in Kenya,	
300.	Deposit Protection Fund	Banking Act (Cap. 488)	To provide cover for depositors and act as a liquidator of failed member institutions.	Central Bank of Kenya
301.	Parliamentary Mortgage (Members Scheme Fund)	Public Finance Management Act (Cap. 412A) and Legal Notice No. 67.	To finance mortgage for Members of Parliament	Parliament.
302.	Parliamentary Mortgage (Staff Scheme Fund)	Public Finance Management Act (Cap. 412A) and Legal Notice No. 67.	To finance mortgage for Staff of Parliament	Parliament.
303.	Parliamentary Car Loan (Members Scheme Fund)	Public Finance Management Act (Cap. 412A) and Legal Notice No. 67.	To finance car loans for Members of Parliament	Parliament.
304.	Parliamentary Car Loan (Staff Scheme Fund)	Public Finance Management Act (Cap. 412A) and Legal Notice No. 67.	To finance car loans for Staff of Parliament	Parliament.

Regulations under section 24**THE PUBLIC FINANCE MANAGEMENT (SENATE
MONITORING AND EVALUATION) REGULATIONS****ARRANGEMENT OF REGULATIONS****PART I – GENERAL PROVISIONS***Regulation*

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**THE PUBLIC FINANCE MANAGEMENT (SENATE
MONITORING AND EVALUATION) REGULATIONS**

[L.N. 71/2018]

PART I – GENERAL PROVISIONS

Citation.

1. These Regulations may be cited as the Public Finance Management (Senate Monitoring and Evaluation) Regulations.

Purpose.

2. (1) The purpose of the regulations is to guide the Senate Sessional Committee on Monitoring and Evaluation in the administration, disbursement and management of the Fund to ensure efficiency and effectiveness.

(2) The regulations—

- (a) specify the sources of monies to the Fund;
- (b) provide guidance on the administration and management of the Fund; and
- (c) provide the financial procedures for the Fund.

Interpretation.

3. In these Regulations—

"Accounting Officer" means the Clerk of the Senate;

"Administrator" means a person appointed under regulation 10 (2);

"bank account" means an account opened at a commercial bank for the purpose of Monitoring and Evaluation under these Regulations;

"Clerk" means the Clerk of the Senate appointed under Article 128 of the Constitution;

"Commission" means the Parliamentary Service Commission established under Article 127 of the Constitution;

"Committee" means the Senate Monitoring and Evaluation Committee established under regulation 12;

"county monitoring and evaluation office manager" means the monitoring and evaluation manager appointed or designated as such for purposes of the Fund;

"county" means a county as prescribed under Article 6 (1) of the Constitution;

"Fund" means the sum allocated to Senators for purposes of carrying out monitoring and evaluation under the Commission's budget;

"monitoring and evaluation officer" means an officer appointed or designated to advise on technical issues related to the management of the Fund;

"recipient" means a nominated or elected Senator who receives monies from the Fund;

"returns" means documentation indicating expenditure incurred during the monitoring and evaluation exercise;

"Speaker" means the Speaker of the Senate;

"staff" means an employee or employees of a Senator under these regulations.

[Subsidiary]

Application.

4. (1) These Regulations shall apply to recipients of funds, the Committee established under Regulation 12 and employees of the Commission involved in the management and administration of the Fund.

(2) The application of these regulations shall be guided by Article 96 of the Constitution which requires the Senate to oversight county governments and protect their interests.

PART II – ESTABLISHMENT OF THE FUND

Establishment of the Fund.

5. (1) There is established a Fund, the Senate Monitoring and Evaluation Fund.

(2) The Fund shall be utilized to carry out monitoring and evaluation activities in exercise of the Senate's oversight function over county governments.

Sources of the Fund.

6. The Fund shall consist of—

- (a) monies appropriated under the Commission's Budget for monitoring, evaluation and impact assessment;
- (b) grants and donations to the Fund received through the Commission; and
- (c) any other lawful sources.

Objects of the Fund.

7. (1) The object of the Fund is to facilitate a Senator to carry out monitoring and evaluation activities in exercise of the Senate's oversight role over county governments in accordance with Article 96 of the Constitution.

(2) Without prejudice to subparagraph (1), the Fund shall be utilized in—

- (a) undertaking county expenditure tracking surveys;
- (b) promoting citizen engagement on issues affecting the counties by undertaking civic education and community sensitization;
- (c) initiating a partnership approach with stakeholders at the county level to ensure a strong and more strategic focus on community development;
- (d) undertaking research, studies and surveys on various thematic areas affecting counties;
- (e) undertaking social auditing of development projects being undertaken in the counties;
- (f) tracking and monitoring development activities in the counties; and
- (g) any other monitoring and evaluation activity relevant to the Senator's mandate.

(3) A nominated Senator shall carry out the monitoring and evaluation activities in sub paragraph (2) at the national level in respect of the interest that the Senator represents in the Senate.

(4) Despite sub paragraph (3), a nominated Senator may perform the following functions in the utilization of the Fund—

- (a) evaluate programmes that promote and protect the full enjoyment of human rights of women, youth and persons with disabilities by involving them in decision-making processes in all policies and programmes; and

- (b) initiate and maintain effective public awareness campaigns designed to promote greater social awareness towards women, youth and persons with disabilities.

Initial allocation.

8. The minimum allocation to the Fund shall be one billion shillings provided under the Commission's budget for every financial year, provided that the allocation shall be reviewed upwards from time to time.

Allocation of the Fund.

9. The allocation to the Fund shall be utilized as follows—

- (a) a one percent (1%) administration fee shall be charged on the total fund allocated and shall be retained by the Commission for purposes of facilitating administrative functions of the Fund;
- (b) a one percent (1%) of the total fund allocation shall be set aside by the Commission for capacity building of the Senators and their staff;
- (c) a six percent (6%) of the total fund allocated shall be set aside for the nominated Senators and this amount shall be divided equally among the nominated Senators; and
- (d) the balance shall be shared among the elected Senators according to the formula provided for in Second Schedule of these regulations.

PART III – ADMINISTRATION OF THE FUND

Administration of the Fund.

10. (1) The Fund shall be administered through the Senate Monitoring and Evaluation Office established by the Commission.

(2) The Accounting Officer shall in writing, appoint an employee of the Commission as the Administrator of the Fund.

Functions of the Administrator.

11. (1) The Administrator of the Fund shall—

- (a) consult with the Accounting Officer and the Committee on matters relating to the administration of the Fund;
- (b) cause to be kept proper books of accounts and other books and records in relation to the Fund, of all activities and undertakings financed by the Fund;
- (c) consolidate the required reports under these regulations and submit them to the Committee; and
- (d) carry out any other duties assigned by the Accounting Officer.

(2) The Administrator may in writing, delegate to an employee of the Commission to exercise any of the administrator's powers or the performance of any of the functions under these regulations.

(3) The Accounting Officer shall ensure that the Senate Monitoring and Evaluation Office is resourced with requisite personnel for purposes of the day to day operations and handling of matters related to the management of the Fund.

(4) The Accounting Officer shall open, maintain and manage a separate account with a reputable bank where the monies due to the Fund shall be kept.

(5) The disbursement of monies out of the Fund to the recipients shall be bi-annual.

(6) The Accounting Officer shall with the approval of the Committee established under Regulation 12, introduce additional administrative measures from time to time for effective operation of the Fund.

PART IV – ESTABLISHMENT OF A COMMITTEE

Establishment of the Senate Monitoring and Evaluation Committee.

12. The Senate shall in accordance with its Standing Orders, establish a Committee known as the Senate Monitoring and Evaluation Committee consisting of a Chairperson and not more than eight other members to oversight the kitty.

The Accounting Officer.

13. The Accounting Officer or the Accounting Officer's representative shall be the secretary to the Committee.

Functions of the Committee.

14. (1) The Committee shall—

- (a) consider the bi-annual disbursements out of the Fund;
- (b) receive reports on the performance of the Fund from the Administrator;
- (c) examine the monitoring programmes being undertaken by the recipients of the Fund;
- (d) prepare and submit an annual report on the operations and performance of the Fund to the Senate; and
- (e) perform any other function as the Senate may approve.

(2) The business and the affairs of the Committee shall be conducted in accordance with the Senate Standing Orders.

PART V – FINANCIAL PROVISIONS

Receipts and earnings to be retained.

15. The receipts, earnings, and accruals to the Fund and the balance of the Fund at the close of each financial year, shall be retained by the Fund for use for the purpose for which the Fund is established,

Accounts and records.

16. The Accounting Officer shall cause to be kept all proper books and records of accounts of the income, expenditure and liabilities associated with the Fund.

Financial statements.

17. Within a period of three months after the end of each financial year, the Accounting Officer shall submit to the Commission the accounts of the Fund showing—

- (a) a statement of income and expenditure during that year; and
- (b) a statement of the assets and liabilities of the Fund on the last day of the financial year.

Report on operations of Fund.

18. (1) The Administrator of the Fund shall within two months after the end of each financial year, prepare and submit to the Accounting Officer a report of the operations of the Fund for the preceding year.

(2) The Accounting Officer shall submit the report under sub paragraph (1) to the Committee for information.

Procurement services.

19. Procurement works and services relating to activities under these regulations shall be governed by the Public Procurement and Asset Disposal Act (Cap. 412C).

Opening a bank account.

20. An account approved by the Commission shall be opened with a reputable commercial bank at the nearest location from the county office.

Source of finance.

21. At the commencement of every financial year, the county monitoring and evaluation office manager shall be issued with an Authority to Incur Expenditure by the Clerk in that financial year.

Signatories of cheques.

22. The signatories to the account opened pursuant to regulation 20 shall be—

- (a) the county monitoring and evaluation office manager whose signature shall be mandatory; and
- (b) two other signatories appointed by the Senator for that purpose.

PART VI – OFFICES AND STAFFING FOR PURPOSES OF MONITORING AND EVALUATION

Monitoring and Evaluation offices.

23. A Senator shall utilize existing structures in the County Office for purposes of administrative activities in undertaking monitoring and evaluation.

Monitoring and Evaluation staff.

24. (1) A Senator shall recruit for purposes of monitoring and evaluation the following staff to serve in the county office—

- (a) the county monitoring and evaluation office manager; and
- (b) the monitoring and evaluation officer.

(2) A Senator may recruit additional staff as may be necessary but subject to the ceiling of staff salaries approved by the Commission.

Terms of service.

25. (1) A member of staff recruited under regulation 24 shall—

- (a) not hold any position in a political party; and
- (b) sign a contract of employment which shall be submitted to the Clerk.

(2) A member of staff may at any time give one month's notice before resignation from employment or surrender one month's salary in lieu of notice.

County monitoring and evaluation office manager.

26. The county monitoring and evaluation office manager shall—

- (a) be the officer in charge of the administrative and institutional management of the finances allocated for monitoring and evaluation;

[Subsidiary]

- (b) avail to the Clerk bi-annually, copies of bank statements and any other financial records from the Senator's allocation;
- (c) make purchases as may be necessary to effectively enable monitoring and evaluation;
- (d) ensure that the money available is spent in conformity with existing government financial regulations to facilitate quick, efficient and effective delivery of services;
- (e) in writing, keep the Senator informed about the transactions of the monitoring and evaluation bank account; and
- (f) perform any other duties as may be assigned by the Senator from time to time.

Monitoring and evaluation officer.

27. The monitoring and evaluation officer shall—

- (a) implement monitor and evaluate programs in line with the objectives of the Fund; and
- (b) perform any other duties as may be assigned by the Senator from time to time.

PART VII – MISCELLANEOUS PROVISIONS

Transition.

28. When the office of a Senator falls vacant pursuant to Article 103 of the Constitution, the—

- (a) contract signed between the Senator and the member of staff shall become void; and
- (b) the county monitoring and evaluation office manager shall be responsible for running the office until a new Senator is elected.

Accounting for Commission property.

29. (1) Upon the gazettment of a new Senator, the county monitoring and evaluation office manager shall hand over the Commission's property to the Clerk or the Clerk's appointed representative within one month after the gazettment.

(2) The Clerk shall confirm that all handing over procedures have been complied with before making the final payment of dues, if any.

Winding up of the Fund.

30. Upon winding up of the Fund, the cash balances, assets and liabilities shall be transferred to the Commission.

Vesting of assets.

31. All assets acquired from the Fund shall remain the property of the Commission and shall vest in the Commission.

FIRST SCHEDULE

CONDITIONS FOR DISBURSEMENT

The funds shall be disbursed under the following conditions—

1. All disbursements from the Fund to the respective recipients shall be approved and minuted by the Committee;

2. All disbursements from the Fund's main account shall be made through the recipient's bank accounts maintained for every recipient by the Fund administrator;
3. The record of the amounts received by each recipient and the record of the amounts so received shall be submitted to the Committee within 30 days after the close of the financial year and no disbursements for the succeeding financial year shall be made into the accounts until the said records are duly received;
4. The Committee shall set out general conditions and requirements for release of funds from the Fund to ensure efficient and effective management of the Fund;
5. The Committee may impose reasonable requirements including restrictions on a particular recipient and such restrictions or requirements shall be reported together with the returns to be submitted to the Senate;
6. Returns from the first tranche made to a recipient in any financial year must be filed with the administrator of the Fund by the county monitoring and evaluation office manager two months after the close of the first half of the financial year;
7. Returns from the second tranche made to a recipient in any financial year must be filed with the administrator of the Fund by the county monitoring and evaluation office manager two months after the close of the financial year;
8. No disbursement to any recipient will be processed and approved until the administrator of the Fund is satisfied that the required returns have been adequately filed within the timelines set; and
9. The administrator of the Fund shall develop a schedule showing documentation to be submitted upon filing the returns.

SECOND SCHEDULE

FORMULA FOR ALLOCATING MONIES AMONG THE ELECTED SENATORS

PARAMETER		WEIGHT (%)
Equal Share	q	47
Population	s	45
Size of County	r	8

$$CA = ((q \text{ (BES)})/47) + ((r \text{ (SC)})/TS) + ((s \text{ (CP)})/TP)$$

Where:

CA - Allocation due to Elected Senator

ES - Equal Share

CF - County population

TP - Total Population

SC - Size of the County

TS - Total Size

q, r, s - parameter weights where: $q + r + s = 1$ or 100%

Regulations under section 24(2A)THE PUBLIC FINANCE MANAGEMENT
(PARLIAMENTARY CATERING FUND) REGULATIONS

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
 2. Interpretation.
 3. Establishment of the Fund.
 4. Object of the Fund.
 5. Capital of the Fund.
 6. Catering Fund Committee.
 7. Functions of the Committee.
 8. Administration of the Fund.
 9. Membership of the Fund.
 10. Functions of the Board.
 11. Operation of the catering facility.
 12. Banking arrangement.
 13. Proper books of account.
 14. Consultancy and outsourcing of services.
 15. Procurement of goods.
 16. Audit of books of accounts and financial statements.
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**THE PUBLIC FINANCE MANAGEMENT
(PARLIAMENTARY CATERING FUND) REGULATIONS**

[L.N. 103/2019]

Citation.

1. These Regulations may be cited as the Public Finance (Parliamentary Catering Fund) Regulations.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

“catering facility” means facilities set aside to offer restaurant, bar and incidental services;

“Commission” means the Parliamentary Service Commission established under Article 127 of the Constitution;

“Committee” means the Catering Fund Management Committee established under regulation 5;

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

“Fund” means the Parliamentary Catering Fund established under Regulation 3;

“officer administering the Fund” means the Clerk of the National Assembly; and “Member” means a Member of Parliament or a former Member of Parliament.

Establishment of the Fund.

3. There is established a Fund to be known as the Parliamentary Catering Fund which shall vest in and be operated and managed by the Committee.

Object of the Fund.

4. The object of the Fund shall be to provide for the purchase of catering equipment, management and administration of catering facilities.

Capital of the Fund.

5. (1) The capital of the Fund shall consist of—

- (a) monies standing to the credit of the account on the date of coming into operation of these Regulations; and
- (b) monies appropriated by Parliament to the Fund;

(2) The Fund shall be administered as a special account in the Parliamentary Fund and shall be operated by the officer administering the Fund.

(3) Monies accruing to the Fund shall, where such monies constitutes a surplus after meeting the requirements of regulation 10 shall be credited to the capital of the Fund.

Catering Fund Committee.

6. (1) There is established a Committee to be known as the Catering Fund Committee, which shall consist of—

- (a) the chairperson of the Members' Welfare Committee of the Commission;
- (b) the chairperson of the Staff Welfare Committee of the Commission;
- (c) one member of the Commission not being the chairperson of the Members' Welfare Committee or Chairperson of the Staff Welfare Committee of the Commission;

[Subsidiary]

- (d) the Majority Whip of the National Assembly and in his or her absence, the Deputy Majority Whip;
- (e) the Minority Whip of the National Assembly and in his or her absence, the Deputy Minority Whip;
- (f) the Majority Whip of the Senate and in his or her absence, the Deputy Majority Whip;
- (g) the Minority Whip of the Senate and in his or her absence, the Deputy Minority Whip; and
- (h) the Clerk of the Senate.

(2) The Clerk of the National Assembly shall be the Officer Administering the Fund and the secretary to the Committee.

(3) The meetings of the Committee shall be convened by the chairperson or in the absence of the chairperson, by a member designated by the chairperson and shall be convened at such times as may be necessary for the discharge of the Committee's functions.

(4) The quorum for a meeting of the Committee shall be the chairperson and any three members.

Functions of the Committee.

7. The Committee shall administer the Fund and shall—

- (a) recommend conditions on use of any monies in the Fund;
- (b) ensure that the monies accruing from the catering facility are used in such a manner as it deems fit; and
- (c) advise the Commission on consultancy and outsourcing of the catering facilities.

Administration of the Fund.

8. (1) The officer administering the Fund shall subject to the directions of the Committee—

- (a) supervise and control the administration of the Fund;
- (b) utilize the monies accruing thereto to defray operating expenses, and may impose any reasonable restriction or other requirements concerning such use;
- (c) cause to be kept books of accounts and other books and records in relation to the Fund;
- (d) prepare, sign and transmit to the Auditor General in respect of each financial year and within three (3) months after the end thereof, a statement of accounts relating to the Fund, prepared and signed by him or her specifying the income of the Fund and showing the expenditure incurred from the Fund, in such details as the Commission may from time to time direct in accordance with the Public Finance Management Act; and
- (e) designate and appoint such staff as may be necessary to assist him or her in the administration of the Fund and may require such staff to carry out such inspections as may be necessary to verify any information submitted under these Regulations.

(2) Every statement of account prepared under this regulation shall include details of the balances between the assets and liabilities of the Fund and shall indicate the financial status of the Fund as at the end of the financial year concerned.

(3) The Committee shall ensure that the monies accruing from catering facilities are used in such a manner as is deemed just and fit.

(4) The officer administering the Fund shall ensure that there is prudence in administration of the Fund.

Membership of the Fund.

9. (1) Member desiring to be a member of the Fund shall apply to the Committee for membership upon payment of a prescribed fee.

(2) The Committee shall prescribe fees payable by a member under paragraph (1).

Functions of the Board.

10. The committee shall ensure that all the expenditure incurred and the monies realized therein shall be used in—

- (a) purchasing goods for supply to the members' catering facility in Parliament;
- (b) purchasing equipment for improvement of the catering facility;
- (c) providing catering staff training in compliance with the hospitality industry practices; and
- (d) providing catering facilities in compliance with the hospitality industry practices; and
- (e) defraying utility bills such as electricity and water bills.

Operation of the catering facility.

11. (1) The officer administering the Fund shall establish a catering payment system for the services offered at the catering facility and which shall include card or mobile money payments and monthly deductions but shall not include cash payments.

(2) Where a member chores a monthly deduction, the prepared of the daily sales to the member shall be summarized on a monthly basis, duly checked by the Catering Manager and forwarded to the officer administering the Fund for final authorization to the payroll department.

(3) Members shall be required to sign their bills promptly to avoid undue delay in effecting payments and unwarranted financial embarrassment.

(4) A pay bill transaction account shall be created for each member and their visitors.

(5) The Committee shall have the discretion to withdraw its services from members until all the bills are paid up.

Banking arrangement.

12. (1) For purposes of disbursement of funds under these Regulations, there shall be opened and maintained a bank account in a commercial bank approved by the Commission.

(2) The bank account contemplated paragraph (1), shall be separate from that of the Commission.

(3) The signatories to the Fund account under paragraph (1), shall be the officer administering the Fund and two other persons authorized by the Commission from amongst the staff of the Commission.

[Subsidiary]

Proper books of account.

13. (1) The officer administering the Fund shall be responsible for the maintenance of proper books of accounts and the preparation of annual financial statements which shall include—

- (a) an income and expenditure account;
- (b) a statement of financial position; and
- (c) a statement of cash flows.

(2) The officer administering the Fund shall ensure that the accounts of the Fund and the annual financial statements relating to those accounts comply with the prescribed accounting standards.

(3) The officer administering the Fund shall cause to be prepared quarterly returns and financial statements to be submitted to the Commission.

Consultancy and outsourcing of services.

14. (1) The Commission may, if it considers it appropriate and upon advice by the Committee engage such experts or consultants to assist in the discharge of the functions of the Fund upon such terms and conditions as the Committee may determine.

(2) The Commission may outsource catering facilities upon such terms and conditions as the Committee may determine.

Procurement of goods.

15. (1) The Public Procurement and Assets Disposal Act (Cap. 412C) and regulations shall guide the procurement of goods and services.

(2) Subject to paragraph (1), the Commission shall establish a catering management system to aid in the procurement and sale of alcoholic drinks and soft drinks.

Audit of books of accounts and financial statements.

16. The annual financial statements of the fund shall be subject to audit by the Auditor General in accordance with Articles 226 and 229 of the Constitution of Kenya and the Public Audit Act (Cap. 412B).

Regulations under section 24(3)THE PUBLIC FINANCE (PARLIAMENTARY
MORTGAGE (STAFF) SCHEME FUND) REGULATIONS

ARRANGEMENT OF REGULATIONS

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4. Object and purpose of the Fund.
5. Capital of the Fund.
6. The Loans Management Committee.
7. Commission may appoint mortgage institution.
8. Utilization of loan monies.
9. Disbursement of loans for development.
10. Application for a loan.
11. Leasehold property.
12. Maximum loan disbursement.
13. Repayment of loan.
14. Administrative Costs.
15. Lien.
16. Mortgage insurance.
17. Default in repayment.
18. Administration of the Fund.
19. Responsibilities of mortgage institution.
20. Supplementary terms.
21. Transition.
22. Repeal of L.N. 46/2008.

SCHEDULE — SCHEDULE [R. 12(1)]

**THE PUBLIC FINANCE (PARLIAMENTARY
MORTGAGE (STAFF) SCHEME FUND) REGULATIONS**

[L.N. 18/2013, L.N. 48/2020, L.N. 187/2020]

Citation.

1. These Regulations may be cited as the Public Finance (Parliamentary Mortgage (Staff) Scheme Fund) Regulations.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

“borrower” means a person in receipt of a loan out of the Fund;

“Commission” means the Parliamentary Service Commission established under section 45B of the former Constitution as continued under Article 127 of the Constitution;

“Committee” means the Loans Management Committee established under regulation 6;

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

“Fund” means the Parliamentary Mortgage Scheme Fund established under the Government Financial Management (Parliamentary Mortgage Scheme Fund) Regulations and continued under paragraph 9 of the Second Schedule to the Public Finance Management Act;

“member of the Scheme” means an employee of the Parliamentary Service Commission who is employed on permanent and pensionable terms;

“Nairobi” means the metropolis of Nairobi as designated by the ministry for the time being responsible for metropolitan development;

“Officer Administering the Fund” means the Clerk of the National Assembly;

“property” means a residential house purchased through a loan from the Fund and includes the land purchased under loan from the Fund on which such house is to be developed;

“valuer” means a person registered as a valuer under the Valuers Act (Cap. 532).

Establishment of the fund.

3. The Parliamentary Mortgage Scheme Fund established under the Government Financial Management (Parliamentary Mortgage Scheme Fund) Regulations, 2008 established under the Government Financial Management Act (now repealed) is continued.

Object and purpose of the Fund.

4. The object and purpose of the Fund shall be to provide a loan scheme for the purchase, development, renovation or repair of residential property by members of the Scheme.

Capital of the Fund.

5. (1) The initial capital of the Fund shall consist of the monies standing to the credit of the account on the date of the coming into operation of these Regulations.

(2) Parliament may appropriate additional monies to the Fund.

(3) The Fund shall be administered as a special account in the Parliamentary Fund and shall be operated by the Officer Administering the Fund.

(4) The administrative costs accruing to the Fund shall, where such administrative costs constitutes a surplus after meeting the requirements of regulation 18(1)(b) be credited to the capital of the Fund.

[L.N. 48/2020, rr. 2 & 3, L.N. 187/2020, rr. 2 & 3.]

The Loans Management Committee.

6. (1) There is established a committee to be known as the Loans Management Committee, which shall consist of—

- (a) the vice-chairman of the Commission who shall be the chairman;
- (b) the chairman of the Staff Welfare Committee of the Commission;
- (c) the Clerk of the Senate;
- (d) the Director-General of Parliament; and
- (e) a member of the Scheme elected by the members of the Scheme.

(2) The officer administering the Fund shall be an *ex officio* member of the Committee and the secretary to the Committee.

(3) The Committee shall administer the Fund and shall—

- (a) process applications for loans in accordance with the existing terms and conditions of borrowing;
- (b) liaise with the housing company (if any) to set up a revolving fund for the disbursement of the loans; and
- (c) supervise the day-to-day running of the Fund.

(4) The meetings of the Committee shall be convened by the chairman or in the absence of the chairman, by a member designated by the chairperson and shall be convened at such times as may be necessary for the discharge of the Committee's functions.

(5) The quorum for a meeting of the Committee shall be the chairman and any three members.

(6) The Committee shall meet at least once every calendar month.

[L.N. 48/2020, r. 4, L.N. 187/2020, r. 4.]

Commission may appoint mortgage institution.

7. Notwithstanding regulation 6(3), the Commission may, if it considers it appropriate to do so, appoint a mortgage institution to administer the Fund on its behalf.

Utilization of loan monies.

8. (1) A member of the Scheme who wishes to apply for a loan from the Fund shall make such application to the officer administering the Fund in such manner as the Loans Management Committee may prescribe.

(2) A loan obtained under these Regulations shall be utilized for the purchase, development, renovation or repair of residential property for the occupation of the applicant and his or her immediate family.

(3) A loan for the development of residential property may be granted at the discretion of the Committee—

- (a) to a member of the Scheme who is in possession of a title deed to the land on which the development is intended to be carried out; or
- (b) in two installments, for the purchase of the land at which the residential property is to be developed and for the subsequent development of the property.

(4) The amount of the first installment granted for the purchase of land under paragraph (3)(b) shall not exceed forty per cent of the maximum loan amount for which the member of the Scheme is eligible.

[Subsidiary]

Disbursement of loans for development.

9. A loan granted for the development of a residential property under these Regulations shall be released to the applicant in the following phases—

- (a) the first disbursement based on the value of the land on which the residential property is proposed to be developed; and
- (b) the subsequent disbursements based on the rate of completion of the various phases of development as certified by a qualified valuer at the cost of the applicant.

Application for a loan.

10. (1) An application for a loan under these Regulations shall be accompanied by the following documents where appropriate—

- (a) copies of the designs of the proposed residential property duly approved by the local authority within whose area it is to be situated;
- (b) bills of quantities in respect of the proposed development, renovation or repair;
- (c) an official search of the title to the property intended to be purchased;
- (d) a certified copy of the sale agreement relating to the property.

(2) The applicant shall bear the cost of stamp duty and other legal fees.

(3) Where a borrower fails to comply with the requirements of paragraph (2) within the stipulated time, the officer administering the Fund shall, upon giving the borrower fourteen days' notice, deduct the amount due from the salary of that borrower in such installments as may be appropriate and remit such deductions to meet such costs as may be due.

(4) All legal transactions in respect of the property being purchased shall be conducted by an advocate appointed by the Commission.

Leasehold property.

11. Where the property intended to be purchased through a loan from the Fund is leasehold property, such loan shall be granted where the expiry date of such lease is at least forty-five years beyond the final loan repayment date.

Maximum loan disbursement.

12. (1) The maximum loan entitlement for a member of the Scheme in respect of the designation or job group scale specified in the first column of the Schedule shall not exceed the respective amount set out in the second column of the Schedule.

(2) For a member of the Scheme to qualify for a loan, such member shall be required to be—

- (a) confirmed in appointment; or
- (b) on contract with the Parliamentary Service Commission with the relevant documentation duly completed.

(3) A loan granted to a borrower under these Regulations shall be funded at the rate of—

- (a) ninety *per centum* of the value of the property, where such property is situated in Nairobi; and
- (b) eighty *per centum* of such value where the property is situated in any other area, and the borrower shall be required to deposit the balance thereof with the Fund.

Repayment of loan.

13. A loan granted under these Regulations shall be repayable within a period of twenty-five years or the remaining period of service of the borrower, whichever is less.

[L.N. 48/2020, r. 5, L.N. 187/2020, r. 5.]

Administrative Costs.

14. (1) The administrative costs chargeable on a loan shall be three *per centum* per annum on a monthly reducing balance and this rate may be reduced from time to time at the discretion of the Commission.

(2) A mortgage institution appointed under regulation 7 to administer the Fund may charge an administrative costs of not more than four *per centum* to cover management costs.

(3) The administrative costs charged under paragraphs (1) and (2) of this regulation shall be met by the borrower.

[L.N. 48/2020, r. 6, L.N. 187/2020, r. 6.]

Lien.

15. (1) The Commission shall have a charge registered on the property financed through a loan granted under these Regulations and shall be entitled to have its name entered in all documents of title for such property.

(2) The borrower shall—

- (a) not mortgage, charge, surrender the lease or sell or agree to sell or part with possession of the charged property or any part thereof without the prior written consent of the Commission;
- (b) meet and pay all rates, rents, insurances and any other outgoings in respect of the property and send the proof of such payments to the Commission; and
- (c) provide a transfer deed duly signed by the borrower and a letter authorizing the Commission to sell the property in case of default in payment.

(3) All residential properties purchased through the Fund shall be constructed of such material as may be acceptable to the Commission.

(4) During the loan repayment period, every borrower shall—

- (a) ensure that the property is used for residential purposes only;
- (b) maintain the property in a satisfactory state of repair; and
- (c) not alter or make any structural alteration to the property, carry out any valuation, assessment or investigation relating to the property or title thereto, as the case may be, without the approval of the Commission.

(5) No borrower shall be eligible for more than one loan at a time.

(6) All legal documentation and disbursement of funds shall be supervised by the officer administering the Fund.

[L.N. 48/2020, r. 7, L.N. 187/2020, r. 7.]

Mortgage insurance.

16. (1) A borrower shall take out and maintain a mortgage protection policy and a fire policy with an insurance firm approved by the Commission, the cost of which shall be paid out of the Fund and debited in such borrower's account.

[Subsidiary]

(2) The originals of all documents relating to property financed by a loan from the Fund shall be kept in safe custody by the officer administering the Fund.

Default in repayment.

17. The Commission may call in a loan and in default sell the charged property by public auction or private treaty where the borrower is in breach of the terms under the loan agreement or the covenant contained in the charge of the mortgage instrument.

Administration of the Fund.

18. (1) The officer administering the Fund shall—

- (a) supervise and control the administration of the Fund;
- (b) utilize the administrative costs accruing thereto to defray operating expenses, and may impose any reasonable restriction or other requirements concerning such use;
- (c) cause to be kept books of accounts and other books and records in relation to the Fund and for all loans financed from the Fund;
- (d) prepare, sign and transmit to the Auditor-General in respect of each financial year and within three (3) months after the end thereof, a statement of accounts relating to the Fund, prepared and signed by him specifying the income of the Fund and showing the expenditure incurred from the Fund, in such details as the Commission may from time to time direct in accordance with the Public Finance Management Act;
- (e) furnish such additional information as may be required for the purpose of examination and audit by the Auditor-General; and
- (f) designate and appoint such staff as may be necessary to assist him in the administration of the Fund and may require such staff to carry out such inspections as may be necessary to verify any information submitted under these Regulations.

(2) Every statement of account prepared under this regulation shall include details of the balances between the assets and liabilities of the Fund and shall indicate the financial status of the Fund as at the end of the financial year concerned.

[L.N. 48/2020, r. 8, L.N. 187/2020, r. 8.]

Responsibilities of mortgage institution.

19. The responsibilities of the mortgage institution, if any, appointed under these Regulations shall be—

- (a) to operate individual accounts for each borrower, which shall provide details of recoveries of the loan;
- (b) to charge security on properties acquired through loans from the Fund to protect the interests of the Fund and act as custodian of such charges;
- (c) to disburse cheques for newly approved loans to various vendors, after the necessary documentation is completed by the Committee;
- (d) to pay all outgoings and issue demand notices where necessary to members through the officer administering the Fund;
- (e) upon repayment of the loan, interest and other expenses which may be outstanding, to discharge the charge and release the security documents to the borrower; and

- (f) upon default, to call in the loan and on behalf of the Commission sell the charged property by public auction or private treaty, in which event the Fund shall meet any shortfall between the loan outstanding and the proceeds of sale.

Supplementary terms.

20. (1) These Regulations shall be supplemented by such terms as may, from time to time, be detailed in the application form supplied by the Commission and in the contract between the mortgage institution and the Commission.

(2) Subject to these Regulations, the Commission shall issue guidelines on—

- (a) the purchase and development of land and residential properties under these Regulations;
- (b) the utilization of surplus Funds for the purchase and development of land and residential property under these Regulations; and
- (c) such other matters as may be necessary for the proper management and administration of the Fund.

Transition.

21. A person who immediately prior to the commencement of these Regulations was servicing a loan obtained under the Regulations shall be entitled to enhance the principal amount of the loan to the respective amount provided for in the Schedule.

Repeal of L.N. 46/2008.

22. The Government Financial Management (Parliamentary Mortgage Scheme Fund) Regulations (L.N. 46/2008) are repealed.

SCHEDULE

(r. 12(1))

<i>Designation/job Group Scale</i>	<i>Maximum entitlement</i>
PSC 6	KSh. 8,000,000
PSC 5	KSh. 7,000,000
PSC 4	KSh. 6,000,000
PSC 1-3	KSh. 5,000,000

THE PUBLIC FINANCE MANAGEMENT (PARLIAMENTARY
CAR LOAN (MEMBERS) SCHEME FUND) REGULATIONS

ARRANGEMENT OF REGULATIONS

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 2. Interpretation.
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 9. Temporary release of log-book.
 10. Loan amounts.
 11. Administrative Costs.
 12. Repayment Period.
 13. Insurance.
 14. Loan discharge.
 15. Administration of the Fund.
 16. Repeal of L.N. 148 of 1999 and transition.
-

**THE PUBLIC FINANCE MANAGEMENT (PARLIAMENTARY
CAR LOAN (MEMBERS) SCHEME FUND) REGULATIONS**

[L.N. 68/2013, L.N. 167/2015, L.N. 45/2020, L.N. 184/2020]

Citation.

1. These Regulations may be cited as the Public Finance Management (Parliamentary Car Loan (Members) Scheme Fund) Regulations.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

“Commission” means the Parliamentary Service Commission established under section 45B of the former Constitution as continued under Article 127 of the Constitution;

“Committee” means the Loans Management Committee established under regulation 6;

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

“Fund” means the Parliamentary Car Loan Scheme Fund established under the Exchequer and Audit (Members of the National Assembly Car Loan Scheme Fund) Regulations and continued under paragraph 9 of the Second Schedule to the Public Finance Management Act (Cap. 412A);

“hire purchase agreement” means an agreement for the bailment of goods under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee;

“member of the Scheme” means a member of Parliament; and

“officer administering the Fund” means the Clerk of the National Assembly.

Establishment of the Fund.

3. The Parliamentary Car Loan Scheme Fund established under the Exchequer and Audit (Member of the National Assembly Car Loan Scheme Fund) Regulations established under the Government Financial Management Act (now repealed) is continued.

Object and purpose of the Fund.

4. The object and purpose of the Fund shall be to provide a loan scheme for the purchase of vehicles by members of the Scheme.

Initial capital.

5. (1) The initial capital of the Fund shall consist of the monies standing to the credit of the account on the date of the coming into operation of these Regulations.

(2) Parliament may appropriate additional monies to the Fund.

(3) The Fund shall be administered as a special account in the Parliamentary Fund and shall be operated by the officer administering the Fund.

The Loans Management Committee.

6. (1) There is established a committee to be known as the Loans Management Committee, which shall consist of—

- (a) the vice-chairperson of the Commission who shall be the chairperson;
- (b) the chairperson of the Members’ Welfare Committee of the Commission;
- (c) the Majority Whip of the National Assembly;
- (d) the Minority Whip of the National Assembly;

[Subsidiary]

- (e) the Majority Whip of the Senate;
- (f) the Minority Whip of the Senate; and
- (g) the Clerk of the Senate.

(2) The officer administering the Fund shall be an ex officio member of the Committee and the secretary to the Committee.

(3) The meetings of the Committee shall be convened by the chairperson or in the absence of the chairperson, by a member designated by the chairperson and shall be convened at such times as may be necessary for the discharge of the Committee's functions.

(4) The quorum for meetings of the Committee shall be the chairperson and any three members.

(5) The Committee shall consider and may approve the loan applications presented by the officer administering the Fund.

(6) The Committee shall meet at least once every calendar month.

[L.N. 45/2020, r. 2, L.N. 184/2020, r. 2.]

Operation of the Fund.

7. (1) A member of the Scheme who wishes to apply for a loan from the Fund shall present to the officer administering the Fund a duly completed hire purchase proposal form in such form as the Management Committee may prescribe.

(2) The officer administering the Fund shall satisfy himself of the applicant's financial status and capacity to repay the loan applied for and where so satisfied shall forward the application to the Committee for consideration.

(3) If the Committee approves the application, the applicant shall enter into a hire purchase agreement in such form as the Committee may prescribe.

Conditions for disbursement of funds.

8. (1) A loan approved under regulation 7 shall be released from the Fund in such manner, taking into account the security of the funds, as may be prescribed by the Committee.

(2) The log-book of a vehicle subject to a loan from the Fund shall be issued jointly between the Parliamentary Service Commission and the member of the Scheme and shall be kept in the custody of the officer administering the Fund until the loan is repaid in full by the member of the Scheme.

Temporary release of log-book.

9. (1) A log-book kept in custody by the officer administering the Fund may be temporarily released to a member of the Scheme upon application in writing to the officer administering the Fund for purposes of renewal by that member of the necessary licences.

(2) A log-book released under paragraph (1) shall be returned to the officer administering the Fund within seven working days from the date of such release.

(3) The officer administering the Fund shall acknowledge receipt of the log-book in writing.

Loan amounts.

10. (1) The loan amount that a member of the Scheme may receive shall be the value of the vehicle that the member of the Scheme proposes to purchase subject to but shall not exceed in the case of—

- (a) a Speaker of a House of Parliament, ten million shillings; and

(b) a Member of Parliament, eight million shillings.

(2) For the purpose of these Regulations, the value of a new vehicle shall be as quoted on the invoice from the supplier whereas the value of a used vehicle shall be as determined by a report from the body known as the Automobile Association of Kenya, or the Government department dealing with such matters.

(3) Notwithstanding the provisions of paragraph (1), there may be advanced from the Fund to a member of the Scheme an additional loan not exceeding ten per cent of the value of the vehicle purchased by the member of the Scheme to cater for an overhaul of the engine of the vehicle.

(4) No member of the Scheme shall receive a loan the repayment of which shall result in salary deductions exceeding thirty per cent of the monthly emoluments of the member of the Scheme.

[L.N. 167/2015, r. 2.]

Administrative Costs.

11. (1) A loan granted to a member of the Scheme under these Regulations shall be charged administrative costs at the rate of three per cent per annum.

(2) The administrative costs charged under paragraph (1) shall be utilized to defray the administrative expenses of the Fund.

[L.N. 45/2020, r. 3, L.N. 184/2020, r. 3.]

Repayment Period.

12. A loan advanced under these Regulations shall be repaid in full over a maximum period of sixty (60) months irrespective of whether the vehicle purchased is new or used.

Insurance.

13. (1) A member of the Scheme shall comprehensively insure any vehicle purchased through the Scheme.

(2) Where a member of the Scheme is unable to raise the funds required for the initial insurance premium, such funds may be advanced from the Fund subject to an approved limit, but subsequently annual premiums shall be paid by the member of the Scheme.

(3) A member of the Scheme who is unable to pay the subsequent annual premiums referred to in paragraph (2) may apply to the fund for a loan which shall be repaid within a period of one year (1) year.

(4) Every loan granted under these Regulations shall be insured for the benefit of the member of the Scheme and the premium in respect thereof shall be debited to the account of the member of the Fund.

Loan discharge.

14. (1) Upon full repayment of the loan, a signed loan discharge certificate in such form as may be prescribed by the Committee shall be issued to the member of the Scheme and a copy thereof shall be forwarded to the Registrar of Motor Vehicles.

(2) The loan discharge certificates shall release the member of the Scheme from any further financial obligation in respect of the loan and shall act as sufficient authority to remove the caveat on the vehicle pursuant to regulation 8.

Administration of the Fund.

15. (1) The officer administering the Fund—

- (a) shall supervise and control the administration of the Fund;
- (b) may impose conditions on the use of any moneys in the Fund and may also impose any reasonable restriction or other requirement concerning such use;
- (c) shall cause to be kept, books of accounts and other books and records in relation to the Fund and for all loans financed from the Fund;
- (d) shall prepare, sign and transmit to the Auditor-General in respect of each financial year and within three (3) months after the end thereof, a statement of accounts relating to the Fund, prepared and signed by him specifying the income of the Fund and showing the expenditure incurred from the Fund, in such details as the Commission may from time to time direct in accordance with the Public Finance Management Act (Cap. 412A);
- (e) shall furnish such additional information as he may deem to be proper and sufficient for the purpose of examination and audit by the Controller and Auditor-General.

(2) Every statement of account prepared under this regulation shall include details of the balances between the assets and liabilities of the Fund and shall indicate the financial status of the Fund as at the end of the financial year concerned.

Repeal of L.N. 148 of 1999 and transition.

16. (1) The Exchequer and Audit (Members of the National Assembly Car Loan Scheme Fund) Regulations (L.N. 148/1999), are repealed.

(2) All the funds and other assets, rights, powers and liabilities which immediately before the coming into force of these Regulations were vested in or imposed on or enforceable against the Fund repealed by paragraph (1) shall, by virtue of this paragraph, be vested in, imposed on or enforceable against the Fund.

(3) Until the constitution of the Parliamentary Service Commission established under Article 127 of the Constitution, the Loans Management Committee established under the Exchequer and Audit (Members of the National Assembly Car Loan Scheme Fund) Regulations existing immediately prior to the commencement of these Regulations shall continue in office.

THE PUBLIC FINANCE MANAGEMENT (PARLIAMENTARY
CAR LOAN (STAFF) SCHEME FUND) REGULATIONS

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16. Repeal of L.N. 148/1999 and transition.

SCHEDULE — MAXIMUM LOAN ENTITLEMENTS FOR MEMBERS OF THE
SCHEME

**THE PUBLIC FINANCE MANAGEMENT (PARLIAMENTARY
CAR LOAN (STAFF) SCHEME FUND) REGULATIONS**

[L.N. 19/2013, L.N. 169/2015, L.N. 47/2020, L.N. 186/2020]

Citation.

1. These Regulations may be cited as the Public Finance (Parliamentary Car Loan (Staff) Scheme Fund) Regulations.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

“Commission” means the Parliamentary Service Commission established under section 45B of the former Constitution as continued under Article 127 of the Constitution;

“Committee” means the Loans Management Committee established under regulation 6;

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

“Fund” means the Parliamentary Car Loan Scheme Fund established under the Exchequer and Audit (Members of the National Assembly Car Loan Scheme Fund) Regulations and continued under paragraph 9 of the Second Schedule to the Public Finance Management Act (Cap. 412A);

“hire purchase agreement” means an agreement for the bailment of goods under which the bailee may buy the goods or under which the property in the goods will or may pass to the bailee;

“member of the Scheme” means an employee of the Commission who is employed on permanent and pensionable terms; and

“Officer Administering the Fund” means the Clerk of the National Assembly.

Establishment of the Fund.

3. The Parliamentary Car Loan Scheme Fund established under the Exchequer and Audit (Members of the National Assembly Car Loan Scheme Fund) Regulations, 1999 established under the Government Financial Management Act (now repealed) is continued.

Object and purpose of the Fund.

4. The object and purpose of the Fund shall be to provide a loan scheme for the purchase of vehicles by members of the Scheme.

Initial capital.

5. (1) The initial capital of the Fund shall consist of the monies standing to the credit of the Fund on the date of the coming into operation of these Regulations.

(2) Parliament may appropriate additional monies to the Fund.

(3) The Fund shall be administered as a special account in the Parliamentary Fund and shall be operated by the Officer Administering the Fund.

The Loans Management Committee.

6. (1) There is established a committee to be known as the Loans Management Committee, which shall consist of—

- (a) the vice-chairperson of the Commission who shall be the chairperson;
- (b) the chairperson of the Staff Welfare Committee of the Commission;
- (c) the Clerk of the Senate;

- (d) the Director-General of the Joint Parliamentary Services; and
- (e) a member of the Scheme elected by the members of the Scheme.

(2) The meetings of the Committee shall be convened by the chairperson or in the absence of the chairperson, by a member designated by the chairperson and shall be convened at such times as may be necessary for the discharge of the Committee's functions.

(3) The quorum for meetings of the Committee shall be the chairperson and any two members.

(4) The Committee shall consider and may approve the loan applications presented by the Officer Administering the Fund.

(5) The Committee shall meet at least once every calendar month.

[L.N. 47/2020, r. 2, L.N. 186/2020, r. 2.]

Operation of the Fund.

7. (1) A member of the Scheme who wishes to apply for a loan from the Fund shall present to the Officer Administering the Fund a duly completed hire purchase proposal form in such form as the Management Committee may prescribe.

(2) The Officer Administering the Fund shall satisfy himself of the applicant's financial status and capacity to repay the loan applied for and where so satisfied shall forward the application to the Committee for consideration.

(3) If the Committee approves the application, the applicant shall enter into a hire purchase agreement in such form as the Committee may prescribe.

Conditions for disbursement of funds.

8. (1) A loan approved under regulation 7 shall be released from the Fund in such manner, taking into account the security of the funds, as may be prescribed by the Committee.

(2) The log-book of a vehicle subject to a loan from the Fund shall be issued jointly between the Parliamentary Service Commission and the member of the Scheme and shall be kept in the custody of the Officer Administering the Fund until the loan is repaid in full by the member of the Scheme.

Temporary release of log-book.

9. (1) A log-book kept in custody by the Officer Administering the Fund may be temporarily released to a member of the Scheme upon application in writing to the Officer Administering the Fund for purposes of renewal by that member of the necessary licences.

(2) A log-book released under paragraph (1) shall be returned to the Officer Administering the Fund within seven working days from the date of such release.

(3) The Officer Administering the Fund shall acknowledge receipt of the log-book in writing.

Loan amounts.

10. (1) The loan amount that a member of the Scheme may receive shall be the value of the vehicle that the member of the Scheme proposes to purchase subject to the maximum amount as set out in the Schedule to these Regulations.

(2) For the purpose of these Regulations, the value of a new vehicle shall be as quoted on the invoice from the supplier whereas the value of a used vehicle shall be as determined by a report from the body known as the Automobile Association of Kenya, or the Government department dealing with such matters.

[Subsidiary]

(3) Notwithstanding the provisions of paragraph (1), there may be advanced from the Fund to a member of the Scheme an additional loan not exceeding ten per cent of the value of the vehicle purchased by the member of the Scheme to cater for an overhaul of the engine of the vehicle.

(4) No member of the Scheme shall receive a loan the repayment of which shall result in salary deductions exceeding thirty per cent of the monthly emoluments of the member of the Scheme.

Administrative Costs.

11. (1) A loan granted to a member of the Scheme under these Regulations shall be charged administrative costs at the rate of three per cent per annum.

(2) The administrative costs charged under paragraph (1) shall be utilized to defray the administrative expenses of the Fund.

[L.N. 47/2020, r. 3, L.N. 186/2020, r. 3.]

Repayment Period.

12. A loan advanced under these Regulations shall be repaid in full over a maximum period of sixty months

Insurance.

13. (1) A member of the Scheme shall comprehensively insure any vehicle purchased through the Fund.

(2) Where a member of the Scheme is unable to raise the funds required for the initial insurance premium, such funds may be advanced from the Fund subject to an approved limit, but subsequent annual premiums shall be paid by the member of the Scheme.

(3) A member of the Scheme who is unable to pay the subsequent annual premiums referred to in paragraph (2) may apply to the fund for a loan which shall be repaid within a period of one year (1) year.

(4) Every loan granted under these Regulations shall be insured for the benefit of the member of the Scheme and the premium in respect of the loan shall be debited to the account of the member of the Scheme.

Loan discharge.

14. (1) Upon full repayment of the loan, a signed loan discharge certificate in such form as may be prescribed by the Committee shall be issued to the member of the Scheme and a copy of the discharge certificate shall be forwarded to the Registrar of Motor Vehicles.

(2) The loan discharge certificate shall release the member of the Scheme from any further financial obligation in respect of the loan and shall act as sufficient authority to remove the caveat on the vehicle pursuant to regulation 8.

Administration of the Fund.

15. (1) The Officer Administering the Fund—

- (a) shall supervise and control the administration of the Fund;
- (b) may impose conditions on the use of any moneys in the Fund and may also impose any reasonable restriction or other requirement concerning such use;
- (c) shall cause to be kept books of accounts and other books and records in relation to the Fund and for all loans financed from the Fund;

- (d) shall prepare, sign and transmit to the Auditor-General in respect of each financial year and within three (3) months after the end of the financial year, a statement of accounts relating to the Fund, prepared and signed by him specifying the income of the Fund and showing the expenditure incurred from the Fund, in such details as the Commission may from time to time direct in accordance with the Public Finance Management Act;
- (e) shall furnish such additional information as he may deem to be proper and sufficient for the purpose of examination and audit by the Auditor-General.

(2) Every statement of account prepared under this regulation shall include details of the balances between the assets and liabilities of the Fund and shall indicate the financial status of the Fund as at the end of the financial year concerned.

Repeal of L.N. 148/1999 and transition.

16. (1) The Exchequer and Audit (Members of the National Assembly Car Loan Scheme Fund) Regulations (L.N. 148/1999), are repealed.

(2) All the funds and other assets, rights, powers and liabilities which immediately before the coming into force of these Regulations were vested in or imposed on or enforceable against the Fund repealed by paragraph (1) shall, by virtue of this paragraph, be vested in, imposed on or enforceable against the Fund.

(3) Until the constitution of the Parliamentary Service Commission established under Article 127 of the Constitution, the Loans Management Committee established under the Exchequer and Audit (Members of the National Assembly Car Loan Scheme Fund) Regulations, 1999 existing immediately prior to the commencement of these Regulations shall continue in office and continue to operate as such.

SCHEDULE

Maximum Loan Entitlements for Members of the Scheme

(r. 10)

[L.N. 169 of 2015.]

<i>Designation Job Group Scale</i>	<i>Maximum entitlement</i>
Clerk of a House of Parliament	KSh. 8.000.000
PSC 16	KSh. 6.000,000
PSC 15	KSh. 5.500,000
PSC 14	KSh. 5.000.000
PSC 13	KSh. 4.500.000
PSC 12	KSh. 4,000.000
PSC 11	KSh. 3.500,000
PSC 10	KSh. 3,000,000
PSC 9	KSh. 3.000,000
PSC 8	KSh. 3,000,000
PSC 7	KSh. 2,500.000
PSC 6	KSh. 2,500.000
PSC 5	KSh. 2,500.000
PSC 4	KSh. 2.500.000

[Subsidiary]

<i>Designation Job Group Scale</i>	<i>Maximum entitlement</i>
PSC 1-3	KSh. 2,500.000

THE PUBLIC FINANCE MANAGEMENT (PARLIAMENTARY
MORTGAGE (MEMBERS) SCHEME FUND) REGULATIONS

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 8. Utilization of loan monies.
 9. Disbursement of loans for development.
 10. Application for a loan.
 11. Leasehold property.
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 13. Repayment of loan.
 14. Administrative Costs.
 15. Lien.
 16. Mortgage insurance.
 17. Default in repayment.
 18. Administration of the Fund.
 19. Responsibilities of mortgage institution.
 20. Supplementary terms.
 21. Repeal of L.N. 46/2008.
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THE PUBLIC FINANCE MANAGEMENT (PARLIAMENTARY MORTGAGE (MEMBERS) SCHEME FUND) REGULATIONS

[L.N. 67/2013, L.N. 168/2015, L.N. 46/2020, L.N. 185/2020]

Citation.

1. These Regulations may be cited as the Public Finance Management (Parliamentary Mortgage (Members) Scheme Fund) Regulations.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

“borrower” means a person in receipt of a loan out of the Fund;

“Commission” means the Parliamentary Service Commission established under section 45B of the former Constitution as continued under Article 127 of the Constitution;

“Committee” means the Loans Management Committee established under regulation 6;

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

“Fund” means the Parliamentary Mortgage Scheme Fund established under the Government Financial Management (Parliamentary Mortgage Scheme Fund) Regulations, 2008 and continued under paragraph 9 of the Second Schedule to the Public Finance Management Act;

“member of the Scheme” means a Member of Parliament;

“Nairobi” means the metropolis of Nairobi as designated by the ministry for the time being responsible for metropolitan development;

“officer administering the Fund” means the Clerk of the National Assembly;

“property” means a residential house purchased through a loan from the Fund and includes the land purchased under loan from the Fund on which such house is to be developed;

“valuer” means a person registered as a valuer under the Valuers Act (Cap. 532).

Establishment of the Fund.

3. The Parliamentary Mortgage Scheme Fund established under the Government Financial Management (Parliamentary Mortgage Scheme Fund) Regulations established under the Government Financial Management Act (now repealed) is continued.

Object and purpose of the Fund.

4. The object and purpose of the Fund shall be to provide a loan scheme for the purchase, development, renovation or repair of residential property by members of the Scheme.

Capital of the Fund.

5. (1) The initial capital of the Fund shall consist of the monies standing to the credit of the account on the date of the coming into operation of these Regulations.

(2) Parliament may appropriate additional monies to the Fund.

(3) The Fund shall be administered as a special account in the Parliamentary Fund and shall be operated by the officer administering the Fund.

(4) The administrative costs accruing to the Fund shall, where such administrative costs constitutes a surplus after meeting the requirements of regulation 18(1)(b) and be credited to the capital of the Fund.

[LN 46/2020, rr. 2 & 3, LN 185/2020, rr. 2 & 3.]

The Loans Management Committee.

6. (1) There is established a committee to be known as the Members Mortgage Loans Management Committee, which shall consist of—

- (a) the vice-chairman of the Commission who shall be the chairman;
- (b) the chairman of the Members' Welfare Committee of the Commission;
- (c) two other members of the Commission, appointed by the Commission;
- (d) the Majority Whip of the National Assembly;
- (e) the Minority Whip of the National Assembly;
- (f) the Majority Whip of the Senate;
- (g) the Minority Whip of the Senate; and
- (h) the Clerk of the Senate.

(2) The officer administering the Fund shall be an *ex officio* member of the Committee and the secretary to the Committee.

(3) The Committee shall administer the Fund and shall—

- (a) process applications for loans in accordance with the existing terms and conditions of borrowing;
- (b) liaise with the housing company (if any) to set up a revolving fund for the disbursement of the loans; and
- (c) supervise the day-to-day running of the Fund.

(4) The meetings of the Committee shall be convened by the chairman or in the absence of the chairman, by a member designated by the chairperson and shall be convened at such times as may be necessary for the discharge of the Committee's functions.

(5) The quorum for a meeting of the Committee shall be the chairman and any three members.

(6) The Committee shall meet at least once every calendar month.

[LN 46/2020, r. 4, LN 185/2020, r. 4.]

Commission may appoint mortgage institution.

7. Notwithstanding regulation 6(3), the Commission may, if it considers it appropriate to do so, appoint a mortgage institution to administer the Fund on its behalf.

Utilization of loan monies.

8. (1) A member of the Scheme who wishes to apply for a loan from the Fund shall make such application to the officer administering the Fund in such manner as the Loans Management Committee may prescribe.

(2) A loan obtained under these Regulations shall be utilized for the purchase, development, renovation or repair of residential property for the occupation of the applicant and his or her immediate family.

(3) A loan for the development of residential property may be granted at the discretion of the Committee—

- (a) to a member of the Scheme who is in possession of a title deed to the land on which the development is intended to be carried out; or

[Subsidiary]

- (b) in two instalments, for the purchase of the land at which the residential property is to be developed and for the subsequent development of the property.

(4) The amount of the first instalment granted for the purchase of land under paragraph (3)(b) shall not exceed forty per cent of the maximum loan amount for which the member of the Scheme is eligible.

Disbursement of loans for development.

9. A loan granted for the development of a residential property under these Regulations shall be released to the applicant in the following phases—

- (a) the first disbursement based on the value of the land on which the residential property is proposed to be developed; and
- (b) the subsequent disbursements based on the rate of completion of the various phases of development as certified by a qualified valuer at the cost of the applicant.

Application for a loan.

10. (1) An application for a loan under these Regulations shall be accompanied by the following documents where appropriate—

- (a) copies of the designs of the proposed residential property duly approved by the local authority within whose area it is to be situated;
- (b) bills of quantities in respect of the proposed development, renovation or repair;
- (c) an official search of the title to the property intended to be purchased;
- (d) a certified copy of the sale agreement relating to the property.

(2) The applicant shall bear the cost of stamp duty and other legal fees.

(3) Where a borrower fails to comply with the requirements of paragraph (2) within the stipulated time, the officer administering the Fund shall, upon giving the borrower fourteen days' notice, deduct the amount due from the salary of that borrower in such instalments as may be appropriate and remit such deductions to meet such costs as may be due.

(4) All legal transactions in respect of the property being purchased shall be conducted by an advocate appointed by the Commission.

Leasehold property.

11. Where the property intended to be purchased through a loan from the Fund is leasehold property, such loan shall be granted where the expiry date of such lease is at least forty-five years beyond the final loan repayment date.

Maximum loan disbursement.

12. (1) The maximum loan to be granted under these Regulations to a member of the Scheme shall be a sum equivalent to the member's net emoluments at the time of application multiplied by the number of months remaining for the life of that Parliament:

(1A) Despite paragraph (1), a loan granted to a member of the scheme under these Regulations shall not, in the case of—

- (a) a Speaker of a House of Parliament, exceed forty million shillings; and
- (b) a Member of Parliament, exceed thirty five million shillings.

(2) A member of the Scheme shall be required to give prior authority in writing for pension dues to be utilized to clear any outstanding debt in case the member loses the parliamentary seat before fully repaying the loan.

(3) A loan granted to a borrower under these Regulations shall be funded at the rate of—

- (a) ninety per centum of the value of the property, where such property is situated in Nairobi; and
- (b) eighty per centum of such value where the property is situated in any other area, and the borrower shall be required to deposit the balance thereof with the Fund.

(4) Subject to this Regulation, a member of the Scheme shall be eligible for the maximum amount of loan specified under subregulation (1) in each parliamentary term to be accessed by the member in a maximum of two disbursements in that term.

[L.N. 168/2015, r. 2, L.N. 46/2020, rr. 2, 3.]

Repayment of loan.

13. (1) A loan granted under these Regulations shall be fully repaid at the end of the term of that Parliament.

(2) Where a person who has been granted a loan under these Regulations ceases to be a member of the scheme for any reason other than removal from office under legislation made under Article 80 of the Constitution, these Regulations shall continue to apply to the repayment of the loan and to recovery in the event of default in payment.

[L.N. 168/2015, r. 3.]

Administrative Costs.

14. (1) The Administrative costs chargeable on a loan shall be three per centum per annum on a monthly reducing balance and this rate may be reduced from time to time at the discretion of the Commission.

(2) A mortgage institution appointed under regulation 7 to administer the Fund may charge an administrative cost of not more than four per centum to cover management costs.

(3) The Administrative cost charged under paragraphs (1) and (2) of this Regulation shall be met by the borrower.

(4) Despite paragraphs (1) and (2), where a person who has been granted a loan under these Regulations ceases to be a member of the scheme for any reason other than removal from office under legislation made under Article 80 of the Constitution and defaults in the repayment of the loan for a period of more than three months, the interest rate on the balance outstanding shall revert to the Kenya Banks Reference Rate as set by the Central Bank of Kenya.

[LN 168/2015, r. 4, LN 46/2020, r. 5, LN 185/2020, r. 5.]

Lien.

15. (1) The Commission shall have a charge registered on the property financed through a loan granted under these Regulations and shall be entitled to have its name entered in all documents of title for such property.

(2) The borrower shall—

- (a) not mortgage, charge, surrender the lease or sell or agree to sell or part with possession of the charged property or any part thereof without the prior written consent of the Commission;
- (b) meet and pay all rates, rents, insurances and any other outgoings in respect of the property and send the proof of such payments to the Commission; and
- (c) provide a transfer deed duly signed by the borrower and a letter authorizing the Commission to sell the property in case of default in payment.

[Subsidiary]

(3) All residential properties purchased through the Fund shall be constructed of such material as may be acceptable to the Commission.

(4) During the loan repayment period, every borrower shall—

- (a) ensure that the property is used for residential purposes only;
- (b) maintain the property in a satisfactory state of repair; and
- (c) not alter or make any structural alteration to the property, carry out any valuation, assessment or investigation relating to the property or title thereto, as the case may be, without the approval of the Commission.

(5) No borrower shall be eligible for more than one loan at a time or more than a total of two loans from the Fund.

(6) All legal documentation and disbursement of funds shall be supervised by the officer administering the Fund.

Mortgage insurance.

16. (1) A borrower shall take out and maintain a mortgage protection policy and a fire policy with an insurance firm approved by the Commission, the cost of which shall be paid out of the Fund and debited in such borrower's account.

(2) The originals of all documents relating to property financed by a loan from the Fund shall be kept in safe custody by the officer administering the Fund.

Default in repayment.

17. The Commission may call in a loan and in default sell the charged property by public auction or private treaty where the borrower is in breach of the terms under the loan agreement or the covenant contained in the charge of the mortgage instrument.

Administration of the Fund.

18. (1) The officer administering the Fund shall—

- (a) supervise and control the administration of the Fund;
- (b) utilize the administrative costs accruing thereto to defray operating expenses, and may impose any reasonable restriction or other requirements concerning such use;
- (c) cause to be kept, books of accounts and other books and records in relation to the Fund and for all loans financed from the Fund;
- (d) prepare, sign and transmit to the Auditor-General in respect of each financial year and within three (3) months after the end thereof, a statement of accounts relating to the Fund, prepared and signed by him specifying the income of the Fund and showing the expenditure incurred from the Fund, in such details as the Commission may from time to time direct in accordance with the Public Finance Management Act (Cap. 412A);
- (e) furnish such additional information as may be required for the purpose of examination and audit by the Auditor-General; and
- (f) designate and appoint such staff as may be necessary to assist him in the administration of the Fund and may require such staff to carry out such inspections as may be necessary to verify any information submitted under these Regulations.

(2) Every statement of account prepared under this regulation shall include details of the balances between the assets and liabilities of the Fund and shall indicate the financial status of the Fund as at the end of the financial year concerned.

[L.N. 46/2020, r. 6, L.N. 185/2020, r. 6.]

Responsibilities of mortgage institution.

19. The responsibilities of the mortgage institution, if any, appointed under these Regulations shall be—

- (a) to operate individual accounts for each borrower, which shall provide details of recoveries of the loan;
- (b) to charge security on properties acquired through loans from the Fund to protect the interests of the Fund and act as custodian of such charges;
- (c) to disburse cheques for newly approved loans to various vendors, after the necessary documentation is completed by the Committee;
- (d) to pay all outgoings and issue demand notices where necessary to members through the officer administering the Fund;
- (e) upon repayment of the loan, interest and other expenses which may be outstanding, to discharge the charge and release the security documents to the borrower; and
- (f) upon default, to call in the loan and on behalf of the Commission sell the charged property by public auction or private treaty, in which event the Fund shall meet any shortfall between the loan outstanding and the proceeds of sale.

Supplementary terms.

20. (1) These Regulations shall be supplemented by such terms as may, from time to time, be detailed in the application form supplied by the Commission and in the contract between the mortgage institution and the Commission.

(2) Subject to these Regulations, the Commission shall issue guidelines on—

- (a) the purchase and development of land and residential properties under these Regulations;
- (b) the utilization of surplus Funds for the purchase and development of land and residential property under these Regulations; and
- (c) such other matters as may be necessary for the proper management and administration of the Fund.

Repeal of L.N. 46/2008.

21. The Government Financial Management (Parliamentary Mortgage Scheme Fund) Regulations, 2008 (LN 46/2008) are repealed.

Regulations under section 24(4)

THE PUBLIC FINANCE MANAGEMENT (ROADS ANNUITY FUND) REGULATIONS

ARRANGEMENT OF REGULATIONS

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THE PUBLIC FINANCE MANAGEMENT (ROADS ANNUITY FUND) REGULATIONS

[L.N. 36/2015, L.N. 8/2019]

Citation.

1. These Regulations may be cited as the Public Finance Management (Roads Annuity Fund) Regulations.

Interpretation.

2. (1) In these Regulations, unless the context otherwise requires—

"annuity payment obligations" means the funding requirements included in approved estimates of expenditure for the purposes of the Fund during a given financial year;

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

"Committee" means the Oversight Committee established under regulation 12;

"contracting authority" means either the Kenya National Highways Authority (KeNHA), the Kenya Rural Roads Authority (KeRRA) or the Kenya Urban Highways Authority (KURA) as defined in the project agreements under the Annuity Programme;

"Independent Engineer" means a suitably qualified and experienced professional engineer or engineering firm hired by the contracting authority, with the approval of the contractor, to certify that the contractor has met all obligations for which payment is claimed under the project agreement;

"Fund" means the Road Annuity Fund established under regulation 3;

"Officer Administering the Fund" means the Principal Secretary for the time being responsible for matters relating to roads;

"operational expenditure" means moneys included in the approved annual budget of the Fund dedicated to meeting the routine administrative costs of the Secretariat;

"penalties" mean amounts payable by or recoverable from contractors or the contracting authority on account of non-performance of contractual obligations as stipulated in project agreements; and

"project" has the meaning assigned to it under section 2 of the Public Private Partnership Act (Cap. 430);

"project agreement" means the agreement executed between a contracting authority and a private entity for the development and maintenance of a road project under the Annuity Programme.

"surplus funds" means any money held within the accounts of the Fund in excess of 1.2 times of the projected revenues and expenditure, on a quarterly basis rolled a year forward.

(2) For the purposes of these Regulations, "Annuity Programme" means the Road Annuity Programme approved by Cabinet on the 10th March, 2015, under which the national government shall—

- (a) identify a maximum of ten thousand kilometre priority roads distributed across the country;
- (b) procure long term contracts for design, finance, construction and maintenance of identified roads under a public private partnership arrangement within the meaning of the Public Private Partnership Act (Cap. 430), with payments linked to the completion of roads and performance based maintenance; and

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- (c) pay for the services delivered by the private contractors through the normal budget process.

[L.N. 8/2019, r. 2.]

Establishment of the Fund.

3. There is established a fund to be known as the Roads Annuity Fund which shall be operated under the budgeting, accounting, reporting and auditing framework of the Act.

Capital of the Fund.

4. The initial capital of the Fund shall be five hundred million shillings appropriated by Parliament in the 2014/15 financial year.

Object and purpose.

5. The object and purpose of the Fund shall be to provide funds to meet the national government's annuity payment obligations for the development and maintenance of roads under the Annuity Programme.

Sources of the funds.

6. The Fund shall consist of—

- (a) money appropriated by Parliament for the purpose of the Fund;
- (b) money allocated from fuel taxes as assigned by an Act of Parliament;
- (c) income from investments of any balances in the Fund;
- (d) grants, donations or other bequests made to the Fund;
- (e) money paid to the Fund from any other source as may from time to time be approved by the Cabinet Secretary.

Payments into the Fund.

7. (1) For the purposes of the Annuity Programme, Parliament shall, in each financial year, appropriate an amount equal to the approved expenditure requirements for that financial year which shall be paid into the Fund.

(2) Transfers of the funds referred to in paragraph (1) of this regulation into the Fund's account shall be effected on a monthly basis.

(3) The Officer Administering the Fund shall ensure that sufficient funds are available in the bank account, in accordance with the funding obligations set out in the project agreements.

(4) For the purposes of paragraph (3) of this regulation, the Officer Administering the Fund shall ensure that a minimum of five *per centum* of the annual annuity obligations or two billion shillings, whichever is lower, is maintained in the annuity payment obligations bank account.

(5) The earnings of, or accruals to the Fund shall be retained in the Fund, and shall be spent only for the purposes for which the Fund is established.

Conditions for payment out of the Fund.

8. (1) Money shall only be paid out of the Fund where—

- (a) an invoice has been issued to the contracting authority with respect to the requested payment;
- (b) the invoice is in respect of an existing project agreement under the Annuity Programme; and

- (c) a certificate of the accounting officer confirming that the annuity payments are due and issued in accordance with the terms of the project agreement has been provided by a contractor under that project agreement.
- (2) Moneys may additionally be paid out of the Fund where such payments—
 - (a) relate to expenditures under the Annuity Programme that did not form part of the approved budget for the financial year; or
 - (b) have been recommended by the Officer Administering the Fund and approved by the Committee.
 - (c) relate to the use or investment of surplus funds in the manner directed by the Cabinet Secretary.

[L.N. 8/2019, r. 3.]

(3) For purposes of paragraph (2) of this regulation, a supplementary budget shall be prepared by the Officer Administering the Fund and approved in accordance with regulation 7, provided that disbursement under the supplementary budget shall comply with the requirements of paragraph (1), of this regulation.

Responsibilities of contracting authorities with respect to applications for payments out of the Fund.

9. A contracting authority shall only request for payments from the Fund where—

- (a) the project to be financed under the Annuity Programme has been procured in accordance with the Public Private Partnership Act (Cap. 430);
- (b) the project to be financed was included in the estimates of revenue and expenditure approved by the Cabinet Secretary;
- (c) the contacting authority ascertains that the Independent Engineer has in accordance with the terms of the respective project agreement certified that the contractor has met all obligations for which payment is claimed under the project agreement; and
- (d) the requirements of regulation 8 are met.
- (e) the application is related to an approved use or investment of Funds declared as surplus funds.

[L.N. 8/2019, r. 4.]

Withholding of payments.

10. The Officer Administering the Fund may withhold payments due and owing to an applicant where—

- (a) a contracting authority provides information justifying the proposed withholding; and
- (b) an Independent Engineer supports that the proposed withholding is justifiable.

Applications for payments out of the Fund.

11. (1) Applications for payment out of the Fund shall be made by a contracting authority in a format prescribed by the Officer Administering the Fund at least twenty one days before the due date.

(2) Any applications for payment made under paragraph (1) of this regulation shall be supported by documents required under these Regulations which shall include—

- (a) the name and address of the payee;

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- (b) the bank account details of the payee;
- (c) an invoice from the contractor;
- (d) any certificates required from the contracting authority and the Independent Engineer under the terms of the project agreement;
- (e) a certified payment voucher with all the certificates filled and signed for; and
- (f) any other information as may be prescribed by the Officer Administering the Fund.

(3) Any application under these Regulations shall be signed by the chief executive officer of a contracting authority.

Establishment and composition of Oversight Committee.

12. There is established a committee to be known as Oversight Committee for the Fund which shall consist of—

- (a) the Principal Secretary responsible for matters relating to finance, who shall be the chairperson of the Committee;
- (b) the Principal Secretary responsible for matters relating to roads, who shall be the Secretary to the Committee;
- (c) the Principal Secretary responsible for matters relating to planning;
- (d) the Attorney-General or his representative;
- (e) a representative of the Kenya Bankers Association; and
- (f) two other persons being eminent professionals appointed by the Cabinet Secretary drawn from the engineering, accounting or legal professions.

Functions of the Committee.

13. (1) The functions of the Committee shall be to—

- (a) inform the Cabinet Secretary on the funding requirements of the Fund;
- (b) adopt the estimates of annual revenue and expenditure of the Fund and recommend them to the Cabinet Secretary for approval;
- (c) ensure that the annual estimates of revenue and expenditure for the Fund include cumulative Annuity Programme commitments for the financial year under review;
- (d) ensure that only the projects included in the Annuity Programme are promoted for funding under these Regulations;
- (e) inform the Cabinet Secretary on the amounts and timing for the fund transfers into the Fund
- (f) make recommendations for the use or investment of surplus funds to the Cabinet Secretary;
- (g) advise the Cabinet Secretary on the sources of funds for the Fund;
- (h) adopt the financial statements prepared by the Officer Administering the Fund before submission to the Auditor- General; and
- (i) adopt the non-financial reports of the Fund and submit them to the Cabinet Secretary.

(2) Where the projected revenues and expenditure of the Fund show that the Fund shall retain funds in excess of 1.2 times of the total projected obligations of the Fund, over the

immediately succeeding 12 month period, the Committee may, on the advice of the Officer Administering the Fund, declare the existence of a surplus in the Fund.

(3) Subject to paragraph (2), surpluses may be paid out of the Fund into the National Exchequer Account, subject to the recommendation of the Committee and authorization of the Cabinet Secretary on the use of surpluses:

Provided the Fund remains adequately funded to meet the national government's annuity payment obligations.

(4) In the event that the Committee is yet to be constituted, or is unable to obtain quorum for whatever reason to allow them to carry out the functions outlined in paragraph (1), the Cabinet Secretary may undertake the functions of the Committee until such a time that the Committee shall be properly constituted.

[L.N. 8/2019, r. 5.]

Officer Administering the Fund.

14. (1) The Principal Secretary responsible for matters relating to roads shall be the Officer Administering the Fund.

(2) The functions of the Officer Administering the Fund shall be to—

- (a) supervise and control the administering of the Fund;
- (b) prepare estimates of annual revenue and expenditure of the Fund relating to Annuity Programme obligations and operational expenses and submit it to the Committee for adoption;
- (bb) advise the Committee on the quantum of surplus funds, if any, based on the annual projected estimates of the revenue and expenditure of the Fund and the annuity programme obligations and operational expenses.
- (c) cause to be established proper systems of control and oversight under the provisions of the Act;
- (d) advise and consult the Committee on matters relating to the administering of the Fund;
- (e) keep and maintain complete financial records of all projects comprised in the Annuity Programme;
- (f) advise the Committee on trends and projections relating to the financing requirements of the Annuity Programme;
- (g) advise and consult with the Cabinet Secretary on matters relating to the administration of the Fund as may, from time to time, be necessary;
- (h) prepare the non-financial performance report of the Fund and submit it to the Committee for adoption;
- (i) cause to be kept proper books of accounts and other books and records relating to the Fund and the activities financed under the Fund;
- (j) prepare, sign and transmit to the Auditor-General in respect of each financial year and within three months after the end thereof, a statement of account relating to the fund in such forms the Public Sector Accounting Standards Board established under section 192 of the Act may from time to time prescribe in accordance with the Act, a copy of which statement of account shall be filed with the National Treasury; and
- (k) furnish any additional information which is proper and sufficient for the proper discharge of the mandate of the Auditor-General.

[Subsidiary]

(3) The Officer Administering the Fund shall comply with the ordinary budget cycle in the preparation of estimates for the Fund.

(4) The Officer Administering the Fund shall submit estimates of revenue and expenditure to the Cabinet Secretary by the 15th September of the preceding financial year for approval.

[L.N. 8/2019, r. 6.]

Powers of Officer Administering the Fund.

15. The Officer Administering the Fund shall have power to—

- (a) access any project related data that he or she may need from contracting authorities in furtherance of his or her functions;
- (b) call for any additional information with respect to requests for payments out of the Fund; and
- (c) issue financial management guidelines relating to the Annuity Programme.

Secretariat support for Officer Administering the Fund.

16. (1) The Officer Administering the Fund shall designate a secretariat to support the operations of the Fund.

(2) The Secretariat shall consist of such staff as the Cabinet Secretary may, in consultation with the Officer Administering the Fund, consider necessary for the proper performance of the functions of the Officer Administering the Fund under these Regulations.

Account of the Fund.

17. (1) The Officer Administering the Fund shall cause an account in the name of the Fund to be maintained for the Fund in a bank within the Republic of Kenya in line with section 28 of the Act and any Regulations made thereunder.

(2) All monies payable into the Fund shall be received into the bank account of the Fund.

(3) The Fund's accounts shall be operated by the Officer Administering the Fund and two other persons nominated from the state department responsible for roads and the Fund's secretariat.

(4) The Officer Administering the Fund may open and maintain other accounts for the following purposes—

- (a) the payment of Annuity Programme obligations;
- (b) the payment of operational expenditure; and
- (c) receiving penalties paid by contractors for contractors non-performance.

(5) Subject to regulation 10, the Officer Administering the Fund shall ensure that the operational expenditure does not, within any given financial year, exceed zero point one *per centum* of the annual Annuity Programme obligations, or one hundred million shillings, whichever is lesser.

(6) The cap under paragraph (5) of this regulation shall be subject to periodic review by the Cabinet Secretary.

Overdrawn accounts.

18. The Officer Administering the Fund shall ensure that the accounts of the Fund are not overdrawn.

Withdrawals from the Fund.

19. (1) Withdrawals from the Fund shall only be for purposes of payment of approved annuity payment obligations approved use or investment of surplus funds and operational expenditure of the Fund.

(2) The records of expenditure relating to the Fund shall be kept and maintained in accordance with the provisions of the Act and Regulations made thereunder.

[L.N. 8/2019, r. 7.]

Financial and procurement Regulations.

20. The Fund shall be governed by all relevant financial and procurement laws and Regulations as applicable.

Invoices.

21. (1) Where a contractor submits an invoice to the contracting Invoices. authority with a request for payment, the contracting authority shall process and submit the same to the officer administering the Fund within ten days from the date of receipt thereof.

(2) Applications for payments out of the Fund that meet all the requirement of these Regulations shall be settled within twenty one days from the date of receipt of the application by the Officer Administering the Fund.

Miscellaneous disclosures.

22. The Officer Administering the Fund shall—

- (a) an annual basis, publish on the website of the ministry responsible for matters relating to roads the estimates prepared of Annuity programme funding and payment obligations for the forthcoming financial year; and
- (b) on a quarterly basis, publish on the website of the ministry responsible for matters relating to roads the balance of funds held in the account designated for annuity payment obligations.

Offences.

23. The provisions of the Act relating to offences by public officers, including financial misconduct, shall apply to these Regulations.

Review of performances of the Fund.

24. (1) The Cabinet Secretary shall at the elapse of ten years from the date of commencement of these Regulations cause a review to be conducted on the performance of the Fund in accordance with the requirements of the Act and Regulations made thereunder.

(2) The review shall determine whether the Fund has met the objectives for which it was established.

(3) The report on the review shall be submitted to the Cabinet for approval.

Winding up of the Fund.

25. (1) The Cabinet Secretary may wind up the Fund with the approval of the National Assembly where the Cabinet Secretary considers that the Fund has successfully completed the specific objectives for which it was created.

(2) On the winding up of the Fund—

- (a) the Officer Administering the Fund shall call on the contracting authorities to request from the respective contractors or their agents for financial statements to confirm any valid outstanding obligations and commitments for payment;

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- (b) the Officer Administering the Fund shall pay any amount remaining in the Fund into the National Exchequer Account for the credit of the national government;
- (c) the Cabinet Secretary shall pay any deficit in the Fund from the funds of the national government in the National Exchequer Account with the approval of the National Assembly;
- (d) assets other than cash of the Fund shall be transferred to the Ministry for the time being responsible for matters relating to roads.

(3) The Cabinet Secretary shall submit a final statement of accounts to Parliament and to the Auditor-General for audit within nine months from the date of the decision to wind up the Fund.

THE PUBLIC FINANCE MANAGEMENT (STATE OFFICERS
HOUSE MORTGAGE SCHEME FUND) REGULATIONS

ARRANGEMENT OF PROVISIONS

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SCHEDULE — SCHEDULE

**THE PUBLIC FINANCE MANAGEMENT (STATE OFFICERS
HOUSE MORTGAGE SCHEME FUND) REGULATIONS**

[L.N. 23/2015]

Citation and commencement.

1. These Regulations may be cited as the Public Finance Management (State Officers House Mortgage Scheme Fund) Regulations.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

"borrower" means a person in receipt of a loan out of the Fund;

"state officer" shall have the meaning ascribed in Article 260 of the Constitution and shall not include a state officer who is covered by any public housing mortgage scheme;

"equity release" means a loan that allows the home owner to access equity in his or her home without having to sell it for purposes of improving it;

"committee" means the Advisory Committee of the Fund established under regulation 6 of these Regulations;

"financial year" means a period of twelve months ending on the 30th June of each year;

"Fund" means the State Officers House Mortgage Scheme Fund established under regulation 3 of these Regulations;

"mortgage finance company" has the meaning assigned to it under section 2 of the Banking Act (Cap. 488);

"officer administering the Fund" means a person designated as such under section 24(5) of the Public Finance Management Act (Cap. 412A); and

"tenant purchase institution" means a company incorporated in Kenya which has not less than twenty years experience in operation of tenant purchase loan schemes for over two thousand housing units at one moment.

Establishment of the Fund.

3. There is hereby established a fund to be known as the State Officers House Mortgage Scheme Fund.

Objects and purpose of the Fund.

4. The objective and purpose for which the Fund is established shall be to provide a loan scheme for the purchase or development of property by the State Officers.

Capital of the Fund.

5. (1) The capital of the fund shall consist of the initial capital of one billion shillings appropriated by Parliament in the 2014/2015 financial year and such other funds as may be voted for the purposes of the Fund in subsequent financial years.

(2) All monies that shall be paid into the account operated by the officer administering the Fund.

Advisory Committee of the Fund.

6. (1) There is established an Advisory Committee of the Fund within the National Treasury which shall consist of the—

(a) Director of Administration;

- (b) Director of Budgetary Supply;
- (c) Director of Human Resources; and
- (d) Director of Fiscal Decentralization.

(2) The functions of the Advisory Committee of the Fund shall be to—

- (a) approve all housing development and financing proposals;
- (b) approve criteria for the beneficiaries of the Fund; and
- (c) such other duty as may be directed by the Cabinet Secretary for the purposes of the proper management of the Fund.

(3) The advisory committee shall meet at least four times in a year.

(4) The officer administering the Fund shall be the Secretary of the committee.

(5) The members of the committee shall elect a chairman from amongst themselves.

(6) The quorum for a meeting of the committee shall be the chairman and two other members.

(7) The chairman shall convene and preside at meetings of the committee and in the absence of the chairman, by a member of the committee, elected by other members present in the meeting.

(8) The decision of the committee shall be by simple majority and in the case of a tie, the chairman shall have a casting vote.

Management of the Fund and Scheme.

7. (1) Notwithstanding paragraph 6 (1), the Cabinet Secretary may appoint a committee or board of an existing house mortgage scheme fund in the public service to manage the State Officers House Mortgage Scheme Fund.

(2) The committee or board in sub-paragraph (1) shall be deemed to have taken the role of the Advisory Committee.

(3) The committee or board appointed under paragraph 7(1), shall conduct its affairs under the Public Finance Management (State Officers House Mortgage Scheme Fund) Regulations, 2015 to manage the scheme.

Purpose of loan.

8. A loan granted under these Regulations shall be solely utilized for the purchase or development of residential property for the occupation of the borrower or equity release for improvement of the residential house.

Disbursement of loans for development.

9. (1) A loan granted to a state officer who is in possession of a title deed to the land on which the development is to be carried out, shall be at the discretion of the Committee.

(2) The first disbursement shall be based on twenty five per cent of the cost of construction.

Provided that the cost of construction shall not exceed the maximum funding due to the borrower under these Regulations or twice the open market value of the land on which the residential property is proposed to be constructed, whichever is less.

(3) A loan granted under these Regulations shall be funded at the rate of ninety percent of the value of the property but shall not exceed the maximum loan threshold set in the Schedule and this shall be based on the ability to pay, and repaid by check off system.

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(4) The subsequent disbursements shall be based on the rate of completion of the various phases of development as certified by a valuer, registered as such under Valuers Act (Cap. 532), at the cost of the borrower.

Application for loan.

10. (1) A state officer who wishes to apply for a loan from the Fund shall make such application to the officer administering the Fund in such manner as the advisory committee may prescribe.

(2) An application for a loan for construction purposes shall be accompanied by the following documents where applicable—

- (a) copies of the designs of the proposed residential property duly approved by the county authority within whose area it is to be situated;
- (b) priced bills of quantities in respect of the proposed development;
- (c) an official search of the title to the property intended to be purchased;
- (d) a certified copy of the sale agreement relating to the property;
- (e) proof of availability of ten percent of the value of the property; and
- (f) any other document that the committee may require for the purpose of determining the application.

(3) The borrower shall bear the costs of stamp duty, transfer fees, legal fees and other related charges.

(4) The balance to the full value of the property, the stamp duty, the transfer fee and other related charges shall be paid by the borrower into the Fund Account.

(5) The Advisory Committee may, where it deems appropriate, recommend the appointment of an advocate to act on its behalf in respect of transactions relating to the property under these Regulations.

Leasehold property.

11. Where the property intended to be purchased through a loan from the Fund is leasehold property, no loan shall be granted unless the expiry date of such lease is at least forty-five years from the date the loan is granted.

Repayment of loan.

12. (1) A loan granted under these Regulations shall be repayable within a period of twenty years or before the borrower attains the age of seventy years, whichever is the earlier.

(2) A state officer who is appointed at the age of seventy years or above shall be required to repay the loan for the duration of the state officer's appointment.

(3) A borrower may give prior authority in writing for his pension dues to be utilized to clear any outstanding debt in case the borrower retires before fully repaying the loan.

(4) Where the property is developed by the Fund for the purposes of tenant purchase, the borrower shall pay a deposit often per centum of the value of the property and shall subject to paragraph 5 be granted a loan of the remaining ninety per centum to be repaid monthly and in accordance with these Regulations.

(5) The loan granted to a borrower under paragraph (4) shall not exceed the maximum loan indicated in the Schedule.

Interest on loan.

13. (1) The interest payable on a loan shall be at the rate of at least three per centum per annum on a monthly reducing balance or such other rate as may from time to time be determined by the committee.

(2) The interest charged under this regulation shall be paid by the borrower.

Lien under loan property.

14. (1) The Fund shall register a charge on any property financed through a loan granted under these Regulations and such charge shall impose an obligation on the chargee—

- (a) not to mortgage, charge, surrender the lease, or sell or agree to sell or part with possession of the charged property or part thereof without the prior written consent of the Committee;
- (b) to meet and pay all rates, rents, insurance and any other outgoings in respect of the property and send the proof of such payments to the committee; and
- (c) to provide a transfer deed duly signed by the borrower and a letter authorizing the Fund to sell the property in case of default in payment.

(2) All residential properties purchased or developed through the Fund shall be of such standards and constructed of such materials the Committee may approve.

(3) During the tenant purchase or loan repayment period, every borrower shall—

- (a) ensure that the property is used for residential purposes only;
- (b) maintain the property in a satisfactory state or repair; and
- (c) make no extension or any structural alteration to the property or title thereto without the prior approval of the Committee.

(4) The committee shall grant only one loan or one house to a State officer.

(5) Notwithstanding paragraph (4) the Committee shall grant another loan or a house to a state officer in event of change of status or maximum threshold, as long as there shall not be any outstanding loan repayment due to the Fund.

(6) Where the spouse of a State officer is also a State officer, the granting of a loan or house to one spouse shall not bar the other spouse from benefiting from the Fund.

(7) All legal documentation and disbursement of funds shall be supervised by the officer administering the Fund.

Insurance in respect of loan property.

15. (1) A borrower shall take and maintain a life insurance policy and a fire insurance policy with an insurance company approved by the committee, the cost of which shall be paid out of the Fund and debited in the borrower's account.

(2) Every borrower of a house under construction shall take a mortgage protection cover for the provisional sale price of the property.

Safe Custody of Documents.

16. The originals of all documents relating to property financed by a loan from the Fund shall be kept in safe custody by the officer administering the Fund.

Protection of Government interest.

17. The Advisory Committee shall be entitled to do everything lawful and necessary to protect the Government's interest in the property in respect of which a loan is granted.

[Subsidiary]

Default in repayment.

18. (1) Where a borrower defaults in the repayment of the loan for a period of three consecutive months the advisory committee shall reposes and sell the property to another deserving state officer.

(2) Where a borrower ceases to be a state officer before full loan repayment, the advisory committee may, in its discretion, allow the borrower to continue to repay the loan on the same terms as set out in these Regulations provided that when the borrower defaults in a period of four months the outstanding loan shall revert to prevailing commercial interest rate.

(3) Notwithstanding these Regulations, where a borrower leaves service on disciplinary grounds or resigns before serving for the contract period, the Committee may grant the borrower a maximum period of four months to repay the full outstanding loan or permit the borrower to repay the outstanding loan at the prevailing market rate and on such other terms and conditions as the Committee may from time to time prescribe.

(4) Where the commercial rate is applicable, and the borrower is in default for a period of four months, the Fund may call in the loan and sell the charged property by public auction or private treaty.

Administration of the Fund.

19. The officer administering the Fund shall—

- (a) open and manage a bank account for the Fund;
- (b) supervise and control the administration of the Fund;
- (c) utilize the interest accruing thereto to defray operating expenses, and may impose any reasonable restriction or other requirement concerning such use;
- (d) cause to be kept books of account and other records in relation to the Fund; and
- (e) prepare, sign and transmit to the Auditor-General in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund, in such details as the National Treasury may from time to time direct in accordance with the Public Finance Management Act (Cap. 412A).

Transfer or sale of loan property.

20. No person shall sell or in any way transfer any property acquired through the Fund under these Regulations unless—

- (a) a period of not less than eight years has expired from the date—
 - (i) the final payment of the full purchase price of the property together with such interest as may be due is made; or
 - (ii) the final repayment of the full loan advanced by the Fund together with such interest as maybe due is made.
- (b) the sale or transfer has been approved by the Advisory Committee.

Duties of mortgage institution.

21. Where the Advisory Committee approves the appointment of a tenant purchase institution or a mortgage finance company to administer the Fund, the institution shall—

- (a) operate individual accounts for each borrower and provide details of recoveries of the loan;
- (b) charge security on properties acquired through loans from the fund to protect the interests of the Fund and act as a custodian of such charges;

- (c) disburse cheques or transfer funds for newly approved loans to borrowers after the necessary documentation is completed by the Committee;
- (d) pay all outgoing and issue demand notices to defaulting borrowers through the officer administering the Fund;
- (e) upon repayment of the loan, interest and other expenses which may be outstanding discharge the charge and release the security documents to the borrowers; and
- (f) perform such other duties as may be assigned to it from time to time by the Committee.

Financing or development Partnership.

22. The Fund may enter into a viable financing or development partnership with a legal entity for the purposes of implementing the objectives of the Fund.

Partnership with other schemes.

23. The Scheme may enter into viable management partnership with a scheme from any other public body.

Management costs.

24. The Fund or, where applicable, the tenant purchase institution or mortgage finance company referred to under regulation 21, may charge an interest of not more than two per centum per annum of the value of the loan to cover its management costs.

Miscellaneous.

25. These Regulations shall be supplemented by such requirements as may be detailed in the loan application form supplied by the Fund and by the contract between the Fund and the borrower.

Amendment to Regulations.

26. The Advisory Committee may from time to time recommend to the Cabinet Secretary any amendment to these Regulations.

SCHEDULE

Beneficiaries

Cabinet Secretaries

Attorney-General

Secretary to the Cabinet

Chief of the Kenya Defence Forces

Governor of Counties

Principals Secretaries

Members of Independent Commissions

Holders of Independent Offices (Controller of Budget, Auditor-General)

Threshold

Up to forty million shillings

Up to thirty five million shillings

[Subsidiary]

Beneficiaries**Threshold**

Vice-Commander of the Defence Forces

Up to thirty million shillings

Commander of Kenya Air Force

Commander of Kenya Navy

Director-General National Intelligence Service

Inspector-General of Police

Director of Public Prosecution

Deputy Governors

Deputy Constitutional Office Holders

Up to twenty five million shillings

Registrar of Political Parties

Other State Officers

Chief Executive Officers of Government Agencies

THE PUBLIC FINANCE MANAGEMENT (STATE OFFICERS AND
PUBLIC OFFICERS MOTOR CAR LOAN SCHEME FUND) REGULATIONS

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SCHEDULE — LOAN THRESHOLD FOR STATE OFFICERS AND OTHER PUBLIC OFFICERS

**THE PUBLIC FINANCE MANAGEMENT (STATE OFFICERS AND
PUBLIC OFFICERS MOTOR CAR LOAN SCHEME FUND) REGULATIONS**

[L.N. 155/2015]

Citation.

1. These Regulations may be cited as the Public Finance Management (State Officers and Public officers Car Loan Scheme Fund) Regulations.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

"Accounting Officer" has the meaning assigned to it under section 2 of the Public Finance Management Act (Cap. 412A);

"Accounting Standards Board" has the meaning assigned to it under section 2 of the Public Finance Management Act (Cap. 412A);

"Advisory Board" means the Loans Management Advisory Board established under regulation 9;

"beneficiary" means State Officers and Public Officers working in the National Government as prescribed in Regulation 31;

"borrower" means a person in receipt of a loan out of the Fund;

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

"Chief Executive Officer" means the Chief Executive Officer of the Fund appointed under regulation 20;

"commercial use" means any motorised road vehicle, that by its type of construction and equipment is designed for, and capable of transporting, goods and services for payment;

"financial institution" means any institution referred to in regulation 19 identified for the purposes of providing financial services to the Fund;

"financial year" means the period of twelve months ending on the 30th June in each year;

"Fund" means the State Officers and Public officers Car Loan Scheme Fund established under regulation 3;

"Motor car" has the meaning assigned to it under section 2 of the Traffic Act (Cap. 403);

"Officer administering the Fund" means a person designated as such under section 24(5) of the Public Finance Management Act (Cap. 412A);

"Public Officer" means an officer employed in the National Government or the Public Service;

"revenue" has the meaning assigned to it under section 2 of the Public Finance Management Act (Cap. 412A);

"State Officers" has the meaning assigned to it under Article 260 of the Constitution but shall not include a state officer who is covered by any public motor car loan scheme; and

"value of the loan" the initial loan granted to a beneficiary or any outstanding loan balance at any given time before full loan repayment.

PART II – ESTABLISHMENT OF THE FUND

Establishment of the Fund.

3. There is established a Fund to be known as the State Officers and Public officers Car Loan Scheme Fund.

Object and Purpose of the Fund.

4. The object and purpose of the Fund shall be to—

- (a) provide a car loan facility to state officers and public officers of the national government to purchase a motor car as prescribed in these Regulations; and
- (b) cater for administrative expenses of the Fund;

Capital of the Fund.

5. The initial capital of the Fund shall be Kenya shillings one billion appropriated by Parliament in the financial year 2014/15 and additional capital of the Fund shall be made in the subsequent financial years' budgets.

Sources of the Fund.

6. There shall be paid into the Fund—

- (a) monies appropriated by Parliament for the purposes of the Fund;
- (b) income from investments made by the Fund;
- (c) grants, donations, bequests or other gifts made to the Fund; and
- (d) monies from any other source approved by the Cabinet Secretary.

Expenditure of the Fund.

7. (1) There shall be paid out of the Fund payments in respect of any expenses incurred in pursuance of the object and purpose for which the Fund is established.

(2) The expenditure incurred on the Fund shall be on the basis of and limited to annual budget estimates prepared by the officer administering the Fund and shall be recommended by the Advisory Board for approval by the Cabinet Secretary at the beginning of the financial year to which they relate.

(3) Any revision of the approved budget estimates, and of any cost estimate, shall be referred to the Advisory Board and the Cabinet Secretary for approval.

Guidelines on the Fund.

8. The Officer administering the Fund, in consultation with the Advisory Board shall develop guidelines for the proper management of Fund for approval by the Cabinet Secretary.

PART III – MANAGEMENT OF THE FUND

Establishment and composition of the Advisory Board.

9. (1) There is established an Advisory Board of the Fund.

(2) The Advisory Board shall comprise—

- (a) the Principal Secretary for the National Treasury or his or her nominee who shall not be below Job Group "T", who shall be the Chairperson;
- (b) the Principal Secretary of the State Department responsible for Public Service Management or his or her nominee who shall not be below Job Group R;

[Subsidiary]

- (c) the Principal Secretary of the State Department responsible for Transport or his or her nominee drawn from the relevant technical department dealing with matters of motor car and shall not be below Job Group R;
- (d) the Chief Executive Officer or Secretary, Salaries and Remuneration Commission or his or her nominee who shall not be below the level of a director;
- (e) the Chief Executive Officer or Secretary, Public Service Commission or his or her nominee who shall not be below Job Group "R"; and
- (f) two persons nominated by the Principal Secretary for the National Treasury who shall not be below Job Group R, from the Directorates of—
 - (i) Budget, Financial and Economic Affairs; and
 - (ii) Administrative Services.

(3) The Chief Executive Officer of the Fund shall be the Secretary to the Advisory Board.

(4) The terms and conditions of service of members of the Advisory Board and the Secretariat shall be as determined by the Cabinet Secretary in consultation with the Public Service Commission and the Salaries and Remuneration Commission.

Functions of the Advisory Board.

10. The functions of the Advisory Board shall be to—

- (a) process and approve loans in accordance with the existing terms and conditions of borrowing;
- (b) liaise with the financial institution to set up a Fund for the disbursement of the loans;
- (c) oversee the management of the Fund;
- (d) monitor and evaluate the performance of the Fund;
- (e) approve annual work programmes and procurement plans for the Fund;
- (f) recommend the investment of any surplus funds not immediately required in securities approved by the National Treasury, for the purposes of realizing the objects and purpose for which the Fund is established;
- (g) cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Fund;
- (h) receive any gifts, donations, grants or endowments made to the Fund;
- (i) consider and recommend approval of the financial statements to the officer administering the Fund;
- (j) recommend as when required the procurement of a financial institution to administer the Fund on its behalf;
- (k) perform any other functions that are ancillary to the objects and purpose for which the Fund is established; and
- (l) determine its own procedures for conducting its business.

Car loan threshold.

11. The maximum loan each beneficiary shall be eligible to, is set out in the Schedule in these Regulations or as may be determined the Salaries and Remuneration Commission, from time to time.

Loan application procedure.

12. (1) An application for a loan under these Regulations shall be accompanied by the following documents where appropriate—

- (a) duly filled application Form by the applicant;
- (b) a certified copy of the National Identify Card or Passport;
- (c) certified copies of pay-slips for the immediate last three months by the respective accounting officers;
- (d) a certified copy of the sale agreement relating to the motor car;
- (e) a certified copy of the log book;
- (f) a non-refundable application fees of one thousand shillings or as determined from time to time by the officer administering the Fund; and
- (g) a valuation report on the motor car.

(2) For the purposes of these Regulations, the value of a new Loan application vehicle shall be as quoted on the invoice from the supplier whereas the procedure value of a used vehicle shall be as determined by a report from the Automobile Association of Kenya, a Government Department dealing with similar matters or a certified automobile valuer registered in Kenya.

(3) For the purposes of these Regulations, a loan shall not be given to a beneficiary to purchase a used vehicle that is more than eight years old from the date of manufacture or as may be determined from time to time.

(4) The applicant shall bear the cost of valuation, registration and other legal fees.

Eligibility criteria.

13. The officer administering the Fund shall use the following eligibility criteria when evaluating a loan application—

- (a) first in first out principle of loan processing;
- (b) applicable loan threshold for each grade of the beneficiary;
- (c) compliance with the provisions of regulation 12;
- (d) ability to repay the loan within existing statutes and the stipulated time;
- (e) an undertaking by the beneficiary that the motor car shall jointly be registered and owned for the period of the loan by the National Treasury on behalf of the Government of Kenya and the beneficiary until the loan is repaid in full by the beneficiary;
- (f) an undertaking to meet such costs for the purpose of securing a motor car comprehensive insurance cover and pay such sum of money on or before thirty days before the expiry of the comprehensive motor car insurance policy as may be determined by the officer administering the Fund from time to time;
- (g) no borrower shall be eligible for more than one loan at a time from the Fund within five years; and
- (h) any other conditions as may be prescribed by the officer administering the Fund.

Insurance in respect of motor car loan.

14. A borrower shall take and maintain a comprehensive motor car insurance policy with an insurance company approved by the Advisory Board, the cost of which shall be paid out of the Fund and debited to the borrower's account.

[Subsidiary]

Conditions for disbursement of Funds.

15. (1) A loan approved by the Advisory Board under these Regulations shall be released from the Fund to the bank account of the supplier or seller of the motor car.

(2) Notwithstanding the provisions of paragraph (1), a person disbursing the funds shall confirm that the beneficiary has complied with regulations 12 and 13 of these Regulations.

(3) The officer administering the Fund shall issue a caveat prohibiting the transfer of the motor car and shall notify the Registrar of Motor Vehicles accordingly.

(4) The Registrar of Motor Vehicles shall confirm in writing to the officer administering the Fund, that a caveat issued under paragraph (3) has been entered and noted in the appropriate motor car file or data base in the registry of the Registrar of Motor Vehicles.

(5) During the loan repayment period the beneficiary shall—

- (a) not lease, sell or agree to sell or part with possession of the charged motor car or any part of the motor car without the prior written consent of the officer administering the Fund;
- (b) meet costs for the motor car comprehensive insurance cover and pay such sum of money as may be determined by the officer administering the Fund from time to time;
- (c) ensure that the motor car is not used for commercial purposes; and
- (d) maintain the motor car in a satisfactory state of repair.

(6) All legal documentation and disbursement of funds shall be supervised by the Advisory Board.

(7) The officer administering the Fund shall be the custodian of the motor car log book until the loan is repaid in full by the beneficiary and thereafter the Officer Administering the Fund shall transfer the motor car log book to the beneficiary in his or her name within ninety days after full repayment of the loan.

(8) Upon receiving the motor car log book in his or her name, the beneficiary shall sign a discharge form confirming receipt of the motor car log book from the Officer Administering the Fund.

Loan repayment.

16. (1) A loan advanced under these Regulations shall be repaid in full within sixty months.

(2) The preferred method of loan repayment shall be through a check-off system or a bank standing order by the beneficiary.

(3) Notwithstanding the provisions of paragraph (1), where a state officer or public officer leaves public service employment for whatever reason other than disciplinary grounds, the terms of the loan shall remain in force and shall not change for the life of the loan unless in cases of default in which case it shall revert to commercial terms.

(4) Where a beneficiary leaves the public service on disciplinary grounds, the terms of the loan shall convert to commercial terms after ninety days from the effective date of leaving the service.

(5) Where a default occurs for whatever reason there shall be a grace period of not more than three months, after which the car which is subject to the loan shall be repossessed and sold to recover the balance of the loan.

(6) Where a repossession of a motor car occurs under paragraph (5), the Officer Administering the Fund shall repossess the motor car within twenty one working days and the motor car shall be disposed-off within ninety days from the date of repossession to recover the loan balance.

(7) Where a motor car has been disposed-off under paragraph (6) and the amount recovered is not sufficient to cover the entire loan balance, the Officer Administering the Fund shall require the loan beneficiary to pay the difference.

(8) Any disposal of a motor car under paragraph (5) by the Officer Administering the Fund shall be through a public auction or private treaty.

Loan interest.

17. A loan granted to a member under these Regulations shall carry an interest rate of three per cent per annum on a reducing balance basis which shall be retained in the Fund or such other rate as may from time to time be determined by the Cabinet Secretary in a *gazette* notice.

Management cost.

18. (1) The Fund or where applicable, the financial institution referred to under these Regulations may charge an interest of not more than two percent per annum of the value of loan to cover its management costs.

(2) The interest charged under regulation 17 and 18(1) shall be paid by the borrower.

Responsibilities of the financial institution.

19. (1) The responsibilities of a financial institution procured under these Regulations shall be to—

- (a) maintain and operate an individual account for each beneficiary;
- (b) charge securities on motor cars acquired through loans from the Fund so as to protect the interest of the Fund, and act as a custodian of such charges;
- (c) disburse monies for newly approved loans to various suppliers or sellers of motor cars to beneficiaries, after the necessary communication in writing authorizing disbursement to them by the officer administering the Fund;
- (d) pay all outgoing and issue demand notices to defaulting borrowers through the officer administering the Fund;
- (e) issue an annual account statement to the Officer Administering the Fund for each borrower;
- (f) upon repayment of the motor car loan, interest and other expenses which may be outstanding discharge the charge and release the security documents to the beneficiaries; and
- (g) provide quarterly reports on details of recovery of the loans to the Officer Administering the Fund.

(2) The expenses of the Fund Secretariat shall be met from funds provided by Parliament for that purpose which shall include but not limited to appropriations, earnings, accruals and shall not exceed five per cent of the annual approved budget of the Fund.

Chief Executive Officer.

20. (1) There shall be a Chief Executive Officer of the Fund who shall be recruited and appointed through a competitive process subject to the provisions of Article 234 (5) of the Constitution.

[Subsidiary]

(2) A person is qualified for appointment as the Chief Executive Officer if the person—

- (a) is a citizen of Kenya;
- (b) holds a degree in economics, finance, accounting or social sciences from a university recognized in Kenya;
- (c) satisfies the requirements of Chapter Six of the Constitution; and
- (d) has at least ten years' experience in the relevant field.

(3) A person appointed as the Chief Executive Officer under this regulation, shall serve for one term of five years, which may be renewed for one further term of five years.

(4) The Chief Executive Officer shall be subject to the directions of the Advisory Board and shall be responsible for the day to day administration of the affairs of the Fund and the Secretariat of the Fund as delegated by the Advisory Board.

Secretariat of the Fund.

21. (1) There shall be a Secretariat of the Fund to be headed by the Chief Executive Officer.

(2) The composition of the Secretariat shall be determined by the Cabinet Secretary subject to Article 234 (2) of the Constitution.

(3) The terms and conditions of service for the Chief Executive Officer and the Fund Secretariat shall be determined by the Cabinet Secretary in consultation with the Public Service Commission and the Salaries and Remuneration Commission.

Retention of receipts.

22. All receipts, earnings and accruals to the Fund, and the balance of the Fund at the close of each financial year, shall be retained by the Fund for strict use for the purpose for which the Fund is established.

Application of Government Regulations and procedures.

23. Subject to the provisions of the Act, any other legislation, the existing Government Regulations and Procedures shall apply in the Government administration of the Fund.

Administration of the Fund.

24. (1) The Chief Executive Officer shall be designated as the administrator of the Fund.

(2) The administrator of the Fund shall—

- (a) open and operate a bank account into which all monies raised under the Fund shall be paid into;
- (b) operate and maintain the bank account in the manner as prescribed by the National Treasury from time to time;
- (c) supervise and control the administration of the Fund;
- (d) consult with the Advisory Board on matters relating to the administration of the Fund;
- (e) cause to be kept proper books of accounts and other books and records in relation to the Fund, of all activities and undertakings financed from the Fund;
- (f) prepare, sign and transmit to the Auditor-General, in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund and submit a copy to the National Treasury and the statements shall be prepared in such a manner as the Public Sector Accounting Standards Board shall prescribe;

- (g) furnish any additional information which is proper and sufficient for the purpose of examination and audit by the Auditor-General in accordance with the provisions of the Public Audit Act;
- (h) prepare a quarterly report on the receipts into and issues out of the Fund and submit it to the Cabinet Secretary for gazettment by the 10th day of every fourth month.
- (i) prepare estimates of revenue and expenditure and submit to the Advisory Board for consideration and recommendation for approval by the Cabinet Secretary;
- (j) prepare a work plan in respect of a financial year and in preparing this work plan they shall ensure that the work plan—
 - (i) contains information on the financial and non-financial performance of the Fund; and
 - (ii) is in a form that complies with the standards prescribed and published by the Accounting Standards Board from time to time; and
- (k) prepare quarterly financial statements to the Advisory Board for onward transmission to the National Treasury.

(3) Every statement of account shall include details of the balance between the assets and liabilities of the Fund, and shall indicate the financial status of the Fund as at the end of the financial year concerned.

PART VI – FINANCE AND ADMINISTRATION

Fund Bank Account.

25. (1) A bank account of the Fund shall be opened and maintained at the Central Bank of Kenya or a bank approved by the National Treasury.

(2) The signatories to the bank account of the Fund under paragraph (1) shall be the Chief Executive Officer and two other persons authorized by the Advisory Board from amongst the staff of the Fund.

(3) The signing instructions shall be such that the signature of the Chief Executive Officer shall be mandatory on all payment cheques and instruments intended for actual release of money from the Fund, plus any one of the other two Fund account signatories.

Withdrawal of funds from the Fund.

26. (1) All withdrawals from the Fund shall be recommended by the Chief Executive Officer and authorized by the Advisory Board as reflected in the Fund's approved annual estimates of expenditure for that financial year.

(2) All payments made from the Fund shall be on the basis of the approved annual estimates of expenditure.

PART V – MISCELLANEOUS PROVISIONS

Offences and penalties.

27. A person who misappropriates any funds or assets from the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in these Regulations, commits an offence and shall, upon conviction, be liable to imprisonment for a term of not less than five years or to a fine not exceeding ten million shillings or to both.

[Subsidiary]

Winding-up of the Fund.

28. In the event of winding up of the Fund, the cash balances shall be transferred to the National Exchequer Account while other assets of the Fund shall be transferred to the Ministry for the time being responsible for matters relating to finance.

Supplementary requirements.

29. These Regulations shall be supplemented by such requirements as may be detailed in the loan application form issued by the Officer Administering the Fund and by the contract between the Fund and the beneficiary.

Amendments to these Regulations.

30. The Advisory Board may from time to time recommend to the Cabinet Secretary any amendments to these Regulations.

Persons to whom these Regulations shall apply.

31. These Regulations shall apply to—

- (a) State Officers in the national government except state officers under the service of Judicial Service Commission and Parliamentary Service Commission; and
- (b) Civil Servants under the service of Public Service Commission.

SCHEDULE

Loan Threshold For State Officers and Other Public Officers

<i>Beneficiaries</i>	<i>Maximum Car Loan (KSh.)</i>
State Officers	
Cabinet Secretary, Attorney-General Secretary to the Cabinet, Auditor-General	10 Million
Principal Secretaries, Chairs and Members of Independent Commissions, Controller of Budget	8 Million
Director of Public Prosecution	6 Million
Register of Political parties, Secretaries of Independent Constitutional Commissions, Accounting Officers/Chief Executive Officers of Government Agencies	5 Million
Other Public Officers	
Chief Executive Officers of Government Agencies or Organs	5 Million
Civil Service Grades S, T, U and Equivalent grades in public service	4 Million
Civil Service Grades P, Q, R and Equivalent grades in the public service	3 Million
Civil Service Grades K, L, M, N and Equivalent grades in the public service	1.5 Million
Civil Service Grades G, H, J and Equivalent grades in the public service	800,000
Civil Service Grades A, B, C, D, E, F and Equivalent grades in the public service	600,000

THE PUBLIC FINANCE MANAGEMENT (STATE OFFICERS AND
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SCHEDULE — LOAN THRESHOLD FOR STATE OFFICERS AND OTHER PUBLIC OFFICERS

**THE PUBLIC FINANCE MANAGEMENT (STATE OFFICERS AND
PUBLIC OFFICERS MOTOR CAR LOAN SCHEME FUND) REGULATIONS**

[L.N. 195/2015, L.N. 60/2020]

PART I – PRELIMINARY

Citation.

1. These Regulations may be cited as the Public Finance Management (State Officers and Public Officers Car Loan Scheme Fund) Regulations.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

"Accounting Officer" has the meaning assigned to it under section 2 of the Public Finance Management Act (Cap. 412A);

"Accounting Standards Board" has the meaning assigned to it under section 2 of the Public Finance Management Act (Cap. 412A);

"Advisory Board" means the Loans Management Advisory Board established under regulation 9;

"beneficiary" means State Officers and Public Officers working in the National Government as prescribed in Regulation 31;

"borrower" means a person in receipt of a loan out of the Fund;

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

"Chief Executive Officer" means the Chief Executive Officer of the Fund appointed under regulation 20;

"commercial use" means any motorised road vehicle, that by its type of construction and equipment is designed for, and capable of transporting, goods and services for payment;

"financial institution" means any institution referred to in regulation 19 identified for the purposes of providing financial services to the Fund;

"financial year" means the period of twelve months ending on the 30th June in each year;

"Fund" means the State Officers and Public officers Car Loan Scheme Fund established under regulation 3;

"Motor car" has the meaning assigned to it under section 2 of the Traffic Act (Cap. 403);

"Officer administering the Fund" means a person designated as such under section 24(5) of the Public Finance Management Act (Cap. 412A);

"Public Officer" means an officer employed in the National Government or the Public Service;

"revenue" has the meaning assigned to it under section 2 of the Public Finance Management Act (Cap. 412A);

"State Officers" has the meaning assigned to it under Article 260 of the Constitution but shall not include a state officer who is covered by any public motor car loan scheme; and

"value of the loan" the initial loan granted to a beneficiary or any outstanding loan balance at any given time before full loan repayment.

PART II – ESTABLISHMENT OF THE FUND

Establishment of the Fund.

3. There is established a Fund to be known as the State Officers and Public Officers Car Loan Scheme Fund.

Object and Purpose of the Fund.

4. The object and purpose of the Fund shall be to—

- (a) provide a car loan facility to state officers and public officers of the national government to purchase a motor car as prescribed in these Regulations; and
- (b) cater for administrative expenses of the Fund;

Capital of the Fund.

5. The initial capital of the Fund shall be Kenya shillings one billion appropriated by Parliament in the financial year 2014/15 and additional capital of the Fund shall be made in the subsequent financial years' budgets.

Sources of the Fund.

6. There shall be paid into the Fund—

- (a) monies appropriated by Parliament for the purposes of the Fund;
- (b) income from investments made by the Fund;
- (c) grants, donations, bequests or other gifts made to the Fund; and
- (d) monies from any other source approved by the Cabinet Secretary.

Expenditure of the Fund.

7. (1) There shall be paid out of the Fund payments in respect of any expenses incurred in pursuance of the object and purpose for which the Fund is established.

(2) The expenditure incurred on the Fund shall be on the basis of and limited to annual budget estimates prepared by the officer administering the Fund and shall be recommended by the Advisory Board for approval by the Cabinet Secretary at the beginning of the financial year to which they relate.

(3) Any revision of the approved budget estimates, and of any cost estimate, shall be referred to the Advisory Board and the Cabinet Secretary for approval.

(4) Notwithstanding the provisions of paragraph (1), the Cabinet Secretary may, with the approval of Parliament, make payments out of the Fund for purposes other than for the objects and purpose of the Fund, on temporary basis, where such deviation is necessitated by a major natural disaster or other significant unforeseen event, and thereafter furnish a published report to Parliament.

[L.N. 60/2020, r. 2.]

Guidelines on the Fund.

8. The Officer administering the Fund, in consultation with the Advisory Board shall develop guidelines for the proper management of Fund for approval by the Cabinet Secretary.

PART III – MANAGEMENT OF THE FUND

Establishment and composition of the Advisory Board.

9. (1) There is established an Advisory Board of the Fund.

[Subsidiary]

(2) The Advisory Board shall comprise—

- (a) the Principal Secretary for the National Treasury or his or her nominee who shall not be below Job Group "T", who shall be the Chairperson;
- (b) the Principal Secretary of the State Department responsible for Public Service Management or his or her nominee who shall not be below Job Group R;
- (c) the Principal Secretary of the State Department responsible for Transport or his or her nominee drawn from the relevant technical department dealing with matters of motor car and shall not be below Job Group R;
- (d) the Chief Executive Officer or Secretary, Salaries and Remuneration Commission or his or her nominee who shall not be below the level of a director;
- (e) the Chief Executive Officer or Secretary, Public Service Commission or his or her nominee who shall not be below Job Group "R"; and
- (f) two persons nominated by the Principal Secretary for the National Treasury who shall not be below Job Group R, from the Directorates of—
 - (i) Budget, Financial and Economic Affairs; and
 - (ii) Administrative Services.

(3) The Chief Executive Officer of the Fund shall be the Secretary to the Advisory Board.

(4) The terms and conditions of service of members of the Advisory Board and the Secretariat shall be as determined by the Cabinet Secretary in consultation with the Public Service Commission and the Salaries and Remuneration Commission.

Functions of the Advisory Board.

10. The functions of the Advisory Board shall be to—

- (a) process and approve loans in accordance with the existing terms and conditions of borrowing;
- (b) liaise with the financial institution to set up a Fund for the disbursement of the loans;
- (c) oversee the management of the Fund;
- (d) monitor and evaluate the performance of the Fund;
- (e) approve annual work programmes and procurement plans for the Fund;
- (f) recommend the investment of any surplus funds not immediately required in securities approved by the National Treasury, for the purposes of realizing the objects and purpose for which the Fund is established;
- (g) cause to be kept all proper books and records of account of the income, expenditure, assets and liabilities of the Fund;
- (h) receive any gifts, donations, grants or endowments made to the Fund;
- (i) consider and recommend approval of the financial statements to the officer administering the Fund;
- (j) recommend as when required the procurement of a financial institution to administer the Fund on its behalf;
- (k) perform any other functions that are ancillary to the objects and purpose for which the Fund is established; and
- (l) determine its own procedures for conducting its business.

Car loan threshold.

11. The maximum loan each beneficiary shall be eligible to, is set out in the Schedule in these Regulations or as may be determined the Salaries and Remuneration Commission, from time to time.

Loan application procedure.

12. (1) An application for a loan under these Regulations shall be accompanied by the following documents where appropriate—

- (a) duly filled application Form by the applicant;
- (b) a certified copy of the National Identify Card or Passport;
- (c) certified copies of pay-slips for the immediate last three months by the respective accounting officers;
- (d) a certified copy of the sale agreement relating to the motor car;
- (e) a certified copy of the log book;
- (f) a non-refundable application fees of one thousand shillings or as determined from time to time by the officer administering the Fund; and
- (g) a valuation report on the motor car.

(2) For the purposes of these Regulations, the value of a new Loan application vehicle shall be as quoted on the invoice from the supplier whereas the procedure. value of a used vehicle shall be as determined by a report from the Automobile Association of Kenya, a Government Department dealing with similar matters or a certified automobile valuer registered in Kenya.

(3) For the purposes of these Regulations, a loan shall not be given to a beneficiary to purchase a used vehicle that is more than eight years old from the date of manufacture or as may be determined from time to time.

(4) The applicant shall bear the cost of valuation, registration and other legal fees.

Eligibility criteria.

13. The officer administering the Fund shall use the following eligibility criteria when evaluating a loan application—

- (a) first in first out principle of loan processing;
- (b) applicable loan threshold for each grade of the beneficiary;
- (c) compliance with the provisions of regulation 12;
- (d) ability to repay the loan within existing statutes and the stipulated time;
- (e) an undertaking by the beneficiary that the motor car shall jointly be registered and owned for the period of the loan by the National Treasury on behalf of the Government of Kenya and the beneficiary until the loan is repaid in full by the beneficiary;
- (f) an undertaking to meet such costs for the purpose of securing a motor car comprehensive insurance cover and pay such sum of money on or before thirty days before the expiry of the comprehensive motor car insurance policy as may be determined by the officer administering the Fund from time to time;
- (g) no borrower shall be eligible for more than one loan at a time from the Fund within five years; and
- (h) any other conditions as may be prescribed by the officer administering the Fund.

[Subsidiary]

Insurance in respect of motor car loan.

14. A borrower shall take and maintain a comprehensive motor car insurance policy with an insurance company approved by the Advisory Board, the cost of which shall be paid out of the Fund and debited to the borrower's account.

Conditions for disbursement of Funds.

15. (1) A loan approved by the Advisory Board under these Regulations shall be released from the Fund to the bank account of the supplier or seller of the motor car.

(2) Notwithstanding the provisions of paragraph (1), a person disbursing the funds shall confirm that the beneficiary has complied with regulations 12 and 13 of these Regulations.

(3) The officer administering the Fund shall issue a caveat prohibiting the transfer of the motor car and shall notify the Registrar of Motor Vehicles accordingly.

(4) The Registrar of Motor Vehicles shall confirm in writing to the officer administering the Fund, that a caveat issued under paragraph (3) has been entered and noted in the appropriate motor car file or data base in the registry of the Registrar of Motor Vehicles.

(5) During the loan repayment period the beneficiary shall—

- (a) not lease, sell or agree to sell or part with possession of the charged motor car or any part of the motor car without the prior written consent of the officer administering the Fund;
- (b) meet costs for the motor car comprehensive insurance cover and pay such sum of money as may be determined by the officer administering the Fund from time to time;
- (c) ensure that the motor car is not used for commercial purposes; and
- (d) maintain the motor car in a satisfactory state of repair.

(6) All legal documentation and disbursement of funds shall be supervised by the Advisory Board.

(7) The officer administering the Fund shall be the custodian of the motor car log book until the loan is repaid in full by the beneficiary and thereafter the Officer Administering the Fund shall transfer the motor car log book to the beneficiary in his or her name within ninety days after full repayment of the loan.

(8) Upon receiving the motor car log book in his or her name, the beneficiary shall sign a discharge form confirming receipt of the motor car log book from the Officer Administering the Fund.

Loan repayment.

16. (1) A loan advanced under these Regulations shall be repaid in full within sixty months.

(2) The preferred method of loan repayment shall be through a check-off system or a bank standing order by the beneficiary.

(3) Notwithstanding the provisions of paragraph (1), where a state officer or public officer leaves public service employment for whatever reason other than disciplinary grounds, the terms of the loan shall remain in force and shall not change for the life of the loan unless in cases of default in which case it shall revert to commercial terms.

(4) Where a beneficiary leaves the public service on disciplinary grounds, the terms of the loan shall convert to commercial terms after ninety days from the effective date of leaving the service.

(5) Where a default occurs for whatever reason there shall be a grace period of not more than three months, after which the car which is subject to the loan shall be repossessed and sold to recover the balance of the loan.

(6) Where a repossession of a motor car occurs under paragraph (5), the Officer Administering the Fund shall repossess the motor car within twenty one working days and the motor car shall be disposed-off within ninety days from the date of repossession to recover the loan balance.

(7) Where a motor car has been disposed-off under paragraph (6) and the amount recovered is not sufficient to cover the entire loan balance, the Officer Administering the Fund shall require the loan beneficiary to pay the difference.

(8) Any disposal of a motor car under paragraph (5) by the Officer Administering the Fund shall be through a public auction or private treaty.

Loan interest.

17. A loan granted to a member under these Regulations shall carry an interest rate of three per cent per annum on a reducing balance basis which shall be retained in the Fund or such other rate as may from time to time be determined by the Cabinet Secretary in a *gazette* notice.

Management cost.

18. (1) The Fund or where applicable, the financial institution referred to under these Regulations may charge an interest of not more than two percent per annum of the value of loan to cover its management costs.

(2) The interest charged under regulation 17 and 18(l) shall be paid by the borrower.

Responsibilities of the financial institution.

19. (1) The responsibilities of a financial institution procured under these Regulations shall be to—

- (a) maintain and operate an individual account for each beneficiary;
- (b) charge securities on motor cars acquired through loans from the Fund so as to protect the interest of the Fund, and act as a custodian of such charges;
- (c) disburse monies for newly approved loans to various suppliers or sellers of motor cars to beneficiaries, after the necessary communication in writing authorizing disbursement to them by the officer administering the Fund;
- (d) pay all outgoing and issue demand notices to defaulting borrowers through the officer administering the Fund;
- (e) issue an annual account statement to the Officer Administering the Fund for each borrower;
- (f) upon repayment of the motor car loan, interest and other expenses which may be outstanding discharge the charge and release the security documents to the beneficiaries; and
- (g) provide quarterly reports on details of recovery of the loans to the Officer Administering the Fund.

(2) The expenses of the Fund Secretariat shall be met from funds provided by Parliament for that purpose which shall include but not limited to appropriations, earnings, accruals and shall not exceed five per cent of the annual approved budget of the Fund

[Subsidiary]

Chief Executive Officer.

20. (1) There shall be a Chief Executive Officer of the Fund who shall be recruited and appointed through a competitive process subject to the provisions of Article 234 (5) of the Constitution.

(2) A person is qualified for appointment as the Chief Executive Officer if the person—

- (a) is a citizen of Kenya;
- (b) holds a degree in economics, finance, accounting or social sciences from a university recognized in Kenya;
- (c) satisfies the requirements of Chapter Six of the Constitution; and
- (d) has at least ten years' experience in the relevant field.

(3) A person appointed as the Chief Executive Officer under this regulation, shall serve for one term of five years, which may be renewed for one further term of five years.

(4) The Chief Executive Officer shall be subject to the directions of the Advisory Board and shall be responsible for the day to day administration of the affairs of the Fund and the Secretariat of the Fund as delegated by the Advisory Board.

Secretariat of the Fund.

21. (1) There shall be a Secretariat of the Fund to be headed by the Chief Executive Officer.

(2) The composition of the Secretariat shall be determined by the Cabinet Secretary subject to Article 234 (2) of the Constitution.

(3) The terms and conditions of service for the Chief Executive Officer and the Fund Secretariat shall be determined by the Cabinet Secretary in consultation with the Public Service Commission and the Salaries and Remuneration Commission.

Retention of receipts.

22. All receipts, earnings and accruals to the Fund, and the balance of the Fund at the close of each financial year, shall be retained by the Fund for strict use for the purpose for which the Fund is established.

Application of Government Regulations and procedures.

23. Subject to the provisions of the Act, any other legislation, the existing Government Regulations and Procedures shall apply in the Government administration of the Fund.

Administration of the Fund.

24. (1) The Chief Executive Officer shall be designated as the administrator of the Fund.

(2) The administrator of the Fund shall—

- (a) open and operate a bank account into which all monies raised under the Fund shall be paid into;
- (b) operate and maintain the bank account in the manner as prescribed by the National Treasury from time to time;
- (c) supervise and control the administration of the Fund;
- (d) consult with the Advisory Board on matters relating to the administration of the Fund;
- (e) cause to be kept proper books of accounts and other books and records in relation to the Fund, of all activities and undertakings financed from the Fund;

- (f) prepare, sign and transmit to the Auditor-General, in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund and submit a copy to the National Treasury and the statements shall be prepared in such a manner as the Public Sector Accounting Standards Board shall prescribe;
- (g) furnish any additional information which is proper and sufficient for the purpose of examination and audit by the Auditor-General in accordance with the provisions of the Public Audit Act;
- (h) prepare a quarterly report on the receipts into and issues out of the Fund and submit it to the Cabinet Secretary for gazettment by the 10th day of every fourth month.
- (i) prepare estimates of revenue and expenditure and submit to the Advisory Board for consideration and recommendation for approval by the Cabinet Secretary;
- (j) prepare a work plan in respect of a financial year and in preparing this work plan they shall ensure that the work plan—
 - (i) contains information on the financial and non-financial performance of the Fund; and
 - (ii) is in a form that complies with the standards prescribed and published by the Accounting Standards Board from time to time; and
- (k) prepare quarterly financial statements to the Advisory Board for onward transmission to the National Treasury.

(3) Every statement of account shall include details of the balance between the assets and liabilities of the Fund, and shall indicate the financial status of the Fund as at the end of the financial year concerned.

PART IV – FINANCE AND ADMINISTRATION

Fund Bank Account.

25. (1) A bank account of the Fund shall be opened and maintained at the Central Bank of Kenya or a bank approved by the National Treasury.

(2) The signatories to the bank account of the Fund under paragraph (1) shall be the Chief Executive Officer and two other persons authorized by the Advisory Board from amongst the staff of the Fund.

(3) The signing instructions shall be such that the signature of the Chief Executive Officer shall be mandatory on all payment cheques and instruments intended for actual release of money from the Fund, plus any one of the other two Fund account signatories.

Withdrawal of funds from the Fund.

26. (1) All withdrawals from the Fund shall be recommended by the Chief Executive Officer and authorized by the Advisory Board as reflected in the Fund's approved annual estimates of expenditure for that financial year.

(2) All payments made from the Fund shall be on the basis of the approved annual estimates of expenditure.

PART V – MISCELLANEOUS PROVISIONS

Offences and penalties.

27. A person who misappropriates any funds or assets from the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in

[Subsidiary]

these Regulations, commits an offence and shall, upon conviction, be liable to imprisonment for a term of not less than five years or to a fine not exceeding ten million shillings or to both.

Winding-up of the Fund.

28. In the event of winding up of the Fund, the cash balances shall be transferred to the National Exchequer Account while other assets of the Fund shall be transferred to the Ministry for the time being responsible for matters relating to finance.

Supplementary requirements.

29. These Regulations shall be supplemented by such requirements as may be detailed in the loan application form issued by the Officer Administering the Fund and by the contract between the Fund and the beneficiary.

Amendments to these Regulations.

30. The Advisory Board may from time to time recommend to the Cabinet Secretary any amendments to these Regulations.

Persons to whom these Regulations shall apply.

31. These Regulations shall apply to—

- (a) State Officers in the national government except state officers under the service of Judicial Service Commission and Parliamentary Service Commission; and
- (b) Civil Servants under the service of Public Service Commission.

SCHEDULE

LOAN THRESHOLD FOR STATE OFFICERS AND OTHER PUBLIC OFFICERS

<i>Beneficiaries</i>	<i>Maximum Car Loan (KSh.)</i>
State Officers	
Cabinet Secretary,	10 Million
Attorney-General Secretary to the Cabinet,	
Auditor-General	
Principal Secretaries,	8 Million
Chairs and Members of Independent Commissions,	
Controller of Budget	
Director of Public Prosecution	6 Million
Register of Political parties,	5 Million
Secretaries of Independent Constitutional Commissions,	
Accounting Officers/Chief Executive Officers of Government Agencies	
Other Public Officers	
Chief Executive Officers of Government Agencies or Organs	5 Million
Civil Service Grades S, T, U and Equivalent grades in public service	4 Million
Civil Service Grades P, Q, R and Equivalent grades in the public service	3 Million
Civil Service Grades K, L, M, N and Equivalent grades in the public service	1.5 Million
Civil Service Grades G, H, J and Equivalent grades in the public service	800,000

Beneficiaries

Civil Service Grades A, B, C, D, E, F and Equivalent grades in the public service

Maximum Car Loan (KSh.)

600,000

THE PUBLIC FINANCE MANAGEMENT (AFRICAN UNION AND OTHER
INTERNATIONAL ORGANISATIONS SUBSCRIPTION FUND) REGULATIONS

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
 2. Interpretation.
 3. Establishment of the Fund.
 4. Object and purpose of the Fund.
 5. Payments out of the Fund.
 7. Administration of the Fund.
 8. Winding-up of the Fund.
-

**THE PUBLIC FINANCE MANAGEMENT (AFRICAN UNION AND OTHER
INTERNATIONAL ORGANISATIONS SUBSCRIPTION FUND) REGULATIONS**

[L.N. 10/2017]

Citation.

1. These Regulations may be cited as the Public Finance Management (African Union and other International Organisations Subscription Fund) Regulations.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

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

"financial year" means the period of twelve months ending on the 30th June in each year;

"Fund" means the African Union and other International Organisations Subscription Fund established under regulation 3;

"National Exchequer Account" has the meaning assigned to it in section 17 of the Act; and

"officer administering the Fund" means the person designated as such under regulation 7(1).

Establishment of the Fund.

3. (1) There is established a fund to be known as the African Union and other International Organisations Subscription Fund.

(2) The Fund shall consist of—

- (a) ten percent of the import declaration fee imposed under section 7 of the Miscellaneous Fees and Levies Act (Cap. 469C);
- (b) monies appropriated by the parliament; and
- (c) any other monies that may accrue to the Fund.

(3) The account of the Fund shall be opened and maintained at the Central Bank of Kenya.

Object and purpose of the Fund.

4. The object and purpose of the Fund shall be to make Kenya's contribution to the African Union and any other international organisation, to which Kenya has a financial obligation.

Payments out of the Fund.

5. There shall be paid out of the Fund, payments pursuant to the object and purpose for which the Fund is established.

Administration of the Fund.

7. (1) The Principal Secretary of the National Treasury is hereby designated as the officer administering the Fund.

(2) The officer administering the Fund shall—

- (a) control the administration of the Fund;
- (b) cause to be kept all proper books of accounts and other books and records relating to the Fund; and
- (c) prepare, sign and transmit to the Auditor-General in respect of each financial year and within three months after the end thereof, a statement of account relating to

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the Fund in such form as the National Treasury may from time to time prescribe, in accordance with Public Finance Management Act (Cap. 412A).

Winding-up of the Fund.

8. In the event of winding up of the Fund, the cash balances shall be transferred to the National Exchequer Account while other assets of the Fund shall be transferred to the National Treasury.

THE PUBLIC FINANCE MANAGEMENT (SPORTS, ARTS
AND SOCIAL DEVELOPMENT FUND) REGULATIONS

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
2. Interpretation.

PART II – ESTABLISHMENT OF THE FUND

3. Establishment of the Fund.
4. Sources of the Fund.
5. Expenditure on the Fund.
6. Capital of the Fund.
7. Objects and purpose of the Fund.

PART III – MANAGEMENT OF THE FUND

8. Establishment of the Sports, Arts and Social Development Fund Oversight Board.
 9. Qualifications of members of the Advisory Board.
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 13. Funding eligibility criteria.
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 19. Preparation and submission of work plans, etc.
 20. Approval of reports.
 21. Annual reports.
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 24. Revocation of LN 174 of 2018.
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**THE PUBLIC FINANCE MANAGEMENT (SPORTS, ARTS
AND SOCIAL DEVELOPMENT FUND) REGULATIONS**

[L.N. 194/2018, L.N. 236/2018]

Citation.

1. These Regulations may be cited as the Public Finance Management (Sports, Arts and Social Development Fund) Regulations.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

"Administrator of the Fund" means a person designated as such under regulation 11;

"Board" means the Sports, Arts and Social Development Fund Oversight Board constituted in accordance with regulation 8;

"Fund" means the Sports, Arts and Social Development Fund established under regulation 3; and

"Government implementing agency" means a government agency established by legislation and whose mandate extends to the promotion of the objects and purposes of this Fund.

PART II – ESTABLISHMENT OF THE FUND

Establishment of the Fund.

3. There is established a Fund to be known as the Sports, Arts and Social Development Fund.

Sources of the Fund.

4. (1) The Fund shall consist of—

- (a) all the proceeds required to be paid into the Fund under section 69A of the Betting, Lotteries and Gaming Act (Cap. 131);
- (b) all the proceeds required to be paid into the Fund under section 35 (5A) of the Income Tax Act (Cap. 470);
- (c) all the proceeds required to be paid into the Fund under section 36 (5) of the Excise Duty Act (Cap. 472);
- (d) such moneys as may be appropriated by the National Assembly;
- (e) grants and donations;
- (f) income generated from the proceeds of the Fund; and
- (g) any moneys accruing to or received by the Fund from any other source.

(2) The proceeds of the Fund shall be apportioned as follows—

- (a) an amount not exceeding sixty percent to social development including universal health care;
- (b) an amount not exceeding thirty five percent to the promotion and development of sports;
- (c) an amount not exceeding twenty percent to the promotion and development of arts; and
- (d) an amount not exceeding five percent to government strategic interventions whose expenditure shall be subject to approval by Cabinet.

(3) The Cabinet Secretary may, on the advice of the Board, vary the apportionments specified in paragraph (2) of this regulation.

Expenditure on the Fund.

5. (1) There shall be paid out of the Fund payments in respect of any expenses incurred in pursuance of the objects and purposes for which the Fund is established.

(2) The expenditure incurred on the Fund shall be on the basis of and limited to annual work programmes and cost estimates which shall be prepared by the Administrator of the Fund, and approved by the Board at the beginning of the financial year to which they relate.

(3) Any revision of the approved annual work programmes, and of any cost estimate, shall be referred to the Board for approval.

Capital of the Fund.

6. The initial capital of the Fund shall be twenty million Shillings appropriated by Parliament in the financial year 2018/2019.

Objects and purpose of the Fund.

7. (1) The object and purpose of the Fund is to provide funding to support the development and promotion of sports and arts and the promotion of social development including universal health care.

(2) Without prejudice to the generality of paragraph (1), the Fund shall provide for—

- (a) promote social development including universal health care;
- (b) financing the development of sports and recreation facilities including stadia, gymnasiums, buildings, tracks;
- (c) enhancing support and access to funding for sportspersons and sports organizations to enable their participation in sporting events and competitions;
- (d) facilitation for the acquisition and provision of equipment to sports and recreation facilities;
- (e) support for the identification, nurturing and development of talent in sports and arts;
- (f) facilitation of training and capacity building programmes for persons involved in sports and recreation, creative arts, artistic production, contemporary and cultural practitioners;
- (g) facilitation for the identification, development and capacity building of technical personnel and sports support personnel involved in sports and recreation;
- (h) support for the promotion and development of artistic production of contemporary or cultural goods and services;
- (i) facilitation for the marketing and promotion of artistic productions and contemporary or cultural goods and services;
- (j) support linkages with domestic, regional and international markets for sports, artistic productions and contemporary or cultural goods and services;
- (k) facilitation for exhibition and promotion of contemporary or cultural artistic production of goods and services for national identity and pride;
- (l) financing the acquisition, development and preservation of, among others, heritage sites, cultural centres, national monuments, tangible and intangible heritage and culture and heritage equipment and tools; and

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- (m) facilitate innovation, research and documentation in arts, culture and the creative industry, sports and social development.

PART III – MANAGEMENT OF THE FUND

Establishment of the Sports, Arts and Social Development Fund Oversight Board.

8. (1) There is established a Board to be known as the Sports, Arts and Social Development Fund Oversight Board.

(2) The Board shall consist of—

- (a) the Principal Secretary for the time being responsible for matters relating to finance;
- (b) the Principal Secretary for the time being responsible for matters relating to sports;
- (c) the Principal Secretary for the time being responsible for matters relating to arts;
- (d) the Principal Secretary for the time being responsible for matters relating to health;
- (e) the Principal Secretary for the time being responsible for matters relating to education;
- (f) one person not being a public officer nominated by the Cabinet Secretary responsible for sports with competence in matters relating to sports;
- (g) one person not being a public officer nominated by the Cabinet Secretary responsible for health with competence in matters relating to health; and
- (h) one person not being a public officer nominated by the Cabinet Secretary with competence in matters relating to finance.

(3) The persons nominated under paragraph (2) (f), (g) and (h) shall be appointed by the Cabinet Secretary.

(4) The President shall appoint one of the members appointed under this regulation to be the Chairperson of the Board.

(5) In the absence of the Chairperson in any meeting of the Board, the members present shall elect one of the members under paragraph (2)(a) to (e) present to chair the meeting.

(6) The members under paragraph (2)(a) to (e) may attend in person or through a designated representative.

(7) The Board may, from time to time, co-opt other members as it may deem necessary, for the proper and efficient discharge of its oversight functions over the Fund.

(8) The quorum for the conduct of meetings of the Board shall be four members.

(9) The Board shall regulate its own procedure.

Qualifications of members of the Advisory Board.

9. A person shall be eligible for appointment as a member of the Board under regulation 8(2)(f) and (h) if that person—

- (a) holds a university degree from a recognized university in Kenya;

- (b) has knowledge and experience of not less than ten years in any of the following fields—
 - (i) sports management;
 - (ii) administration;
 - (iii) finance;
 - (iv) law;
 - (v) accounting;
 - (vi) Health; or
 - (vii) economics; and
- (c) meets the requirements of Chapter Six of the Constitution.

[L.N. 236/2018, r. 2.]

Functions of the Board.

10.

The Board shall—

- (a) provide overall oversight of the Fund;
- (b) approve the ceilings for funding under sports, arts and social development in each financial year;
- (c) develop policy guidelines relating to disbursements by the Fund;
- (d) prescribe other guidelines for the administration of the Fund;
- (e) review the estimates of annual revenue and expenditure of the Fund and recommend them to the Cabinet Secretary responsible for Sports for approval and submission to the Cabinet Secretary responsible for finance;
- (f) review guidelines on the fund priorities and criteria for allocation and disbursement of funds to implementing agencies in furtherance of the objects of the Fund;
- (g) monitor and evaluate the programmes and activities under the Fund;
- (h) facilitate and develop sectoral linkages to the Fund;
- (i) review the performance of the Fund and make recommendations on the operations of the Fund to the administrator of the Fund;
- (j) review and approve the financial statements of the Fund before submission to the Auditor General;
- (k) review policy on the management of assets, equipment and all properties under the Fund;
- (l) receive reports on the performance of the Fund; and
- (m) any other activity that in the opinion of the Board, will promote and facilitate the realization of the objects and purposes of the Fund.

(2) The Oversight Board shall prepare and submit a quarterly report to the Cabinet Secretary responsible for finance on the performance of the Fund with copies to the Cabinet Secretaries responsible for sports, arts, health and education.

(3) The Cabinet Secretary responsible for finance shall prepare and submit a quarterly report to the Cabinet on the performance of the Fund.

[Subsidiary]

Administration of Fund.

11. (1) The administrator of the Fund shall be the accounting officer responsible for matters relating to sports or any other person designated by the Cabinet Secretary, in writing, for that purpose.

(2) The Administrator of the Fund shall—

- (a) open and operate a separate bank account or accounts at the Central Bank of Kenya or a bank to be approved by the Board and the National Treasury in accordance with the Act;
- (b) supervise and control the administration of the Fund;
- (c) consult with the Board on matters relating to the administration of the Fund;
- (d) cause to be kept proper books of accounts and other books and records relating to all activities and undertakings financed from the Fund;
- (e) prepare, sign and transmit to the Auditor-General, upon the approval by the Board, in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund and submit a copy to the National Treasury and the statements shall be prepared in such a manner as the Accounting Standards Board shall prescribe in accordance with the provisions of the Public Finance Management Act (Cap. 412A) and Public Audit Act (Cap. 412B);
- (f) furnish additional information to the Auditor-General as he or she may consider to be proper and sufficient for the purpose of examination and audit by the Auditor-General in accordance with the provisions of the Public Audit Act (Cap. 412B);
- (g) prepare a quarterly report on financial and non-financial activities of the Fund in accordance with the provisions of the Public Finance Management Act (Cap. 412A), and as may be prescribed from time to time by the Accounting Standards Board and submit the report to the Board for approval and subsequent transmission to the National Treasury and the Controller of Budget; and
- (h) be the custodian of all the assets, equipment and properties under the Fund.

(3) Every statement of account shall include details of the balance between the assets and liabilities of the Fund, and shall indicate the financial status of the Fund as at the end of the quarter concerned.

Secretariat.

12. (1) There shall be a secretariat of the Fund which shall consist of a Chief Executive Officer and such other staff as are necessary for the proper discharge of the functions of the Fund.

(2) The Chief Executive Officer and other staff of the secretariat shall be appointed competitively in consultation with the Public Service Commission.

(3) The Chief Executive Officer shall, subject to the direction of the Administrator, be responsible for the day-to-day running of the affairs of the Fund.

(4) Parliament shall appropriate administration expenses not exceeding three percent of the annual budgetary allocations of the Fund.

Funding eligibility criteria.

13. A sports organization, professional sports person or government implementing agency shall be eligible to apply for funding from the Fund if—

- (a) in the case of a sports organization if the organization—
 - (i) is registered under the Sports Act (Cap. 223);
 - (ii) has an annual work programme aligned to the strategic plan of the organizations and the medium term plan approved by the governing body of the sports organization;
 - (iii) has, in the case of an infrastructure development project, prepared project designs, plans and bills of quantities, approved by the governing body and the requisite regulatory approvals from relevant government institutions; and
 - (iv) meets any other criteria prescribed by the Board.
- (b) for a professional sportsperson, he or she—
 - (i) has a valid license issued under the Sports Act (Cap. 223);
 - (ii) has met the criteria for participation for competition in the respective sport, nationally, regionally and internationally; and
 - (iii) meets any other criteria prescribed by the Board.
- (c) for a government implementing agency the agency—
 - (i) is established by legislation;
 - (ii) has an annual work programme aligned to the strategic plan of the agency and the medium term plan approved by the governing body of the government implementing agency;
 - (iii) has, in the case of an infrastructure development project, prepared project designs, plans and bills of quantities, approved by the governing body and the requisite regulatory approvals from relevant government institutions; and
 - (iv) meets any other criteria prescribed by the Board.

Application for funding.

14. (1) The Administrator of the Fund shall by the 30th August of each year issue a budget circular for the Fund to the eligible persons indicating—

- (a) the ceilings for funding under sports, arts and social development;
- (b) priority programmes, projects and activities to be funded in that financial year; and
- (c) any other information that the Board may consider necessary.

(2) A person who wishes to receive funding from the Fund and meets the criteria set out under regulation 13 shall at least six months before the commencement of a financial year apply to the Administrator of the Fund in such a manner as may be prescribed by the Board.

[Subsidiary]

(3) An application for funding under paragraph (2) shall be accompanied by—

- (a) in case of a sports organisation—
 - (i) the certificate of registration issued under the Sports Act (Cap. 223);
 - (ii) the minutes of a properly constituted meeting of the governing body of the organization containing the resolution to apply for funding from the Fund;
 - (iii) an annual work programme aligned to the strategic plan of the organizations and the medium term plan approved by the governing body of the sports organization;
 - (iv) the project designs, plans and bills of quantities, approved by the governing body and the requisite regulatory approvals from relevant government institutions, where applicable;
 - (v) a statutory declaration of programmes funded through other sources;
 - (vi) the details and signatories of the bank account in the name of the organization where the funds shall be channeled; and
 - (vii) any other information as may be required by the Board.
- (b) in the case of a professional sportsperson—
 - (i) a valid licence issued under the Sports Act (Cap. 223);
 - (ii) proof that he or she has met the criteria for participation for competition in the respective sport, nationally, regionally and internationally;
 - (iii) a statutory declaration of his or her programmes funded through other sources;
 - (iv) a written confirmation from the accounting officer responsible for matters relating to sports that the professional sportsperson has met the criteria set under paragraph (ii); and
 - (v) the details and signatories of the bank account where the funds shall be channeled;
- (c) in the case of a government implementing agency—
 - (i) a copy of the legislation establishing the agency;
 - (ii) an annual work programme aligned to the strategic plan of the agency and the medium term plan approved by the governing body of the government implementing body;
 - (iii) the minutes of a properly constituted meeting of the governing body of the government implementing agency containing the resolution to apply for funding from the Fund;
 - (iv) the project designs, plans and bills of quantities, approved by the governing body and the requisite regulatory approvals from relevant government institutions, where applicable;
 - (v) a statutory declaration of programmes funded through other sources;
 - (vi) the details and signatories of the bank account in the name of the agency where the funds shall be channeled; and
 - (vii) any other information as may be required by the Board.

Fund disbursements.

15. (1) The funds under the Fund shall be disbursed under the following conditions—

- (a) all disbursements from the Fund shall be approved and recorded in minutes of the Board;

- (b) disbursements from the Fund shall be to support the objects and purpose of this Fund;
 - (c) transfers to defray the expenses in respect of the administration of the Fund shall be as approved by the Board for the respective financial year;
 - (d) the Board shall set out other conditions and requirements for release of funds, to ensure efficient and effective management of resources.
- (2) A recipient shall—
- (a) submit quarterly and annual progress reports of the programmes, projects and activities funded by the Fund; and
 - (b) allow staff of the secretariat to monitor and evaluate programmes, projects and activities funded by the Fund.
- (3) A recipient shall return any unutilized funds disbursed in accordance with paragraph (1) where—
- (a) the purpose for which the funds were disbursed was not undertaken; or
 - (b) the purpose for which the funds were disbursed was undertaken but the funds were not fully utilized; or
 - (c) savings are realized as a result of change in circumstances.
- (4) Unutilized funds returned under paragraph (2) shall be recorded as receipts of the Fund.
- (5) A recipient who fails to comply with paragraph (2) and (3) shall not be eligible for any subsequent disbursement until full compliance.

Investment of funds.

16. The Administrator may, with the approval of the Board, invest any of the funds of the Fund which are not immediately required for its purposes in accordance with the provisions of the Public Finance Management Act (Cap. 412A).

Retention of receipts.

17. All receipts, earnings and accruals to the Fund, and the balance of the Fund at the close of each financial year, shall be retained by the Fund for use for the purpose for which the Fund is established.

Application of Government regulations and procedures.

18. Subject to the provisions of the Act, existing government regulations and procedures shall apply in the administration of the Fund.

Preparation and submission of work plans, etc.

19. The Administrator of the Fund shall prepare a work plan, projects and quarterly reports in respect of a financial year and in preparing the work plan, projects and quarterly reports and ensure the work plan, projects and quarterly reports—

- (a) contain information on the financial and non-financial performance of the Fund; and
- (b) are in a form that complies with the standards prescribed and published by the Accounting Standards Board from time to time.

[Subsidiary]

Approval of reports.

20. The work plans, projects, procurement plans and quarterly reports shall be prepared by the administrator of the Fund before submission to the Board for approval.

Annual reports.

21. (1) The administrator of the Fund shall prepare annual financial and non-financial reports in accordance with the provisions of the Public Finance Management Act (Cap. 412A) and as may be prescribed from time to time by the Accounting Standards Board.

(2) In addition, the administrator of the Fund shall prepare an annual general performance report of the Fund to be submitted with the report under paragraph (1).

(3) The annual financial and non-financial statements under paragraph (1) shall be approved by the Board and submitted to the Auditor-General for audit within three months after the end of the financial year in accordance with the Public Audit Act (Cap. 412B) and a copy thereof submitted to the Cabinet Secretary responsible finance, Cabinet Secretary responsible for sports and arts and Cabinet Secretary responsible for health.

Offences and Penalties.

22. A person who misappropriates any funds or assets from the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in these Regulations, commits an offence and shall, upon conviction, be liable to imprisonment for a term of not less than five years or to a fine not exceeding ten million shillings or to both.

Winding-up of the Fund.

23. (1) In the event of winding up of the Fund, the administrator of the Fund shall pay any amount remaining in the Fund into the National Exchequer Account for the credit of the national government while other assets of the Fund shall be transferred to the Ministry for the time being responsible for matters relating to sports.

(2) The administrator of the Fund shall prepare the final winding up report not later than six months from the date of the decision to wind up the Fund and submit the financial and non-financial reports to the Auditor-General for audit with a copy to the National Treasury.

(3) The Auditor-General shall after audit, submit the final report to the National Assembly within three months of the receipt of the initial report under paragraph (2).

Revocation of LN 174 of 2018.

24. The Public Finance Management (Sports, Arts and Social Development Fund) Regulations (L.N. 174/2018) are revoked.

THE PUBLIC FINANCE MANAGEMENT (TOURISM PROMOTION FUND) REGULATIONS

ARRANGEMENT OF REGULATIONS

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THE PUBLIC FINANCE MANAGEMENT (TOURISM PROMOTION FUND) REGULATIONS

[L.N. 140/2018]

Citation.

1. These Regulations may be cited as the Public Finance Management (Tourism Promotion Fund) Regulations.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

"Board" means the Oversight Board established under regulation 17;

"Cabinet Secretary" has the meaning assigned to it under section 2 of the Act;

"Fund" means the Tourism Promotion Fund established under regulation 3 of these Regulations;

"Officer Administering the Fund" means the Principal Secretary for the time being responsible for matters relating to tourism;

"operational and maintenance expenses" means moneys included in the approved annual budget of the Fund dedicated to meeting the routine administrative expenses of the Secretariat;

"plugging projects" means projects which support the development, promotion and branding of tourism in Kenya;

"tourism events" means natural phenomena or human scheduled activity which attract visitors to a particular area as organizers, participants, spectators or service providers to support the activity or a combination of several purpose of engagement, including wildebeest migration, observation of eclipse, exhibition, conferences, sporting events, cultural festivals and dances;

"tourism implementing agency" means a government agency involved in the development, promotion and branding of tourism in Kenya;

"tourism niche product" means an attraction, good or service of special appeal and of specific interest to a particular market segment;

"tourism product" means an attraction, good or service which contributes to the total visitor or tourist experience in a destination, including wildlife, culture, rivers, beaches, historical sites, museums, hotels and artifacts.

Establishment of the Fund.

3. There is established a fund to be known as the Tourism Promotion Fund which shall operate under the budgeting, accounting, reporting and auditing framework of the Act.

Capital of the Fund.

4. The initial capital of the Fund shall be 200 million shillings appropriated by Parliament in the financial year 2018/19.

Object and purpose.

5. (1) The object and purpose of the Fund shall be to provide funds to support development, promotion and branding of tourism sector.

(2) Without prejudice to the generality of paragraph (1) of this regulation, the Fund shall provide for—

- (a) financing development, promotion and branding programmes and initiatives in relation to tourism products, including tourism niche products and tourism events;
- (b) financing development, promotion and branding of Kenya in specific local, regional and international market segments;
- (c) financing tourism data capture, analysis and dissemination of the same and any other related research which may include deployment of technology based applications;
- (d) financing development of tourism facilities and establishments in areas where the private sector is unable or unwilling to develop, but with a high potential for tourism promotion and branding;
- (e) co-financing of tourism promotion projects with the county governments on the basis of an agreed ratio of matching grants;
- (f) funding programmes and initiatives for tourism safety and security geared towards development, promotion and branding of tourism sector;
- (g) financing development of innovations and inventions which promote tourism development, promotion and branding;
- (h) funding of plugging projects which contribute to development, promotion and branding of tourism sector;
- (i) financing programmes and initiatives geared towards tourism intelligence and information gathering for purposes of developing, promoting and branding tourism in Kenya; and
- (j) standard development and capacity building in the tourism sector.

Sources of funds.

6. The Fund shall consist of—

- (a) proceeds realised under section 3 of the Air Passengers Service Charge Act (Cap. 475);
- (b) moneys appropriated by the National Assembly for the purpose of the Fund;
- (c) income from investments of any surplus funds in the Fund;
- (d) interest accruing to the Fund;
- (e) grants, donations or other bequests made to the Fund;
- (f) moneys paid into the Fund from any other source as may from time to time be approved by the Cabinet Secretary; and
- (g) any other moneys as may be provided for in an Act of Parliament.

Payment out of the Fund.

7. (1) There shall be paid out of the Fund monies in respect of any expenses incurred in pursuant of the objects and purposes for which the Fund is established.

(2) The expenditure incurred out of the Fund shall be on the basis of and limited to annual work programmes and cost estimates which shall be prepared by the Officer Administering the Fund, and approved by the Board at the beginning of the financial year to which they relate.

[Subsidiary]

(3) Any revision of the approved annual work programmes, and of any cost estimate, shall be referred to the Board for approval.

Retention of funds.

8. The earnings of, or accruals to the Fund shall be retained in the Fund, and shall be spent only for the objects and purposes for which the Fund is established.

Funding eligibility criteria.

9. A tourism implementing agency shall be eligible to apply for funding from the Fund if—

- (a) in the case of a state corporation or a government agency—
 - (i) has an annual work programme aligned to the strategic plan of the corporation or agency and the medium term plan approved by the governing body of the state corporation or agency;
 - (ii) has, in relation to an infrastructure development project, prepared project designs, plans and bills of quantities, approved by the governing body and the requisite regulatory approvals from relevant government institutions; and
 - (iii) meets any other criteria set out by the Board.
- (b) in case of a Ministry or a State Department, that Ministry or State Department—
 - (i) has an annual work programme aligned to the strategic plan of the Ministry or state department and the medium term plan approved by the Cabinet Secretary responsible for that Ministry or State Department;
 - (ii) has, in relation to an infrastructure development project, prepared project designs, plans and bills of quantities, approved by the Accounting Officer of that Ministry or State Department and the requisite regulatory approvals from relevant government institutions; and
- (iii) meets any other criteria set out by the Board.

Procedure for funding.

10. (1) The Officer Administering the Fund shall by the 30th August of each year issue a budget circular to the eligible persons indicating—

- (a) the ceilings for funding each objects of the Fund;
- (b) priority programmes, projects and activities to be funded in that financial year; and
- (c) any other information that the Board may consider necessary.

(2) A person who wishes to receive funding from the Fund and meets the criteria set out under regulation 9 shall at least, six months before the commencement of a financial year, apply to the Officer Administering the Fund in such a manner as may be specified by the Board.

(3) An application for funding under paragraph (2) shall be accompanied by—

- (a) in case of a state corporation or government agency—
 - (i) the minutes of a properly constituted meeting of the governing body of the state corporation or government agency containing the resolution to apply for funding from the Fund;
 - (ii) an annual work programme aligned to the strategic plan of the state corporation or government agency approved by the governing body of that

- corporation or agency and the Medium Term Plan approved by the Cabinet Secretary responsible for that state corporation or government agency;
- (iii) where the project is an infrastructure development project, the project designs, plans and bills of quantities, approved by the governing body and the requisite regulatory approvals from relevant government institutions, where applicable;
 - (iv) a statutory declaration of programmes funded through other sources, if any;
 - (v) the details and signatories of the bank account in the name of the state corporation or government agency where the funds shall be channeled; and
 - (vi) any other additional information as may be required by the Board.
- (c) in the case of a Ministry or State Department—
- (i) an annual work programme aligned to the strategic plan of that Ministry or State Department and the Medium Term Plan;
 - (ii) a written confirmation from the accounting officer responsible for that Ministry or State Department that there is no other funding for the same programme, project or activity;
 - (iii) where it is an infrastructure development project, the project designs, plans and bills of quantities, approved by the Accounting Officer of that Ministry or State Department and the requisite regulatory approvals from relevant government institutions, where applicable;
 - (iv) an accounting officers' declaration of programmes funded through other sources, if any;
 - (v) the details and signatories of the bank account in the name of that Ministry or State Department where the funds shall be channeled; and
 - (vi) any other additional information as may be required by the Board.

(3) A maximum of ten *per centum* (10%) of the approved budget for each financial year shall be allocated annually by the Board, with the approval of the Cabinet Secretary for the time being responsible for matters relating to tourism based on the Medium Term Plan of that Ministry and the Cabinet Secretary for the National Treasury, to implement strategic interventions, programmes and initiatives through a tourism implementing agency.

Conditions for disbursements of funds.

11. (1) The funds shall only be disbursed if—

- (a) the disbursement is approved and recorded in minutes of the Board; and
- (b) the disbursement is to meet the expenses related to the objects and purpose of the Fund.

(2) The Board may set out other conditions and requirements for release of funds, to ensure efficient and effective management of resources.

(3) Moneys may additionally be disbursed out of the Fund where such disbursements—

- (a) relate to expenditures that did not form part of the approved budget for the financial year in accordance with provisions of the Act; and
- (b) have been approved by the Officer Administering the Fund and submitted to the Board for further approval.

(4) For purposes of paragraph (3) of this regulation, a supplementary budget shall be prepared by the Officer Administering the Fund and approved in accordance with the provisions of regulation 10, provided disbursement under the supplementary budget complies with the requirements of these Regulations.

[Subsidiary]

Obligations of the recipient of funds.

12. (1) A recipient of the funds shall—

- (a) submit quarterly and annual progress reports of the programmes, projects and initiatives funded by the Fund; and
- (b) allow staff of the secretariat to monitor and evaluate programmes, projects and initiatives funded by the Fund.

(2) A recipient of the funds shall return any unutilized funds disbursed in accordance with these Regulations where—

- (a) the purpose for which the funds were disbursed was not undertaken;
- (b) the purpose for which the funds were disbursed was undertaken but the funds were not fully utilized; or
- (c) savings are realized as a result of change in circumstances.

(3) Unutilized funds returned under paragraph (2) shall be recorded as receipts of the Fund.

(4) A recipient of the funds who fails to comply with paragraph (2) and (3) shall not be eligible for any subsequent disbursement until that person has fully complied with the provisions of these Regulations.

Request for payment from the Fund.

13. A tourism implementing agency shall only request for payments from the Fund where—

- (a) the project to be financed is procured in accordance with the Public Procurement and Asset Disposal Act (Cap. 412C);
- (b) the project to be financed is included in the approved estimates of revenue and expenditure for the tourism implementing agency; and
- (c) the requirements of regulation 27 are met.

Withholding of payments.

14. The Officer Administering the Fund may withhold payments due and owing to a tourism implementing agency where—

- (a) that tourism implementing agency fails to comply with the provisions of regulation 12;
- (b) the Officer Administering the Fund is of the opinion that the provisions of these Regulations have not been complied with; or
- (c) a tourism implementing agency provides information justifying the proposed withholding with approval of the agency governing body, and the Board approves the withholding.

Imposition of sanctions.

15. The Board, with the prior approval of the Cabinet Secretary for the time being responsible for matters relating to tourism and the Cabinet Secretary to the National Treasury, may—

- (a) impose such penalties, including the suspension of funding allocations, as it may direct the tourism implementing agencies which fail to comply with any of the provisions under these Regulations; or

- (b) take such remedial, supplementary or alternative measures to ensure the performance of the functions of tourism implementing agencies which persistently fail to discharge their functions under these Regulations.

Applications for payments out of the fund.

16. (1) Applications for payment out of the Fund shall be made by a tourism implementing agency in a format specified by the Board at least twenty-one (21) days before the due date.

(2) Any applications for payment made under paragraph (1) of this regulation shall be supported by documents required under these Regulations which shall include —

- (a) the name and address of the payee (tourism implementing agency);
- (b) the bank account details of the payee;
- (c) specific project to be financed; and
- (d) any other additional information as may be deemed necessary by the tourism implementing agency.

(3) Any application under these Regulations shall be signed by an accounting officer or the chief executive officer of a tourism implementing agency or an officer delegated by him or her, in writing.

Establishment and composition of the Board.

17. (1) There is established a board to be known as Oversight Board for the Fund which shall consist of—

- (a) the Cabinet Secretary responsible for matters relating to tourism, who shall be the chairperson of the Board, or in his or her absence, the Principal Secretary responsible for matters relating to tourism;
- (b) the Principal Secretary responsible for matters relating to tourism;
- (c) the Principal Secretary responsible for matters relating to finance;
- (d) the Principal Secretary responsible for matters relating to Transport;
- (e) the Principal Secretary responsible for matters relating to Culture;
- (f) the Principal Secretary responsible for matters relating to wildlife;
- (g) the Principal Secretary responsible for matters relating to Internal Security;
- (h) two persons of opposite gender appointed by the Cabinet Secretary responsible for matters relating to tourism in accordance with Article 27 of the Constitution.

(2) A person shall not be appointed under paragraph (1) (h) of this regulation, unless that—

- (a) holds a university degree recognized in Kenya;
- (b) has not less than fifteen years' experience in the relevant field; and
- (c) meets the requirements of Chapter Six of the Constitution.

(3) A person appointed under paragraph (1)(h) of this regulation shall serve for a period of three (3) years, and the period may be renewed for a further final term of three (3) years.

Functions of the Board.

18. The functions of the Board shall be to—

- (a) advise the Cabinet Secretary on the funding requirements of the Fund;

[Subsidiary]

- (b) review and adopt the estimates of annual revenue and expenditure of the Fund and recommend them to the Cabinet Secretary for the time being responsible for matters relating to tourism for concurrence and onward transmission to the Cabinet Secretary for approval;
- (c) determine the allocation of financial resources from the Fund required by the tourism implementing agencies for the development, promotion and branding of tourism sector in Kenya;
- (d) ensure that the annual estimates of revenue and expenditure for the Fund include retention funds for the preceding financial year which shall be revoted;
- (e) ensure that only projects included in the tourism implementing agency annual programme are promoted for funding under these Regulations;
- (f) advise the Cabinet Secretary on amounts and timing for the fund transfers into the Fund;
- (g) approve and review the investment of surplus funds from the Fund;
- (h) advise the Cabinet Secretary on any additional sources of funds for the Fund;
- (i) approve the financial statements prepared by the Officer Administering the Fund before submission to the Auditor-General; and
- (j) approve the non-financial reports of the Fund before submitting them to the Cabinet Secretary responsible for tourism for onward transmission to the National Treasury.

Appointment of chief executive officer.

19. (1) The Board shall, through a competitive recruitment process, identify and shortlist three successful persons in order of merit and forward the names to the Cabinet Secretary for the time being responsible for matters relating to tourism to appoint one of them to be the Chief Executive Officer of the Fund.

(2) A person shall not be qualified for appointment as the chief executive officer under paragraph (1) unless that person—

- (a) holds at least a degree from a university recognized in Kenya in the field of tourism, wildlife, economics, finance, natural resources or any other relevant field;
- (b) has at least ten years practical experience in senior management capacity; and
- (c) satisfies the requirements of Chapter Six of the Constitution.

(3) The chief executive officer of the Fund shall hold office for a term of three years, but shall be eligible for re-appointment for one further term of three years.

(4) The chief executive officer shall be the Secretary to the Board and shall be responsible for the day to day running of the Fund including the staff of the secretariat of the Fund.

Officer Administering the Fund.

20. (1) The Principal Secretary responsible for matters relating to tourism shall be the Officer Administering the Fund.

(2) The functions of the Officer Administering the Fund shall be to—

- (a) supervise and control the administration of the Fund based on a five year tourism investment programme approved by the Cabinet Secretary for tourism and the Cabinet Secretary for the National Treasury;

- (b) recommend the allocation of financial resources from the Fund required by the tourism implementing agencies for the development, promotion and branding of tourism sector in Kenya;
- (c) prepare estimates of annual revenue and expenditure of the Fund relating to its purpose and object and operational and maintenance expenses and submit it to the Board for approval;
- (d) establish proper systems of internal control and management in accordance with the provisions of the Act and these Regulations;
- (e) advise and consult the Board on matters relating to the administration of the Fund;
- (f) co-ordinate monitoring and evaluation of tourism development, promotion and branding projects financed from the Fund;
- (g) advise and consult with the Cabinet Secretary on matters relating to the administration of the Fund as may, from time to time, be necessary;
- (h) keep proper books of accounts and other books and records relating to the Fund and the activities financed under the Fund and submit them to the Board;
- (i) keep custody of the Funds' assets, equipment and properties under the Fund;
- (j) prepare financial and non-financial performance report of the Fund and submit it to the Board for approval, and upon approval transmit a copy to the National Treasury and Ministry for matters relating to tourism;
- (k) prepare the annual financial statements and submit them to the Board for approval before submission to the Auditor-General with a copy to the National Treasury and Ministry for matters relating to tourism;
- (l) furnish any additional information which is proper and sufficient for the proper discharge of the mandate of the Auditor-General; and
- (m) undertake any other duty as the Board may assign through resolutions.

(3) When discharging the functions under paragraph (2) of this regulation, the Officer Administering the Fund shall—

- (a) comply with the ordinary budget cycle in the preparation of estimates for the Fund; and
- (b) submit estimates of revenue and expenditure to the Cabinet Secretary by the 31st January of the preceding financial year for approval.

Power of Officer Administering the Fund.

21. The Officer Administering the Fund shall have power to—

- (a) access any project related data he or she may need from tourism implementing agency in furtherance of his or her functions;
- (b) call for any additional information with respect to requests for payments out of the Fund; and
- (c) cause for a monitoring and evaluation exercise to be done to a tourism implementing agency projects funded from the Fund, and with the approval of the Board.

Secretariat support for Officer Administering the Fund.

22. (1) The Board shall designate a secretariat to support the operations of the Fund which shall be headed by the Chief Executive Officer.

[Subsidiary]

(2) The Secretariat shall consist of such staff as the Board with the approval of the Cabinet Secretary responsible for matters relating to tourism may, in consultation with the Public Service Commission, consider necessary for the proper performance of the functions of the Fund under these Regulations.

Accounts of the Fund.

23. (1) The Officer Administering the Fund shall cause an account in the name of the Fund to be maintained for the Fund in a bank within the Republic of Kenya in line with section 28 of the Act and any Regulations made thereunder.

(2) All monies payable into the Fund shall be received into the bank account of the Fund.

(3) The Fund's accounts shall be operated by the Officer Administering the Fund and two other persons nominated by the Cabinet Secretary from the Fund's secretariat.

(4) The Officer Administering the Fund may open and maintain other accounts for the following purposes—

- (a) payments for development, promotion and branding of tourism sector;
- (b) payments of operational and maintenance expenses; and
- (c) receiving receipts of the Fund and unutilized funds by tourism implementing agencies.

Overdrawn accounts.

24. The Officer Administering the Fund shall ensure the accounts of the Fund are not overdrawn.

Advances to the Board.

25. (1) The Board shall ensure that in any financial year expenditure and commitments from the Fund shall not exceed the annual income of the Fund together with any surplus income brought forward from a previous year.

(2) If, in exceptional circumstances, the income from the Fund or other funds together with any surplus income brought forward from a previous year is insufficient to meet the actual or estimated liabilities of the Board and the Fund, the Cabinet Secretary to the National Treasury may, with the approval of Parliament, make advances to the Board and such advances shall be made on such terms and conditions, whether as to repayment or otherwise, as the Cabinet Secretary to the National Treasury may determine:

Provided that any such advance shall be repaid from the income of the Fund.

Investments of the funds.

26. The Board may with the consent of the Cabinet Secretary to the National Treasury and the Cabinet Secretary responsible for matters relating to tourism, invest any of its surplus funds in Government securities.

Financial and procurement Regulations.

27. The Fund shall be governed by all relevant financial and procurement laws and regulations as applicable.

Review of performance of the Fund.

28. (1) The Cabinet Secretary shall at the elapse of ten years from the date of commencement of these Regulations cause a review to be conducted on the performance of the Fund in accordance with the requirements of the Act and Regulations thereunder.

(2) The review shall determine whether the Fund has met the objectives for which it was established.

(3) The report on the review shall be submitted to the Cabinet and Parliament for approval.

Annual estimates.

29. (1) At least six months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Board for that year.

(2) The annual estimates shall make provision for all estimated revenues into and expenditures from the Fund for the financial year and in particular, the estimates shall provide for—

- (a) revenues projected to be received by the Fund from the sources of funds provided for under these Regulations;
- (b) moneys allocated to tourism implementing agencies under these Regulations;
- (c) monies for the administration expenses of the Fund;
- (d) the payment of the salaries, allowances and other charges in respect of the staff of the Board, where applicable;
- (e) the payment of pensions, gratuities and other charges in respect of the staff Fund, where applicable; and
- (f) the proper maintenance of the assets, equipment and properties under the Fund.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval and thereafter, the Board shall not increase or decrease the annual estimates unless a supplementary budget has been approved in the same manner.

Quarterly reports.

30. (1) The Officer Administering the Fund shall prepare quarterly financial and non-financial reports in accordance with the format prescribed by the Public Sector Accounting Standards Board and the Act and submit it to the Board for approval.

(2) Upon approval, under paragraph (1), the Officer Administering the Fund shall submit the report to the National Treasury and Ministry responsible for matters relating to tourism.

Accounts and audit.

31. (1) The Board shall cause to be kept all proper books and records of account of the income, expenditure, assets, equipment and properties of the Fund.

(2) Within a period of three months from the end of each financial year, the Board shall submit to the Auditor-General with a copy to the National Treasury, the accounts of the Fund together with—

- (a) a statement of the income and expenditure of the Fund during the financial year; and
- (b) a statement of the assets and liabilities of the Fund on the last day of that financial year.

(3) The financial statements prepared under paragraph (2) shall be in accordance with the prescribed format by the Public Sector Accounting Standards Board and the Act.

(4) The accounts of the Fund shall be audited and reported upon in accordance with the Public Audit Act (Cap. 412B).

[Subsidiary]

(5) The Board shall inform and keep the public informed of its activities and operations through regular publications and such activities and operations shall be accessible to the public unless there are reasons of commercial confidentiality or security justifying exclusions.

Administration expenses.

32. (1) The administrative expenses of the Fund shall not exceed three *per centum* of the approved budget of each financial year.

(2) Despite the provisions of paragraph (1) the Board may, with the concurrence of the Cabinet Secretary for the time being responsible for matters relating to tourism, recommend increase of the administrative expenses from three *per centum* to five *per centum* where there are justifiable reasons to the Cabinet Secretary for approval for that particular financial year.

Offences and Penalties.

33. A person who misappropriates any funds or assets from the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in these Regulations, commits an offence and shall, upon conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings or to both.

Winding-up of the Fund.

34. (1) The Cabinet Secretary may wind-up the Fund with the approval of the National Assembly where the Cabinet Secretary considers that the Fund has successfully completed the specific objectives for which it was created.

(2) On winding up of the Fund—

- (a) the officer Administering the Fund shall call on the tourism implementing agencies to submit any valid outstanding obligations and commitments for payment;
- (b) the Officer Administering the Fund shall pay any amount remaining in the Fund into the National Exchequer Account for the credit of the national government;
- (c) the Cabinet Secretary shall pay any deficit in the Fund from the funds of the national government in the National Exchequer Account with the approval of the National Assembly; and
- (d) assets, equipment and properties other than cash of the Fund shall be transferred to the Ministry for the time being responsible for matters relating to tourism.

(3) Within three months upon the decision to wind up the Fund, the Officer Administering the Fund shall prepare final financial and non-financial statements of the Fund and submit them to the Board for approval.

(4) Upon approval under paragraph (3), the administrator shall submit the final financial and non-financial statements to the Cabinet Secretary.

(5) The Cabinet Secretary shall submit a final statement of accounts to Parliament and to the Auditor-General for audit within three months from the date of the decision to wind up the Fund.

THE PUBLIC FINANCE MANAGEMENT (BIASHARA KENYA FUND) REGULATIONS

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THE PUBLIC FINANCE MANAGEMENT (BIASHARA KENYA FUND) REGULATIONS

[L.N. 78/2019]

Citation.

1. These Regulations may be cited as the Public Finance Management (Biashara Kenya Fund) Regulations.

Interpretation.

2. In these Regulations, unless the context otherwise requires —

"Advisory Board" means the Advisory Board constituted under regulation 8;

"Administrator" means the Principal Secretary of the State Department for the time being responsible for gender affairs or any other person designated by the Cabinet Secretary, in writing for that purpose;

"borrower" means a person in receipt of a loan out of the Fund;

"Cabinet Secretary" has the same meaning as assigned in section 2 of the Public Finance Management Act (Cap. 412A);

"enterprise" means an undertaking or a business concern, whether formal or informal, engaged in the production of goods, provision of services or trade in goods;

"financial intermediary" means a credible commercial bank, microfinance institution, registered non-governmental organisations involved in financing or savings and credit co-operative organisations;

"financial year" means the period of twelve months ending on the 30th June in each year;

"Fund" means the Biashara Kenya Fund established under regulation 3;

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

- (a) whose annual turnover ranges between ten million and one hundred million shillings;
- (b) which employs between fifty and two hundred and fifty people; and
- (c) whose total assets and financial investments is between fifty million and two hundred and fifty million shillings,

"micro enterprise" means a firm, trade, service, industry or a registered business —

- (a) whose annual turnover does not exceed two million shillings;
- (b) which employs less than ten people; and
- (c) whose total assets and financial investments does not exceed ten million shillings;

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

- (a) whose annual turnover ranges between two million and ten million shillings; and
- (b) which employs between ten and fifty people; and
- (c) whose total assets and financial investments is between ten million and fifty million shillings;

"women" means female persons aged eighteen years and above; and

"youth" has the meaning assigned to it under Article 260 of the Constitution.

PART II – ESTABLISHMENT OF THE FUND

Establishment of the Fund.

3. There is established a Fund to be known as the Biashara Kenya Fund.

Sources of the Fund.

4. The Fund shall consist of –

- (a) monies appropriated by Parliament for the purposes of the Fund;
- (b) income-generated from the proceeds of the Fund;
- (c) income from investments made by the Fund;
- (d) grants, donations, bequests or other gifts made to the Fund; and
- (e) monies from any other source approved by the Cabinet Secretary.

Expenditure of the Fund.

5. (1) There shall be paid out of the Fund payments in respect of any expenses incurred in pursuance of the object and purpose for which the Fund is established.

(2) The expenditure incurred on the Fund shall be on the basis of, and limited to, annual budget estimates prepared by the Administrator of, the Fund and recommended by the Advisory Board to the Cabinet Secretary for the time being responsible for gender affairs for approval and submission to the Cabinet Secretary, at the beginning of the financial year to which they relate.

(3) Any revision of the approved budget estimates, and of any cost estimate, shall be referred to the Advisory Board and the Cabinet Secretary for approval.

Capital of the Fund.

6. The initial capital of the Fund shall be two billion shillings appropriated by Parliament in the financial year 2019/20 and additional capital of the Fund shall be made in the subsequent financial years' budgets.

Object and purpose of the Fund.

7. The object and purpose of the Fund shall be to –

- (a) expand access of finances in promotion of women, youth and persons with disability enterprises or groups and micro, small and medium enterprises for economic growth towards the realization of the goals of Vision 2030;
- (b) provide loans to credible commercial banks, micro-finance institutions, registered non-governmental organizations involved in financing, and savings and credit co-operative organizations for on-lending to women, youth and persons with disability enterprises or groups and micro, small and medium enterprises;
- (c) provide loans directly to women, youth and persons with disability enterprises or groups and micro, small and medium enterprises for entrepreneurship development;
- (d) attract and facilitate investment in micro, small and medium enterprises oriented infrastructure such as business, markets or business incubators that will be beneficial to youth, women, persons with disability enterprises or groups and micro, small and medium enterprises;
- (e) support women, youth and persons with disability enterprises or groups and micro, small and medium enterprises to develop linkages with large enterprises;

[Subsidiary]

- (f) facilitate marketing of products and services of youth, women, persons with disability enterprises or groups and micro, small and medium enterprises in both domestic, regional and international markets;
- (g) facilitate mainstreaming of the interests of the women, youth and persons with disability enterprises or groups and micro, small and medium enterprises in bilateral and international trade, investment and agreements;
- (h) support capacity building of the beneficiaries of the Fund and their institutions through training, incubation, mentorship, start-up support and promotion of innovation and development of products;
- (i) facilitate periodic market surveys and data analysis to identify industry opportunities for women, youth, persons with disability enterprises or groups and micro, small and medium enterprises; and
- (j) promote, develop and facilitate access to government procurement opportunities by women, youth and persons with disability enterprises or groups and micro, small and medium enterprises.

PART III – MANAGEMENT OF THE FUND

Advisory Board.

8. (1) There shall be a Board to be known as the Advisory Board which shall consist of—

- (a) a non-executive Chairperson appointed by the President;
- (b) the Principal Secretary of the National Treasury;
- (c) the Principal Secretary of the State Department for the time being responsible for gender affairs;
- (d) the Principal Secretary of the State Department for the time being responsible for matters relating to youth;
- (e) the Principal Secretary of the State Department for the time being responsible for matters relating to micro, small and medium enterprises; and
- (f) four other persons, not being public officers, appointed by the Cabinet Secretary for time being responsible for gender affairs.

(2) The members of the Advisory Board referred to in paragraphs (1)(b), (c), (d) and (e) may, in writing, appoint suitable persons to represent them at the meetings of the Advisory Board.

(3) The chairperson and members of the Advisory Board shall serve for a term of three years but shall, subject to satisfactory performance, be eligible for re-appointment for one further term of three years, for a maximum of two terms.

Qualifications of members of the Advisory Board.

9. (1) A person shall be eligible for appointment as the chairperson of the Advisory Board under regulation 8(1)(a) if that person —

- (a) possesses a university degree in a relevant field from a university recognised in Kenya;

- (b) has knowledge and experience of not less than ten years in a relevant field, including —
 - (i) strategic management;
 - (ii) enterprise development;
 - (iii) finance;
 - (iv) law;
 - (v) accounting;
 - (vi) engineering; or
 - (vii) economics;
- (c) meets the requirements of Chapter Six of the Constitution.

(2) A person shall be eligible for appointment as a member of the Advisory Board under regulation 8(1)(f) if that person —

- (a) has knowledge and relevant experience of not less than five years in relevant fields including enterprise development, capital fund management, financial management, gender and development, youth and development, policy formulation; and
- (b) meets the requirements of Chapter Six of the Constitution.

Functions of the Advisory Board.

10. The Advisory Board shall—

- (a) oversee the administration of the Fund;
- (b) advise the Cabinet Secretary for the time being responsible for gender affairs generally on the operations of the Fund;
- (c) receive reports on the performance of the Fund;
- (d) develop policy guidelines relating to disbursements by the Fund;
- (e) review the estimates of annual revenue and expenditure of the Fund and recommend them to the Cabinet Secretary for the time being responsible for gender affairs for approval and submission to the Cabinet Secretary responsible for finance;
- (f) review guidelines on the Fund priorities and criteria for allocation and disbursement of funds to beneficiaries in furtherance of the objects of the Fund;
- (g) monitor and evaluate the programmes and activities under the Fund;
- (h) review the performance of the Fund and make recommendations on the operations of the Fund to the administrator of the Fund;
- (i) review and approve the financial statements of the Fund before submission to the Auditor General;
- (j) review policy on the management of assets, equipment and all properties under the Fund;
- (k) prescribe other guidelines for use by the Fund;
- (l) mobilize resources for the Fund to be paid into the Fund; and
- (m) undertake any other activity that in the opinion of the Advisory Board, will promote and facilitate realization of the objects and purposes of the Fund.

[Subsidiary]

Administrator of the Fund.

11. (1) The Administrator of the Fund shall be the Principal Secretary of the State Department for the time being responsible for gender affairs or any other person designated by the Cabinet Secretary, in writing for that purpose.

(2) In administering the Fund, the Administrator shall —

- (a) open and operate a bank account with the approval of the Advisory Board and the National Treasury;
- (b) supervise and control the administration of the Fund;
- (c) consult with the Advisory Board on matters relating to the administration of the Fund;
- (d) cause to be kept books of accounts and other books and records in relation to the Fund of all activities and undertakings financed from the Fund;
- (e) enter into and sign agreements with all successful applicants or financial intermediaries providing affordable and accessible credit to women, youth, persons with disability enterprises and micro, small and medium enterprises;
- (f) open loan accounts of all successful applicants or financial intermediaries and maintain a record of the amount disbursed and the balance thereof;
- (g) prepare, sign and transmit to the Auditor-General, in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund and showing the expenditure incurred from the Fund, and such details as the Public Sector Accounting Standards Board may prescribe from time to time, in accordance with the provisions of the Public Finance Management Act (Cap. 412A) and Public Audit Act (Cap. 412B); and
- (h) furnish such additional information as may be considered proper and sufficient for the purpose of examination and audit by the Auditor-General in accordance with the provisions of the Public Audit Act (Cap. 412B).

(3) Every statement of account shall include details of the balance between the assets and liabilities of the Fund, and shall indicate the financial status of the Fund as at the end of the financial year to which they relate.

Secretariat and chief executive of the Fund.

12. There shall be a secretariat of the Fund, headed by a Chief Executive Officer, which shall be responsible for the day-to-day running of the affairs of the Fund, and the Chief Officer Executive and staff of the secretariat shall be appointed competitively in consultation with the Public Service Commission.

Eligibility criteria.

13. (1) A woman, youth, person with disability and micro, small and medium enterprise shall be eligible to apply for a loan for business purposes from the Fund if —

- (a) in the case of a group, is registered with the department of social services, Cooperatives or the Registrar of Societies; and
 - (i) at least seventy percent of the membership is aged between 18 and 35 years;
 - (ii) at least seventy per cent of the membership is composed of women aged eighteen years and above; or
 - (iii) at least seventy per cent of the membership is composed of persons with disability aged eighteen years and above.

- (b) in the case of an enterprise owned by women, youth, persons with disability, micro, small and medium enterprises registered under the Registration of Business Names Act (Cap. 499), Partnerships Act (Cap. 29), Companies Act (Cap. 486) or Co-operatives Act (Cap. 490);
- (c) in the case of unregistered business, the person shall have a business permit and a P. I. N issued by the Kenya Revenue Authority; or
- (d) in the case of a natural person, the person shall demonstrate that he or she is running an enterprise or intends to start an enterprise.

(2) Women, youth and persons with disability enterprises shall be given a preference while processing loans by the Fund.

Loan application procedure for direct lending by the Fund.

14. (1) A person who meets the criteria set out in regulation 13 and wishes to borrow a loan from the Fund shall make an application to the Administrator of the Fund in such a manner as may be prescribed by the Advisory Board.

(2) An application for a loan under subregulation (1) shall be accompanied by —

- (a) in case of a group —
 - (i) certificate of registration;
 - (ii) minutes of the group's resolution to borrow from the Fund where applicable; and
 - (iii) copies of identification documents of all the group members;
- (b) in the case of an enterprise owned by women, youth, persons with disability, micro, small and medium enterprises registered under the Registration of Business Names Act, Partnerships Act, Companies Act or Co-operatives Act—
 - (i) certificate of registration;
 - (ii) an official search document under the Companies Act, where applicable;
 - (iii) minutes of the resolution to borrow from the Fund where applicable; and
 - (iv) copies of identification documents of all the persons who own the enterprise; or
- (c) in a case of unregistered business—
 - (i) copies of personal identification documents; and
 - (ii) or business permit.
- (d) in case of a person who has demonstrated that he or she is running an enterprise or intends to start an enterprise, a national identification document.

(3) The Administrator of the Fund shall use the following criteria when evaluating a loan application —

- (a) first in first out principle of loan processing;
- (b) give preference to women, youth and persons with disability enterprises;
- (c) applicable loan threshold for each category of applicant based on the ratio of the maximum amount applied for to the annual turn-over of the applicant's business or projected annual turn-over for start-ups;
- (d) compliance with the provisions of sub regulation (2);
- (e) ability to repay the loan within the stipulated loan tenure;

[Subsidiary]

- (f) an undertaking by the beneficiary that the loan shall only be used for the purpose of the business applied for until the loan is repaid in full by the beneficiary;
 - (g) no borrower shall be eligible for more than one loan at a time from the Fund;
 - (h) an undertaking by the applicant to notify the Secretariat of the Fund of any change in physical address; and
 - (i) any other conditions as may be prescribed by the Advisory Board.
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THE PUBLIC FINANCE MANAGEMENT (TOURISM PROMOTION FUND) REGULATIONS

ARRANGEMENT OF REGULATIONS

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THE PUBLIC FINANCE MANAGEMENT (TOURISM PROMOTION FUND) REGULATIONS

[L.N. 24/2019]

Citation.

1. These Regulations may be cited as the Public Finance Management (Tourism Promotion Fund) Regulations.

Interpretation.

2. In these Regulations, unless the context otherwise requires —

"Administrator of the Fund" means the Chief Executive Officer designated as such under regulation 20 of these Regulations;

"Board" means the Oversight Board established under regulation 16;

"Cabinet Secretary" has the meaning assigned to it under section 2 of the Act;

"Fund" means the Tourism Promotion Fund established under regulation 3 of these Regulations;

"operational and maintenance expenses" means moneys included in the approved annual budget of the Fund dedicated to meeting the routine administrative expenses of the Secretariat;

"plugging projects" means projects which support the development, promotion and branding of tourism in Kenya;

"tourism events" means natural phenomena or human scheduled activity which attract visitors to a particular area as organizers, participants, spectators or service providers to support the activity or a combination of several purpose of engagement including wildebeest migration, observation of eclipse, exhibition, conferences, sporting events, cultural festivals and dances;

"tourism implementing agency" means a government agency involved in the development, promotion and branding of tourism in Kenya;

"tourism niche product" means an attraction, good or service of special appeal and of specific interest to a particular market segment; and

"tourism product" means an attraction, good or service which contributes to the total visitor or tourist experience in a destination including wildlife, culture, rivers, beaches, historical sites, museums, hotels and artefacts.

Establishment of the Fund.

3. There is established a fund to be known as the Tourism Promotion Fund which shall operate under the budgeting, accounting, reporting and auditing framework of the Act.

Capital of the Fund.

4. The initial capital of the Fund shall be 200 million shillings appropriated by Parliament in the financial year 2018/19.

Object and purpose.

5. (1) The object and purpose of the Fund shall be to provide funds to support development, promotion and branding of tourism sector.

(2) Without prejudice to the generality of paragraph (1) of this regulation, the Fund shall provide for—

- (a) financing development, promotion and branding programmes and initiatives in relation to tourism products including tourism niche products and tourism events;
- (b) financing marketing, promotion and branding of Kenya in specific local, regional and international market segments;
- (c) financing tourism data capture, analysis and dissemination of the same and any other related research which may include deployment of technology based applications;
- (d) financing development of tourism facilities and establishments in areas where the private sector is unable or unwilling to develop, but with a high potential for tourism promotion and branding;
- (e) co-financing of tourism development and promotion projects with the county governments on the basis of an agreed ratio of matching grants;
- (f) funding programmes and initiatives for tourism safety and security geared towards development, promotion and branding of tourism sector;
- (g) financing development of innovations and inventions which promote tourism development, promotion and branding;
- (h) funding of plugging projects which contribute to development, promotion and branding of tourism sector;
- (i) financing programmes and initiatives geared towards tourism intelligence and information gathering for purposes of developing, promoting and branding tourism in Kenya; and
- (j) standards development and capacity building in the tourism sector.

Sources of funds.

6. The Fund shall consist of—

- (a) proceeds realised under section 3 of the Air Passengers Service Charge Act (Cap. 475);
- (b) moneys appropriated by the National Assembly for the purpose of the Fund;
- (c) income from investments of any surplus funds in the Fund;
- (d) interest accruing to the Fund;
- (e) grants, donations or other bequests made to the Fund;
- (f) moneys paid into the Fund from any other source as may from time to time be approved by the Cabinet Secretary; and
- (g) any other moneys as may be provided for in an Act of Parliament.

Payment out of the Fund.

7. (1) There shall be paid out of the Fund monies in respect of any expenses incurred in pursuance of the objects and purposes for which the Fund is established.

(2) The expenditure incurred out of the Fund shall be on the basis of and limited to annual work programmes and cost estimates which shall be prepared by the Administrator of the Fund and approved by the Board at the beginning of the financial year to which they relate.

[Subsidiary]

(3) Any revision of the approved annual work programmes, and of any cost estimate, shall be referred to the Board for approval.

Funding eligibility criteria.

9. A tourism implementing agency shall be eligible to apply for funding from the Fund if—

- (a) in the case of a state corporation or a government agency—
 - (i) has an annual work programme aligned to the strategic plan of the corporation or agency and the medium term plan approved by the governing body of the state corporation or agency;
 - (ii) has, in the case of an infrastructure development project, prepared project designs, plans and bills of quantities, approved by the governing body and the requisite regulatory approvals from relevant government institutions; and
 - (iii) meets any other criteria set out by the Board.
- (b) in case of a Ministry or a State Department, that Ministry or State Department —
 - (i) has an annual work programme aligned to the strategic plan of the Ministry or state department and the medium term plan approved By the Cabinet Secretary responsible for that Ministry or State Department;
 - (ii) has, in the case of an infrastructure development project, prepared project designs, plans and bills of quantities, approved by the accounting officer of that Ministry or State Department and the requisite regulatory approvals from relevant government institutions; and
 - (iii) meets any other criteria set out by the Board.

Procedure for funding.

10. (1) The Administrator of the Fund shall by the 30th August of each year issue a budget circular to the eligible persons indicating—

- (a) the ceilings for funding each objects of the Fund;
- (b) priority programmes, projects and activities to be funded in that financial year; and
- (c) any other information that the Board may consider necessary.

(2) A person who wishes to receive funding from the Fund and meets the criteria set out under regulation 9 shall at least six months before the commencement of a financial year apply to the Administrator of the Fund in such a manner as may be specified by the Board.

(3) An application for funding under paragraph (2) shall be accompanied by—

- (a) In case of a state corporation or government agency —
 - (i) the minutes of a properly constituted meeting of the governing body of the state corporation or government agency containing the resolution to apply for funding from the Fund;
 - (ii) an annual work programme aligned to the strategic plan of the state corporation or government agency approved by the governing body of that corporation or agency and the Medium Term Plan approved by the Cabinet Secretary responsible for that state corporation or government agency;
 - (iii) where the project is an infrastructure development project, the project designs, plans and bills of quantities approved by the governing body and

- the requisite regulatory approvals from relevant government institutions, where applicable;
 - (iv) a statutory declaration of programmes funded through other sources, if any;
 - (v) the details and signatories of the bank account in the name of the state corporation or government agency where the funds shall be channeled; and
 - (vi) any other additional information as may be required by the Board
- (b) in the case of a Ministry or State Department—
- (i) an annual work programme aligned to the strategic plan of that Ministry or State Department and the Medium Term Plan;
 - (ii) a written confirmation from the accounting officer responsible for that Ministry or State Department that there is no other funding for the same programme, project or activity;
 - (iii) where it is an infrastructure development project, the project designs, plans and bills of quantities approved by the accounting officer of that Ministry or State Department and the requisite regulatory approvals from relevant government institutions, where applicable;
 - (iv) an accounting officers' declaration of programmes funded through other sources, if any;
 - (v) the details and signatories of the bank account in the name of that Ministry or State Department where the funds shall be channeled; and
 - (vi) any other additional information as may be required by the Board.

(4) A maximum of ten per centum (10%) of the approved budget for each financial year shall be allocated annually by the Board, with the approval of the Cabinet Secretary for the time being responsible for matters relating to tourism based on the Medium Term Plan of that Ministry and the Cabinet Secretary for the National Treasury, to implement strategic interventions, programmes and initiatives through a tourism implementing agency.

Conditions for disbursements of funds.

11. (1) The funds shall only be disbursed if—
- (a) the disbursement is approved and recorded in minutes of the Board; and
 - (b) the disbursement is to meet the expenses related to the objects and purpose of the Fund.
- (2) The Board may set out other conditions and requirements for release of funds, to ensure efficient and effective management of resources.
- (3) Moneys may additionally be disbursed out of the Fund where such disbursements—
- (a) relate to expenditures that did not form part of the approved budget for the financial year in accordance with provisions of the Act; and
 - (b) have been approved by the Administrator of the Fund and submitted to the Board for approval.
- (4) For purposes of paragraph (3) of this regulation, a supplementary budget shall be prepared by the Administrator of the Fund and approved in accordance with the provisions of regulation 10, provided disbursement under the supplementary budget complies with the requirements of these Regulations.

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Obligations of the recipient of funds.

12. (1) A recipient of the funds shall—

- (a) submit quarterly and annual progress reports of the programmes, projects and initiatives funded by the Fund; and
- (b) allow staff of the secretariat to monitor and evaluate programmes, projects and initiatives funded by the Fund.

(2) A recipient of the funds shall return any unutilized funds disbursed in accordance with these Regulations where—

- (a) the purpose for which the funds were disbursed was not undertaken;
- (b) the purpose for which the funds were disbursed was undertaken but the funds were not fully utilized; or
- (c) savings are realized as a result of change in circumstances.

(3) Unutilized funds returned under paragraph (2) shall be recorded as receipts of the Fund.

(4) A recipient of the funds who fails to comply with paragraph (2) and (3) shall not be eligible for any subsequent disbursement until that person has fully complied with the provisions of these Regulations.

Request for payment from the Fund.

13. A tourism implementing agency shall only request for payments from the Fund where—

- (a) the project to be financed is procured in accordance with the Public Procurement and Asset Disposal Act (Cap. 412C);
- (b) the project to be financed is included in the approved estimates of revenue and expenditure for the tourism implementing agency; and
- (c) the requirements of regulation 11 are met.

Establishment and composition of the Board.

14. (1) There is established a board to be known as Oversight Board for the Fund which shall consist of—

- (a) the Cabinet Secretary responsible for matters relating to tourism, who shall be the chairperson of the Board, or in his or her absence, the Principal Secretary responsible for matters relating to tourism;
- (b) the Principal Secretary responsible for matters relating to tourism;
- (c) the Principal Secretary responsible for matters relating to finance;
- (d) the Principal Secretary responsible for matters relating to Transport;
- (e) the Principal Secretary responsible for matters relating to Culture;
- (f) the Principal Secretary responsible for matters relating to wildlife;
- (g) the Principal Secretary responsible for matters relating to Internal Security;
- (h) two persons of opposite gender appointed by the Cabinet Secretary responsible for matters relating to tourism in accordance with Article 27 of the Constitution.

(2) A person shall not be appointed under paragraph (1)(h) of this regulation, unless that person—

- (a) holds a university degree recognized in Kenya;
- (b) has not less than fifteen years' experience in the relevant field; and
- (c) meets the requirements of Chapter Six of the Constitution.

(3) A person appointed under paragraph (1)(h) of this regulation shall serve for a period of three (3) years, and the period may be renewed for a further final term of three (3) years.

Functions of the Board.

15. The funds under the Fund shall be disbursed under the following conditions—

- (a) to advise the Cabinet Secretary on the funding requirements of the Fund;
- (b) to review and adopt the estimates of annual revenue and expenditure of the Fund and recommend them to the Cabinet Secretary for the time being responsible for matters relating to tourism for concurrence and onward transmission to the Cabinet Secretary for approval;
- (c) to determine the allocation of financial resources from the Fund required by the tourism implementing agencies for the development, promotion and branding of tourism sector in Kenya;
- (d) to ensure that the annual estimates of revenue and expenditure for the Fund include retention funds for the preceding financial year which shall be revoted;
- (e) to ensure that only projects included in the tourism implementing agency annual programme are promoted for funding under these Regulations;
- (f) to advise the Cabinet Secretary on amounts and timing for the fund transfers into the Fund;
- (g) to approve and review the investment of surplus funds from the Fund;
- (h) to advise the Cabinet Secretary on any additional sources of funds for the Fund;
- (i) to approve the financial statements prepared by the Administrator of the Fund before submission to the Auditor-General; and
- (j) to approve the non-financial reports of the Fund before submitting them to the Cabinet Secretary responsible for tourism for onward transmission to the National Treasury.

Withholding of payments.

16. The Administrator of the Fund may withhold payments due and owing to a tourism implementing agency where—

- (a) that tourism implementing agency fails to comply with the provisions of regulation 12;
- (b) the Administrator of the Fund is of the opinion that the provisions of these Regulations have not been complied with; or
- (c) a tourism implementing agency provides information justifying the proposed withholding with approval of the agency governing body; and
- (d) the Board approves the withholding.

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Imposition of sanctions.

17. The Board, with the prior approval of the Cabinet Secretary for the time being responsible for matters relating to tourism and the Cabinet Secretary to the National Treasury, may—

- (a) impose such penalties, including the suspension of funding allocations, as it may direct the tourism implementing agencies which fail to comply with any of the provisions under these Regulations; or
- (b) take such remedial, supplementary or alternative measures to ensure the performance of the functions of tourism implementing agencies which persistently fail to discharge their functions under these Regulations.

Applications for payments out of the fund.

18. (1) Applications for payment out of the Fund shall be made by a tourism implementing agency in a format specified by the Board at least 21 days before the due date.

(2) Any applications for payment made under paragraph (1) of this regulation shall be supported by documents required under these Regulations which shall include—

- (a) the name and address of the payee (tourism implementing agency);
- (b) the bank account details of the payee;
- (c) specific project to be financed; and
- (d) any other additional information as may be deemed necessary by the tourism implementing agency.

(3) Any application under these Regulations shall be signed by an accounting officer or the chief executive officer of a tourism implementing agency or an officer delegated by him or her, in writing.

Appointment of chief executive officer.

19. (1) The Board shall, through a competitive recruitment process, identify and shortlist three successful persons in order of merit and forward the names to the Cabinet Secretary for the time being responsible for matters relating to tourism to appoint one of them to be the Chief Executive Officer of the Fund.

(2) A person shall not be qualified for appointment as the chief executive officer under paragraph (1) unless that person—

- (a) holds at least a degree from a university recognized in Kenya in the field of tourism, wildlife, economics, finance, natural resources or any other relevant field;
- (b) has at least ten years practical experience in senior management capacity; and
- (c) satisfies the requirements of Chapter Six of the Constitution.

(3) The chief executive officer of the Fund shall hold office for a term of three years and shall be eligible for re-appointment for one further term of three years.

(4) The chief executive officer shall be the Secretary to the Board and shall be responsible for the day to day running of the Fund including the staff of the secretariat of the Fund.

Administrator of the Fund.

20. (1) The chief executive officer appointed under regulation 19 shall be the Administrator of the Fund.

(2) The functions of the Administrator of the Fund shall be to —

- (a) supervise and control the administration of the Fund based on a five year tourism investment programme approved by the Cabinet Secretary for tourism and the Cabinet Secretary for the National Treasury;
- (b) recommend the allocation of financial resources from the Fund required by the tourism implementing agencies for the development, promotion and branding of tourism sector in Kenya;
- (c) prepare estimates of annual revenue and expenditure of the Fund relating to its purpose and object and operational and maintenance expenses and submit it to the Board for approval;
- (d) establish proper systems of internal control and management in accordance with the provisions of the Act and these Regulations;
- (e) advise and consult the Board on matters relating to the administration of the Fund;
- (f) co-ordinate monitoring and evaluation of tourism development, promotion and branding projects financed from the Fund;
- (g) advise and consult with the Cabinet Secretary on matters relating to the administration of the Fund as may, from time to time, be necessary;
- (h) keep proper books of accounts and other books and records relating to the Fund and the activities financed under the Fund and submit them to the Board;
- (i) keep custody of the Funds' assets, equipment and properties under the Fund;
- (j) prepare financial and non-financial performance report of the Fund and submit it to the Board for approval, and upon approval transmit a copy to the National Treasury and Ministry for matters relating to tourism;
- (k) prepare the annual financial statements and submit them to the Board for approval before submission to the Auditor-General with a copy to the National Treasury and Ministry for matters relating to tourism;
- (l) furnish any additional information which is proper and sufficient for the proper discharge of the mandate of the Auditor-General; and
- (m) undertake any other duty as the Board may assign through resolutions.

(3) When discharging the functions under paragraph (2) of this regulation, the Administrator of the Fund shall—

- (a) comply with the ordinary budget cycle in the preparation of estimates for the Fund; and
- (b) submit estimates of revenue and expenditure to the Cabinet Secretary by the 31st January of the preceding financial year for approval.

Powers of Administrator of the Fund.

21. The Administrator of the Fund shall have power to —

- (a) access any project related data he or she may need from tourism implementing agency in furtherance of his or her functions;
- (b) call for any additional information with respect to requests for payments out of the Fund; and

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- (c) cause for a monitoring and evaluation exercise to be done to a tourism implementing agency projects funded from the Fund, and with the approval of the Board.

Secretariat support for Administrator of the Fund.

22. (1) The Board shall designate a secretariat to support the operations of the Fund which shall be headed by the Chief Executive Officer.

(2) The Secretariat shall consist of such staff as the Board with the approval of the Cabinet Secretary responsible for matters relating to tourism may, in consultation with the Public Service Commission, consider necessary for the proper performance of the functions of the Fund under these Regulations.

Accounts of the Fund.

23. (1) The Administrator of the Fund shall cause an account in the name of the Fund to be maintained for the Fund in a bank within the Republic of Kenya in line with section 28 of the Act and any Regulations made thereunder.

(2) All monies payable into the Fund shall be received into the bank account of the Fund.

(3) The Fund's accounts shall be operated by the Administrator of the Fund and two other persons nominated by the Cabinet Secretary from the Fund's secretariat.

(4) The Administrator of the Fund may open and maintain other accounts for the following purposes—

- (a) payments for development, promotion and branding of tourism sector;
- (b) payments of operational and maintenance expenses; and
- (c) receiving receipts of the Fund and unutilized funds by tourism implementing agencies.

Overdrawn accounts.

24. The Administrator of the Fund shall ensure the accounts of the Fund are not overdrawn.

Advances to the Board.

25. (1) The Board shall ensure that in any financial year expenditure and commitments from the Fund shall not exceed the annual income of the Fund together with any surplus income brought forward from a previous year.

(2) If, in exceptional circumstances, the income from the Fund or other funds together with any surplus income brought forward from a previous year is insufficient to meet the actual or estimated liabilities of the Board and the Fund, the Cabinet Secretary to the National Treasury may, with the approval of Parliament, make advances to the Board and such advances shall be made on such terms and conditions, whether as to repayment or otherwise, as the Cabinet Secretary to the National Treasury may determine:

Provided that any such advance shall be repaid from the income of the Fund.

Investments of the funds.

26. The Board may with the consent of the Cabinet Secretary to the National Treasury and the Cabinet Secretary responsible for matters relating to tourism, invest any of its surplus funds in Government securities.

Financial and procurement Regulations.

27. The Fund shall be governed by all relevant financial and procurement laws and regulations as applicable.

Review of performance of the Fund.

28. (1) The Cabinet Secretary shall at the elapse of ten years from the date of commencement of these Regulations cause a review to be conducted on the performance of the Fund in accordance with the requirements of the Act and Regulations thereunder.

(2) The review shall determine whether the Fund has met the objectives for which it was established.

(3) The report on the review shall be submitted to the Cabinet and Parliament for approval.

Annual estimates.

29. (1) At least six months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Board for that year.

(2) The annual estimates shall make provision for all estimated revenues into and expenditures from the Fund for the financial year and in particular, the estimates shall provide for—

- (a) revenues projected to be received by the Fund from the sources of funds provided for under these Regulations;
- (b) moneys allocated to tourism implementing agencies under these Regulations;
- (c) monies for the administration expenses of the Fund;
- (d) the payment of the salaries, allowances and other charges in respect of the staff of the Board, where applicable;
- (e) the payment of pensions, gratuities and other charges in respect of the staff Fund, where applicable; and
- (f) the proper maintenance of the assets, equipment and properties under the Fund.

(3) The annual estimates shall be approved by the Board before the commencement of the financial year to which they relate and shall be submitted to the Cabinet Secretary for approval and thereafter, the Board shall not increase or decrease the annual estimates unless a supplementary budget has been approved in the same manner.

Quarterly reports.

30. (1) The Administrator of the Fund shall prepare quarterly financial and non-financial reports in accordance with the format prescribed by the Public Sector Accounting Standards Board and the Act and submit it to the Board for approval.

(2) Upon approval, under paragraph (1), the Administrator of the Fund shall submit the report to the National Treasury and Ministry responsible for matters relating to tourism.

Accounts and audit.

31. (1) The Board shall cause to be kept all proper books and records of account of the income, expenditure, assets, equipment and properties of the Fund.

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(2) Within a period of three months from the end of each financial year, the Board shall submit to the Auditor-General with a copy to the National Treasury, the accounts of the Fund together with—

- (a) a statement of the income and expenditure of the Fund during the financial year; and
- (b) a statement of the assets and liabilities of the Fund on the last day of that financial year.

(3) The financial statements prepared under paragraph (2) shall be in accordance with the prescribed format by the Public Sector Accounting Standards Board and the Act.

(4) The accounts of the Fund shall be audited and reported upon in accordance with the Public Audit Act (Cap. 412B)

(5) The Board shall inform and keep the public informed of its activities and operations through regular publications and such activities and operations shall be accessible to the public unless there are reasons of commercial confidentiality or security justifying exclusions.

Administration expenses.

32. (1) The administrative expenses of the Fund shall not exceed three per centum of the approved budget of each financial year.

(2) Despite the provisions of paragraph (1) the Board may, with the concurrence of the Cabinet Secretary for the time being responsible for matters relating to tourism, recommend increase of the administrative expenses from three per centum to five per centum where there are justifiable reasons to the Cabinet Secretary for approval for that particular financial year.

Offences and Penalties.

33. A person who misappropriates any funds or assets from the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in these Regulations, commits an offence and shall, upon conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings or to both.

Winding-up of the Fund.

34. (1) The Cabinet Secretary may wind-up the Fund with the approval of the National Assembly where the Cabinet Secretary considers that the Fund has successfully completed the specific objectives for which it was created.

(2) On winding up of the Fund—

- (a) the Administrator of the Fund shall call on the tourism implementing agencies to submit any valid outstanding obligations and commitments for payment;
- (b) the Administrator of the Fund shall pay any amount remaining in the Fund into the National Exchequer Account for the credit of the national government;
- (c) the Cabinet Secretary shall pay any deficit in the Fund from the funds of the national government in the National Exchequer Account with the approval of the National Assembly; and
- (d) assets, equipment and properties other than cash of the Fund shall be transferred to the Ministry for the time being responsible for matters relating to tourism.

(3) Within three months upon the decision to wind up the Fund, the administrator of the Fund shall prepare final financial and non-financial statements of the Fund and submit them to the Board for approval.

(4) Upon approval under paragraph (3), the administrator shall submit the final financial and non-financial statements to the Cabinet Secretary.

(5) The Cabinet Secretary shall submit a final statement of accounts to Parliament and to the Auditor-General for audit within three months from the date of the decision to wind up the Fund.

THE PUBLIC FINANCE MANAGEMENT (COFFEE
CHERRY ADVANCE REVOLVING FUND) REGULATIONS

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SCHEDULE — FORMS

**THE PUBLIC FINANCE MANAGEMENT (COFFEE
CHERRY ADVANCE REVOLVING FUND) REGULATIONS**

[L.N. 29/2020]

Citation.

1. These Regulations may be cited as the Public Finance Management (Coffee Cherry Advance Revolving Fund) Regulations.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

"Act" means the Public Finance Management Act (Cap. 412A);

"administrator" means the person designated as the Administrator of the Fund under regulation 8;

"advance payment rate" means the advance payment rates set out in regulation 13;

"affiliation" means registered with the New Kenya Planters Co- operative Union Limited;

"agent" means a person contracted by New Kenya Planters Co- operative Union Limited, for the purposes of—

- (a) processing loan applications;
- (b) disbursing or recovery of loans advanced; and
- (c) any other function assigned by the New Kenya Planters Co- operative Union Limited;

"Board" means the New Kenya Planters Co-operative Union Board managing the New Kenya Planters Co-operative Union Limited;

"coffee" means cherry, *buni* or parchment;

"co-operative society" has the meaning assigned to it under the Co-operative Societies Act (Cap. 490);

"Fund" means the Coffee Cherry Advance Revolving Fund established under regulation 3;

"New Kenya Planters Co-operative Union Limited" means the body incorporated under the Companies Act (Cap. 486);

"small holder coffee estate" means a grower licensed by the county government with an area of land or parcels land under coffee not less than five acres and not more than twenty acres; and

"small holder coffee grower" means a coffee grower with an area of land or parcels of land under coffee of not more than twenty acres.

PART II – ESTABLISHMENT OF THE FUND

Establishment of The Fund.

3. There is established a Fund to be known as the Coffee Cherry Advance Revolving Fund.

Object and purpose of the Fund.

4. The object and purpose of the Fund shall be to provide affordable, sustainable and accessible cherry advance to smallholder coffee growers and small holder coffee estates.

Sources of the Fund.

5. The Fund shall consist of—

- (a) monies appropriated by Parliament for purposes of the Fund;
- (b) recoveries for administration costs relating to coffee cherry advance by Fund;
- (c) grants, donations, bequests or other gifts made to the Fund;
- (d) monies from any other source approved by the Cabinet Secretary; and
- (e) income derived from investment of surplus funds.

Expenditure of the Fund.

6. (1) There shall be paid out of the Fund payments in respect of any expenses incurred in pursuance of the objects and purpose for which the Fund is established.

(2) The expenditure on the Fund shall be on the basis of and limited to annual work programmes and cost estimates which shall be prepared by the Administrator at the beginning of every Financial Year and approved by the Board.

(3) Any revision of the approved work programmes and of any cost estimates shall be approved by the Board.

PART III – MANAGEMENT OF THE FUND

Functions of the Board.

7. The functions of the Board with regards to this Fund shall be to—

- (a) oversee the administration of the Fund;
- (b) develop policies relating to the general administration and management of the Fund;
- (c) develop policies and procedures relating to application, disbursement and recovery of coffee cherry advances;
- (d) develop a standard coffee advance agreement;
- (e) approve the opening and closing of bank accounts in accordance with the Act;
- (f) receive, review and approve the annual estimates of revenue and expenditure of the Fund and submit to the Cabinet Secretary responsible for the matters relating to co-operatives for concurrence and submit to the Cabinet Secretary for approval;
- (g) oversee the monitoring and evaluation of the programmes and activities of the Fund;
- (h) review the performance of the Fund and make recommendations on the operations of the Fund to the administrator of the Fund;
- (i) consider, review and approve the annual financial and non-financial statements of the Fund prepared in accordance with the Act in the format prescribed by the Public Sector Accounting Standards Board for submission to the Auditor General with a copy to the National Treasury, Commission for Revenue Allocation, and Controller of Budget;
- (j) consider, review and approve policies on the management of assets, equipment and all properties under the Fund;
- (k) consider, review and approve the investment policies for the investment of surplus funds;

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- (l) receive, review and approve reports on the performance of the Fund;
- (m) decentralize its services, in so far as practically possible, to the coffee growing areas;
- (n) consult with the Cabinet Secretary on matters relating to the administration of Fund; and
- (o) perform any other functions that shall be assigned by the Cabinet Secretary.

Administrator of the Fund.

8. (1) The Cabinet Secretary shall designate in writing, the Administrator of the Fund, in accordance with section 24(5) the Act.

(2) The Administrator shall exercise the following functions—

- (a) supervise and control the administration of the Fund;
- (b) develop a predictable, transparent and accountable financial internal control systems for the Fund;
- (c) prepare estimates of annual revenue and expenditure of the Fund relating to its obligations and operational expenses and submit it to the Board for adoption;
- (d) cause to be established proper systems of control and oversight under the provisions of the Act;
- (e) consult and advise the Board on matters relating to the administration of the Fund;
- (f) consult and advise with the Cabinet Secretary on matters relating to the administration of the Fund as may, from time to time, be necessary;
- (g) prepare non-financial performance report of the Fund and submit it to the Board for adoption;
- (h) be the custodian of the properties, assets and equipment of the Fund;
- (i) open individual loan ledger accounts for each loan approved by the Board;
- (j) cause to be kept proper books of accounts and other books and records relating to the Fund and the activities financed under the Fund;
- (k) prepare, sign and transmit to the Auditor-General in respect of each financial year and within three months after the end thereof, a statement of account relating to the Fund in such form as the Public Sector Accounting Standards Board established under the Act; and
- (l) furnish any additional information which is proper and sufficient for the proper discharge of the mandate of the Auditor-General.

PART IV – OPERATION OF THE FUNDS

Eligibility.

9. (1) A small holder coffee estate or small holder coffee grower shall be eligible to benefit from the Fund if that person is—

- (a) a citizen of Kenya; and
- (b) a member of a registered coffee co-operative society; or
- (c) affiliated to New Kenya Planters Co-operative Union Limited.

(2) In addition to the eligibility criteria set out in sub-regulation (1), a person desirous of accessing the monies in the Fund shall apply for the coffee advance and meet the following conditions—

- (a) in the case of a member of a registered coffee co-operative society, have—
 - (i) a national identity card or passport; and
 - (ii) a membership card of a co-operative society;
- (b) in the case of a smallholder coffee estate, who is affiliated to New Kenya Planters Co-operative Union Limited, have—
 - (i) a national identity card or passport; and
 - (ii) a membership card of the New Kenya Planters Co- operative Union Limited.

Application procedure.

10. (1) A person who meets the criteria and conditions set out in regulation 9 shall—

- (a) in the case of a member of a registered coffee co-operative society, apply in the manner set out in Form 1A of the Schedule; and
- (b) in the case of a smallholder estate affiliated to New Kenya Planters Co-operative Union Limited, apply in the manner set out in Form 1B of the Schedule.

(2) The Board may provide further policies on the application procedure.

Coffee advance approval thresholds.

11. (1) The Board shall provide thresholds for coffee advances which may be approved by the Administrator.

(2) Any coffee advances approved under sub-regulation (1) shall be tabled by the Administrator in the subsequent meeting of the Board.

Evaluation of applications.

12. (1) Upon receipt of an application the Administrator shall evaluate the application to ensure compliance with these Regulations and coffee advance evaluation procedures approved by the Board.

(2) The Administrator shall, after evaluation of the application in sub-regulation (1), make recommendation to the Board to either approve or reject the application.

(3) The Administrator shall process the applications on a first come first serve basis.

(4) Where the Board rejects an application under these Regulations the Board shall give reasons for such decision within fourteen days of such decision.

(5) An applicant whose application has been rejected may re- submit the application upon fulfillment of the requirements set in these Regulations.

(6) Any decision of the Board shall be communicated to the applicant within fourteen days from the date of the decision of the Board.

(7) Any applicant who is dissatisfied with the decision of the Board to reject his application for a coffee advance may apply to the Board for review of the decision.

Coffee advance payment rate.

13. (1) A member of a registered cooperative society or a smallholder estate affiliated to New Kenya Planters Co-operative Union Limited shall be advanced—

- (a) forty per-centum of the prevailing average sales price at the Coffee Exchange;

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- (b) twenty shillings per kilogram of cherry delivered; or
- (c) forty per-centum of the payment rate to members by a co- operative society for the immediate past crop year.

(2) The Cabinet Secretary may review the rates provided under sub regulation (1) upon the recommendation of the Board.

Coffee advance disbursement procedure.

14. (1) The Board shall develop the procedures for disbursement of approved coffee advances under these Regulations.

(2) The Administrator shall inform—

- (a) the applicant; and
- (b) the registered coffee co-operative society, of approved coffee advances of successful applicants under them within fourteen days from the date of approval.

(3) The Board shall disburse the approved funds directly to the bank account of the successful applicant using the details provided by the applicant in application form.

Recovery of administration costs.

15. (1) Any coffee advance shall attract an administration cost of three *per centum* of each amount advanced.

(2) The administration cost shall be met by the applicant and be deducted from the coffee advance.

Recovery mechanism.

16. (1) The Board shall develop procedures for recovery of coffee advances.

(2) The Board may appoint agents for purposes of recovery of the coffee advances in accordance with the procedures developed under sub-regulation (1).

(3) The coffee advance shall be a first charge on the applicant's sale proceeds for coffee.

(4) The applicant may repay the coffee advance through alternative sources of income in accordance with the procedures developed under sub-regulation (1).

(5) Notwithstanding sub-regulation (4), the coffee advance shall be recovered after the sale of coffee.

PART V – FINANCIAL PROVISION

Bank accounts for the Fund.

17. (1) The Administrator shall cause accounts in the name of the Fund to be maintained for the Fund in a bank within the Republic of Kenya in line with the Act and any Regulations made thereunder.

(2) All moneys payable into the Fund shall be received into the bank accounts of the Fund.

(3) The Fund's bank accounts shall be operated by the Administrator and two other persons nominated by the Administrator, and approved by the Board.

Overdrawn accounts.

18. The Administrator shall ensure that no bank account of the Fund is overdrawn.

Expenditure of the Fund.

19. (1) The Board shall ensure that in any financial year expenditure from the Fund shall not exceed the annual income of the Fund together with any surplus income brought forward from a previous year.

(2) The records of expenditure relating to the Fund shall be kept and maintained in accordance with the provisions of the Act and Regulations made thereunder.

Withdrawals from the Fund.

20. Withdrawals from the Fund shall only be for purposes of promoting the objects and purpose for which the Fund is established and in accordance with the approved estimates of revenue and expenditure.

Financial and procurement Regulations.

21. The Fund shall be governed by all relevant financial and procurement laws and regulations as applicable.

Investments of the Fund.

22. (1) The Board may with the consent of the Cabinet Secretary invest any of its surplus funds in Government securities.

(2) The income derived from the investment of surplus funds under sub-regulation (1) shall be a source of the Fund.

Annual estimates.

23. (1) At least six months before the commencement of each financial year, the Board shall cause to be prepared estimates of the revenue and expenditure of the Fund for that year.

(2) The annual estimates shall make provision for all estimated revenues into and expenditures from the Fund for the financial year and in particular, the estimates shall provide for—

- (a) revenues projected to be received by the Fund from the sources of funds provided for under these Regulations;
- (b) coffee advances;
- (c) monies for the administration expenses of the Fund; and
- (d) the payment of the allowances of the Board in respect to oversight of the Fund.

Miscellaneous disclosures.

24. The Administrator shall publish and publicize all reports of the Fund approved by the Board in accordance with the Act.

Quarterly reports.

25. (1) The Administrator shall prepare quarterly financial and non-financial reports in accordance with the format prescribed by the Public Sector Accounting Standards Board and the Act and submit them to the Board for approval.

(2) Upon approval, under sub-regulation (1), the Administrator shall submit the report to the National Treasury.

Accounts of the Fund.

26. (1) The Board shall cause to be kept all proper books and records of account of the income, expenditure, assets, equipment and properties of the Fund.

[Subsidiary]

(2) Within a period of three months from the end of each financial year, the Administrator shall submit to the Auditor-General with a copy to the National Treasury, Commission on Revenue Allocation and Controller of Budget the financial and non-financial statements of the Fund in accordance with the format prescribed by the Public Sector Accounting Standards Board and the Act.

Audit of accounts.

27. The accounts submitted under regulation 26 shall be audited by the Auditor General in accordance with the Constitution, the Act and the Public Audit Act.

Annual performance report.

28. The Board shall prepare annual performance report and submit to the Cabinet Secretary responsible for matters relating to Co-operatives.

PART VI – GENERAL PROVISIONS

Winding up of the Fund.

29. (1) The winding up of the Fund shall be in accordance with the provisions of the Act and the Regulations made on winding up of the Fund.

(2) The Administrator shall pay any amount remaining in the Fund into the National Exchequer Account for the credit of the national government.

(3) The Cabinet Secretary shall pay any deficit in the Fund from the funds of the national government in the National Exchequer Account with the approval of the National Assembly.

(4) Assets other than cash of the Fund shall be transferred to the accounting officer responsible for matters relating to co-operatives.

(5) The Cabinet Secretary shall submit a final statement of accounts to National Assembly and to the Auditor-General for audit within six months from the date of the decision to wind up the Fund.

Offences and penalties.

30. (1) A person who fails to give information or gives inaccurate or misleading information or falsifies information or misrepresents information required under these Regulations commits an offence and shall upon conviction be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million Kenya shillings, or to both.

(2) A person who misappropriates any funds or assets of the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in these Regulations, commits an offence and shall, upon conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings, or to both.

Guidelines.

31. Pursuant to section 12(2)(k) of the Act, the Cabinet Secretary may issue guidelines for the better administration of the Fund.

Revocation of LN 201 of 2019.

32. The Public Finance Management (Coffee Cherry Advance Revolving Fund) Regulations (L.N. 201/2019) are revoked.

SCHEDULE

FORMS

APPLICATION FORM FOR COFFEE ADVANCE

Form 1A

[Regulation 10(1)(a).]

APPLICATION FORM FOR COFFEE ADVANCE
BY A MEMBER OF CO-OPERATIVE SOCIETY

PART A													
1. Personal particulars	2. Society Details												
Full Name	Name of society												
Gender Male:	County.....												
Female:	Sub County.....												
ID. NO.....	Ward.....												
(attach copy)													
Postal Address	Membership No.(attach												
Tel	copy of certificate)												
Email	Current Cherry or <i>buni</i> production in (Kg)												
	Month 1												
Bank /FOSA account details (attach	Month 2												
copy of the Bank Card Plate) OR	Month 3												
Certificate from the Bank showing	Month 4												
Account holder particulars	Total												
Name A/C.....	Record of previous production and payment												
Bank	rate for past 2 years.												
Branch													
Farm Records	<table border="1"> <thead> <tr> <th>Year</th> <th>1</th> <th>2</th> </tr> </thead> <tbody> <tr> <td>Production (kg)</td> <td></td> <td></td> </tr> <tr> <td>Payment rate (KES/Kg)</td> <td></td> <td></td> </tr> <tr> <td>Total amount paid (KES)</td> <td></td> <td></td> </tr> </tbody> </table>	Year	1	2	Production (kg)			Payment rate (KES/Kg)			Total amount paid (KES)		
Year	1	2											
Production (kg)													
Payment rate (KES/Kg)													
Total amount paid (KES)													
i. Acreage under coffee.....													
ii. No. of Trees													
iii. Variety													
Other Incomes	Other Debts												
<table border="1"> <thead> <tr> <th>Source</th> <th>Amount (KES)</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> </tr> </tbody> </table>	Source	Amount (KES)			<table border="1"> <thead> <tr> <th>Institution</th> <th>Amount (KES)</th> </tr> </thead> <tbody> <tr> <td></td> <td></td> </tr> </tbody> </table>	Institution	Amount (KES)						
Source	Amount (KES)												
Institution	Amount (KES)												

[Subsidiary]

I authorise that the cherry advance be recovered from the proceeds of my coffee sales

DECLARATION

I certify that the above information is correct to the best of my knowledge and belief.

Signature.....Date

PART B

Recommendation by Society

I certify that the above information is correct to the best my knowledge and belief

Authorised officers(s)

CEO/Manager - Name in Full

(Society Registration NO.....CS NO.....(attach certificate of registration)

Signature

Date

Chairman - Name in Full

Signature

Date

OFFICIAL STAMP /SEAL

FOR OFFICIAL USE

REVIEWED BY FUND SECRETARIAT	
Name in Full	
Signature	
Date	
Comments if Any.....	
RECOMMENDED/NOT RECOMMENDED BY ADMINISTRATOR	
Name in Full	
Signature	
Date	
Comments if any.....	
APPROVED/NOT APPROVED BY THE BOARD Minute No.	
Name in Full	
Signature	
Date	

FORM 1 B.*(r.10 (1)(b))*

**APPLICATION FORM FOR COFFEE ADVANCE BY A SMALL HOLDER ESTATE
AFFILIATED TO NEW KENYA PLANTERS COOPERATIVE UNION**

PART A	
1. Personal particulars	2. Estate Details
Full Name	Name of Estate
Gender Male Female	(attach copy of valid licence)
ID.NO..... (attach copy)	County.....
	Sub County.....
	Ward.....
Postal Address	Growers Code.
Tel	
Email	

[Subsidiary]

<div style="border: 1px solid black; height: 150px; margin-bottom: 5px;"></div>	<p>Current Parchment production in (Kg)</p> <p>Delivery 1</p> <p>Delivery 2</p> <p>Delivery 3</p> <p>Delivery 4</p> <p>Total</p> <p>Record of previous deliveries and payment rate for past 2 years.</p> <table border="1" style="width: 100%; border-collapse: collapse; margin-top: 5px;"> <tr> <th style="width: 20%;">Year</th> <th style="width: 40%;">1</th> <th style="width: 40%;">2</th> </tr> <tr> <td>Delivery (kg)</td> <td></td> <td></td> </tr> <tr> <td>Payment rate (KES/Kg)</td> <td></td> <td></td> </tr> <tr> <td>Total amount paid (KES)</td> <td></td> <td></td> </tr> </table>	Year	1	2	Delivery (kg)			Payment rate (KES/Kg)			Total amount paid (KES)										
Year	1	2																			
Delivery (kg)																					
Payment rate (KES/Kg)																					
Total amount paid (KES)																					
<p>Bank /FOSA account details (attach copy of the Bank Card Plate) OR Certificate from the Bank showing Account holder particulars</p> <p style="margin-left: 20px;">Name A/C.....</p> <p style="margin-left: 20px;">Bank</p> <p style="margin-left: 20px;">Branch</p>	<div style="border: 1px solid black; height: 80px; margin-bottom: 5px;"></div>																				
<p>Farm Records</p>	<div style="border: 1px solid black; height: 40px; margin-bottom: 5px;"></div>																				
<p>i. Acreage under coffee.....</p> <p>ii. No. of Trees</p> <p>iii. Variety</p>	<div style="border: 1px solid black; height: 40px; margin-bottom: 5px;"></div>																				
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Source	Amount (KES)																				
Institution	Amount (KES)																				
<p>I authorise that the cherry advance be recovered from the proceeds of my coffee sales</p> <p>DECLARATION</p> <p>I certify that the above information is correct to the best of my knowledge and belief.</p> <p>Signature.....Date</p>																					

PART B	
Recommendation by the Administrator	
I certify that the above information is correct to the best my knowledge	
Authorised officers(s)	
Administrator - Name in Full	
(New Kenya Planters Cooperative Union Licence No..... (attach copy of licence)	
Board minute number.....	Date.....
Signature	
Date	
Chairman - Name in Full	
Signature	
Date	
OFFICIAL STAMP /SEAL	
FOR OFFICIAL USE	
REVIEWED BY FUND SECRETARIAT	
Name in Full	
Signature	
Date	
Comments if any.....	
RECOMMENDED/NOT RECOMMENDED BY ADMINISTRATOR	
Name in Full	
Signature	
Date	
Comments if any.....	
APPROVED/NOT APPROVED BY THE BOARD	
Minute No.	Date.....
Name in Full	
Signature	
Date	

THE PUBLIC FINANCE MANAGEMENT (STRATEGIC FOOD
RESERVE TRUST FUND) (REVOCATION) REGULATIONS

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
 2. Revocation of LN No 15 of 2015 and LN No 145.
-

**THE PUBLIC FINANCE MANAGEMENT (STRATEGIC FOOD
RESERVE TRUST FUND) (REVOCATION) REGULATIONS**

[L.N. 61/2020]

Citation.

1. These Regulations may be cited as the Public Finance Management (Strategic Food Reserve Trust Fund Fund) (Revocation) Regulations.

Revocation of LN No 15 of 2015 and LN No 145.

2. The Public Finance Management (Strategic Food Reserve Trust Fund) Regulations (L.N. No 15/2015) are revoked.

THE PUBLIC FINANCE MANAGEMENT (NATIONAL
DROUGHT EMERGENCY FUND) REGULATIONS

ARRANGEMENT OF REGULATIONS

PART I – PRELIMINARY

Regulation

1. Citation.
2. Interpretation.

PART II – ESTABLISHMENT AND ADMINISTRATION OF THE FUND

3. Establishment of the Fund.
4. Capital of the Fund.
5. Sources of the Fund.
6. Object and purpose of the Fund.
7. Expenditure of the Fund.
8. Oversight role of the Board.
9. Functions of the Board.
10. Administrator of the Fund.
11. Designation of administrator of the Fund.
12. Vacancy in the office of the administrator of the Fund.
13. Removal of the administrator of the Fund.
14. Secretariat of the Fund.
15. Functions of the secretariat.
16. Coordination mechanism.
17. Establishment of the National Steering Committee.
18. Establishment of the Intergovernmental Technical Committee.
19. Establishment of the County Drought Committee.
20. Resource mobilization.
21. Standard setting and norms.

PART III – PROJECTS

22. Intervention areas.
23. Emergencies not handled by the Fund.
24. Drought recovery.
25. Criteria for accessing drought resilience and preparedness component funds.
26. Project planning.
27. Projects designed by the Fund, county governments or national government entities.
28. Projects financed jointly with faith based organization or non-governmental organization or community based organization.
29. Joint infrastructure projects by counties.
30. Drought response.
31. Rules to access drought response funds.
32. Submission of project proposals.

PART IV – FINANCIAL PROVISIONS

33. Allocation of resources among drought risk management components.
34. Procedures of disbursement and accountability.

- 35. Quarterly reports on projects and disbursements.
- 36. Fund bank accounts.
- 37. Record of disbursements to be kept.
- 38. Financial reporting.
- 39. Management reports.

PART V – MISCELLANEOUS PROVISIONS

- 40. Application of Government Financial Regulations and procedures.
 - 41. Costs of running the Fund.
 - 42. Offence and penalty.
 - 43. Guidelines on the Fund.
 - 44. Winding-up of the Fund.
-

**THE PUBLIC FINANCE MANAGEMENT (NATIONAL
DROUGHT EMERGENCY FUND) REGULATIONS**

[L.N. 27/2021]

PART I – PRELIMINARY**Citation.**

1. These Regulations may be cited as the Public Finance Management (National Drought Emergency Fund) Regulations, 2021.

Interpretation.

2. In these Regulations, unless the context otherwise requires —

"Act" means the Public Finance Management Act (Cap. 412A);

"accounting officer" has the meaning assigned to it under section 2 of the Public Finance Management Act (Cap. 412A);

"Board" means the Board of the National Drought Management Authority constituted under section 8 of the National Drought Management Authority Act (Cap. 388);

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

"County Drought Committee" means the County Committee on Drought and Food Security constituted under regulation 19;

"disaster" means disruption of the functioning of a community or society causing widespread human, material, economic or environmental losses which exceed the ability of the affected community or society to cope using its own resources;

"drought" means a predictable and slow-onset disruption of the functioning of a community or society caused by periods of lower-than-normal precipitation;

"drought contingency plan" means a management process that analysis emerging drought risks and establishes arrangements in advance to enable timely, effective and appropriate preparedness and responses;

"financial year" means the period of twelve months ending on the thirtieth day of June in each year;

"financing agreement" means any document signed by the Government of Kenya and any development partner or such other person, which provides for grant or other financing to the Fund;

"Fund" means the National Drought Emergency Fund established under regulation 3;

"Inter-governmental Technical Committee" means the Intergovernmental Technical Committee on Drought and Food Security established under regulation 18;

"National Steering Committee" means the National Drought and Food Security Steering Committee established under regulation 17;

"officer administering the Fund" means an officer designated as the administrator of the fund under regulation 10;

"Secretary" means the Secretary of the National Drought Management Authority appointed under section 12 of the National Drought Management Authority Act (Cap. 388).

PART II – ESTABLISHMENT AND ADMINISTRATION OF THE FUND**Establishment of the Fund.**

3. There is established a Fund to be known as the National Drought Emergency Fund which shall be administered by the officer designated under regulation 10.

Capital of the Fund.

4. (1) The initial capital of the Fund shall be two billion shillings appropriated by Parliament.

(2) The Fund shall be financed through the annual appropriations by the National Assembly which appropriations may include contributions from the private sector, donor support and global climate change and disaster risk financing facilities.

(3) All receipts, savings and accruals to the Fund and the balances thereof at the end of each financial year shall be retained by the Fund.

Sources of the Fund.

5. The sources of the Fund shall consist of—

- (a) such monies as may be appropriated by the National Assembly;
- (b) grants and donations;
- (c) global climate change and disaster risk financing facilities;
- (d) income generated from the proceeds of the Fund; and
- (e) any monies accruing to or received by the Fund from any other lawful source.

Object and purpose of the Fund.

6. The object and purpose for which the Fund is established is to —

- (a) improve the effectiveness and efficiency of the drought risk management system in the country;
- (b) facilitate resilience building, preparedness and timely response to drought during its different stages in order to reduce and minimise the negative effects of droughts;
- (c) to receive financial resources from development partners who support government on drought risk management interventions;
- (d) provide for —
 - (i) a common basket emergency fund in order to facilitate faster, transparent, predictable and accountable release of Funds for drought risk management;
 - (ii) funds for capacity and technical expertise development to improve on drought risk management systems; and
 - (iii) the establishment, management and coordination of programmes, projects or activities to further the foregoing objects and purposes.

Expenditure of the Fund.

7. (1) There shall be paid out of the Fund payments in respect of any expenses incurred pursuant to the object and purpose for which the Fund is established.

(2) The expenditure on the Fund shall be on the basis of and limited to annual work programmes, contingency plans and cost estimates which shall be prepared by the administrator of the Fund and approved by the Board before the beginning of the financial year to which they relate.

[Subsidiary]

(3) Any revision of the approved annual work programme, contingency plans and of any cost estimates shall be referred to the Board for approval.

(4) The expenditure of this Fund shall be based on projects and programmes approved by the Board.

(5) The Fund shall not be used for the purpose of supporting political parties or entities. Oversight role of the Board.

8. The Board of the National Drought Management Authority established under section 18(1) of the National Drought Management Authority Act (Cap. 388) shall oversee the administration and management of the Fund.

Functions of the Board.

9. (1) The functions of the Board relating to the oversight role and administration of the Fund shall be to —

- (a) formulate policies to achieve the objects and purpose of the Fund;
- (b) provide oversight on the administration and management of the Fund;
- (c) approve estimates of revenue and expenditure of the Fund for each financial year;
- (d) receive, review and approve statutory and management reports of the Fund before submission to third parties;
- (e) approve the opening of any bank account of the Fund;
- (f) oversee timely and efficient disbursement of funds from the Fund to finance approved projects and programmes or interventions by the Fund; and
- (g) perform such other duties as may be considered necessary by the Cabinet Secretary responsible for matters relating to drought from time to time, for the proper administration and management of the Fund and such a duty shall be assigned in writing.

(2) The Board shall conduct its business and affairs in the manner provided under section 11 of the National Drought Management Authority Act (Cap. 388).

Administrator of the Fund.

10. (1) The Secretary of the National Drought Management Authority Board shall be the administrator of the Fund.

(2) Despite paragraph (1), in the absence of the Secretary, the Cabinet Secretary may designate a person who has satisfied the criteria set out under regulation 11 and upon recommendation by the Cabinet Secretary responsible for matters relating to drought in consultation with the Board as the administrator of the Fund and shall be a member of the Board.

(3) The administrator of the Fund shall —

- (a) open and operate a bank account at the Central Bank of Kenya or a bank to be approved by the Board and the National Treasury;
- (b) supervise and control the administration of the Fund;
- (c) consult with the Board and the Cabinet Secretary responsible for matters relating to drought on matters relating to the administration of the Fund;
- (d) cause to be kept proper books of accounts and other books and records of all activities and undertakings financed from the Fund;

- (e) prepare, sign and submit to the Board in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund for approval;
- (f) transmit to the Auditor-General the statement of accounts under paragraph (e), with a copy to the National Treasury and such a statement shall be prepared in the manner prescribed by the Public Sector Accounting Standards Board and audited in accordance with the Public Audit Act (Cap. 412B);
- (g) furnish additional information which is proper and sufficient for the purpose of examination and audit by the Auditor General in accordance with the provisions of the Public Audit Act (Cap. 412B); and
- (h) prepare a quarterly report on the receipts into and issues out of the Fund and submit it to the Cabinet Secretary for gazettelement by the 21st of every fourth month.

(4) Every statement of account shall include details of the balance between the assets and liabilities of the Fund, and shall indicate the financial status of the Fund as at the end of the financial year concerned.

Designation of administrator of the Fund.

11. (1) Where the Cabinet Secretary designates a person as the administrator of the Fund under regulation 10 (2), that person shall be designated as provided under this regulation.

(2) A person shall be designated as the administrator of the Fund under this regulation if that person —

- (a) holds a degree from a university recognized in Kenya;
- (b) has at least ten years' post-qualification experience;
- (c) has at least five years' experience in the relevant field; and
- (d) satisfies the requirements of Chapter Six of the Constitution.

(3) A person designated as the administrator of the Fund under this regulation, shall serve for a term of three years, renewable once.

(4) Where the Cabinet Secretary does not intend to designate the administrator of the Fund after the first term, the Cabinet Secretary shall notify the administrator of the Fund of such a decision at least three months before the expiry of the incumbent's term.

(5) The administrator of the Fund shall only be subject to the directions of the Board and shall be responsible for the day to day administration of the affairs of the Fund including the staff of the secretariat of the Fund.

Vacancy in the office of the administrator of the Fund.

12. The office of the administrator of the Fund shall become vacant if the holder—

- (a) dies;
- (b) by notice in writing addressed to the Board resigns from office;
- (c) is convicted of an offence and sentenced to imprisonment for a term of more than six months without the option of a fine;
- (d) is absent from three consecutive meetings of the Board without good cause; or
- (e) is removed in accordance with the provisions of the Constitution.

[Subsidiary]

Removal of the administrator of the Fund.

13. (1) The administrator of the Fund may be removed from office by the Board only on grounds of—

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct;
- (c) bankruptcy; or
- (d) incompetence.

(2) Prior to removal under paragraph (1), the administrator of the Fund shall be—

- (a) informed, in writing, of the reasons for the intended removal; and
- (b) given an opportunity to put in a defence against any such allegations either in person or through an advocate.

Secretariat of the Fund.

14. (1) The secretariat of the National Drought Management Authority established under section 13(1) of the National Drought Management Authority Act (Cap. 388) shall be the secretariat of the Fund.

(2) Subject to paragraph (1), the Board may designate the staff of the National Drought Management Authority to be the secretariat of the Fund or recruit staff of the Fund as are necessary for the proper discharge of the functions of the Fund.

(3) Where, the Board recruits staff under paragraph (2), the Board shall ensure that in the appointment of the staff—

- (a) is done competitively subject to the provisions of Article 234(5) of the Constitution;
- (b) not more than two-thirds of the staff shall be of the same gender;
- (c) the regional and other diversity of the people of Kenya is taken into account; and
- (d) persons with disabilities are afforded adequate and equal opportunities.

(4) For the avoidance of doubt, the Secretariat of the Fund shall also comprise of the administrator of the Fund.

Functions of the secretariat.

15. (1) The secretariat shall—

- (a) be responsible for the day to day administration and management of the Fund;
- (b) develop a transparent and accountable financial internal control systems for the Fund;
- (c) prepare and submit for approval by the Board estimates of revenue and expenditure, annual work programmes and costs estimates, annual procurement plans and annual cash flow plans;
- (d) implement projects, programmes and coordinate with other national government ministries, county governments and non-state actors at the national and county level in the realization of the objectives and purpose of the Fund;
- (e) prepare statutory and management reports and submit them to the Board for approval;

- (f) monitor and provide reports to the Board, on a quarterly basis or as need arises, on efficiency and effectiveness of drought risk management supported by the Fund;
 - (g) implement the decisions of the Board;
 - (h) undertake any other duty as the Board may assign through a resolution.
- (2) In addition to the functions assigned under paragraph (1), the secretariat shall—
- (a) receive investment and contingency plans for review and recommendation to the Board for approval;
 - (b) receive and review drought early warning information for early action;
 - (c) propose to the Board the triggers for the funds flow to the various drought stages to be financed from the Fund;
 - (d) propose to the Board the triggers for response plans for the activation of the response plans;
 - (e) oversee projects and programmes implemented through financing of the Fund;
 - (f) with the approval of the Board, establish prudent public financial management systems for the administration of the Fund;
 - (g) coordinate monitoring and evaluation of projects financed from the Fund;
 - (h) prepare regular communication messages regarding drought risk management with regard to the Fund; and
 - (i) maintain proper records of the Fund.

Coordination mechanism.

16. The coordination mechanism for the Fund shall be through—

- (a) the National Drought and Food Security Steering Committee established under regulation 17;
- (b) the Inter-Governmental Technical Committee on Drought and Food Security established under regulation 18; and
- (c) the County Committee on Drought and Food Security established under regulation 19;
- (d) development partner engagement forums as may be determined by the Cabinet Secretary from time to time.

Establishment of the National Steering Committee.

17. (1) There is established the National Drought and Food Security Steering Committee comprised of—

- (a) the Deputy President who shall be the chairperson;

[Subsidiary]

- (b) the cabinet secretaries responsible for—
 - (i) drought risk management;
 - (ii) devolution;
 - (iii) planning;
 - (iv) finance;
 - (v) water;
 - (vi) health;
 - (vii) education;
 - (viii) defence;
 - (ix) national government coordination;
 - (x) agriculture, livestock and fisheries;
 - (xi) social protection;
 - (xii) environment;
 - (xiii) energy;
 - (xiv) wildlife; and
 - (xv) meteorology;
- (c) the chairperson, Council of Governors.

(2) The Chairperson, Council of Governors shall be the Vice-Chair of the National Steering Committee.

(3) The Cabinet Secretary responsible for matters relating to drought risk management shall be the Secretary of the Steering Committee.

(4) The functions of the National Steering Committee shall be to—

- (a) provide policy recommendations on drought response interventions;
- (b) provide leadership and oversight on drought and food security interventions during the alarm and emergency stages;
- (c) receive, consider and make decisions based on reports from the Inter-governmental Technical Committee; and
- (d) mobilize resources for drought response interventions during alarm and emergency stages.

(5) The National Drought and Food Security Steering Committee shall report to the Cabinet.

(6) The quorum at the meeting of the National Steering Committee shall be one-third of the members of the Committee, and decisions at a meeting of the Committee shall be by consensus.

(7) The Secretariat of the Fund shall keep proper records of the meetings of the National Steering Committee.

(8) The decisions of the National Steering Committee shall be communicated to the members of the Committee and relevant government agencies within fourteen days after the meeting.

Establishment of the Intergovernmental Technical Committee.

18. (1) There is established the Inter-Governmental Technical Committee on Drought and Food Security comprised of—

- (a) the principal secretaries responsible for—
 - (i) drought risk management;
 - (ii) devolution;
 - (iii) planning;
 - (iv) finance;
 - (v) water;
 - (vi) health;
 - (vii) education;
 - (viii) defence;
 - (ix) national government coordination;
 - (x) agriculture and livestock;
 - (xi) social protection;
 - (xii) environment;
 - (xiii) energy;
 - (xiv) wildlife; and
 - (xv) meteorology;
- (b) five nominees of the Council of Governors, who shall be county executive committee members responsible for matters relating to drought, water, health, agriculture and finance.

(2) In making the nominations under paragraph (1)(b), the Council of Governors shall consider representation from drought prone areas.

(3) The Inter-governmental Technical Committee shall be chaired by the Principal Secretary for matters relating to drought risk management.

(4) The quorum at the meeting of the Intergovernmental Technical Committee shall be one-third of the members of the Committee, and decisions at a meeting of the Committee shall be by consensus.

(5) The administrator of the Fund shall be the Secretary of the Inter-governmental Technical Committee.

(6) The functions of the Inter-governmental Technical Committee shall be to—

- (a) prepare the agenda of the National Steering Committee;
- (b) receive, consider and make appropriate recommendations to the national steering committee on the optimal drought response interventions;
- (c) receive, consider and identify resources available in various ministries, state departments and agencies and county governments for drought interventions and make appropriate recommendations;
- (d) oversee the implementation of the decisions of the National Steering Committee;
- (e) receive, consider and make appropriate recommendations on intervention measures being undertaken by various government agencies, development partners, faith based organizations and other non-governmental organizations; and

[Subsidiary]

(f) mobilize resources towards the fulfilment of the objective of the Fund.

(7) The secretariat of the Fund shall keep proper records of the meetings of the Intergovernmental Technical Committee.

(8) The decisions of the Intergovernmental Technical Committee shall be communicated to the members of the Committee and relevant government agencies within fourteen days after the meeting.

Establishment of the County Drought Committee.

19. (1) There is established the County Committee on Drought and Food Security comprised of—

- (a) the officer responsible for coordination of national government functions at the county level;
- (b) the national government officer responsible for drought risk management at the county level;
- (c) the national government officer responsible for education at the county level;
- (d) the national government officer responsible for social protection at the county level;
- (e) the county executive committee member responsible for drought risk management;
- (f) the county executive committee member responsible for planning;
- (g) the county executive committee member responsible for water;
- (h) the county executive committee member responsible for finance;
- (i) the county executive committee member responsible for health;
- (j) the county executive committee member responsible for agriculture, livestock and fisheries;
- (k) the county executive committee member responsible for early childhood education;
- (l) the county executive committee member responsible for social protection;
- (m) two representatives nominated by the caucus of faith based organizations involved in matters related to drought and food security at the county level;
- (n) two representatives of non-governmental organizations and community based organizations working on matters related to drought and food security in the respective county; and
- (o) two persons nominated by the Board to represent the marginalised areas who shall have knowledge on drought and food security in the respective county and shall be residents of that county.

(2) The officers specified under paragraphs (1)(b) to (l) may in writing nominate a representative to attend and participate in the meetings of the County Drought Committee on their behalf.

(3) The County Drought Committee shall be co-chaired by the Governor and the County Commissioner.

(4) The Secretariat of the Fund shall be the Secretariat to the County Drought Committee.

(5) The functions of the County Drought Committee shall be to—

- (a) consider drought and food security early warning information and make recommendation to the Board;
- (b) coordinate drought risk management plans and ensure their integration into the national and county planning and budgeting processes;
- (c) consider and recommend to the Board for approval projects to be financed by the Fund under the investments in resilience building and drought preparedness;
- (d) consider and recommend to the Board, for approval, drought response plans and appropriate interventions;
- (e) ensure projects recommended for funding under paragraph (c) and (d) are not duplicated;
- (f) coordinate and communicate drought interventions measures and share drought risk management information with the public;
- (g) provide recommendations to the Board to inform policy formulation and strategy of the Fund;
- (h) oversee the monitoring and evaluation of projects and programmes funded under the Fund;
- (i) oversee drought and food security interventions;
- (j) coordinate actors on drought risk management at the county level;
- (k) implement decisions of the National Steering Committee and the Inter-governmental Technical Committee;
- (l) consider and make recommendations on the level of government that should intervene on drought and food security matters;
- (m) co-ordinate resource mobilization at the county level.

(6) The quorum at the meeting of the County Drought Committee shall be one-third of the members of the Committee, and decisions at a meeting of the Committee shall be by consensus.

(7) The County Drought Committee may co-opt upto a maximum of three experts in order to facilitate the Committee in making an informed decision.

(8) A person appointed under paragraph (1)(m), (n) and (o) shall cease to be a member of the County Drought Committee —

- (a) if the person resigns from office;
- (b) dies;
- (c) is absent from three consecutive meetings of the Committee without permission from the chairperson;
- (d) is convicted of an offence and sentenced to imprisonment for a term of more than six months without the option of a fine;

[Subsidiary]

- (e) is removed from office by the vote of at least two thirds of the members of the Committee on any one or more of the following grounds —
 - (i) lack of integrity;
 - (ii) gross misconduct;
 - (iii) embezzlement of public funds;
 - (iv) physical or mental infirmity.

(9) Whenever a vacancy occurs in the County Drought Committee by reason of resignation, incapacitation or death of a member appointed pursuant to paragraph (1)(m) (n) and (o), then the vacancy shall be filled from the same category of persons where the vacancy has occurred.

(10) Members of the County Drought Committee shall be appointed by notice in the *Gazette* by the Cabinet Secretary responsible for matters relating to drought risk management.

(11) A member of the County Drought Committee appointed under paragraph 1(m) (n) and (o), other than *ex-officio* member, shall hold office for a term of three years renewable once.

(12) The Secretariat of the Fund shall keep proper records of the meetings of the County Drought Committee.

(13) The decisions of the County Drought Committee shall be communicated to the members of the Committee and relevant government agencies within fourteen days after the meeting.

(14) The secretariat shall prepare and submit reports on the activities of the County Drought Committee to the Board with a copy to the county executive committee responsible for matters relating to drought risk management.

(15) The Secretariat of the Fund shall keep proper records of the meetings of the County Drought Committee, which records shall be shared within fourteen days after confirmation with the county committee members with a copy to the Board.

Resource mobilization.

20. (1) The Committees established under regulations 17, 18 and 19 and the Board shall mobilize resources through—

- (a) engagement with the communities, development partners and private sector;
- (b) engagement with the global disaster risk and climate change funds or entities that finance drought risk management programmes;
- (c) development of bankable proposals for drought early warning, preparedness and resilience.

(2) Any engagement with the development partners, private sector or global funds shall be done within the framework specified by the Cabinet Secretary and shall be in line with the Kenya external resources mobilization policy.

Standard setting and norms.

21. (1) The National Government shall be responsible for policy formulation, setting norms and standards for drought risk management through public participation.

(2) The secretariat of the Fund shall consolidate various policies, norms and standards and disseminate them to national government agencies, counties and development partners to facilitate their implementation.

(3) County governments shall prepare their drought risk management plans and reports based on national policies, norms and standards set by the National Government including Guidelines which may be issued from time to time.

(4) The national norms and standards shall set sector specific quantifiable indicators for the outputs for each strategic objective, which shall form the basis of reporting on drought and food security for both national and county governments.

PART III – PROJECTS

Intervention areas.

22. The Fund may finance interventions in the following areas to complement existing government programmes, in accordance with the Guidelines under these Regulations –

- (a) water and sanitation;
- (b) agriculture, livestock and fisheries;
- (c) education;
- (d) health, sanitation and nutrition;
- (e) cash transfers scale ups;
- (f) conflict management and resolution; and
- (g) drought coordination.

Emergencies not handled by the Fund.

23. The Fund shall not finance hazards which may include floods, epidemics, wild fires, terrorism and armed conflict.

Drought recovery.

24. (1) The Secretariat of the Fund may, from time to time, request the Board to approve drought recovery interventions.

(2) Where the Board has approved drought recovery interventions to be undertaken by the Secretariat, the Secretariat shall prepare and submit monthly progress reports to the Board.

Criteria for accessing drought resilience and preparedness component funds.

25. (1) The criteria for prioritising access to drought resilience and preparedness component funds shall be as follows—

- (a) the projects shall be either aligned to national development priorities or be included in the county integrated development plan;
- (b) projects contributing significantly to sustainable development to enhance resilience of communities against drought and climate change risks;
- (c) evidence of community participation in drought risk reduction project identification;
- (d) projects sustainability framework after completion;
- (e) satisfy all statutory requirements relating to design and implementation of such projects;
- (f) proof that a county government shall contribute a per centum agreed under regulation 27 on co-financed projects;
- (g) proof that a faith based organization, non-governmental organization or community based organization shall contribute a per centum agreed under regulation 28 on co- financed projects; and
- (h) is supported by a recommendation of the County Drought Committee or the Secretariat of the Fund.

[Subsidiary]

(2) The Secretariat shall submit to the Board for approval the scores of the projects evaluated against the criteria set out under paragraph (1).

Project planning.

26. (1) The secretariat of the Fund shall—

- (a) coordinate the development of community drought risk reduction plans;
- (b) receive, review and prioritise project proposals from the communities which are aligned to national development goals or county integrated development plan;
- (c) initiate project proposals to address drought and food insecurity and submit the proposals to the Board for approval;
- (d) prepare and submit prioritised projects to the County Drought Committees for review and make recommendations to the Board;
- (e) monitor implementation of approved projects and submit quarterly reports to the County Drought Committee and the Board.
- (f) evaluate and document approved completed projects and submit reports to the County Drought Committee and the Board.

(2) Any project proposals to be implemented by the Fund shall be approved by the Board prior to implementation.

(3) The project proposals under this regulation shall relate to resilience and preparedness stages of drought risk management.

Projects designed by the Fund, county governments or national government entities.

27. (1) A project relating to a devolved function may be designed by the secretariat of the Fund or a county government or a national government agency.

(2) The project designed under paragraph (1) shall be submitted to the Board, a county government or a national government agency for consideration and financing.

(3) Where the secretariat of the Fund has designed a project relating to a devolved function, the secretariat may engage a county government for co-financing.

(4) Where a project has been designed under paragraph (3), the county government shall contribute a per centum to be agreed between the county government and the Board in form of a matching grant, from time to time.

(5) Where a county government has accepted to co-finance a project under paragraph (4) that county government shall signify in writing to the administrator of the Fund not later than 31st January of each year.

(6) Where projects are financed under this regulation, the Secretariat of the Fund shall use that project to build the capacity of that county on drought risk management.

(7) The secretariat of the Fund shall enter into an inter-governmental agreement pursuant to Article 187 of the Constitution and the Intergovernmental Relations Act (Cap. 265F) with the respective county government for any project financed under this Regulation.

Projects financed jointly with faith based organization or non-governmental organization or community based organization.

28. (1) The secretariat of the Fund in collaboration with a county government may design a project relating to a devolved function and submit it to a faith based organization or non-governmental organization or community based organization for consideration and co-financing.

(2) Where a project is co-financed by a faith based organization or non-governmental organization or community based organization, such an institution shall contribute a per centum to be agreed between the organization and the Board.

(3) The Secretariat of the Fund shall enter into an inter- governmental agreement pursuant to Article 187 of the Constitution and the Intergovernmental Relations Act (Cap. 265F) with the respective county government for any project financed under this Regulation.

(4) The Secretariat of the Fund shall carry out joint monitoring and evaluation with a faith based organization or non-governmental organization or community based organization, as agreed between the parties in the memorandum of understanding for any project financed under this regulation.

Joint infrastructure projects by counties.

29. (1) Pursuant to section 146 of the Public Finance Management Act (Cap. 412A), the Secretariat of the Fund may in collaboration with the respective county governments, prepare a project design relating to a devolved function as a joint infrastructure project to be financed by more than one county or a joint infrastructure project between one county and the Fund.

(2) Any projects designed under paragraph (1) shall be submitted to the Board for approval and after approval it shall be submitted to the respective county executive committee member responsible for matters relating to drought risk management for co-financing, with a copy to the County Governor.

(3) The Secretariat of the Fund shall coordinate meetings among the counties undertaking the joint infrastructure project.

(4) The Board shall enter into an inter-governmental agreement pursuant to Article 187 of the Constitution and the Intergovernmental Relations Act (Cap. 265F) with the respective county governments for any project financed under this Regulation.

Drought response.

30. (1) The Secretariat of the Fund shall prepare a rapid assessment report for the affected county during alert stage or alarm stage as informed by drought early warning information for—

- (a) determining the resource requirements for alert, alarm or emergency stages of the drought;
- (b) proposing the agencies to be involved in responding to the drought and food security interventions to be financed by the Fund;
- (c) recommending the funds flow mechanism to the Board for approval which may include flow of funds to county governments or various agencies and the accountability framework by each agency to the Fund; or
- (d) liaising with the county governments or other agencies approved by the Board to undertake various response interventions in a timely manner.

(2) The Secretariat of the Fund shall receive sectoral reports from the relevant national government agencies to facilitate preparation of the drought and food security reports.

(3) The Secretariat of the Fund shall prepare and submit drought and food security report to the Inter-governmental Technical Committee—

- (a) on a monthly basis and before the tenth day of the succeeding month during the alert stage; and Joint infrastructure projects by counties.
- (b) every fourteen days during the alarm and emergency stages, on receipt of the early warning information of the drought and food security.

[Subsidiary]

(4) Where drought and food security response interventions require financial resources beyond the capital of this Fund, the Board shall submit a proposal to the National Steering Committee on the financing gap and a request to mobilise more resources to respond to drought and food insecurity.

Rules to access drought response funds.

31. To access drought response funds the Board shall consider the —

- (a) alert stage of drought cycle as per the Authority's drought phase classifications guided by vegetation condition index and other social economic indicators;
- (b) request received from County Drought Committees or the Secretariat of the Fund on drought response plans;
- (c) evidence of drought rapid assessment by the affected sectors based on early warning trigger indicators;
- (d) response plan based on drought rapid assessment reports and other drought risk secondary data;
- (e) recommendation by the county or national coordination structure;
- (f) procurement plans based on drought and food security response intervention measures; and
- (g) cash flow plans supporting the procurements plans on drought and food security response intervention measures.

Submission of project proposals.

32. (1) A community may at any time submit project proposals through the county government, national government agency, community based organization or faith based organization, to the Secretariat of the Fund.

(2) Project proposals received by the Secretariat of the Fund by thirtieth November of each year shall be reviewed and appropriate recommendations made by the County Drought Committee to the Board for financing from the Fund.

(3) Any project approved for financing by the Board, which has a co-financing arrangement shall be communicated to the relevant county government or agency co-financing that project by the thirtieth day of January each year for incorporation in their respective budgets.

(4) Any project submitted for approval under this regulation shall be identified through a drought risk management participatory process.

(5) The Secretariat of the Fund shall publish and publicise the list of approved projects by the Board for each financial year.

PART IV – FINANCIAL PROVISIONS

Allocation of resources among drought risk management components.

33. (1) The resources of the Fund shall be allocated to the various drought risk management components as follows—

- (a) resilience and preparedness shall be allocated up to fifty per centum (50%) of the total budget of the Fund in each financial year;
- (b) response interventions shall be allocated up to forty per centum (40%) of the total budget of the Fund in each financial year; and
- (c) recovery interventions shall be allocated up to five per centum (5%) of the total budget to be funded every financial year.

(2) Where no recovery interventions are required under paragraph (1)(c), the amount of money thereof may be allocated to either resilience and preparedness or response interventions.

(3) Notwithstanding paragraphs (1) and (2), at least twenty five per cent (25%) of the total Government of Kenya funds allocated to response are earmarked for cash transfers through the National Safety Net Programme.

(4) Despite paragraph (1), the National Steering Committee may increase the proportion of the Fund allocated to drought response.

(5) Despite paragraphs (1), (2), (3) and (4), a grant or donation to the Fund may be earmarked for the purpose agreed between the government and the development partner in line with the objectives of the Fund.

Procedures of disbursement and accountability.

34. (1) The Board shall, from time to time, formulate guidelines for disbursements of funds.

(2) Where the Board intends to use the county governments or faith based organizations, non-governmental organizations or community based organizations, it shall ensure that the guidelines for disbursement of funds to the county government or institution have clear roles and responsibilities for reporting and accounting of the resources disbursed to the county governments or the institution.

Quarterly reports on projects and disbursements.

35. (1) The Board shall, on a quarterly basis, submit a report to the Cabinet Secretary responsible for matters relating to drought affairs with a copy to the National Treasury and the National Steering Committee, detailing –

- (a) a summary of the project proposals approved by the Board in the preceding quarter as recommended by the County Drought Committee or the Secretariat of the Fund and indicating the funding status of such projects, if any;
- (b) a summary of the status of disbursements from the Fund to the respective county governments or any agency involved in implementation of any projects financed from the Fund;
- (c) a summary of the status of disbursements of funds to the various projects and implementation progress;
- (d) a summary of outputs and outcomes of each project, where applicable; and
- (e) any restriction imposed on a county government or any agency involved in the implementation of the projects of the Fund.

(2) The Board shall prepare and submit quarterly monitoring and evaluation reports to the Cabinet Secretary responsible for matters relating to drought affairs in line with the guidelines issued by the Board from time to time.

Fund bank accounts.

36. (1) All bank accounts of the Fund shall be opened in accordance with the provisions of section 28 of the Public Finance Management Act (Cap. 412A) and the Regulations thereof.

(2) Any bank account of the Fund shall be opened upon approval of the Board and the National Treasury and shall be in the name of the Fund and the name of the county to which it relates.

(3) The main Fund bank account shall be opened and maintained at the Central Bank of Kenya.

[Subsidiary]

(4) The signatories to the main Fund account under paragraph (3) shall be the administrator of the Fund and at least two other persons authorized by the Board from amongst the staff of the Secretariat of the Fund.

(5) The signing instructions shall be such that the signature of the administrator of the Fund shall be mandatory on all payment cheques or electronic instructions intended for actual release of money from the main Fund account, plus any one of the other two Fund account signatories.

(6) The signatories of any other bank accounts shall be at least two, one of whom shall be mandatory and all the signatories shall be approved by the Board.

(7) The signing instructions of any other bank account of the Fund under paragraph (6) shall be such that the signature of the technical officer designated by the administrator of the Fund, shall be mandatory on all payment cheques or electronic instructions intended for actual release of money from that account, plus any one of the other bank account signatories of that account designated as such.

(8) Every payment or instruction for payment out of the respective bank account shall be fully supported in line with the provisions of the Public Finance Management Act (Cap. 412A) and the Regulations thereof.

Record of disbursements to be kept.

37. (1) An accurate record of all disbursements from the Fund Account for financing approved projects shall be kept and updated every month by the Secretariat of the Fund.

(2) The administrator of the Fund shall submit to the Board, quarterly and annual reports on all projects approved and financed from the Fund.

Financial reporting.

38. (1) The Board shall prepare financial and non-financial reports in accordance with the provisions of the Public Finance Management Act (Cap. 412A) and as may be prescribed from time to time by the Public Sector Accounting Standards Board.

(2) The Board shall prepare an annual general performance report of the Fund to be submitted together with the report under paragraph (1).

(3) The annual financial and non-financial statements prepared under paragraph (1) shall be submitted to the Auditor-General for audit in accordance with the Public Audit Act (Cap. 412B).

Management reports.

39. (1) The Board shall prepare a management report on a monthly basis, which report shall contain details on—

- (a) the severity of the drought prevailing in the country and by county;
- (b) the status report on drought interventions measures undertaken during the preceding month and the cumulative drought period;
- (c) status report on county drought and food security intervention measures undertaken during the preceding month and the cumulative drought period;
- (d) the resources required for drought risk management under each of the following stages—
 - (i) resilience and preparedness stage, if any;
 - (ii) response stage; or
 - (iii) recovery stage.

(2) The report prepared under paragraph (1) shall be submitted to the Cabinet Secretary for matters relating to drought risk management with a copy to the National Steering Committee and the Chairperson Council of Governors, with clear recommendations from the Board by the tenth day of the succeeding month.

(3) A county government experiencing drought and food insecurity shall by the fifth day of each month submit a report to the secretariat of the Fund for review and the making of recommendations by the County Drought Committee.

(4) The report under paragraph (3) shall contain the following details—

- (a) the county drought response plan;
- (b) interventions made by the county to mitigate against drought impacts;
- (c) interventions made in partnership with a county government against drought impacts by development partners;
- (d) resources available by the county government and development partners partnering with the county government to finance the response plan; and
- (e) financing gap per sector, if any.

PART V – MISCELLANEOUS PROVISIONS

Application of Government Financial Regulations and procedures.

40. Subject to the provisions of the Public Finance Management Act (Cap. 412A), any existing relevant legislation and existing Government Financial Regulations and Procedures shall apply in the administration of the Fund.

Costs of running the Fund.

41. (1) The administration costs for running the Fund shall not be more than three per centum (3%) of the total budgetary provision for the Fund.

(2) Despite the provisions under paragraph (1), each year, three (3%) per centum of the annual budget of the Fund shall be set aside for the Fund Secretariat, of which not more than two (2%) per centum shall be allocated to all County Secretariat's and Committees expenditure in accordance with the set criterion by the Board.

Offence and penalty.

42. (1) Any person who misappropriates any funds or assets from the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided for in the Act and these Regulations, commits an offence and shall, upon conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings or to both.

(2) In addition to the penalty prescribed under paragraph (1) and subject to the existing relevant laws, the Court may order for the recovery of the monies or assets acquired as a result of the commission of the offence thereof.

Guidelines on the Fund.

43. The Board shall through participatory process and in consultation with the Cabinet Secretary, develop guidelines for the proper management of the Fund.

Winding-up of the Fund.

44. (1) In the event of winding up of the Fund, the net cash balances shall be transferred to the National Exchequer Account while other assets of the Fund shall be transferred to the Ministry for the time being responsible for matters relating to drought.

[Subsidiary]

(2) The term of the Fund shall be for an initial period of ten (10) years, beyond which the approval of the Cabinet and Parliament shall be sought.

THE PUBLIC FINANCE MANAGEMENT (NATIONAL ROADS TOLL FUND) REGULATIONS

ARRANGEMENT OF REGULATIONS

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**THE PUBLIC FINANCE MANAGEMENT
(NATIONAL ROADS TOLL FUND) REGULATIONS**

[L.N. 222/2021]

Citation.

1. These Regulations may be cited as the Public Finance Management (National Roads Toll Fund) Regulations.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

"Act" means the Public Finance Management Act (Cap. 412A);

"authorized toll collector" means a toll collector appointed as such under section 4 of the Public Roads Toll Act (Cap. 407);

"budget framework" means the national government budget process under the Act;

"business day" means a working day and excludes weekends and public holidays;

"Cabinet Secretary" means the Cabinet Secretary responsible for finance;

"carrying capacity of the Fund" means the ability of the Fund to meet new funding obligations being imposed as a consequence to the admission of new project roads into the Fund's liability portfolio, relative to obligations already existing under the Fund;

"Committee" means the Oversight Committee established under regulation 8 of these Regulations;

"contracting authority" has the meaning assigned to it under section 2 of the Public Private Partnership Act (Cap. 430);

"financial year" has the meaning assigned to it under Article 260 of the Constitution;

"Fund" means the National Roads Toll Fund established under regulation 5 of these Regulations;

"Fund Secretariat" means the Fund Secretariat established under regulation 16 of these Regulations;

"independent expert" means a person or organisation with substantial experience in the development of traffic forecasts, toll revenue projections and road project agreements appointed to support the Officer Administering the Fund in the preparation of quarterly and annual inflow and outflow projections;

"inflows" means all payments into the Fund;

"Officer Administering the Fund" means the officer designated as such under regulation 12 of these Regulations;

"outflows" means payments out of the Fund to meet eligible expenditure under the Fund;

"Public Private Partnership Project Facilitation Fund" means the Fund established under section 68 of the Public Private Partnerships Act, 2013;

"PPP unit" has the meaning assigned to it under section 2 of the Public Private Partnerships Act, 2013;

"private party" includes a service provider or a toll operator appointed as an authorised toll collector under a project agreement to perform services related to a toll road in Kenya;

"project agreement" has the meaning assigned to it under section 2 of the Public Private Partnerships Act, 2013;

"project company" has the meaning assigned to it under section 2 of the Public Private Partnerships Act (Cap. 429);

"project road" means a road declared as toll road under section 3(1) of the Public Roads Toll Act and for which a project agreement obligates service or other payments from the Fund;

"Projected Fund Ratio" as at a particular future date, means the ratio of the projected future Inflows plus any moneys currently held within the accounts of the Fund divided by the projected future Outflows of the Fund up to that future date, calculated for twelve forward rolling months:

Provided that this ratio shall, at a minimum, be computed taking into account arrears, amounts invoiced but not settled and not yet classified as arrears, and other amounts that will become due over the forecast period;

"projected shortfall" means the Projected Fund Ratio which is less than 1.3 in any projection period;

"projected surplus" means existing Projected Fund Ratio exceeding 1.3 in any projection period and where actual cash balances, excluding projected future inflows, within the Fund are the basis for determining the Projected Fund Ratio;

"road toll" means a user charge levied on road users in accordance with the Public Roads Toll Act (cap. 407);

"road users" means the categories of vehicular traffic subject to pay a prescribed toll;

"service payments" means scheduled payments due to and invoiced by a private party pursuant to a project agreement and in accordance with these Regulations;

"service provider" means a private party or project company that enters into a project agreement with a contracting authority to provide a project road, as detailed under a project agreement;

"Short-Term Liquid Instruments" means any marketable financial security having short-term maturity, readily convertible into cash, including fixed income instruments such as treasury bills, commercial paper and certificates of deposit as may from time to time be approved in accordance with these Regulations; and

"toll operator" means a private party appointed as an authorised toll collector under a project agreement by a contracting authority to establish, administer and operate a toll system.

Objects and purpose of Regulations.

3. The objects and purposes of these Regulations are—

- (a) to establish a centralized Fund into which all revenues collected pursuant to these Regulations shall be paid and administered;
- (b) to provide for the oversight and administration of the Fund;
- (c) to prescribe the processes by which money is paid into and out of the Fund;
- (d) to provide investors in and financiers of project roads, as well as the general public, necessary information on the status of the Fund to support investment decisions; and
- (e) to make provision for purposes connected with and incidental to the foregoing objects and purposes.

[Subsidiary]

Imposition of tolls.

4. There shall be imposition of road tolls which shall be set in accordance with the Public Roads Toll Act (Cap. 407).

Establishment of the Fund.

5. There is established a fund to be known as the National Roads Toll Fund, which shall be operated under the budgeting, accounting, reporting and auditing framework of the Act.

Sources of the Fund.

6. The sources of the Fund shall consist of the following—

- (a) road tolls levied on road users for access to and use of project roads;
- (b) fees or charges imposed on road users accessing project roads with overloaded axles levied in accordance with Part III of the Kenya Roads (Kenya National Highways Authority) Regulations, 2013, section 58 of the Traffic Act (Cap. 403) and section 21 of the East African Community Vehicle Load Control Act, 2016;
- (c) monies appropriated by Parliament or otherwise paid into the Fund by the Government for the purposes of the Fund;
- (d) grants and donations made to the Fund;
- (e) any earnings, accruals or income generated from moneys held within the Fund;
- (f) proceeds from levies on roadside developments including road side stations which form part of the scope of works for project roads, as well as proceeds from any access fees and advertisements along the project roads levied in accordance with Part II of the Kenya Roads (Kenya National Highways Authority) Regulations, 2013 and any other applicable framework as from time to time adopted in this regard;
- (g) penalties arising from any breaches by a private partner under an agreement entered into under section 4A of the Public Roads Toll Act (Cap. 407);
- (h) insurance proceeds payable to a contracting authority under a project agreement applied as reimbursement intended to make good a loss occasioned to and suffered by a contracting authority for an action of a private party only where the loss suffered by the contracting authority, and linked to an insured event, have been met from the Fund; and
- (i) money from any other source approved by the Cabinet Secretary.

Payments out of the Fund.

7. Payments out of the Fund shall comprise the following—

- (a) payments certified by a contracting authority as being due to a service provider or a toll operator under a project agreement and in accordance with these Regulations, excluding—
 - (i) compensation for political risks as specified under a project agreement;
 - (ii) termination payments; and
 - (iii) any other large, unscheduled one-off payments arising under a project agreement which have not been or cannot be accommodated under the payment mechanism under a project agreement;
- (b) the approved annual operating budget of the Fund; and

- (c) any other eligible expenditure incurred in pursuance of the object and purpose for which the Fund is established:

Provided such costs are directly linked to the underlying projects supported under the Fund, and they are necessary and essential components of meeting the liabilities of the Fund under Project Roads.

Establishment of Oversight Committee.

8. (1) There is established a committee to be known as the Oversight Committee which shall consist of—

- (a) the Principal Secretary for the time being responsible for matters relating to finance, who shall be its chairperson;
- (b) the Principal Secretary for the time being responsible for matters relating to roads;
- (c) the Principal Secretary for the time being responsible for matters relating to planning and statistics;
- (d) the Attorney-General or his representative;
- (e) three other persons being non-public officials drawn from technical, financial services, social services, life sciences, consumer rights and legal professions appointed competitively by the Cabinet Secretary; and
- (f) the Officer Administering the Fund, who shall be Secretary to the Committee.

(2) The Committee may from time to time admit a representative of a contracting authority for the time being having a project road, a representative of the PPP Unit, the Accountant-General or any other public official it deems fit into its sittings and participate as an *ex officio* member.

Qualifications for appointment.

9. A person shall be qualified to be appointed under regulation 8(1)(e) as a member of the Committee if that person—

- (a) holds a degree in the relevant field from a university recognized in Kenya;
- (b) has proven fund management or other relevant professional experience;
- (c) has served in a position of senior management for a period of at least 6 years;
- (d) meets the requirements of Chapter six of the Constitution; and
- (e) has no convictions resulting from integrity related matters or civil liabilities.

Functions of the Committee.

10. (1) The functions and powers of the Committee shall be to—

- (a) review and approve the annual work programme and budget of the Fund;
- (b) authorise allocations in accordance with approved budgets as prescribed under these Regulations;
- (c) approve annual reports of the Fund before submission to the Cabinet Secretary and inform the Cabinet Secretary of the annual funding requirements of the Fund;
- (d) approve the opening of bank accounts of the Fund by the Officer Administering the Fund;
- (e) make recommendations to the Cabinet Secretary on the declaration and use of projected surpluses;

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- (f) authorise withdrawals from the Fund of projected surpluses upon approval by the Cabinet Secretary in accordance with these Regulations and any guidelines it approves for this purpose;
 - (g) approve the systems for the control and oversight of the operation of the Fund;
 - (h) approve the recruitment and the terms and conditions of staff of the Fund;
 - (i) appoint independent advisors to provide it with expert opinion on any matter falling within its mandate that is deemed to require such expertise, and require the Officer Administering the Fund to meet the costs, if any, attendant on such experts or advisors;
 - (j) establish the Fund's investment policies with respect to surplus cash;
 - (k) approve annual financial statement of accounts prepared by the Officer Administering the Fund;
 - (l) oversee the performance of the Officer Administering the Fund;
 - (m) oversee the performance of the Fund; and
 - (n) perform any other function necessary to promote the objects and purpose of the Fund and consistent with these Regulations.
- (2) The Committee shall, in discharging its functions under these Regulations—
- (a) take such measures and make such recommendations to the Cabinet Secretary as it shall be necessary to guarantee, sustain and improve the governance framework for toll road programmes with the view to promoting the long-term financial integrity and sustainability of the Fund with respect to the purposes for which it has been established;
 - (b) meet regularly, and at least once a quarter, to consider the affairs, status and operation of the Fund; and
 - (c) adopt such procedures as shall be necessary to organize the conduct of its business including the methods by which meetings shall be convened and the frequency and quorum thereof, the keeping of records, co-option of persons with such skills as the Committee may require to better discharge its duties under these Regulations, the formation of any sub- committees as the business of the Committee may demand, and for such other matters as the Committee shall deem fit and necessary to support its operational and functional efficiency and effectiveness.

Vacation and filling of office.

11. (1) A vacancy shall arise under regulation 8(1)(e) where the member—

- (a) dies;
- (b) resigns from office, by notice in writing addressed to the Cabinet Secretary;
- (c) is adjudged bankrupt or otherwise declared to be insolvent;
- (d) abandons the business of the Fund or fails to attend three consecutive meetings of the Committee without a valid reason; or
- (e) is convicted of an offence involving dishonesty or fraud or moral turpitude and sentenced to imprisonment.

(2) The Cabinet Secretary shall appoint the person to fill the vacancy in the Committee in accordance with regulation 8(1)(e).

(3) The Cabinet Secretary shall, within seven days of appointing a person under regulation 8(1)(e) notify such appointment by notice in the *Gazette*.

Officer Administering the Fund.

12. Pursuant to section 24(5) of the Act, the Cabinet Secretary shall designate a person to be the Officer Administering the Fund.

Functions of Officer Administering the Fund.

13. (1) The Officer Administering the Fund shall control the administration of the Fund, for which purpose it shall cause to be established proper systems for the operation of the Fund.

(2) The systems to be established under sub-regulation (1) shall include the following—

- (a) financial management systems;
- (b) audit control systems;
- (c) documentation and records systems;
- (d) human resource management systems;
- (e) assets, stores and supplies; and
- (f) reporting systems.

(3) The Officer Administering the Fund shall have the following key functions—

- (a) the preparation of work programme and budget of the Fund, and for this purpose shall—
 - (i) make preparation of the Fund's annual budget and work plans, and submit the same to the Committee for approval; and
 - (ii) address projected shortfalls in the Fund through the budget framework in accordance with the Act and these Regulations;
- (b) financial control over the administration of the Fund, which shall include the following—
 - (i) opening of a bank account and any sub-accounts of the Fund in a financial institution approved by the Cabinet Secretary;
 - (ii) making payments out of the Fund in accordance with these Regulations;
 - (iii) causing to be kept proper books of account and all records of the Fund;
 - (iv) specifying all forms and prepare all funding documentation required under these Regulations; and
 - (v) ensuring that there are held within the Fund sufficient funds to meet the quarterly and annual obligations of the Fund;
- (c) reporting to the Committee on the operations and performance of the Fund, which shall include—
 - (i) annual financial accounts and reports of the Fund in accordance with the Act;
 - (ii) quarterly reports, on a rolling 12-month basis, of the projected inflows and outflows of the Fund and of the Projected Fund Ratio, and for any projected shortfalls or projected surpluses and make recommendations to the Committee for their approval;
 - (iii) quarterly reports, on a rolling 12-month basis, on the projected inflows and outflows of the Fund and of the Projected Fund Ratio, as well as statements on how any projected shortfalls are intended to be addressed which reports shall be submitted to contracting authorities and service providers, within

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45 business days of the end of each quarter, following approval by the Committee;

- (iv) quarterly and annual non-financial reports on the performance of the Fund in accordance with the Act; and
- (v) preparation, signature, and with the approval of the Committee, transmission to the Auditor-General in respect of each financial year a statement of account relating to the Fund in such form and within such timelines as the Public Sector Accounting Standards Board established under section 192 of the Act may from time to time specify in accordance with the Act, a copy of which statement of account shall be filed with the National Treasury;

Provided that—

- (aa) for the purpose of paragraphs (c)(i) and (c)(ii), the Officer Administering the Fund, in making projections for the purpose of determining surpluses or addressing shortfalls, shall take into account such macroeconomic forward-looking assumptions derived from recognised and reputable independent sources for macro-economic forecasts, to the extent these are available, such assumptions to be used both to produce traffic and revenue forecasts as well as to forecast future service payments, and may retain advisors for this purpose; and
- (bb) the Officer Administering the Fund may recommend to the Committee, and the Committee may issue, such guidelines on conditions to be met before surpluses are declared and or withdrawn, taking into account the liabilities of the Fund, as may be necessary for the better carrying out of the objects of this regulation;
- (d) implement the Fund's investment policies with respect to declared surpluses as established by the Committee, which shall include—
 - (i) recommendations on the declaration of projected surpluses and their usage or application;
 - (ii) investment of surplus cash in approved Short-Term Liquid Instruments; and
 - (iii) raising additional resources for the Fund;
- (e) human resource management within the Fund, which shall include—
 - (i) recommendations on the appointment of Fund Secretariat staff to the Committee;
 - (ii) appointment of required, suitably qualified, independent experts or advisors, to prepare or advise on the preparation of the traffic and toll revenue projections supporting the estimates of inflows, and the estimates of payments to be made under project agreements supporting the estimates of outflows, and consult with the contracting authorities and service providers as necessary;
 - (iii) meeting the costs of advisors appointed by the Committee; and
 - (iv) performing any other function that the Committee may, consistent with these Regulations, delegate and require to be undertaken.

(4) Subject to the approval of the Committee, the Officer Administering the Fund may outsource some of its functions to agents or experts and advisors it may appoint for that purpose, which appointment shall be in writing, and time-bound.

(5) The act of outsourcing the performance of a function of the Officer Administering the Fund to an appointed agent, expert or advisor shall not divest the Officer Administering the

Fund of the responsibility to ensure that the function is effectively and efficiently performed in the public interest or on behalf of public service as set out in these Regulations.

Addressing shortfalls in the Fund.

14. For the better implementation of the obligations under regulation 13(3)(c), (d) and (e), the Officer Administering the Fund shall—

- (a) calculate the Projected Fund Ratio for each quarter of the immediate subsequent 12-month period with the view to determining whether the Fund shall realize a Projected Shortfall or Projected Surplus for the forecast period;
- (b) upon the establishment of the Fund, and for as long as toll revenues lead to the realization of projected shortfalls in the Fund, where the Projected Fund Ratio is less than 1.3, cause to be appropriated such budgetary allocations as shall be adequate to cover the projected shortfall, that is, bring the Projected Fund Ratio to at least 1.3; and
- (c) make recommendations to the Committee on the carrying capacity of the Fund, and the Committee shall advise the Cabinet Secretary on the advisability and implications of admitting new project liabilities into the Fund.

Determining shortfalls in Fund.

15. (1) Projected shortfalls in the Fund shall be evidenced by—

- (a) contracted obligations under project agreements; and
- (b) quarterly estimates of inflows and outflows of the Fund prepared by the Officer Administering the Fund, as prescribed under Regulation 13(3)(c).

(2) For purposes of sub-regulation (1), the Officer Administering the Fund shall, at the start of the Fund, prepare and submit to the Committee for approval a detailed methodology for the determination of the quantum of projected shortfalls, as the basis for resolution of such projected shortfalls within the annual budget framework.

(3) The methodology referred to under sub-regulation (2) shall be subject to such periodic reviews as the Committee shall determine, taking into account actual experiences observed from the tolling programme.

Fund Secretariat.

16. The Officer Administering the Fund shall appoint such staff, in consultation with the Committee, as shall be deemed necessary to constitute the Fund Secretariat for the purposes supporting the discharge of the functions of the Officer Administering the Fund under these Regulations.

Eligibility of disbursements out of Fund.

17. Disbursements out of the Fund shall be bound by the following broad principles—

- (a) disbursements to service providers and toll operators shall be on the basis of contracted obligations of a contracting authority under a project agreement, as included in the approved annual budget of the Fund and shall be against proper documentation as detailed in regulation 18; and
- (b) disbursement of projected surpluses shall be subject to formal approval of the Cabinet Secretary as detailed in these Regulations.

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Payment procedure by the Officer Administering the Fund.

18. (1) The Officer Administering the Fund shall satisfy himself or herself, with respect to every payment instruction received from a contracting authority—

- (a) that each payment instruction is made in writing and authenticated by the certificate of the contracting authority as to the payment amount, the nature of services rendered or the compensation due against which the payment instruction is submitted and the payment recipient;
- (b) that the payee's account is the same one indicated in the project agreement or where appropriate the payee's account pursuant to the provisions of the lender's direct agreement, unless an alternative payee has been communicated in writing to the Officer Administering the Fund by a contracting authority in accordance with a project agreement or a lenders' direct agreement entered into between the relevant contracting authority, service provider or the toll operator and project's financiers, as the case may be, payments to which alternative payee shall amount to complete and final discharge of the Fund and the contracting authority to the service provider and all its financiers for that particular invoice; and
- (c) that the payment processes of the Officer Administering the Fund, including the execution of the powers reserved for him or her under these Regulations shall be completed and payments made no later than the time stipulated for such payments under a project agreement.

(2) The Officer Administering the Fund shall specify forms and documents to be used by contracting authorities in submitting payment requests to the Fund, in accordance with the requirements of a project agreement.

(3) All payment requests to the Fund shall be submitted to the Fund not later than twenty one Business days before the due date for such payment, without prejudice to any larger period to the extent such is provided for under a project agreement.

(4) Any application for payment under this regulation shall, without prejudice to any provision in these Regulations, be supported by such documents as may be required under a project agreement, including the following—

- (a) the name and address of the payee;
- (b) the bank account details of the payee;
- (c) an invoice from the contractor or other eligible contract party;
- (d) any certificate required from a contracting authority and any independent expert under the terms of a project agreement;
- (e) a certified payment voucher, with all material fields duly populated and vetted; and
- (f) any other information as may be specified by the Officer Administering the Fund under sub-regulation (2) of this regulation.

Right to question and withhold payment instruction.

19. The Officer Administering the Fund shall, where it establishes that the requirements in regulation 18 have not been met in any material particular, have the right to request for clarification and rectification from the contracting authority, and the power to withhold disbursements against invoices until such matters are resolved.

Opening of accounts, and equality of Fund liabilities.

20. (1) The Officer Administering the Fund shall cause to be opened in the name of the Fund such bank accounts for the Fund in a bank or banks approved in accordance with section 28 of the Act, as may be necessary for the purposes for which the Fund is established.

(2) All liabilities relating to contracted obligations of the Fund shall be settled in the manner prescribed under this regulation.

(3) The Officer Administering the Fund shall open sub-accounts in the name of each project road supported under the Fund, and into which sub-account shall be remitted all toll revenues realized from the said project road by a private party pursuant to these Regulations.

(4) Funds within a project sub-account shall be applied to the following purposes in the following order, and for which reason the Officer Administering the Fund shall establish a cash waterfall—

- (a) payments for the toll operator;
- (b) payments for the service provider;
- (c) proportional payments to meet the costs of the Officer Administering the Fund;
- (d) any professional fees incurred in the proper discharge of obligations under the Regulations by the Officer Administering the Fund and the Oversight Committee:
Provided such fees shall be proportionally met out of the various project sub-accounts where the advisory relates to a portfolio-wide matter, and allocated to a specific project sub-account, where the advisory relates to issues on that individual project road;
- (e) any other payment declared to be eligible and directly linked to the project road supported under the Fund.

Fund not to be overdrawn.

21. The Officer Administering the Fund shall ensure that no bank accounts of the Fund are overdrawn.

Procedure for prefunding the Fund.

22. (1) Further to regulation 14 and upon the establishment of the Fund, and until toll revenues collected on annual basis attain such a scale that the Projected Fund Ratio is equal to or exceeds 1.3 times annual obligations of the Fund, the Officer Administering the Fund shall cause to be appropriated such budgetary allocations as shall be adequate to meet the Fund's projected shortfall, and this shall be an ongoing duty until such a time as toll revenues attain a Projected Fund Ratio of 1.3 or more.

(2) The Officer Administering the Fund shall, for purposes of this regulation, observe the budget process for national government entities as prescribed in the Act.

Declaration and use of surplus Funds.

23. (1) Where, and pursuant to regulation 13(3) (c) and (d), there is a projected surplus, the Committee, on the advice of the Officer Administering the Fund, may recommend to the Cabinet Secretary the declaration of a projected surplus in the Fund, subject to sub-regulation (2) of this Regulation.

(2) A projected surplus may only be declared where the Projected Fund Ratio is derived against actual cash balances held within the Fund and not projected inflows.

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(3) Subject to sub-regulation (4) of this regulation, and regulation 13, projected surpluses may be paid out of the Fund into the National Exchequer Account, provided such withdrawal does not exceed the amount of the projected surplus and does not lead to a projected shortfall.

(4) Where projected surpluses are taken out of the Fund under the terms of these Regulations, the surpluses shall be paid into the National Exchequer and applied to such purposes as shall be determined by the Cabinet Secretary within the national budget framework.

Moneys to be retained in Fund.

24. All receipts, savings and accruals of the Fund and the balance of the Fund at the close of each financial year, shall be retained for the purpose for which the Fund is established.

Administrative costs.

25. The Officer Administering the Fund shall ensure the administration costs of the Fund are managed within the framework permissible under the Act.

Superintendence of Fund expenditure.

26. The Officer Administering the Fund shall establish systems, protocols and procedures necessary to ensure that—

- (a) the Fund's expenditure is controlled and is monitored, on an annual basis, against the Fund's approved revenue and expenditure plan;
- (b) withdrawals from the Fund are only for the purposes of payment of approved expenditure in accordance with these Regulations; and
- (c) the records of expenditure relating to the Fund are kept and maintained in accordance with the provisions of the Act and Regulations made thereunder.

Access to information.

27. In furtherance of its mandate under these Regulations, the Officer Administering the Fund shall have power—

- (a) to access any project related data that he or she may need from contracting authorities in furtherance of his or her functions with respect to invoice settlement;
- (b) to call for such additional information with respect to requests for payments out of the Fund as are necessary to satisfy the requirements of regulation 18;
- (c) to issue financial management guidelines upon approval of the Committee relating to the purposes and objects of these Regulations; and
- (d) to publish at the start of each financial year, on its website, the following information—
 - (i) amount and source of money received into the Fund as at the close of the previous financial year;
 - (ii) clear credit balances of available funds for the current financial year;
 - (iii) quantum of committed eligible expenditure for the current financial year;
 - (iv) total number of projects and other eligible activities supported under the Fund for the current financial year; and
 - (v) such other information that Fund stakeholders may reasonably request, and approved by the Committee, from time to time.

Government financial Regulations.

28. The existing government financial and procurement Regulations shall, to the extent they relate to the administration of public funds established under the Act, apply in the administration of the Fund.

Submission of annual performance reports.

29. The Officer Administering the Fund shall prepare and submit to the Committee and the Cabinet Secretary, within three months after the end of each financial year, an annual Fund performance report relating to the previous financial year, detailing the extent to which the Fund met its regulatory and development objectives in the period under review, and highlighting challenges, threats and opportunities for the enhanced effectiveness of the Fund in promoting the public interests secured under these Regulations.

Misconduct of public officers.

30. The provisions of the Act relating to offences by public officers, including financial misconduct, shall apply to these Regulations.

Review of performance of the Fund.

31. (1) The Cabinet Secretary shall at the elapse of ten years from the date of commencement of these Regulations cause a review to be conducted of the performance of the Fund in accordance with the requirements of the Act.

(2) The review shall determine whether the Fund has met the objectives for which it was established.

(3) The report on the review shall be submitted to the Cabinet for approval.

(4) The review of the performance of the Fund under this regulation 31 shall be without prejudice to the obligations of the Oversight Committee and the Officer Administering the Fund prescribed under these Regulations for the more frequent reviews of the Fund's performance, in particular under Regulations 5, 10, 13, 14, 15, 22, 23, 26 and 29.

Alternative Arrangements and Winding Up.

32. (1) The Cabinet Secretary may, subject to the approval of the National Assembly, wind up the Fund where the Cabinet Secretary considers that the Fund has successfully completed the specific objectives for which it was created, or where it is demonstrated the Fund has irredeemably failed to meet such objectives.

(2) Despite the provisions of sub-regulation (1), the Cabinet Secretary may wind up the Fund if—

- (a) the Fund no longer has obligations to eligible parties under these Regulations, or where such obligations exist, upon demonstration that alternative arrangements agreed with all project participants have been put into place to meet such obligations; and
- (b) the Committee has made its recommendations supporting such winding up or the set up of such alternative arrangements, and which opinion shall have taken into account any views and representations of any project participant supported under or through the Fund; and
- (c) the Cabinet has considered and approved the recommendation of the Cabinet Secretary to wind up the Fund or to set up such alternative arrangements, and Cabinet grants approval for such winding up to be moved before the National Assembly.

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(3) On the winding up of the Fund—

- (a) the Officer Administering the Fund shall call on the contracting authorities to request from the respective service providers or toll operators or other project parties or their agents financial statements to confirm that there are no valid outstanding obligations to service providers or toll operators or other involved project parties and commitments for payment;
- (b) subject to paragraph (a), the Officer Administering the Fund shall pay any amount remaining in the Fund into the National Exchequer Account for the credit of the national government;
- (c) the Cabinet Secretary shall pay any deficit in the Fund, and shall meet any residual liabilities of the Fund at the time of such winding up from the funds of the national government in the National Exchequer Account with the approval of the National Assembly;
- (d) assets other than cash of the Fund shall be transferred to the National Treasury; and
- (e) the Fund Secretariat shall be disbanded.

(4) The Officer Administering the Fund shall prepare, and the Cabinet Secretary shall submit to Parliament and to the Auditor-General, a final statement of accounts for audit within nine months from the date of the decision to wind up the Fund.

Revocation of LN 307 of 1986.

33. The Public Roads Toll (Public Roads Toll Fund) Rules, 1986 (LN No 307 of 1986) made under the Public Roads Toll Act are hereby revoked.

THE PUBLIC FINANCE MANAGEMENT (FINANCIAL INCLUSION FUND) REGULATIONS

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**THE PUBLIC FINANCE MANAGEMENT
(FINANCIAL INCLUSION FUND) REGULATIONS**

[L.N. 213/2022]

Citation.

1. These Regulations may be cited as the Public Finance Management (Financial Inclusion Fund) Regulations.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

"Act" means the Public Finance Management Act (Cap. 412A);

"Administrator of the Fund" means a person designated as such under regulation 17(1);

"association" has the meaning assigned to it under section 2 of the Micro and Small Enterprises Act (Cap. 499C);

"Board" means the Advisory Board established under regulation 10(1) of these Regulations;

"borrower" means a person in receipt of a financial service or product advanced to that person by the Fund;

"bottom of the pyramid" means a socio-economic group of persons with low disposable income;

"Cabinet Secretary" has the meaning assigned to it under section 2 of the Act;

"chama" means a registered group of persons pursuing common objectives by pooling resources together to empower one another economically;

"cooperative society" has the meaning assigned to it under section 2 of the Co-operative Societies Act (Cap. 490);

"credit scoring" means a statistical analysis performed by the Fund or an agent or a financial intermediary to determine the creditworthiness of an applicant to qualify for subsequent and enhanced financial service or product under this Fund;

"eligible person" means a person with low disposable income or a registered micro, small and medium enterprise, a chama, group, table banking group, a cooperative society or an association intending to take a financial product or service to start a business or enhance an existing business;

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

"financial intermediary" means a micro-finance institution, a cooperative society, a chama, a group or an association that holds funds from the Fund for on-lending;

"financial product" means a financial instrument including a loan which may be advanced by the Fund to an eligible person under these Regulations;

"financial service" includes health insurance, retirement benefit scheme, universal health coverage and universal social security which may be offered by the Fund to an eligible person under these Regulations;

"financial year" means the period of twelve months ending on the 30th June in each year;

"Fund" means the Financial Inclusion Fund established under regulation 3;

"group" means a registered self-help group with a common interest or whose aim is to organize itself to work together or act together to achieve an economic objective;

"medium enterprise" has the meaning assigned to it under section 2 of the Act;

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

"on-lending" means lending of a financial service or product by a financial intermediary to a member or a third party on conditions determined by the Board;

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

"table banking" means a group-based funding system where members of a group make periodic monetary contributions to form a kitty from which members may borrow.

PART II – ESTABLISHMENT OF THE FUND

Establishment of the Fund.

3. There is established a Fund to be known as the Financial Inclusion Fund.

Sources of the Fund.

4. The Fund shall consist of—

- (a) monies appropriated by the National Assembly for the purposes of the Fund;
- (b) income generated from the proceeds of the Fund in form of interest and other charges such as penalties;
- (c) income from investments made by the Fund;
- (d) grants, donations, bequests or other gifts made to the Fund; and
- (e) monies from any other source approved by the Cabinet Secretary.

Expenditure of the Fund.

5. (1) There shall be paid out of the Fund payments in respect of any expenses incurred in pursuance of the object and purpose for which the Fund is established.

(2) The expenditure incurred on the Fund shall be limited to annual budget estimates prepared by the Administrator of the Fund and recommended by the Board to the Cabinet Secretary for the time being responsible for matters relating to Micro, Small and Medium Enterprises (MSMEs) for approval and submission to the Cabinet Secretary for further approval, at the beginning of the financial year to which they relate.

(3) Any revision of the approved budget estimates shall be referred to the Board and the Cabinet Secretary for approval.

Capital of the Fund.

6. The capital of the Fund shall be as appropriated by the National Assembly or from any other source provided for under regulation 4 of these Regulations.

Object and purpose of the Fund.

7. (1) The object and purpose of the Fund shall be to innovate, develop and deploy bottom of the pyramid financial services and products that are affordable, accessible and appropriate for the unserved and under-served persons, including credit, saving, insurance and investment products.

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(2) Without prejudice to the generality of paragraph (1), the objects and purpose of the Fund shall be to—

- (a) promote financial inclusion through expanding access to credit by persons, micro, small and medium enterprises, chamas, table banking groups, groups, cooperative societies, associations and start-ups for economic growth and job creation;
- (b) address the qualitative dimension of financial inclusion, in particular responsible lending and borrowing, ethical practices, consumer rights and financial literacy;
- (c) strengthen the financial and operational capacity of informal sector membership based financial institutions including cooperative societies, chamas, table banking groups and micro-finance institutions;
- (d) promote market interventions to improve supply of affordable credit to Micro, Small and Medium sized Enterprises (MSMEs) including credit-worthiness based lending, risk pricing, business and financial management skills, and cost of doing business;
- (e) address the low participation of the non-formal wage workforce, namely informal sector entrepreneurs and workers, smallholder farmers, pastoralists, fisherfolk and other self-employed in health insurance and retirement benefit schemes, for the purpose of achieving universal health coverage (UHC) and universal social security; and
- (f) provide for government counterpart funding for the savings for pension component for beneficiaries, who shall be natural persons, of the Fund.

Delivery of Products and Services.

8. (1) The Fund shall ensure that its products and services are commercially viable, rapidly scalable at reasonable cost and low operational risk without distorting the market.

(2) In facilitating the provision under paragraph (1), the Fund shall leverage on existing commercial infrastructure, including mobile payments platforms and financial institutions, including agency, co- financing and on-lending partnerships:

Provided that such partnerships are not exclusive or preferential, are technology neutral and do not confer market advantage to any partners over competitors.

Role of the Cabinet Secretary in charge of MSMEs.

9. The Cabinet Secretary for the time being responsible for matters relating to Micro, Small and Medium Enterprises (MSMEs) shall be responsible for—

- (a) providing overall policy direction in implementation of the Fund;
- (b) appointment of members of the Board under regulation 10(1)(e);
- (c) appointment of the Chief Executive Officer under regulation 14(1);
- (d) providing regular briefs to the Cabinet on the status of implementation of the Fund;
- (e) approval of the estimates of expenditure and revenue before submission to the Cabinet Secretary;
- (f) receipt of quarterly and annual financial and non-financial reports of the Fund; and
- (g) receipt of any recommendations from the Board for policy guidance in furtherance of the objects and purpose of the Fund.

PART III – MANAGEMENT OF THE FUND

Advisory Board.

10. (1) There is established a board to be known as the Advisory Board which shall consist of—

- (a) a non-executive Chairperson appointed by the President;
- (b) the Principal Secretary to the National Treasury or his representative, designated in writing;
- (c) the Principal Secretary of the State Department for the time being responsible for matters relating to micro, small and medium enterprises or his representative, designated in writing;
- (d) the Principal Secretary of the State Department for the time being responsible for matters relating to cooperatives or his representative, designated in writing;
- (e) three other persons, not being public officers, who shall be appointed by the Cabinet Secretary for the time being responsible for matters relating to micro, small and medium enterprises; and
- (f) the Administrator of the Fund, who shall be the Secretary of the Board and an *ex-officio* member.

(2) The Board may invite any person to attend a meeting of the Board for the purpose of assisting or advising the Board on any particular matter but such a person shall have no right to vote at the meeting.

(3) The Chairperson and members of the Board appointed under paragraph (1)(a) and (1)(e) respectively shall serve for a term of three years but shall, subject to satisfactory performance, be eligible for re-appointment for one further term of three years, for a maximum of two terms.

(4) The quorum necessary for transaction of the business of the Board shall be a simple majority of the members.

(5) The conduct and regulation of the business and affairs of the Board shall be determined by the Board.

Qualifications of members of the Board.

11. (1) A person shall be eligible for appointment as the Chairperson of the Board under paragraph 10(1)(a) if that person—

- (a) possesses a university degree in a relevant field from a university recognised in Kenya;

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- (b) has leadership and management experience of not less than ten years and has knowledge in any of the following fields—
 - (i) finance;
 - (ii) accounting;
 - (iii) economics;
 - (iv) law;
 - (v) enterprise development;
 - (vi) cooperative management;
 - (vii) information, communication and technology;
 - (viii) business and management; or
 - (ix) strategic management.
- (c) meets the requirements of Chapter Six of the Constitution.

(2) A person shall be eligible for appointment as a member of the Board under paragraph 10(1)(e) if that person—

- (a) possesses a university degree in a relevant field from a university recognised in Kenya;
- (b) has leadership and management experience of not less than five years and has knowledge in any of the following fields—
 - (i) finance;
 - (ii) accounting;
 - (iii) Economics;
 - (iv) enterprise development;
 - (v) cooperatives management;
 - (vi) information, communication and technology;
 - (vii) business and management;
 - (viii) law; or
 - (ix) strategic management; and
- (c) meets the requirements of Chapter Six of the Constitution.

Vacation of office by Chairperson or a member of the Board.

12. The Chairperson or a member of the Board appointed under regulation 10(1) (a) and (e) shall cease to hold office if—

- (a) he resigns from office by notice in writing to the appointing authority;
- (b) he is removed from office by the appointing authority upon being—
 - (i) absent from three consecutive meetings of the Board without permission from the appointing authority;
 - (ii) adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;
 - (iii) convicted of an offense involving dishonesty or fraud;
 - (iv) convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;
 - (v) incapacitated by prolonged physical or mental illness;
 - (vi) otherwise unable or unfit to discharge his duties; or
- (c) he dies.

Functions of the Board.

13. The Board shall—

- (a) provide oversight on the administration of the Fund;
- (b) approve operational policies to facilitate the attainment of the objects and purpose of the Fund;
- (c) determine additional disbursement conditions as the Board may consider necessary;
- (d) participate in the formulation of operational policy, regulation and programmes of the Fund to address systemic financial market failure and malpractices including predatory lending and pyramid schemes;
- (e) develop operational policies to guide on—
 - (i) savings for borrowers, who shall be natural persons, of the Fund;
 - (ii) financial services and products under regulation 18 of these Regulations to operationalize the Fund;
 - (iii) the eligibility criteria, online application procedure, credit scoring, approval, disbursement and repayment of loans;
 - (iv) the development of loan management systems and solutions which among others will include database of loan beneficiaries, loans disbursed, amounts recovered and balances;
 - (v) capacity building in respect of eligible persons of the Fund; and
 - (vi) access and conduct of financial intermediaries;
- (f) review and approve the estimates of annual revenue and expenditure of the Fund and recommend them to the Cabinet Secretary for the time being responsible for micro, small and medium enterprises for approval and submission to the Cabinet Secretary for approval;
- (g) set the criteria and conditions for accessing the various financial services including the rate of interest or administrative fee and recovery of financial services or products; in furtherance of the objects and purpose of the Fund;
- (h) monitor and evaluate the implementation and performance of the Fund;
- (i) promote access to the services of the Fund to all Kenyans in all parts of the Republic;
- (j) review and approve the financial statements of the Fund before submission to the Auditor General;
- (k) review and approve operational policy on the management of assets, equipment and all properties under the Fund;
- (l) mobilize resources for the Fund;
- (m) approve the opening and closing of bank accounts of the Fund by the Administrator of the Fund;
- (n) advise the Cabinet Secretary for the time being responsible for micro, small and medium enterprises generally on the operations of the Fund;
- (o) determine the allocation criteria that will ensure equitable distribution of financial products across the country, including the target number of eligible persons to be advanced loans in any one particular year; and

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- (p) undertake any other activity that in the opinion of the Board, will promote and facilitate realization of the objects and purpose of the Fund.

Chief Executive Officer of the Fund.

14. (1) There shall be a Chief Executive Officer of the Fund who shall be competitively appointed by the Cabinet Secretary responsible for matters relating to Micro, Small and Medium Enterprises upon recommendation by the Board.

(2) The Board shall recommend three persons from whom one shall be appointed under paragraph (1).

(3) Where a substantive Chief Executive Officer has not been appointed, the Cabinet Secretary responsible for matters relating to Micro, Small and Medium Enterprises shall appoint a public officer to act as the Chief Executive officer.

(4) A person shall not be appointed as Chief Executive officer, unless that person—

- (a) holds a degree in either economics, accounting, finance or any other relevant degree from a recognized institution;
- (b) has ten years of work experience of which five years shall be in senior management level in a relevant field; and
- (c) meets the requirement of Chapter Six of the Constitution.

(5) A person appointed as a Chief Executive Officer shall hold office—

- (a) for a term of four years subject to renewal for a further one term of four years; and
- (b) on such terms and conditions as may be determined by the Cabinet Secretary responsible for matters relating to micro, small and medium enterprises in consultation with the Cabinet Secretary and the Salaries and Remuneration Commission.

Vacation of office by Chief Executive Officer.

15. The Chief Executive Officer of the Fund shall cease to hold office if—

- (a) he resigns from office by notice in writing to the appointing authority;
- (b) he is removed from office by the appointing authority upon being—
 - (i) adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;
 - (ii) convicted of an offense involving dishonesty or fraud;
 - (iii) convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;
 - (iv) incapacitated by prolonged physical or mental illness;
 - (v) otherwise unable or unfit to discharge his duties; or
- (c) he dies.

Secretariat of the Fund.

16. (1) There shall be a secretariat of the Fund headed by the Chief Executive Officer.

(2) The staff of the secretariat shall be competitively appointed by the Cabinet Secretary responsible for matters relating to Micro, Small and Medium Enterprises upon recommendation by the Board.

(3) Where the Secretariat has not been constituted as envisaged under paragraph (1), the Cabinet Secretary responsible for matters relating to Micro, Small and Medium Enterprises shall second public officers to perform the duties of the Secretariat.

Administrator of the Fund.

17. (1) The Administrator of the Fund shall be the Chief Executive Officer appointed under regulation 14(1).

(2) In administering the Fund, the Administrator of the Fund shall—

- (a) open and operate such bank accounts with the approval of the Board and the National Treasury;
- (b) supervise and control the day-to-day administration of the Fund;
- (c) in consultation with the Board, develop such policies as may be necessary for the attainment of the objects and purpose of the Fund;
- (d) consult with the Board on matters relating to the administration of the Fund;
- (e) cause to be kept books of accounts and other books and records in relation to the Fund of all activities and undertakings financed from the Fund;
- (f) with the approval of the Board, outsource services and enter into and sign commercial contracts or agreements in furtherance of the objects and purpose of the Fund;
- (g) be the custodian of the assets and properties of the Fund;
- (h) open loan accounts of all successful applicants or financial intermediaries and maintain a record of the amount disbursed and the balance thereof;
- (i) prepare, sign and transmit to the Auditor-General, in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund and showing the expenditure incurred from the Fund, and such details as the Public Sector Accounting Standards Board may prescribe from time to time, in accordance with the provisions of the Act and Public Audit Act (Cap. 412B);
- (j) prepare quarterly and annual financial and non-financial reports in a format prescribed by the Public Sector Accounting Standards Board and submit the same to the National Treasury with copies to the Controller of Budget and the Commission on Revenue Allocation; and
- (k) implement any recommendations from the Board for policy guidance in furtherance of the objects and purpose of the Fund.

Categories of financial services or products.

18. (1) The financial services or products of the Fund shall include the following—

- (a) loans;
- (b) retirement benefits;
- (c) health insurance benefits; and
- (d) savings.

(2) The Fund shall leverage on credit scoring model to determine the creditworthiness of an eligible person to qualify for subsequent and enhanced financial services or products.

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Eligibility conditions.

19. Further to the eligibility criteria set in these Regulations, an eligible person may qualify for a financial product or service under these Regulations—

- (a) where an applicant is a natural person, if that person—
 - (i) is eighteen years of age and above; and
 - (ii) is a holder of a Kenyan national identification card.
- (b) where an applicant is a micro, small and medium enterprise, a cooperative society, chama, a group, a table banking group or any other association, if that applicant—
 - (i) has all members who are eighteen years of age and above; and
 - (ii) is registered by the relevant government institution.

Lending to financial intermediary for on lending.

20. A financial intermediary may apply and enter into a lending agreement for a loan from the Fund for on-lending to a business person or micro, small and medium enterprises.

Matching funds by financial intermediary.

21. (1) Where a financial intermediary enters into a lending agreement with the Fund under regulation 20, that financial intermediary may provide matching funds of at least the amount that may be determined by the Board.

(2) A financial intermediary shall pay an interest or administrative fee as may be determined by the Board, but where the financial intermediary provides matching funds under paragraph (1), the interest or administrative fee shall be lower compared to where no matching funds are provided.

Interest or administrative fee on financial services or products.

22. The interest or administrative fee payable by a beneficiary on a financial service or product advanced under these Regulations shall be at a maximum rate of eight *per centum* per annum on reducing balance:

Provided that where a beneficiary defaults, the interest or administrative fee payable shall be nine and one half *per centum* on a reducing balance.

Repayment.

23. (1) A financial product or service advanced under these Regulations shall be repaid in full within the period determined in the agreement.

(2) All sums due to the Fund shall be recoverable as a debt due to the Fund.

Bank accounts for the Fund.

24. (1) The Administrator of the Fund shall open the main bank account at the Central Bank of Kenya.

(2) The Administrator may open such other bank accounts in the Central Bank of Kenya or commercial banks including trust accounts, or pension saving accounts with the approval of the Board and the National Treasury to further the objects and purpose of this Fund.

Administration costs.

25. The Administrative costs of the Fund shall be met through appropriations of the State Department responsible for matters relating to Micro, Small and Medium Enterprises.

Government financial Regulations.

26. The existing government financial and procurement Regulations shall, to the extent they relate to the administration of public funds established under the Act, apply in the administration of the Fund.

Investment of funds.

27. The Administrator of the Fund may invest any of the funds of the Fund which are not immediately required for its purposes in such government securities as may be approved by the Board under these Regulations.

Retention of receipts and earnings.

28. All receipts, earnings and accruals to the Fund, and the balance of the Fund at the close of each financial year shall be retained by the Fund for the purposes of the Fund.

Accounts and audit.

29. (1) The Administrator of the Fund shall cause to be kept all proper books and records of account of the income, expenditure and assets of the Fund.

(2) Within a period of three months from the end of each financial year, the Administrator of the Fund shall submit to the Auditor General the accounts of the Fund together with—

- (a) a statement of the income and expenditure of the Fund during the year; and
- (b) a statement of the assets and liabilities of the Fund on the last day of that year.

(3) The accounts of the Fund shall be audited and reported upon in accordance with the Public Audit Act (Cap. 412B).

Offences and penalties.

30. (1) A public officer who—

- (a) takes possession of the funds or assets of the Fund without lawful authority;
- (b) misappropriates funds or assets of the Fund;
- (c) causes any person to misappropriate or apply the funds otherwise than in the manner provided in these Regulations;
- (d) conceals information on finances of the Fund to obtain a financial benefit either for the officer or another person; or
- (e) engages in a corrupt act, that public officer commits an offence and shall be liable to the penalty provided for under section 199 of the Act.

(2) An applicant or an agent of the Fund who fails to give proper information or gives inaccurate or misleading information or falsifies information or misrepresents information required under these Regulations to obtain a financial benefit, either for himself or herself or for another person, that applicant or agent commits an offence and shall be liable to the penalty provided for under section 199 of the Act.

Protection from personal liability.

31. No matter or thing done by the Chairperson or any member of the Board or any officer, employee or agent of the Fund shall, if the matter or thing is done *bona fide* for the purpose of executing any provision of these Regulations, render the chairperson, member, officer, employee or agent or any person acting on their directions, personally liable to any action, claim or demand whatsoever.

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Winding up.

32. In the event of winding up of the Fund, the cash balances shall be transferred to the Exchequer while other assets of the Fund shall be transferred to the National Treasury.

THE PUBLIC FINANCE MANAGEMENT (NATIONAL PEACE
SUPPORT OPERATIONS FUND) REGULATIONS, 2023

ARRANGEMENT OF PROVISIONS

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**THE PUBLIC FINANCE MANAGEMENT (NATIONAL PEACE
SUPPORT OPERATIONS FUND) REGULATIONS, 2023**

[L.N. 58/2023]

Citation.

1. These Regulations may be cited as the Public Finance Management (National Peace Support Operations Fund) Regulations, 2023.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

"Administrator of the Fund" means the person designated as such under regulation 12 of these Regulations;

"Cabinet Secretary" has the meaning assigned to it under section 2 of the Act;

"Contingent Owned Equipment" means equipment and assets acquired by Government of Kenya for purpose of Peace Support Operations;

"Defence Council" means the Defence Council established under Article 241(5) of the Constitution;

"Equipment Park" means an area designated by the Defence Council for storage of Contingent Owned Equipment and assets;

"financial year" means the period of twelve months ending on the 30th June in each year;

"force generation" means a procedure in which required resources are mobilized with the necessary capabilities at the right scale and readiness for Peace Support Operations;

"force projection" means ability to deploy forces for Peace Support Operations;

"Fund" means the National Peace Support Operations Fund established under regulation 3 of these Regulations;

"Peace Support Operation (PSO)" means peace keeping, enforcement or any other support operation mandated by international or regional agencies involving diplomatic, humanitarian organizations, military and any other components deployed by the National Security Council outside the Country; and

"Public Sector Accounting Standards" has the meaning assigned to it under section 2 of the Act.

Establishment of the Fund.

3. There is established a fund to be known as the National Peace Support Operations Fund which shall operate under the budgeting, accounting, reporting and auditing framework of the Act.

Capital of the Fund.

4. The initial capital of the Fund shall be seven billion shillings as appropriated by the National Assembly as follows—

- (a) one billion to be appropriated from the Exchequer; and
- (b) six billion to be retained from Peace Support Operation reimbursable.

Object and purpose.

5. (1) The object and purpose of the Fund shall be to provide funds to support the participation in Peace Support Operations (PSO) by the Kenya Defence Forces in accordance with Article 240(8)(a) of the Constitution.

(2) Without prejudice to the generality of paragraph (1) of this regulation, the Fund shall provide for—

- (a) financing the establishment of equipment parks as approved by the Defence Council for Peace Support Operation;
- (b) financing for acquisition and maintenance of Contingent Owned Equipment and other assets for Peace Support Operation;
- (c) financing enhancement of units to attain appropriate levels at the United Nations peacekeeping capability readiness system;
- (d) funding of capacity building programmes including training facilities and infrastructure development for the purpose of Peace Support Operation;
- (e) funding force generation and force projection activities;
- (f) funding research, monitoring and evaluation of activities related to Peace Support Operation; and
- (g) funding and facilitation of any other activities in furtherance of Peace Support Operation approved by the Defence Council.

Sources of funds.

6. The Fund shall consist of—

- (a) moneys appropriated by the National Assembly for purposes of the Fund;
- (b) moneys received as reimbursement from Peace Support Operation for the Government provision of Contingent Owned Equipment, assets and services excluding personnel reimbursements;
- (c) grants, donations, bequests or other gifts made to the Fund; and
- (d) moneys from any other source approved by the Cabinet Secretary.

Payment out of the Fund.

7. (1) There shall be paid out of the Fund moneys in respect of any expenses incurred in pursuance of the object and purpose for which the Fund is established.

(2) The expenditure incurred on the Fund shall be on the basis of and limited to annual budget estimates approved by the Defence Council at the beginning of the financial year to which they relate.

(3) Any revision of the approved budget estimates shall be referred to the Defence Council and the Cabinet Secretary for approval.

Retention of receipts.

8. The earnings of, or accruals to the Fund shall be retained in the Fund, and shall be spent only for the objects and purposes for which the Fund is established unless the Cabinet Secretary directs otherwise.

Conditions for release of funds.

9. (1) The funds shall only be released if—

- (a) the release is approved by the Defence Council; and
- (b) the release is to meet the expenses related to the objects and purpose of the Fund.

(2) The Defence Council may set out other conditions and requirements for release of fund to ensure the efficient and effective management of resources.

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(3) Monies may additionally be released out of the Fund where such release—

- (a) relates to expenditures that did not form part of the approved budget for the financial year in accordance with provisions of the Act; and
- (b) has been recommended by the Administrator of the Fund and submitted to the Defence Council for approval.

(4) For purposes of paragraph (3) of these Regulations, a supplementary budget shall be prepared by the Administrator of the Fund and approved in accordance with the provisions of regulation 7;

Provided that the release under the supplementary budget complies with the requirements of these Regulations.

Management of the Fund.

10. The Fund shall be managed by the Defence Council.

Functions of the Defence Council.

11. The functions of the Defence Council shall be—

- (a) to formulate policies and guidelines for the regulation and management of the Fund;
- (b) in liaison with other relevant government state departments and agencies, to continuously seek opportunities for participation in Peace Support Operation by the Government of Kenya and determine the allocation of financial resources from the Fund as required;
- (c) to approve annual estimates of revenue and expenditure for the Fund;
- (d) to ensure retention funds of the preceding financial year are revoted;
- (e) to ensure that only the personnel, assets and services provided to Peace Support Operation conform to the required standards and are earmarked for funding under these Regulations;
- (f) to approve and review investment of surplus funds from the Fund;
- (g) to advise the Cabinet Secretary on any additional sources of funds for the Fund; and
- (h) to approve the financial statements and non-financial reports prepared by the Administrator of the Fund.

Administrator of the Fund.

12. (1) The Principal Secretary in the Ministry responsible for matters relating to defence shall be the Administrator of the Fund.

(2) The Administrator of the Fund shall—

- (a) supervise and control the administration of the Fund;
- (b) open and operate bank accounts at the Central Bank of Kenya into which all moneys raised under the Fund shall be paid;
- (c) operate and maintain bank accounts in the manner as may be prescribed by the National Treasury from time to time;
- (d) prepare, sign and transmit to the Auditor-General, in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund;

- (e) establish proper systems of internal control and management in accordance with the provisions of the Act and these Regulations;
- (f) advise and consult the Defence Council and Cabinet Secretary on matters relating to the administration of the Fund;
- (g) keep proper books of accounts and other books and records relating to the Fund;
- (h) be the custodian of the Funds' assets, equipment and properties under the Fund;
- (i) prepare financial and non-financial performance report of the Fund and submit it to the Defence Council for approval;
- (j) furnish additional information which is proper and sufficient for the purpose of examination and audit by the Auditor-General in accordance with the provisions of the Public Audit Act, 2015 (Cap. 412B);
- (k) prepare quarterly reports on the receipts into and issues out of the Fund; and
- (l) undertake any other duties as the Defence Council may assign.

(3) When discharging the functions under paragraph (2) of this regulation, the Administrator of the Fund shall—

- (a) comply with the ordinary budget cycle in the preparation of estimates for the Fund; and
- (b) submit estimates of revenue and expenditure to the Cabinet Secretary by the 31st January of the preceding financial year for approval.

Secretariat support for Administrator of the Fund.

13. (1) There shall be a secretariat to be known as the National Peace Support Operation Secretariat which shall provide secretariat support services to the operation of the Fund and shall be headed by the Administrator of the Fund.

(2) The Secretariat shall consist of such staff as the Defence Council may consider necessary for the proper performance of the functions of the Fund under these Regulations.

Bank Account of the Fund.

14. (1) The Administrator of the Fund shall cause an account in the name of the Fund to be maintained at the Central Bank of Kenya in line with section 28 of the Act and any Regulations made thereunder.

(2) All money payable into the Fund shall be received into the bank account of the Fund.

(3) The Fund's account shall be operated by the Administrator of the Fund and two other persons designated by the Defence Council from the Fund's Secretariat.

(4) The Administrator of the Fund may open and maintain other accounts in furtherance of the objective of the Fund.

Overdrawn accounts.

15. The Administrator of the Fund shall ensure the accounts of the Fund are not overdrawn.

Advances.

16. (1) If, in exceptional circumstances, the income from the Fund together with any surplus income brought forward from a previous year is insufficient to meet the actual or estimated liabilities of the Fund, the Cabinet Secretary to the National Treasury may, with the approval of National Assembly, may make advances to the Fund and such advances shall

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be made on such terms and conditions, whether as to repayment or otherwise, as the Cabinet Secretary may determine, but any such advance shall be repaid from the income of the Fund.

(2) The Defence Council shall ensure that in any financial year expenditure and commitments from the Fund shall not exceed the annual income of the Fund together with any surplus income brought forward from a previous year.

Investments of the funds.

17. The Defence Council may with the consent of the Cabinet Secretary to the National Treasury invest any of the surplus funds in Government securities.

Review of performance of the Fund.

18. (1) The Cabinet Secretary shall at the lapse of ten years from the date of commencement of these Regulations cause a review to be conducted on the performance of the Fund in accordance with the requirements of the Act and Regulations thereunder.

(2) The review shall determine whether the Fund has met the objectives for which it was established.

(3) The report on the review shall be submitted to the Cabinet and the National Assembly for approval.

Annual estimates.

19. (1) At least six months before the commencement of each financial year, the Administrator of the Fund shall cause to be prepared estimates of the revenue and expenditure of the fund for that year.

(2) The annual estimates shall make provision for all estimated revenue and expenditure from the Fund for the financial year and in particular, the estimates shall provide for—

- (a) revenue projected to be received by the Fund from the sources of funds provided for under these Regulations;
- (b) expenses in furtherance of the objects and purpose of the Fund;
- (c) moneys for the administration expenses of the Fund including—
 - (i) the payment of salaries, allowances and other charges in respect of the secretariat staff, where applicable;
 - (ii) the payment of pensions, gratuities and other charges in respect of the staff Fund, where applicable; and
 - (iii) the proper maintenance of the office assets, equipment and properties under the Fund.

(3) The annual estimates shall be approved by the Defence Council before the commencement of the financial year to which they relate.

Quarterly reports.

20. (1) The Administrator of the Fund shall prepare quarterly financial and non-financial reports in accordance with the format prescribed by the Public Sector Accounting Standards Board for approval.

(2) Upon approval under paragraph (1), the Administrator of the Fund shall submit the report to the National Treasury.

Accounts and audit.

21. (1) The Administrator shall cause to be kept all proper books and records of account of the income, expenditure, assets, equipment and properties of the Fund.

(2) Within a period of three months from the end of each financial year, the Administrator shall submit to the Auditor-General with a copy to the National Treasury, Controller of Budget and the Commission for Revenue Allocation the accounts of the Fund together with—

- (a) a statement of the income and expenditure of the Fund during the financial year; and
- (b) a statement of the assets and liabilities of the Fund on the last day of that financial year.

(3) The accounts of the Fund shall be audited and reported upon in accordance with the Public Audit Act (Cap. 412A).

Administration expenses.

22. The administrative expenses of the Fund shall not exceed three *per centum* of the approved budget of each financial year.

Offences and penalties.

23. A person who misappropriates any funds or assets from the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in these Regulations, commits an offence and shall be liable to the penalty provided for under section 199 of the Act.

Effects of winding-up of the Fund.

24. (1) On winding up of the Fund in accordance with the Act and Regulations made thereunder—

- (a) the Administrator of the Fund shall compile any valid outstanding obligations and commitments for payment;
- (b) the Administrator of the Fund shall pay any amount remaining in the Fund into the National Exchequer Account for the credit of the national government;
- (c) the Cabinet Secretary shall pay any deficit in the Fund from the funds of the national government in the National Exchequer Account with the approval of the National Assembly; and
- (d) assets, equipment and properties other than cash of the Fund shall be transferred to the Ministry for the time being responsible for matters relating to defence.

(2) Within three months upon the decision to wind up the Fund, the administrator of the Fund shall prepare final financial and non-financial statements of the Fund and submit them to the Defence Council for approval.

(3) Upon approval under paragraph (2), the administrator shall submit the final financial and non-financial statements to the Cabinet Secretary.

(4) The Cabinet Secretary shall submit a final statement of accounts to Parliament and to the Auditor-General for audit within three months from the date of the decision to wind up the Fund.

Revocation of LN. No. 219/2022.

25. The Public Finance Management (National Peace Support Operations Fund) Regulations, 2022, are revoked.

THE PUBLIC FINANCE MANAGEMENT (ULINZI PRIME
HEALTH SERVICES FUND) REGULATIONS, 2023

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**THE PUBLIC FINANCE MANAGEMENT (ULINZI PRIME
HEALTH SERVICES FUND) REGULATIONS, 2023**

[L.N. 175/2023]

Citation.

1. These Regulations may be cited as the Public Finance Management (Ulinzi Prime Health Services Fund) Regulations, 2023.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

"**Act**" means the Public Finance Management Act (Cap. 412A);

"**Advisory Board**" means the Ulinzi Prime Health Services Fund Advisory Board established under regulation 9(1);

"**Administrator of the Fund**" means the person designated as such under regulation 12(1);

"**Cabinet Secretary**" has the meaning assigned to it under the Act;

"**Defence Council**" means the Defence Council established under Article 241 (5) of the Constitution;

"**Fund**" means the Ulinzi Prime Health Services Fund established under regulation 3(1); and

"**Kenya Defence Forces hospital facilities**" means the Kenya Defence Forces level IV, V and VI hospitals.

PART II – ESTABLISHMENT OF THE FUND

Establishment of the Fund and sources of funds.

3. (1) There is established a fund to be known as the Ulinzi Prime Health Services Fund.

(2) There shall be paid into the Fund—

- (a) such moneys as may be appropriated by the National Assembly;
- (b) income generated from the proceeds of medical and health services offered by the Kenya Defence Forces hospital facilities;
- (c) grants, gifts and donations; and
- (d) any moneys accruing to or received by the Fund from any other lawful source.

The purpose and object of the Fund.

4. The purpose and object of the Fund shall be to finance the provision of medical and health services to paying clients of the Kenya Defence Forces hospital facilities across the country, and in particular—

- (a) facilitate the establishment, modernization, operation and the maintenance of the Kenya Defence Forces hospital facilities;
- (b) fund research and training for the purposes of improving the quality of health services offered by the Kenya Defence Forces hospital facilities;
- (c) facilitate the purchase of equipment and drugs for the Kenya Defence Forces hospital facilities;
- (d) provide funds for administration expenses including payment of salaries, allowances, pensions, gratuity and other charges for its employees;

[Subsidiary]

- (e) provide any other funding that may be necessary to further the object of the Fund.

Expenditure on the Fund.

5. (1) There shall be paid out of the Fund payments in respect of any expenses incurred in pursuance of the objects and purposes for which the Fund is established.

(2) The expenditure incurred on the Fund shall be on the basis of and limited to annual work programs, plans and cost estimates which shall be prepared by the Administrator of the Fund, submitted to and approved by the Defence Council at the beginning of the financial year to which they relate.

(3) Any revision of the approved annual work programs, plans and of any cost estimate, shall be referred to the Defence Council by the Advisory Board for approval.

Retention of receipts.

6. The earnings of, or accruals to the Fund shall be retained in the Fund, and shall be spent only for the objects and purposes for which the Fund is established unless the Cabinet Secretary directs otherwise.

Initial capital of the Fund.

7. The initial capital of the Fund shall be as appropriated by the National Assembly for the Kenya Defence Forces hospital facilities or from any other source provided for under regulation 3(2) of these Regulations.

PART III – GOVERNANCE AND ADMINISTRATION OF THE FUND

Role of the Defence Council.

8. (1) The role of the Defence Council shall be to oversee the functioning of the Fund.

(2) In carrying out the role provided for under subregulation (1), the Defence Council shall be responsible for—

- (a) providing overall policy and direction in implementation of the Fund;
- (b) approval of the estimates of expenditure and revenue before submission to the Cabinet Secretary; and
- (c) receipt of any recommendations from the Advisory Board for policy guidance in furtherance of the objects and purpose of the Fund.

Establishment of the Advisory Board.

9. (1) There is established a board to be known as Ulinzi Prime Health Services Fund Advisory Board which shall provide technical oversight on behalf of the Defence Council.

(2) The Board shall consist of—

- (a) Principal Secretary, Ministry of Defence, who shall be the Chairperson;
- (b) Director of Medical Services, Defence Headquarters;
- (c) a representative of the National Treasury;
- (d) Director-General Ministry of Health or his representative;
- (e) Director, Military Veteran Affairs;
- (f) Head of Accounting Unit, Ministry of Defence;
- (g) Chairperson, Advisory Committee of Veterans Affairs;
- (h) Director Human Resource Management and Training, Ministry of Defence;

- (i) Chief of Medical, Defence Headquarters; and
- (j) Chief of Finance, Defence Headquarters.

(3) The Managing Director of the Fund appointed under regulation 13(1) shall be the Secretary of the Advisory Board.

(4) The Advisory Board may, from time to time, co-opt other members as it may deem necessary, for the proper and efficient discharge of its Advisory functions over the Fund.

Meetings of the Advisory Board.

10. (1) The Chairperson of the Advisory Board shall chair all the meetings of the Advisory Board and in his absence the members present shall elect one of them to chair the meeting.

(2) The Advisory Board shall meet not less than four times in every financial year and not more than four months shall elapse between the date of one meeting and the date of the next meeting.

(3) The quorum for the conduct of meetings of the Advisory Board shall be five members.

(4) The Board shall regulate its own procedure.

Functions of the Advisory Board.

11. The functions of the Advisory Board shall be—

- (a) to provide technical guidance on the administration of the Fund;
- (b) to recommend policies to achieve the objects and purpose of the Fund;
- (c) to receive, review and recommend the statutory and technical reports of the Fund;
- (d) to advise the Defence Council and the Administrator of the Fund on the administration of the Fund;
- (e) to recommend the ceilings for funding under the Fund;
- (f) to monitor and evaluate the programmes and activities under the Fund;
- (g) to receive reports on the performance of the Fund;
- (h) to facilitate public awareness, education and access to services offered by the Kenya Defence Forces Hospital facilities; and
- (i) to perform such other duties as may be considered necessary by the Defence Council.

Administrator of the Fund.

12. (1) The Principal Secretary in the Ministry responsible for matters relating to defence is hereby designated as the Administrator of the Fund in accordance with section 24(5) of the Act.

(2) The Administrator of the Fund shall—

- (a) be responsible for the day to day administration and management of the Fund;
- (b) open and operate bank accounts at the Central Bank of Kenya into which all moneys raised under the Fund shall be paid;
- (c) prepare strategic plan, budget and annual work plan for approval by the Defence Council;
- (d) operate and maintain bank accounts in the manner as may be prescribed by the National Treasury from time to time;

[Subsidiary]

- (e) prepare, sign and transmit to the Auditor-General, in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund;
- (f) establish proper systems of internal control and management in accordance with the provisions of the Act and these Regulations;
- (g) advise and consult the Defence Council and Cabinet Secretary on matters relating to the administration of the Fund;
- (h) keep proper books of accounts and other books and records relating to the Fund;
- (i) be custodian of the Funds' assets, equipment and properties;
- (j) prepare financial and non-financial performance reports of the Fund and submit it to the Defence Council for approval;
- (k) furnish additional information which is proper and sufficient for the purpose of examination and audit by the Auditor - General in accordance with the provisions of the Public Audit Act (Cap. 412B);
- (l) prepare quarterly reports on the receipts into and issues out of the Fund; and
- (m) undertake any other duty as the Defence Council may assign.

(3) When discharging the functions under subregulation (2), the Administrator of the Fund shall—

- (a) comply with the ordinary budget cycle in the preparation of estimates for the Fund; and
- (b) submit estimates of revenue and expenditure to the Cabinet Secretary by the 31st January of the preceding financial year for approval.

Managing Director of the Fund.

13. (1) There shall be a Managing Director of the Fund who shall be appointed by the Defence Council on terms and conditions to be set by the Defence Council.

(2) A person appointed as a Managing Director shall be the head of the Secretariat established under regulation 14(1).

Secretariat of the Fund.

14. (1) There shall be a secretariat which shall provide secretariat support services to the operation of the Fund.

(2) The Secretariat shall consist of such personnel as the Defence Council may consider necessary.

(3) The Secretariat of the Fund shall be reporting to the Administrator of the Fund, and shall—

- (a) develop a predictable, transparent and accountable financial internal control systems for the Fund;
- (b) prepare estimates of revenue and expenditure, annual work programs and work plans, costs estimates, annual procurement plans and annual cash flow plans;
- (c) prepare reports on a bi-monthly basis, on efficiency and effectiveness of programs supported by the Fund;
- (d) prepare and validate payment schedules;

- (e) implement projects, programs and coordinate with other medical institutions and Universities in realization of the objects and purpose of this Fund;
- (f) monitor and evaluate programs financed from the Fund and provide reports to the administrator of the Fund;
- (g) prepare statutory and management reports of the Fund and submit them to the administrator of the Fund; and
- (h) maintain proper records of the Fund.

(4) Notwithstanding the provisions of subregulation (3), the Administrator of the Fund may assign any other duty to the Secretariat for the proper administration and management of the Fund.

PART IV – FINANCIAL PROVISIONS

Bank Account of the Fund.

15. (1) The Administrator of the Fund shall cause an account in the name of the Fund to be maintained at the Central Bank of Kenya in line with section 28 of the Act and any Regulations made thereunder.

(2) All money payable into the Fund shall be received into the bank account of the Fund.

(3) The Fund's account shall be operated by the Administrator of the Fund and two other persons designated by the Defence Council from the Fund's Secretariat.

(4) The Administrator of the Fund may open and maintain other accounts in furtherance of the objective of the Fund.

Overdrawn accounts.

16. The Administrator of the Fund shall ensure the accounts of the Fund are not overdrawn.

Advances.

17. (1) If, in exceptional circumstances, the income from the Fund together with any surplus income brought forward from a previous year is insufficient to meet the actual or estimated liabilities of the Fund, the Cabinet Secretary may, with the approval of National Assembly, make advances to the Fund and such advances shall be made on such terms and conditions, whether as to repayment or otherwise, as the Cabinet Secretary may determine, but any such advance shall be repaid from the income of the Fund.

(2) The Administrator of the Fund shall ensure that in any financial year expenditure and commitments from the Fund shall not exceed the annual income of the Fund together with any surplus income brought forward from a previous year.

Investments of the funds.

18. Administrator of the Fund may with the approval of the Defence Council and consent of the Cabinet Secretary, invest any of the surplus funds in Government securities.

Review of performance of the Fund.

19. (1) The Cabinet Secretary shall at the lapse of ten years from the date of commencement of these Regulations cause a review to be conducted on the performance of the Fund in accordance with the requirements of the Act and Regulations thereunder.

(2) The review shall determine whether the Fund has met the objectives for which it was established.

[Subsidiary]

(3) The report on the review shall be submitted to the Cabinet and the National Assembly for approval.

Annual estimates.

20. (1) At least six months before the commencement of each financial year, the Administrator of the Fund shall cause to be prepared estimates of the revenue and expenditure of the Fund for that year.

(2) The annual estimates shall make provision for all estimated revenue and expenditure from the Fund for the financial year and in particular, the estimates shall provide for—

- (a) revenue projected to be received by the Fund from the sources of funds provided for under these Regulations;
- (b) expenses in furtherance of the objects and purpose of the Fund;
- (c) moneys for the administration expenses of the Fund including—
 - (i) the payment of salaries, allowances and other charges in respect of the secretariat staff, where applicable;
 - (ii) the payment of pensions, gratuities and other charges in respect of the staff Fund, where applicable; and
 - (iii) the proper maintenance of the office assets, purchase of drugs and equipment for hospital facilities and properties under the Fund.

(3) The annual estimates shall be approved by the Defence Council before the commencement of the financial year to which they relate.

Quarterly reports.

21. (1) The Administrator of the Fund shall prepare quarterly financial and non-financial reports in accordance with the format prescribed by the Public Sector Accounting Standards Board for approval.

(2) Upon approval, under paragraph (1), the Administrator of the Fund shall submit the report to the National Treasury.

Accounts and audit.

22. (1) The Administrator of shall cause to be kept all proper books and records of account of the income, expenditure, assets, equipment and properties of the Fund.

(2) Within a period of three months from the end of each financial year, the Administrator of the Fund shall submit to the Auditor-General with a copy to the National Treasury, Controller of Budget and the Commission for Revenue Allocation the accounts of the Fund together with—

- (a) a statement of the income and expenditure of the Fund during the financial year; and
- (b) a statement of the assets and liabilities of the Fund on the last day of that financial year.

(3) The accounts of the Fund shall be audited and reported upon in accordance with the Public Audit Act (Cap. 412B).

Administration expenses.

23. The administrative expenses of the Fund shall not exceed three per centum of the approved budget of each financial year.

Offences and penalties.

24. A person who misappropriates any funds or assets from the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in these Regulations, commits an offence and shall be liable to the penalty provided for under section 199 of the Act.

Effects of winding-up of the Fund.

25. (1) On winding up of the Fund in accordance with the Act and Regulations made thereunder—

- (a) the Administrator of the Fund shall compile any valid outstanding obligations and commitments for payment;
- (b) the Administrator of the Fund shall pay any amount remaining in the Fund into the National Exchequer Account for the credit of the national government;
- (c) the Cabinet Secretary shall pay any deficit in the Fund from the funds of the national government in the National Exchequer Account with the approval of the National Assembly; and
- (d) assets, equipment and properties other than cash of the Fund shall be transferred to the Ministry for the time being responsible for matters relating to defence.

(2) Within three months upon the decision to wind up the Fund, the Administrator of the Fund shall prepare final financial and non-financial statements of the Fund and submit them to the Defence Council for approval.

(3) Upon approval under subsection (2), the Administrator of the Fund shall submit the final financial and non-financial statements to the Cabinet Secretary.

(4) The Cabinet Secretary shall submit a final statement of accounts to Parliament and to the Auditor-General for audit within three months from the date of the decision to wind up the Fund.

THE PUBLIC FINANCE MANAGEMENT (WILDLIFE
CONSERVATION TRUST FUND) REGULATIONS, 2023

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**THE PUBLIC FINANCE MANAGEMENT (WILDLIFE
CONSERVATION TRUST FUND) REGULATIONS, 2023**

[L.N. 220/2023]

PART I – PRELIMINARY

Citation.

1. These Regulations may be cited as the Public Finance Management (Wildlife Conservation Trust Fund) Regulations, 2023.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

"Administrator" means the person designated as the Administrator of the Fund under regulation 10;

"beneficiary" means a legal entity that is a recipient of financial support from the Fund;

"Governing Board" means the governing board of the Wildlife Conservation Trust Fund established under section 23(2) of the Wildlife Conservation and Management Act (Cap. 376);

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

"ecosystem service" means any positive direct or indirect benefit that wildlife or environment provides to people;

"Fund" means the Wildlife Conservation Trust Fund established under section 23(1) of the Wildlife Conservation and Management Act (Cap. 376); and

"grantee" means a person or institution to whom a grant is made out of the Fund.

Purpose of the Fund.

3. The purpose of the Fund shall be as specified in section 23(4) of the Act.

PART II – THE WILDLIFE CONSERVATION TRUST FUND

Initial capital.

4. The initial capital for the Fund shall be two hundred million shillings provided out of the voted funds of the State Department for Wildlife in the 2020/2021 financial year.

Apportionment of funds.

5. (1) The funds paid into Fund shall be apportioned for the following purposes—

- (a) wildlife conservation initiatives for terrestrial and marine national parks, national reserves, community conservancies and sanctuaries;
- (b) conservation of endangered and endemic species;
- (c) education awareness including advocacy for wildlife policies;
- (d) wildlife conservation and national wildlife research priorities; and
- (e) subject to subregulation 3, such other purposes as may be provided by the Governing Board.

(2) The funds apportioned under subregulation (1) shall be disbursed in accordance with the terms and conditions of the agreement between the Fund and the entity receiving the funds.

[Subsidiary]

(3) Notwithstanding the provisions of subregulation (1), the Governing Board may, with the approval of the Cabinet Secretary, vary the apportionment of funds in subregulation (1) in favour of conservation and mitigation in any particular year.

PART III – MANAGEMENT OF THE FUND

Members of the Governing Board.

6. The Governing Board of the Fund shall consist of the persons specified in section 23(2) of the Wildlife Conservation and Management Act (Cap. 376) who shall serve as a public-private partnership in respect of the Fund.

Functions of the Governing Board.

7. The Governing Board shall—

- (a) formulate the Fund's strategic direction including strategic plans, investment plans and policies;
- (b) set up administrative, governance and financial management structures of the Fund;
- (c) consider and approve the procedures relating to eligibility criteria, processes, and access to the Fund;
- (d) oversee the administration and management of the Fund;
- (e) supervise the performance of the chief executive officer of the Fund;
- (f) consider, review and approve the estimates of revenue and expenditure of the Fund for each financial year;
- (g) consider and approve the opening of a bank account or bank accounts for the purposes of the Fund and submit the proposal to open the bank account or bank accounts to the Cabinet Secretary for approval;
- (h) receive, review and approve statutory and management reports of the Fund before the reports are submitted to the Auditor-General, Cabinet Secretary, Commission for Revenue Allocation and Controller of Budget;
- (i) approve, monitor and evaluate the programmes and activities of the Fund;
- (j) set fundraising targets and mobilise resources for the Fund;
- (k) approve, with the concurrence of the Cabinet Secretary, the investment policy, investment plan and risk threshold of the Fund;
- (l) receive and review reports on the performance of the Fund and make recommendations thereon;
- (m) review the Fund's policies on the management of the Fund's assets, equipment and properties of the Fund;
- (n) approve the criteria for funding requirements; and
- (o) perform such other functions as may be necessary for the purpose of achieving the objects for which the Fund is established.

Chief executive officer of the Fund.

8. (1) There shall be a chief executive officer of the Fund who shall be competitively recruited and appointed by the Governing Board.

(2) A person shall be qualified to be appointed as the chief executive officer if that person—

- (a) is a Kenyan citizen;
- (b) possesses a Bachelor's degree from a university recognised in Kenya;
- (c) possesses at least ten years' relevant experience in financial management and resource mobilisation; and
- (d) satisfies the requirements of Chapter Six of the Constitution.

(3) A person is not qualified to be appointed as the chief executive officer if that person—

- (a) is a member of any legislature in Kenya;
- (b) has been adjudged bankrupt by a court of competent jurisdiction;
- (c) is a member of the governing body of a political party;
- (d) has been convicted of an offence the penalty of which is imprisonment for a term of at least six months without the possibility of a fine;
- (e) has been found to have violated any provision of the Constitution; or
- (f) has been removed from any public office because of a conviction for an offence or violation of the Constitution.

Tenure of the chief executive officer.

9. The chief executive officer shall serve for a term of three years and shall, upon satisfactory performance, be eligible for reappointment for only one further term of three years.

Administrator of the Fund.

10. The chief executive officer shall be the Administrator of the Fund.

Functions of the chief executive officer.

11. (1) The chief executive officer shall, subject to the direction of the Governing Board, be responsible for the day-to-day management of the Fund.

(2) The chief executive officer shall—

- (a) open and operate a bank account or bank accounts with the approval of the governing board and the Cabinet Secretary;
- (b) consult with the Governing Board on matters relating to the administration of the Fund;
- (c) cause to be kept proper books of account and records in relation to the Fund;
- (d) prepare, sign and submit to the Governing Board, in respect of each financial year and within three months after the end thereof, a statement of account relating to the Fund for consideration and approval;
- (e) prepare quarterly reports on financial and non-financial activities of the Fund in accordance with the provisions of the Act and as may be prescribed by the Public Sector Accounting Standards Board, and submit the reports to the Governing Board for approval and transmission to the Cabinet Secretary, the Auditor-General, Commission for Revenue Allocation and Controller of Budget;
- (f) be the custodian of the assets, equipment and property of the Fund;
- (g) engage the Fund's stakeholders to secure funding commitments;

[Subsidiary]

- (h) develop, with the approval of the Governing Board, the operational and strategic documents of the Fund including strategic plans, communication materials, grant-making frameworks and operation manuals;
- (i) facilitate the recruitment or secondment of the staff of the Fund;
- (j) supervise and monitor utilisation of funds by beneficiaries and grantees;
- (k) communicate effectively and in a timely manner to the contributors and beneficiaries of the Fund;
- (l) provide leadership for the programmes and operations of the Wildlife Conservation Trust Fund; and
- (m) perform such other functions as directed by the Governing Board that may be necessary for the achievement of the objects for which the Fund is established.

Secretariat of the Fund.

12. (1) There shall be a secretariat of the Fund to be known as the Wildlife Conservation Trust Fund Secretariat which shall provide secretariat and support services to the Fund and shall be headed by the chief executive officer of the Fund.

(2) The Secretariat shall consist of such staff as the Governing Board may consider necessary for the proper performance of the functions of the Fund under these Regulations.

(3) The staff of the Fund shall be recruited and appointed by the Governing Board on such terms of service as may be determined by the Governing Board on the advice of the Salaries and Remuneration Commission.

Disbursements to be made in accordance with funding agreements.

13. (1) The Governing Board shall establish a mechanism for evaluating proposals for funding for the purposes of these Regulations.

(2) The chief executive officer shall enter into funding agreements with beneficiaries and grantees who receive disbursements for the purposes of these Regulations from the Fund.

(3) The beneficiary or grantee to whom funds are disbursed under these Regulations, upon receipt of the funds, shall utilise those funds in accordance with the funding agreement.

(4) A beneficiary or grantee who enters into a funding agreement under this regulation shall return to the Fund any unutilised funds disbursed under these Regulations if—

- (a) the purpose for which the funds were disbursed was not undertaken;
- (b) the purpose for which the funds were disbursed was undertaken but the funds were not fully utilised;
- (c) savings have been realised as a result of a change in circumstances; or
- (d) any other circumstances that may result in the non-utilisation of the funds.

(5) Funds returned under subregulation (3) shall be recorded by the Administrator as receipts of the Fund.

(6) A beneficiary or grantee who fails to comply with the provisions of this regulation shall not be eligible to receive funds from the Fund until that beneficiary or grantee has fully complied with the provisions of this regulation or any other provision of these Regulations.

PART IV – FINANCIAL PROVISIONS

Application of Government Regulations and procedures.

14. Subject to the provisions of the Act, relevant existing Government Regulations and procedures shall apply in the administration of the Fund's financial resources.

Financial year of the Fund.

15. The financial year of the Fund shall be the period of twelve months ending on the 30th June of every year.

Preparation and submission of a work plan.

16. The Administrator shall prepare a work plan in respect of a financial year and submit it to the governing board for approval.

Quarterly and annual reports.

17. (1) The governing board shall submit quarterly and annual reports to the Cabinet Secretary responsible for matters relating to wildlife conservation.

(2) The reports under subregulation (1) shall contain—

- (a) in the case of a quarterly report, a summary of the proposals approved, rejected, or deferred by the governing board in the preceding quarter as recommended by the Administrator and indicating the funding status of such proposals, if any;
- (b) in the case of an annual report, a summary of all the proposals that were received, approved, rejected and deferred, the reasons for thereof, and the funding status of any proposals that were approved, including any funds that have been paid back to the Fund;
- (c) a summary of the status of disbursements from the Fund for the implementation of any proposals financed out of the Fund;
- (d) any restrictions imposed on a non-compliant beneficiary or grantee;
- (e) information on the financial and non-financial performance of the Fund; and
- (f) such other relevant information that may inform the Cabinet Secretary responsible for wildlife as to the financial and non-financial performance of the Fund.

(3) The Board shall prepare and submit annual monitoring and evaluation reports for the Cabinet Secretary responsible for wildlife conservation.

Record of disbursements.

18. The Administrator shall keep and maintain an accurate record of disbursements from and payments into the Fund which shall be updated at least once in every month.

Administration costs of the Fund.

19. The administration costs of the Fund shall not exceed three per cent of the approved annual budget of the Fund.

Expenditure of the Fund.

20. (1) There shall be paid out of the Fund payments in respect of any expenses incurred in furtherance of the objects for which the Fund is established.

(2) The expenditure incurred on the Fund shall be on the basis of and limited to annual work plans and cost estimates which shall be prepared by the Administrator and approved by the governing board at the beginning of the financial year to which they relate.

[Subsidiary]

(3) Any revision of the approved annual work plans and of any cost estimate shall be referred to the governing board for approval subject to the provisions of the Act.

Investment of surplus funds.

21. The Administrator may, with the approval of the governing board and the Cabinet Secretary, invest any funds of the Fund which are not immediately required for the Fund's purposes.

Retention of receipts, earnings and accruals.

22. All receipts, earnings and accruals to the Fund and the balance of the Fund at the close of each financial year shall be retained by the Fund for use for the purpose for which the Fund is established.

Annual reports.

23. (1) The Administrator shall prepare annual financial and non-financial reports in accordance with the provisions of the Act.

(2) In addition to the reports prepared under subregulation (1), the Administrator shall prepare an annual general performance report of the Fund that shall be submitted to the governing board together with the annual report under subregulation (1).

Audited accounts.

24. The accounts of the Fund shall be audited and reported on in accordance with the provisions of the Public Audit Act (Cap. 412B).

PART V – MISCELLANEOUS PROVISIONS

Conflicts of interest.

25. No member of the governing board shall hold any interest in any property of the Fund otherwise than in the member's capacity as a member of the governing board nor receive remuneration nor be interested in the supply of work, goods or services to the Fund or any other non-pecuniary conflict of interest.

Winding up of the Fund.

26. (1) In the case of the winding up of the Fund, the winding up shall be undertaken in accordance with regulation 209 of the Public Finance Management (National Governments) Regulations (L.N. 34 of 2015).

(2) Where the Fund is wound up, the cash balances shall be transferred to the Exchequer and the other assets of the Fund shall be transferred to the national government.

Effect of winding-up of the Fund.

27. (1) On winding up of the Fund—

- (a) the Administrator of the Fund shall compile any valid outstanding obligations and commitments for payment;
- (b) the Administrator of the Fund shall pay any amount remaining in the Fund into the National Exchequer Account for the credit of the national government;
- (c) the Cabinet Secretary shall pay any deficit in the Fund from the funds of the national government in the National Exchequer Account with the approval of the National Assembly; and
- (d) assets, equipment and properties other than cash of the Fund shall be transferred to the Ministry for the time being responsible for matters relating to wildlife conservation.

(2) Within three months after the decision to wind up the Fund, the Administrator of the Fund shall prepare final financial and non-financial statements of the Fund and submit them—

- (a) to the Cabinet Secretary responsible for matters relating to wildlife conservation; and
- (b) to the Auditor-General to be audited and reported on in accordance with the Public Audit Act (Cap. 412B).

(3) Upon approval under paragraph (2) (a), the Administrator shall submit the final financial and non-financial statements to the Cabinet Secretary.

PUBLIC FINANCE (KENYA MILLENNIUM DEVELOPMENT FUND) REGULATIONS, 2024

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PUBLIC FINANCE (KENYA MILLENNIUM DEVELOPMENT FUND) REGULATIONS, 2024

[L.N. 51/2024]

PART I – PRELIMINARY

Citation.

1. These Regulations may be cited as the Public Finance Management (Kenya Millennium Development Fund) Regulations, 2024.

Interpretation.

2. In these Regulations, unless the context otherwise request—

"accounting officer" has the meaning assigned to it under section 2 of the Act;

"bank account" means the Kenya Millennium Development bank account;

"Board" means the Kenya Millennium Development Fund Board established under Regulation 11;

"Cabinet Secretary" means the Cabinet Secretary for the National Treasury;

"Chief Executive Officer" means a person appointed as such under regulation 16;

"fiscal agent" means one or more individuals or a firm with expertise in financial management engaged to perform certain financial management activities on behalf of the Fund;

"Fund" means the Kenya Millennium Development Fund established under regulation 3;

"Government" means the Government of Kenya;

"Grant Agreement" means the Millennium Challenge Corporation Threshold Program Grant Agreement signed between the Government of Kenya and the Government of the United States of America, acting through the Millennium Challenge Corporation;

"implementing entity" means a government ministry, department, agency, bureau, affiliate, government corporation or any other entity chartered or established by the Government, or by a county government that are engaged by the Fund to play a role in achieving or sustaining the project objectives as defined in the Grant Agreement;

"MCC" means the Millennium Challenge Corporation, a United States Government Corporation established under the Millennium Challenge Act of 2003, as amended (the "MCA Act"), and an implementing agency of the United States of America;

"operating unit" has the meaning assigned to it under the Grant Agreement; and

"Threshold Program" means the projects and activities funded under the Grant Agreement.

PART II – ESTABLISHMENT OF KENYA MILLENNIUM DEVELOPMENT FUND

Establishment of Fund.

3. There is established a Fund to be known as the Kenya Millennium Development Fund which shall be the vehicle for implementation of the Threshold Program on behalf of the Government.

Object and purpose of the Fund.

4. (1) The object and purpose of the Fund is to exercise and perform the Government's obligation to oversee, manage and implement the Threshold Program.

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(2) Without prejudice to the generality of sub-paragraph (1), the object of the Fund is *inter alia* managing the implementation of the projects and their activities, allocating resources for the projects set out in the Grant Agreement, and managing procurements.

Sources of the Fund.

5. The Fund shall consist of —

- (a) such moneys as may be granted for the Threshold Program under the Grant Agreement;
- (b) monies appropriated by the National Assembly for the Government; and
- (c) grants, other than that provided under the Grant Agreement and donations, if approved by Millennium Challenge Corporation (MCC) and the Board.

Capital of the Fund.

6. The initial capital of the Fund shall be a sixty million dollars grant from the Millennium Challenge Corporation provided in accordance with the terms of the Grant Agreement, and any other funds and resources that are necessary to carry out the Government's responsibilities and obligations under the Grant Agreement.

Expenditure of the Fund.

7. (1) There shall be paid out of the Fund payments in respect of any expenses incurred in pursuant of the Threshold Program and accordance of the Grant Agreement.

(2) The expenditure incurred on the Fund shall be on the basis of and limited to annual work plans and cost estimates which shall be prepared by the Chief Executive Officer of the Fund and approved by the Board, in accordance with the Grant Agreement requirements.

(3) Any revision of the approved annual work plan and of any cost estimate shall be referred to the Board for approval in accordance with the Grant Agreement.

(4) Funds provided under these Regulations shall not be used for the purpose of supporting activities outside the Grant Agreement.

Administration of the Fund.

8. (1) The Fund shall be administered by the Board which shall have legal and operational independence to oversee the Threshold Program.

(2) In the process of administering the Fund under paragraph (1) the Board shall be able to —

- (a) perform the Government's rights and responsibilities under the Grant Agreement and bind the Government to the full extent of such rights and responsibilities;
- (b) make its own budget and expend the grant funding provided under the Grant Agreement;
- (c) open and operate a bank account at a commercial bank in Kenya;
- (d) supervise and control the administration of the Fund;
- (e) cause to be kept proper books of accounts and other books and records in relation to the Fund, of all activities and undertakings financed from the Fund in accordance with the Grant Agreement;
- (f) sue and be sued in its own name;
- (g) enter into be bound by and enforce contracts in its own name, with private and public entities including MCC, any Implementing Entity, employees, service providers and consultants;

- (h) engage any Implementing Entity and delegate certain powers and activities to such in accordance with the Grant Agreement;
- (i) insure against all normal commercial risks associated with its activities;
- (j) engage an external fiscal agent to perform certain financial management activities;
- (k) engage an external procurement agent to carry out and certify specific procurement activities in furtherance of the threshold program;
- (l) oversee all procurements for goods works and services required to implement the Threshold Program in accordance with the MCC Program Procurement Guidelines, as contemplated in section 4 (2) (f) of the Public Procurement and Asset Disposal Act (Cap. 412C);
- (m) conduct or cause to be conducted on an annual basis (or on a more frequent basis if required under the Grant Agreement) financial audits in accordance with MCCs Accountable Entity Guidelines for Contracted Financial Audits;
- (n) provide to the Auditor-General, in respect of each financial year and within three months after the end thereof, a statement of accounts relating to the Fund and submit a copy to the National Treasury, and the statements shall be prepared in accordance with the requirements of the Grant Agreement;
- (o) furnish additional information which is proper and sufficient for the purpose of examination and audit by an independent auditor required in accordance with the Grant Agreement including to MCC's Office of Inspector-General and by the Auditor-General; and
- (p) prepare a quarterly report on the performance of the Fund and submit it to the Board during each quarterly meeting.

(3) Every statement of account shall include details of the balance between the assets and liabilities of the Fund and shall indicate the financial status of the Fund as at the end of the financial year concerned.

Retention of receipts.

9. All deposits made to the bank account shall be retained by the Fund and used for the purpose for which the Fund is established, subject to applicable provisions of the Grant Agreement.

Fiscal accountability and compliance.

10. The grant shall be managed in accordance with section 2.5, section 4.4 and section 5 of the Grant Agreement.

PART III – ESTABLISHMENT AND COMPOSITION OF THE BOARD

Establishment and composition of the Board.

11. (1) There is established a board to be known as the Kenya Millennium Development Fund Board, which shall be a body corporate—

(2) The Board shall consist of—

- (a) a chairperson appointed by the President from among the three members appointed at paragraph (f);
- (b) the Cabinet Secretary for the time being responsible for matters relating to the National Treasury;
- (c) the Principal Secretary for the time being responsible for matters relating to transport;

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- (d) the Principal Secretary for the time being responsible for matters relating to urban planning;
 - (e) the Attorney-General;
 - (f) three non-government members, one each selected by the Kenya Private Sector Alliance, Kenya Alliance of Residents Associations, and Maendeleo ya Wanawake Organization and appointed by the Cabinet Secretary; and
 - (g) the Chief Executive Officer who shall be the secretary to the Board and a member without the right to vote at the meetings of the Board.
- (3) The appointments under paragraph (2)(a) and (f) shall be by notice in the *Gazette*.
- (4) Each member of the Board appointed under paragraph (2)(f) shall be selected by the respective non-government organization and shall not be selected by the Government.
- (5) Each member of the Board under paragraph (2)(b), (c), (d), and (e) shall have an alternate with clear decision-making authority who is drawn from the same institution, is designated in writing, and can attend Board meetings when such member cannot attend.
- (6) Each member of the Board appointed under paragraph (2)(f) shall have an alternate with clear decision-making authority who is drawn from the same institution selected through the same internal selection process, is designated in writing, and can attend Board meetings when such member cannot attend.
- (7) The tenure of the members of the Board appointed under paragraph (2)(a) and (f) and the Chief Executive Officer shall each be for a period not exceeding three years which may be renewed only once for a period not exceeding three years.

Qualification for appointment to the Board.

12. A person shall be eligible to be appointed as the Chairperson or a member of the Board if that person—

- (a) holds a degree in a relevant field from a university recognized in Kenya
- (b) has proven financial management or other relevant professional experience; and
- (c) has served in a senior management position for a period of at least six years.

Functions of the Board.

13. (1) The Board shall—

- (a) take responsibility for the proper management of the affairs of the Fund and shall be accountable for the moneys, the financial business and the management of the Fund;
- (b) oversee and provide direction to the Fund, and ensure that the Funds management unit is composed of qualified experts from the public or private sectors who are hired through an open and competitive recruitment and selection process;
- (c) protect preserve and manage the assets financed under the Grant Agreement and ensure that the funding provided by MCC under the Grant Agreement is used for its intended purposes;
- (d) cause to be kept proper books of accounts and other books and records in relation to the Fund, of all activities and undertakings financed from the Fund in accordance with the Grant Agreement;
- (e) ensure that regular audits of the Fund are conducted by an independent auditor as required by the Threshold Program Grant Agreement (or as may otherwise be

- agreed by MCC and the Board), and that statutory annual audits of the Fund are conducted by the Auditor-General;
- (f) follow the Fund's governing documents and regulations, including its mission to implement the Grant Agreement;
 - (g) approve guidelines and internal operational policies for the proper management of the Fund;
 - (h) supervise and control the administration of the Fund;
 - (i) perform the rights and responsibilities under the Grant Agreement and bind the Government of Kenya to the full extent of such rights and responsibilities;
 - (j) open and operate a bank account at a commercial bank in Kenya;
 - (k) keep written minutes of all meetings held by the Board, which will reflect all decisions made and all actions taken;
 - (l) ensure that the Fund's records and accounts are accurate and complete;
 - (m) ensure that regular audits of the Fund by an independent auditor are performed annually; and
 - (n) consider and approve the following documents agreements and actions on behalf of the Fund—
 - (i) procurement plans fiscal accountability plans, Monitoring and Evaluation plans Accountable Entity Anti-Fraud and Corruption Action Plans, the MCC Human Resources Manual, and any material amendments or supplements thereto;
 - (ii) agreements between the Government of Kenya or the Fund and MCC, and any material amendment, suspension or termination of such agreements;
 - (iii) agreements (and any material amendment suspension or termination of such agreements) between the Fund and any third-party auditor, the fiscal agent, the Procurement Agent any bank, any implementing entity any outside project manager or any Board member;
 - (iv) the selection performance evaluation, and termination of the Chief Executive Officer,
 - (v) the human resources instruments, including the organizational chart, staff grading, remuneration structure (salary grid) career guidelines (position descriptions) and human resources policy (including a Human Resources Manual);
 - (vi) the Fund policies, Board charter and any other Board guidelines;
 - (vii) form of employment agreement to be used for members of the management unit;
 - (viii) the Fund's organizational staffing plan, and any material amendments or supplements thereto;
 - (ix) salary grid or scale with approved salary ranges and benefits for members of the management unit, and any material amendments or supplements thereto;
 - (x) any adoption of an alternative performance evaluation system and related amendments to the MCA Human Resources Manual and any material

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changes to a previously-approved alternative performance evaluation system;

- (xi) Audit findings and reports of the results of audits received from the audit committee;
- (xii) any agreement that is with a party related to the Fund or any party that controls, is controlled by, or is under common control with the Fund, or not at arm's length (that is, the parties are not dealing from equal bargaining positions one party is subject to the other's control or dominant influence, or the transaction is not treated with fairness integrity, and legality);
- (xiii) any material amendments or supplements to the Fund's governing documents;
- (xiv) any decision to dispose of liquidate, dissolve, wind up, or reorganize the Board including any decision to add or remove any Board member;
- (xv) any formation or acquisition of a subsidiary or other related entity of the Fund;
- (xvi) any material changes to the components or structure of the Fund;
- (xvii) any decision to engage accept, or manage any funds from any donor agencies or donor organizations in addition to MCC's funding during the term of the Grant Agreement; and
- (xviii) any other action that requires Board approval pursuant to the Grant Agreement.

Meetings and procedure of the Board.

14. The conduct and regulation of the business and affairs of the Board shall be as stipulated under section 8 of the State Corporations Act the Fund's internal regulations and the Grant Agreement.

Procurement of goods works and services.

15. The Board shall ensure that all procurements for goods, works, and services required to implement the Threshold Program are undertaken solely in accordance with the MCC Program Procurement Guidelines.

Chief Executive Officer.

16. (1) The Board shall appoint a Chief Executive Officer of the Fund who shall be recruited through an open and competitive process on a contract for a period not exceeding five years or until the closure of the Threshold Program.

(2) A person shall be qualified to be appointed as the Chief Executive Officer, if that person—

- (a) holds a degree in a relevant field from a university recognized in Kenya;
- (b) has at least ten years knowledge and experience in financial management;
- (c) has served in a senior management position for a period of at least five years; and
- (d) meets the requirements of Chapter Six of the Constitution.

(3) The Chief Executive Officer shall be responsible for—

- (a) the day-to-day operations of the Fund;
- (b) for supervision, management and discipline of the staff of the Fund;
- (c) executing the policies of the Board in respect of the mandate of the Fund;
- (d) reporting to the Board on the performance of Fund; and

- (e) performing any other functions as may be assigned by the Board from time to time.

Record disbursements to be kept.

17. (1) The Chief Executive Officer shall maintain an accurate record of all payments from the Fund for financing approved projects, and such record of payments shall be updated every quarter required by the Board.

(2) The Chief Executive Officer shall submit to the Board an annual report on the Fund's activities, operations and expenditures.

Corporation Secretary.

18. (1) There shall be a Corporation Secretary to the Board who shall be competitively recruited and appointed by the Board.

(2) A person shall be qualified to be appointed as the Corporation Secretary if that person—

- (a) holds a degree from a university recognised in Kenya;
- (b) is a Certified Public Secretary and a member of the Institute of Certified Public Secretaries of Kenya in good standing;
- (c) has previously held the position of corporation secretary or in a similar governance role for a period of at least five years; and
- (d) meets the requirements of Chapter Six of the Constitution.

(3) The Corporation Secretary shall be responsible for—

- (a) providing guidance to the Board and Board members on their duties, responsibilities and powers and how these should be exercised in the best interests of the Fund;
- (b) ensuring that Board procedures are followed and reviewed regularly, and that the Board complies with the law, rules and regulations;
- (c) assisting the Chairperson in organising Board activities including providing information, preparing agenda, issuing notices and preparing for meetings, Board evaluations and Board development programmes;
- (d) providing secretarial services to the Board including ensuring that the Board work plan is prepared and adhered to, circulating Board papers in advance of the meeting keeping the record of attendance of the meetings;
- (e) ensuring that the minutes of the Board and Board committees are promptly prepared and circulated;
- (f) keeping the Board abreast of and informed on, current governance thinking and practise;
- (g) keeping a record of conflicts of interest declared by each member of the Board; and
- (h) co-ordinating the governance audit process.

Staff of the Board.

19. (1) The Board may appoint such number of professional, technical and administrative staff for the Board.

(2) The staff appointed under sub-paragraph (1) shall serve on such terms and conditions as the Board may, with the advice of the Salaries and Remuneration Commission, determine.

PART IV – FINANCIAL PROVISIONS

Financial year.

20. The financial year of the Fund shall be the period of twelve months ending on the 30th June in each year.

Annual Estimates.

21. (1) At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of its revenue and expenditure for that year.

(2) The annual estimates shall make provision for the estimated expenditure of the Fund for the financial year concerned and, in particular, shall provide for—

- (a) the payment of salaries, allowances and other charges in respect of the staff of the Fund;
- (b) the payment of pensions, gratuities and other charges in respect of retirement benefits to staff of the Fund;
- (c) the proper maintenance of the buildings and grounds of the Fund; and
- (d) the proper maintenance repair and replacement of the equipment and other movable property of the Fund.

(3) The annual estimates shall be submitted to the Cabinet Secretary for approval before the commencement of the financial year to which they relate and once approved, the sum provided in the estimates shall not be increased without the prior consent of the Cabinet Secretary.

(4) No expenditure shall be incurred for the purposes of the Fund except in accordance with the annual estimates approved under this paragraph.

(5) The Government shall provide office space and finance its operations for the duration of the Fund.

Books of accounts.

22. The Board shall cause to be kept proper books and records of account of the income, expenditure, assets and liabilities of the Fund.

Accounts and audit.

23. (1) The accounts of the Fund shall be audited by the Auditor-General or by an auditor appointed by the Board with the written approval of the Auditor-General.

(2) Within a period of three months after the end of each financial year, the Board shall submit to the Auditor-General or to an auditor appointed under sub-regulation (1) the accounts of the Fund together with—

- (a) a statement of income and expenditure of Fund during that year; and
- (b) a statement of the assets and liabilities of the Fund on the last day of the financial year.

(3) In addition to the Audit requirements set out in the Grant Agreement, the accounts of the Fund shall be audited in accordance with the provisions of the Public Audit Act (Cap. 412B).

(4) The appointment of an auditor under sub-regulation (1) shall not be terminated by the Board without the prior written consent of the Auditor-General.

(5) The Auditor-General may give general or special directions to an auditor appointed under sub-regulation (1) and the audit or shall comply with those directions.

(6) An auditor appointed under sub-regulation (1) shall report directly to the Auditor-General on any matter relating to the directions given by the Auditor-General.

(7) Within six months after the end of each financial year, the Auditor-General shall report on the examination and audit of the accounts of the Funds to the Cabinet Secretary and, in the case of an auditor appointed under sub-regulation (1), the auditor shall transmit a copy of the report to the Auditor-General.

(8) Nothing in this Order shall be construed to prohibit the Auditor-General from carrying out an inspection of Fund's accounts or records whenever it appears desirable and the Auditor-General shall carry out such an inspection at least once every six months

(9) The Cabinet Secretary shall lay the report prepared under sub-regulation (6) before the National Assembly as soon as reasonably practicable after the report has been submitted to him or her.

PART V – MISCELLANEOUS PROVISIONS

Close-out of the Grant Agreement.

24. At the close out of the Grant Agreement, any cash balances on the grant shall be returned promptly to MCC, while other assets of the Fund shall be disposed in accordance with the Grant Agreement and the MCC Program Closure Guidelines.

Regulations under section 24(4)&(11)**THE PUBLIC FINANCE MANAGEMENT (NATIONAL
GOVERNMENT AFFIRMATIVE ACTION FUND) REGULATIONS****ARRANGEMENT OF REGULATIONS****PART I – PRELIMINARY***Regulation*

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SCHEDULE — CONDUCT OF THE AFFAIRS AND BUSINESS OF THE BOARD

**THE PUBLIC FINANCE MANAGEMENT (NATIONAL
GOVERNMENT AFFIRMATIVE ACTION FUND) REGULATIONS**

[L.N. 52/2016, L.N. 104/2019]

PART I – PRELIMINARY

Citation.

1. These Regulations may be cited as the Public Finance Management (National Government Affirmative Action Fund) Regulations.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

"affirmative action" has the meaning assigned to it under Article 260 of the Constitution;

"affirmative action group" includes women, the youth, persons with disabilities, children and the elderly as may be organised into a savings and credit co-operative or some similar organisation;

"accounting officer" has the meaning assigned to it under section 2 of the Public Finance Management Act (Cap. 412A);

"Board" means the National Government Affirmative Action Fund Board established under regulation 8;

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

"Chief Executive Officer" means the Chief Executive Officer of the Fund appointed under regulation 17;

"county Affirmative Action Fund bank account" means the National Government Affirmative Action Fund account for each county opened under regulation 24;

"county committee" means the National Government Affirmative Action Fund Committee established under regulation 16;

"county co-ordinator" means a person appointed as a county- coordinator of the Fund under regulation 18;

"financial year" means the period of twelve months ending on the 30th June in each year;

"Fund" means the National Government Affirmative Action Fund established under regulation 3;

"Fund bank account" means the Fund's bank account opened under regulation 25;

"officer administering the Fund" means a person designated as the administrator of the Fund under regulation 15(1);

"Public Sector Accounting Standards Board" has the meaning assigned to it by section 2 of the Public Finance Management Act (Cap. 412A);

"revenue" has the meaning assigned to it under section 2 of the Commission on Revenue Allocation Act (Cap. 428);

"revolving fund" means a fund established by the recipient affirmative action group for receiving funds and disbursing loans under regulation 6(2); and

"youth" has the meaning assigned to it under Article 260 of the Constitution.

PART II – THE NATIONAL GOVERNMENT AFFIRMATIVE ACTION FUND

Establishment of the Fund.

3. There is established a fund to be known as the National Government Affirmative Action Fund which shall vest in and be operated by the Board.

Sources of the Fund.

4. The Fund shall consist of—

- (a) such moneys as may be appropriated by the Parliament from the national government's share of revenue;
- (b) grants and donations;
- (c) income generated from the proceeds of the Fund; and
- (d) any monies accruing to or received by the Fund from any other source.

Expenditure of the Fund.

5. (1) There shall be paid out of the Fund payments in respect of any expenses incurred pursuant to the object and purpose for which the Fund is established.

(2) Payments shall only be made out of the Fund where—

- (a) the Fund administrator has based the payments on annual work programmes;
- (b) the Fund administrator has based the payments on cost estimates; and
- (c) the Board has approved the annual work programmes and cost estimates at the beginning of the financial year to which they relate.

(3) The Fund administrator shall submit to the Board any revised annual work programmes or cost estimates for approval.

(4) Funds provided under these Regulations shall not be used for the purpose of supporting political parties or entities.

Object and purpose of the Fund.

6. (1) The object and purpose of the Fund is to complement the measures of the National Government on affirmative action.

(2) Without prejudice to the generality of paragraph (1), the object of the Fund is to provide for—

- (a) enhancement of access to financial facilities for affirmative action groups;
- (b) support of value addition initiatives by affirmative action groups;
- (c) socio cultural development and nurturing of talent for affirmative action groups including promotion of the arts, music or sports;
- (d) enhancement of access to services for survivors of gender-based violence, female genital mutilation, child marriages or forced marriages, through the establishment of rescue centres and legal aid centres and other similar facilities;
- (e) support of affirmative action groups through bursaries and scholarships to access education opportunities;
- (f) establishment of drugs and substance abuse rehabilitation and counselling centres in conjunction with the relevant Government agencies;

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- (g) conducting civic education and community sensitisation on the National Government affirmative action programmes and policies; and
- (h) any other function necessary to give effect to the provisions of this paragraph.

(3) Despite the provisions of paragraph (2), the Fund shall not—

- (a) allocate more than twenty percent of its funds for the enhancement of access to financial facilities by affirmative action groups;
- (b) allocate more than twenty percent of its funds to bursaries or scholarships for affirmative action groups; or
- (c) allocate more than ten percent of its funds to conducting civic education or community sensitisation on National Government affirmative action programmes.

(4) The Fund shall perform its functions in conjunction with the relevant National Government ministries, agencies or departments.

Guidelines of the Fund.

7. The Board shall, in consultation with the Cabinet Secretary, develop guidelines for the proper management of the Fund.

PART III – ESTABLISHMENT AND COMPOSITION OF THE BOARD AND ADMINISTRATION OF THE FUND

Establishment and composition of the Board.

8. (1) There is established a board to be known as the National Government Affirmative Action Fund Board.

(2) The Board shall be a body corporate with a common seal and perpetual succession, and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) holding, acquiring, or otherwise dealing with any property or any interest in property; and
- (c) doing all such things that a body corporate is capable of doing under these Regulations.

(3) The Board shall consist of—

- (a) a chairperson appointed by the Cabinet Secretary responsible for matters relating to gender affairs from among the persons appointed under subparagraphs (e) or (g);
- (b) the Principal Secretary in the Ministry responsible for matters relating to gender affairs;
- (c) the Principal Secretary to the National Treasury;
- (d) the Principal Secretary in the Ministry of responsible for social security services;
- (da) the Principal Secretary in the State Department for the time being responsible for planning;
- (e) one person to represent the youth or persons with disability and appointed by the Cabinet Secretary;
- (f) *deleted by LN 104 of 2019, r. 2;*
- (g) three other persons appointed by the Cabinet Secretary responsible for matters relating to gender affairs for their knowledge or expertise in affirmative action; and

(h) *deleted by LN 104 of 2019, r. 2.*

(4) A person is qualified to be appointed under paragraph (2)(e), (1) or (g) if that person—

- (a) holds a degree in social sciences from a university recognised in Kenya;
- (b) has at least five years' experience in the relevant area of expertise; and
- (c) meets the requirements of Chapter Six of the Constitution.

(5) Any appointment under paragraph (2) shall be in accordance with Article 27 of the Constitution.

[LN 104 of 2019, r. 2.]

Functions of the Board.

9. (1) The functions of the Board shall be to—

- (a) receive, review and approve project proposals for funding from each county in accordance with these Regulations;
- (b) oversee the management of the Fund;
- (c) receive, review and approve the reports of the Fund; and
- (d) perform such other duties as may be assigned by the Cabinet Secretary responsible for matters relating to gender affairs for the proper management of the Fund.

(2) The Board shall conduct and regulate its business and affairs of the Board as provided in the Schedule.

Capital of the Fund.

10. The initial capital of the Fund shall be two billion and thirty million shillings appropriated by Parliament in the financial year that these Regulations come into force.

Disbursements from the Fund.

11. (1) The disbursements from the Fund shall be done by the designated signatories.

(2) Each disbursement from the Fund shall be approved by the Board and recorded in the minutes of the Board.

(3) The Board shall disburse from the Fund an equal amount to each constituency.

(4) The Board shall disburse funds out of the Fund bank account to each county Affirmative Action Fund account at the beginning of the first quarter of each financial year.

(5) Subject to the Act and these Regulations, the initial disbursement by Board to each county committee after the commencement of these Regulations shall be equivalent to twenty five per cent of the annual allocation for the county.

(6) Each disbursement to a county committee from the Fund shall be for a specific project approved in accordance with these Regulations.

(7) Each county committee shall, within thirty days after the close of the financial year, submit to the Board the records including copies of relevant bank statements of the amounts received by the county committee from the Board and expenditures of the county committee in the financial year to which the records relate.

(8) The Board shall not disburse any sum from the Fund to a county committee that does not comply fully with the requirements of paragraph (6).

(9) The Board shall set out the general conditions and requirements to be met by county committees for the disbursement of funds.

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(10) The Board may impose reasonable requirements including restrictions on a particular county for the disbursement of funds.

(11) Where the Board imposes any requirement or restriction on a county committee for the disbursement of funds, it shall be report the imposition of the requirement or restriction to the Cabinet Secretary responsible for matters relating to gender affairs.

(12) The Board shall, at least once in every month, make a report of its disbursements to county committees to the Cabinet Secretary responsible for matters relating to gender affairs.

Retention of receipts.

12. (1) All receipts, earnings and accruals to the Fund, and the balance of the Fund at the end of the financial year, shall be retained by the Fund for use for the purpose for which the Fund is established.

(2) All funds allocated to a county committee shall be cumulative and shall be carried forward from one financial year to the next including funds retained in the accounts in accordance with paragraph (1) or funds which are not utilised for whatever reason.

Emergency reserve.

13. (1) A portion of the Fund, equivalent to two per cent which shall be known as the "Emergency Reserve", shall remain unallocated by the Board and shall be available to cover emergencies faced by affirmative action groups.

(2) The administration of the Emergency Reserve shall be in accordance with the provisions of the Constitution, the Act, these Regulations and any other relevant written law.

(3) The Board shall determine the allocation of the Emergency Reserve to each county committee:

Provided that the total allocation from the Emergency Reserve shall not exceed the threshold under paragraph (1).

Application of Government financial Regulations and procedures.

14. Subject to the provisions of the Act, the existing Government financial Regulations and procedures shall apply in the administration of the Fund.

Administration of the Fund.

15. (1) The accounting officer of the State Department responsible for matters relating to gender affairs shall be designated as the administrator of the Fund.

(2) The administrator of the Fund shall—

- (a) open and operate a bank account at the Central Bank of Kenya or a bank approved by the National Treasury for the purposes of the Fund;
- (b) supervise and control the administration of the Fund;
- (c) consult with the Cabinet Secretary responsible for matters relating to gender affairs on matters relating to the administration of the Fund;
- (d) cause to be kept proper books of account and other books and records in relation to the Fund of all activities and undertakings by the Fund;
- (e) prepare in the manner that the Public Sector Accounting Standards Board may prescribe, sign and submit to the Auditor-General, in respect of each financial year and within three months after the end of each financial year, a statement of accounts relating to the Fund and submit a copy to the National Treasury;

- (f) furnish such additional information which is proper and sufficient for the purpose of examination and audit by the Auditor-General of the statement of accounts relating to the Fund in accordance with the provisions of the Public Audit Act (Cap. 412B); and
 - (g) prepare a quarterly report on the receipts into and disbursements out of the Fund and submit it to the Cabinet Secretary responsible for gender affairs.
- (3) The Cabinet Secretary responsible for matters relating to gender affairs shall publish the report submitted by the administrator of the Fund under paragraph (2)(g) by the 21st of every third month.
- (4) Every statement of account prepared by the administrator of the Fund shall include details of the balance between the assets and liabilities of the Fund and indicate the financial status of the Fund at the end of the financial year to which the statement relates.
- (5) Each financial year, five per cent of the annual allocation to the Fund shall be set aside for the Fund secretariat, of which three per cent shall be shared among all county committees.
- (6) At the coming into force of these Regulations an amount totalling five hundred million shillings shall be set aside for the purchase of vehicles for use by the Fund secretariat and for each county secretariat.

Establishment of National Government Affirmative Action Fund county committees.

16. (1) There shall be established a county committee to be known as the National Government Affirmative Action Fund Committee in each county.

(2) Each county committee shall—

- (a) ensure that the projects funded under these Regulations comply with the objects and purposes set out in these Regulations;
- (b) ensure compliance with the guidelines on the disbursement of funds for projects approved under these Regulations;
- (c) oversee the implementation of projects financed through the Fund;
- (d) oversee the monitoring and evaluation of projects or programmes funded under these Regulations;
- (e) identify through a participatory process projects to be funded under these Regulations;
- (f) receive, review and recommend to the Board for approval proposals prepared through a participatory process for funding;
- (g) prepare quarterly and annual reports on the operations of the Fund;
- (h) sensitise the community on the object and purpose of the Fund;
- (i) ensure projects recommended for funding are guided by national development priorities and are not duplicated; and
- (j) perform any other function required under these Regulations or any other written law.

[Subsidiary]

(3) Each county committee shall consist of—

- (a) one person each from each of the constituencies in the county who shall be nominated through a participatory process and have the following qualifications—
 - (i) be a citizen of Kenya;
 - (ii) hold a minimum of a post-secondary school certificate from an institution recognised in Kenya;
 - (iii) have at least three years' experience in matters relating to rural development, affirmative action or social development; and
 - (iv) meet the requirements of Chapter Six of the Constitution;
- (b) a representative of persons with disability appointed by the Cabinet Secretary responsible for matters related to gender affairs and who shall meet the requirements prescribed under paragraph (a);
- (c) the county commissioner or his or her nominee;
- (d) the national government officer in charge of the county responsible for gender affairs or his or her nominee; and
- (e) the county co-ordinator who shall be an *ex officio* member and who shall be the secretary to the Committee.

(4) The quorum at the meeting of the county committee shall be one-third of the members of the committee and decisions at a meeting of the committee shall be by a majority of those present and voting.

(5) The county committee shall at its first meeting elect a chairperson and vice chairperson from among its members who shall be of opposite sexes.

(6) The respective county commissioner shall convene the first meeting and preside over the election of the chairperson and the vice-chairperson as well as file a return to the Fund secretariat.

(7) Members of the county committee shall be appointed by notice in the *Gazette* by the Cabinet Secretary responsible for matters relating to gender affairs.

(8) A person shall cease to be a member of the county committee—

- (a) if that person dies;
- (b) if that person resigns in writing from office;
- (c) if that person is removed from office by a vote of at least two-thirds of the members of the committee on any of the following grounds—
 - (i) lack of integrity;
 - (ii) gross misconduct;
 - (iii) conviction by a court of competent jurisdiction for embezzlement of public funds;
 - (iv) bringing the image of the county committee into disrepute through unbecoming personal public conduct;
 - (v) causing disharmony within the county committee; or
 - (vi) physical or mental infirmity.

(9) A member of a county committee, other than an *ex officio* member, shall serve for a term of three years which may be renewed once:

Provided that the member shall not have ceased to be a member of the county committee in accordance with paragraph (8).

(10) A decision to remove a member under paragraph (8)(c) shall be made through a resolution of the committee by at least two-thirds of the members:

Provided that the member sought to be removed shall be given a fair hearing before the resolution is made.

(11) Whenever a vacancy occurs in the county committee by reason of resignation, removal, incapacitation or death of a member appointed under paragraph (3)(a) or (b), the vacancy shall be filled from the same category of persons from which the member was appointed.

Chief Executive Officer.

17. (1) There shall be a chief executive officer of the Fund who shall be appointed by the Board.

(2) The Chief Executive Officer of the Fund shall be recruited through a competitive process and appointed by the Board in accordance with the provisions of Article 234(5) of the Constitution, the Act and these Regulations.

(3) A person shall qualify to be appointed as the Chief Executive Officer if that person—

- (a) is a citizen of Kenya;
- (b) holds a degree in social sciences from a university recognised in Kenya;
- (c) has at least five years' experience in matters relating to rural development or affirmative action; and
- (d) meets the requirements of Chapter Six of the Constitution.

(4) A person appointed as the Chief Executive Officer shall serve for a term of three years, which may be renewed for one further term of three years.

(5) The Chief Executive Officer shall only be subject to the directions of the Board and shall be responsible for the day to day administration of the affairs of the Fund including the staff of the Board.

Secretariat of the county committee.

18. (1) There shall be a secretariat of the county committee in each county which shall consist of—

- (a) a county co-ordinator appointed by the Board from the relevant county;
- (b) a monitoring and evaluation officer appointed by the Board; and
- (c) not more than three other officers as may be required appointed by the Board.

(2) The officers of the county secretariat shall be appointed through an open and competitive process.

(3) A person shall not be appointed as a county co-ordinator unless that person holds at least a degree in accountancy, finance, economics or social sciences.

(4) The county co-ordinator shall be the custodian of all the records and equipment of the Fund at the county level.

(5) The county secretariat shall be responsible for project monitoring, evaluation, coordination and the proper keeping of records.

PART IV – PROJECTS

Projects to be in respect of national government functions and community-based.

19. (1) A project under these Regulations shall—

- (a) only relate to functions of the national government under the Constitution;
- (b) be community-based; and
- (c) ensure that the benefits of the project are available to a widespread cross-section of the inhabitants of the community.

(2) Each project shall be identified at the constituency level through a participatory process.

(3) The Board shall only approve the disbursement of funds for a complete project or a defined phase of a project.

(4) A project may include—

- (a) the acquisition of land and buildings; and
- (b) the costs related to studies, planning and design or other technical input for the project.

(5) In this regulation, "project" shall not include the recurrent costs for a facility.

Process of applying for funds at the county level.

20. (1) The county committee shall, once in every year, through public notices in all the wards within the county, invite interested members of the public to submit project proposals for funding.

(2) The county committee shall receive and review all project proposals and prepare a list of the projects to recommend to the Board for approval the projects to be funded.

(3) The county co-ordinator shall submit the list prepared under paragraph (2) to the Chief Executive Officer who shall submit them to the Board for approval of funding.

(4) On the application of a county committee, the Board may reallocate funds approved for a project to another project in the same sector:

Provided that the amount reallocated from one project to another shall not exceed ten per cent of the funds allocated for that project during a financial year.

Sharing of funds at the county level.

21. (1) The county committee may allocate up to fifty per cent of the funds disbursed to it by the Board to county-wide projects.

(2) The county committee may disburse up to fifty per cent of the funds disbursed to it by the board to constituency-based projects.

(3) Despite paragraphs (1) and (2), the county committee shall allocate funds for projects after accounting for administrative, and monitoring and evaluation costs of the county secretariat.

Quarterly reports on projects and disbursements.

22. The Board shall, at least once in every three months, submit a report to the Cabinet Secretary responsible for matters relating to gender affairs and a copy of the report to the

parliamentary committee responsible for matters relating to affirmative action and social development, detailing—

- (a) a summary of the project proposals approved by the Board in the preceding three months and the funding status of such projects;
- (b) a summary of the status of disbursement of funds to the respective county committees for the preceding three months;
- (c) a summary of the status of disbursements from the Ministry responsible for gender affairs to the Fund account; and
- (d) any restriction imposed on the respective county committee in accordance with these Regulations.

Eligibility criteria for applicants.

23. (1) An affirmative action group shall qualify for funding under these Regulations where—

- (a) for an affirmative action group—
 - (i) it is registered under any relevant written law;
 - (ii) it is comprised of at least one hundred women members;
 - (iii) it operates a revolving fund account to receive funds and advance loans to eligible members in accordance with these Regulations;
 - (iv) it is based and operational in the constituency for which it seeks to make the application;
 - (v) it operates a table banking structure where members make monthly or quarterly contributions in accordance with the group's internal guidelines;
 - (vi) it has a bank account in the name of the group;
 - (vii) it has a minimum of its funding of at least three hundred thousand shillings; and
 - (viii) its revolving fund is used for achieving the objects of the group; or
- (b) for an institution composed of affirmative action groups—
 - (i) it is a registered entity;
 - (ii) it has registered affirmative action groups among its members;
 - (iii) it has a minimum of its funding of at least three hundred thousand shillings; and
 - (iv) its revolving fund is used for achieving the objects of the institution and should be revolved among the registered affirmative action groups.

(2) An application for funds shall be accompanied by a resolution of a proper constituted meeting of the affirmative action group or institution and the resolution shall be recorded in the minutes of that meeting.

(3) An agreement for funding under these Regulations shall be made between the county committee on behalf of the Government and an affirmative action group or institution and shall be in the prescribed form.

[Subsidiary]

(4) The prescribed form under paragraph (3) shall provide—

- (a) that any loan advanced to a member of an affirmative action group shall attract an interest rate of five percent of which—
 - (i) three percent shall be retained as savings of the affirmative action group; and
 - (ii) two percent may be used to pay the administrative costs of the affirmative action group;
- (b) that any member of an affirmative action group who has been advanced a loan by the group shall be allowed a three month grace period before being required to commence the repayment of the loan:

Provided that any loan advanced to a member of an affirmative action group shall be repayable within a period of two years after the expiry of the grace period;

- (c) that any amount paid on account of the repayment of a loan advanced by an affirmative action group shall be paid into the bank account of the group and the group shall issue the person paying the amount with a receipt for the amount paid;
- (d) upon verifiable proof of loan repayment of all loan proceeds, the affirmative group shall issue a discharge certificate to the recipient person with respect to the loan repayment;
- (e) each affirmative action group that has received funds from the county committee shall submit a quarterly report to the county co-ordinator on the financial and non-financial activities of the group; and
- (f) any other information that the county committee, on behalf of the Board, may require.

PART V – FINANCE AND ADMINISTRATION

Fund bank accounts.

24. (1) The Fund bank account shall be opened and maintained at the Central Bank of Kenya.

(2) The signatories to the Fund bank account shall be the Chief Executive Officer and two other persons authorised by the Board from among the staff of the Board secretariat.

(3) The Chief Executive Officer's signature and the signature of at least one of the other persons authorised under sub-regulation (2) shall be required before funds are paid out of the Fund bank account.

(4) For the disbursement of funds by the Board, the Board shall, with the approval of the National Treasury, open and maintain a bank account for each county committee styled the "(Name of county) National Government Affirmative Action Fund Account" bank account in every county into which all funds will be received or paid out of.

(5) Each county National Affirmative Action Fund bank account shall have at least two signatories who shall be the national sub-county accountant, the county co-ordinator and at least one other officer designated by the Chief Executive Officer in writing.

(6) At least two signatories shall be required for every cheque or instrument for payment or withdrawal of funds from the county Affirmative Action Fund bank account held in every county and the signatories shall be such that—

- (a) the sub-county accountant is a mandatory signatory; and
- (b) at least one other authorised signatory shall sign.

(7) Every payment or instruction for payment out of the respective county Affirmative Action Fund bank account shall be on the basis of a resolution of the relevant county committee recorded in the minutes of the meeting at which the resolution was made and shall comply with the provisions of the Act and these Regulations.

(8) All receipts, savings and accruals to any county Affirmative Action Fund bank account and the balances thereof at the end of each financial year shall be returned to the National Government Fund Account.

Record of disbursements to be kept.

25. (1) The Board Secretariat shall keep and, at least once in every month, update, an accurate record of all disbursements from the Fund account to the county Affirmative Action Fund account.

(2) The Chief Executive Officer shall submit to the Board a report on the activities, operations and expenditures of the Fund during that financial year.

(3) At the end of every financial year, the Chief Executive Officer shall submit the financial statements of the Fund to the Board in a format prescribed by the Public Sector Accounting Standards Board for approval and immediately thereafter, the Board shall approve and submit the financial statements to the Auditor-General.

PART VI – MISCELLANEOUS PROVISIONS

Costs of running the Fund.

26. (1) The administration costs of a county committee shall not be more than five per cent of the total disbursement made to the county committee in the financial year.

(2) Despite the provisions under paragraph (1), the costs of monitoring and evaluation shall not be more than two percent of the total disbursement to the county committee in the financial year.

(3) The accounts of the Fund shall be audited and reported upon in accordance with the Public Finance Management Act (Cap. 412A) and the Public Audit Act (Cap. 412B).

Offences and penalty.

27. Any person who misappropriates any funds or assets from the Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in the Act and these Regulations, commits an offence and shall, upon conviction, be liable to imprisonment for a term not exceeding five years or to a fine not exceeding ten million shillings or to both.

Winding up of the Fund.

28. If the Fund is wound up, the cash balances of the Fund shall be transferred to the National Exchequer account while other assets of the Fund shall be transferred to the Ministry for the

time being responsible for matters relating to gender affairs.

Revocation of L.N. No. 24 of 2015.

29. The Public Finance Management (Affirmative Action Social Development Fund) Regulations (L.N. 24/2015), are hereby revoked.

SCHEDULE
CONDUCT OF THE AFFAIRS AND BUSINESS OF THE BOARD

(r. 9(2))

1. Term of office

Members of the Board shall, subject to the provisions of this Schedule, hold office for a term of three years, on such conditions as may be specified in the instrument of appointment but shall be eligible for reappointment for a further term of three years.

2. Vacancy in office of member of Board

A member of the Board, other than an *ex officio* member, may—

- (1) at any time resign from office by notice in writing to the Cabinet Secretary responsible for matters relating to gender affairs; or
- (2) be removed from office by the Cabinet Secretary responsible for matters related to gender affairs, if the member—
 - (a) has been absent from three consecutive meetings of the Board without just cause;
 - (b) is adjudged bankrupt or enters into a scheme of composition or arrangement with his or her creditors;
 - (c) is convicted of an offence involving dishonesty or fraud;
 - (d) is incapacitated by prolonged physical or mental illness; or
 - (e) is otherwise unable or unfit to discharge his or her functions.

3. Meetings of the Board

- (1) The Board shall meet at least four times in every financial year and not more than four months shall elapse between one meeting of the Board and the next.
- (2) Unless three-quarters of the total members of the Board otherwise agree, at least fourteen days' written notice of a meeting of the Board shall be given to each member of the Board.
- (3) The quorum for the conduct of the business of the Board shall be five members excluding the Secretary, and the majority of the quorum shall be formed by non *ex officio* members.
- (4) The Chairperson shall preside at every meeting of the Board at which he or she is present but in the Chairperson's absence, the members present shall elect one of their number who shall preside at that meeting and shall enjoy the powers of the Chairperson for the purposes of that meeting.
- (5) The decisions of the Board shall be reached by consensus or where that fails, by majority vote of the members present and voting.
- (6) Subject to the requirement under paragraph (3), a meeting of the Board shall not be invalid merely because of a vacancy in the membership of the Board.
- (7) Subject to these Regulations, the Board shall regulate its own procedure.

4. Disclosure of interest

- (1) If a member is directly or indirectly interested in any matter being considered by the Board, and is present at a meeting of the Board at which that matter is being considered, he or she shall disclose that fact as soon as practicable after the

commencement of the meeting and shall not take part in the consideration of that matter or be counted in the quorum of the meeting at which that matter is considered:

Provided that if the majority of the members present at that meeting are of the opinion that the experience or expertise of that member is vital to the deliberations of the meeting, the Board may permit that member to participate in the deliberations subject to any restrictions the Board may impose on the member.

- (2) A disclosure of an interest made under this paragraph shall be recorded in the minutes of the meeting at which the disclosure is made.

5. Minutes

The Board shall cause minutes of the proceedings of all its meetings to be entered in books kept for that purpose.

Order under section 24(8)

THE GOVERNMENT COAST AGENCY CLEARING FUND (WINDING-UP) ORDER, 2023

ARRANGEMENT OF PROVISIONS

Provision

1. Citation.
 2. Winding up of Fund.
 3. Transitional provisions.
-

THE GOVERNMENT COAST AGENCY CLEARING FUND (WINDING-UP) ORDER, 2023

[L.N. 48/2023]

Citation.

1. This Order may be cited as the Government Coast Agency Fund (Winding-up) Order, 2023.

Winding up of Fund.

2. The Government Coast Agency Fund is wound up.

Transitional provisions.

3. On the winding up of the Fund—

- (a) the administrator of the Fund shall pay any amount remaining in the Fund into the National Exchequer Account for the credit of the national government; or
 - (b) the Cabinet Secretary shall pay any deficit in the Fund from funds of the national government in the National Exchequer Account with the approval of the National Assembly; and
 - (c) the Cabinet Secretary shall submit a final statement of accounts to Parliament.
-

THE JOINT CONSOLIDATED FUND (WINDING-UP) ORDER, 2023

ARRANGEMENT OF PARAGRAPHS

Paragraph

1. Citation.
 2. Winding up of Fund.
 3. Transitional provisions.
-

THE JOINT CONSOLIDATED FUND (WINDING-UP) ORDER, 2023

[L.N. 49/2023]

Citation.

1. This Order may be cited as the Joint Consolidated Fund (Winding-Up) Order.

Winding up of Fund.

2. The Joint Consolidated Fund is wound up.

Transitional provisions.

3. On the winding up of the Fund—

- (a) the administrator of the Fund shall pay any amount remaining in the Fund into the National Exchequer Account for the credit of the national government; or
 - (b) the Cabinet Secretary shall pay any deficit in the Fund from funds of the national government in the National Exchequer Account with the approval of the National Assembly; and
 - (c) the Cabinet Secretary shall submit a final statement of accounts to Parliament
-

THE KENYA LOCAL LOANS SUPPORT FUND (WINDING-UP) ORDER, 2023

ARRANGEMENT OF PROVISIONS

Provision

1. Citation.
 2. Winding up of Fund.
 3. Transitional provisions.
-

THE KENYA LOCAL LOANS SUPPORT FUND (WINDING-UP) ORDER, 2023

[L.N. 50/2023]

Citation.

1. This Order may be cited as the Kenya Local Loans Support Fund (Winding-Up) Order, 2023.

Winding up of Fund.

2. The Kenya Local Loans Support Fund is wound up.

Transitional provisions.

3. On the winding up of the Fund—

- (a) the administrator of the Fund shall pay any amount remaining in the Fund into the National Exchequer Account for the credit of the national government; or
 - (b) the Cabinet Secretary shall pay any deficit in the Fund from funds of the national government in the National Exchequer Account with the approval of the National Assembly; and
 - (c) the Cabinet Secretary shall submit a final statement of accounts to Parliament.
-

THE PRE-SHIPMENT INSPECTION FUND (WINDING-UP) ORDER, 2023

ARRANGEMENT OF PROVISIONS

Provision

1. Citation.
 2. Winding up of Fund.
 3. Transitional provisions.
-

THE PRE-SHIPMENT INSPECTION FUND (WINDING-UP) ORDER, 2023

[L.N. 47/2023]

Citation.

1. This Order may be cited as the Pre-shipment Inspection Fund (Winding-Up) Order, 2023.

Winding up of Fund.

2. The Pre-shipment Inspection Fund is wound up.

Transitional provisions.

3. On the winding up of the Fund—

- (a) the administrator of the Fund shall pay any amount remaining in the Fund into the National Exchequer Account for the credit of the national government; or
 - (b) the Cabinet Secretary shall pay any deficit in the Fund from funds of the national government in the National Exchequer Account with the approval of the National Assembly; and
 - (c) the Cabinet Secretary shall submit a final statement of accounts to Parliament.
-

THE TREASURY MAIN CLEARANCE FUND (WINDING-UP) ORDER, 2023

ARRANGEMENT OF PARAGRAPHS

Paragraph

1. Citation.
 2. Winding up of Fund.
 3. Transitional provisions.
-

THE TREASURY MAIN CLEARANCE FUND (WINDING-UP) ORDER, 2023

[L.N. 51/2023]

Citation.

1. This Order may be cited as the Treasury Main Clearance Fund (Winding-Up) Order.

Winding up of Fund.

2. The Treasury Main Clearance Fund is wound up.

Transitional provisions.

3. On the winding up of the Fund—

- (a) the administrator of the Fund shall pay any amount remaining in the Fund into the National Exchequer Account for the credit of the national government; or
 - (b) the Cabinet Secretary shall pay any deficit in the Fund from funds of the national government in the National Exchequer Account with the approval of the National Assembly; and
 - (c) the Cabinet Secretary shall submit a final statement of accounts to Parliament.
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Regulations under section 24(8)

THE PUBLIC FINANCE MANAGEMENT (UWEZO FUND) (REVOCATION) REGULATIONS

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
 2. Winding up L.N. 21 of 2014.
 3. Transfer of outstanding amounts.
 4. Transition of Staff.
 5. Revocation L.N. 21/2014.
-

**THE PUBLIC FINANCE MANAGEMENT
(UWEZO FUND) (REVOCATION) REGULATIONS**

[L.N. 79/2019]

Citation.

1. These Regulations may be cited as the Public Finance Management (Uwezo Fund) (Revocation) Regulations.

Winding up L.N. 21 of 2014.

2. The Uwezo Fund established under the Public Finance Management (Uwezo Fund) Regulations (L.N. 21/2014) is wound up.

Transfer of outstanding amounts.

3. (1) Any amounts remaining in the Uwezo Fund shall be paid into the National Exchequer Account for the credit of the national government.

(2) The Cabinet Secretary shall, with the approval of the National Assembly, pay any deficit in the Fund from funds of the national government in the National Exchequer Account.

(3) Any outstanding loan between the Uwezo Fund and a beneficiary shall on the commencement of these Regulations, become a loan between the Biashara Kenya Fund established under regulation 3 of the Public Finance Management (Biashara Kenya Fund) Regulations and the same beneficiary, with the same rights and subject to the same obligations and the loan shall be deemed to be a single continuing loan.

Transition of Staff.

4. (1) In the regulation, unless the context otherwise requires—

"Administrator" means the Principal Secretary of the State Department for the time being responsible for gender affairs or any other person designated by the Cabinet Secretary, in writing for that purpose;

"Biashara Kenya Fund" means the Biashara Kenya Fund established under regulation 3 of the Public Finance Management (Biashara Kenya Fund) Regulations.

(2) Subject to paragraph (4), a person who, immediately before the commencement of these Regulations, was an employee of the Government serving in the Uwezo Fund shall serve in the Biashara Kenya Fund.

(3) Despite Regulation (2), employees of the Government serving in the Uwezo Fund immediately before the commencement of these Regulations shall, upon the commencement of these Regulations, be given an option to serve in the Biashara Kenya Fund and if not appointed be redeployed in the public service.

(4) Before appointing a person to whom paragraph (2) applies, the Administrator, in consultation with the Public Service Commission, shall—

- (a) require such person to make an application for employment or appointment to the Fund; and
- (b) using the criteria determined by the Public Service Commission, vet such a person to ensure that he or she is fit and proper to serve in the position applied for in the Biashara Kenya Fund.

(5) A person who, immediately before the commencement of these Regulations, was an employee of the Government serving in the Uwezo Fund immediately before the commencement of these Regulations, who fails to meet the vetting criteria set under paragraph (4), may be deployed in the public service.

[Subsidiary]

(6) Notwithstanding the provisions of this regulation, and for as long as the Administrator has not appointed staff to serve in the Biashara Kenya Fund, the staff of the Uwezo Fund shall continue to perform those functions and their acts shall be deemed to be those of the Biashara Kenya Fund

Revocation L.N. 21/2014.

5. The Government Financial Management (Uwezo Fund) Regulations (L.N. 21/2014) are revoked.

THE PUBLIC FINANCE MANAGEMENT (YOUTH ENTERPRISE
DEVELOPMENT FUND) (REVOCATION) REGULATIONS

ARRANGEMENT OF REGULATIONS

Regulation

1. Citation.
 2. Winding up.
 3. Transfer of outstanding amounts.
 4. Revocation of LN 167 of 2006.
-

**THE PUBLIC FINANCE MANAGEMENT (YOUTH ENTERPRISE
DEVELOPMENT FUND) (REVOCATION) REGULATIONS**

[L.N. 81/2019]

Citation.

1. These Regulations may be cited as the Public Finance Management (Youth Enterprise Development Fund) (Revocation) Regulations.

Winding up.

2. The Youth Enterprise Fund established under the Government Financial Management (Youth Enterprise Development Fund) Regulations (L.N. 167/2006) is wound up.

Transfer of outstanding amounts.

3. (1) Any amounts remaining in the Youth Enterprise Development Fund shall be paid into the National Exchequer Account for the credit of the national government.

(2) The Cabinet Secretary shall, with the approval of the National Assembly, pay any deficit in the Fund from funds of the national government in the National Exchequer Account.

(3) Any outstanding loan between the Youth Enterprise Development Fund and a beneficiary shall on the commencement of these Regulations, become a loan between the Biashara Kenya Fund established under regulation 3 of the Public Finance Management (Biashara Kenya Fund) Regulations, 2019 and the same beneficiary, with the same rights and subject to the same obligations and the loan shall be deemed to be a single continuing loan.

Revocation of LN 167 of 2006.

4. The Government Financial Management ((Youth Enterprise Revocation Development Fund) Regulations (L.N. 167/2006) are revoked.

THE PUBLIC FINANCE MANAGEMENT (YOUTH ENTERPRISE
DEVELOPMENT FUND) (REVOCATION) REGULATIONS

ARRANGEMENT OF REGULATIONS

PART I – PRELIMINARY

Regulation

1. Citation.
 2. Winding up. LN 167 of 2006.
 3. Transfer of outstanding amounts.
 4. Revocation. LN 167 of 2006.
-

**THE PUBLIC FINANCE MANAGEMENT (YOUTH ENTERPRISE
DEVELOPMENT FUND) (REVOCATION) REGULATIONS**

[L.N. 58/2021]

PART I – PRELIMINARY

Citation.

1. These Regulations may be cited as the Public Finance Management (Youth Enterprise Development Fund) (Revocation) Regulations, 2021.

Winding up. LN 167 of 2006.

2. The Youth Enterprise Fund established under the Government Financial Management (Youth Enterprise Development Fund) Regulations, 2007 is wound up.

Transfer of outstanding amounts.

3. (1) Any amounts remaining in the Youth Enterprise Development Fund shall be paid into the National Exchequer Account for the credit of the national government.

(2) The Cabinet Secretary shall, with the approval of the National Assembly, pay any deficit in the Fund from funds of the national government in the National Exchequer Account.

(3) Any outstanding loan between the Youth Enterprise Development Fund and a beneficiary shall on the commencement of these Regulations, become a loan between the Biashara Kenya Fund established under regulation 3 of the Public Finance Management (Biashara Kenya Fund) Regulations, 2021 and the same beneficiary, with the same rights and subject to the same obligations and the loan shall be deemed to be a single continuing loan.

Revocation. LN 167 of 2006.

4. The Government Financial Management (Youth Enterprise Development Fund) Regulations, 2006 are revoked.

Regulations under section 58(9)

THE PUBLIC FINANCE MANAGEMENT (CREDIT GUARANTEE SCHEME) REGULATIONS

ARRANGEMENT OF REGULATIONS

PART I – PRELIMINARY*Regulation*

1. Citation.
2. Interpretation.
3. Objects of the Regulations.

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**THE PUBLIC FINANCE MANAGEMENT (CREDIT
GUARANTEE SCHEME) REGULATIONS**

[L.N. 197/2020]

PART I – PRELIMINARY

Citation.

1. These Regulations may be cited as the Public Finance Management (Credit Guarantee Scheme) Regulations.

Interpretation.

2. In these Regulations, unless the context otherwise requires —

"Administrator" means the Administrator of the Scheme who shall be the Principal Secretary in the Ministry responsible for matters relating to finance;

"borrower" means a person in whose favour a credit facility has been granted by a financial intermediary, part of which has been guaranteed under these Regulations;

"enterprise" means an undertaking or a business concern engaged in the production of goods, provision of services or trade in goods;

"financial intermediary" means a bank, a microfinance bank and any other institution designated as a financial intermediary by the Cabinet Secretary in accordance with regulation 12 (1) (a); and

"Scheme" means the Credit Guarantee Scheme established under regulation 4.

Objects of the Regulations.

3. The objects of these Regulations shall be to—

- (a) improve and stimulate the national economy by encouraging additional lending to micro, small and medium enterprises, increasing investment opportunities for micro, small and medium enterprises and strengthening skills and capacities of proprietors of micro, small and medium enterprises;
- (b) facilitate the financing of micro, small and medium enterprises by partially guaranteeing credit advanced to the enterprises; and
- (c) create a conducive business environment and promote partnerships between the government and financial intermediaries with respect to credit guarantees for micro, small and medium enterprises and other related activities.

PART II – CREDIT GUARANTEE SCHEME

Establishment of the Scheme.

4. There is established a Scheme to be known as the Credit Guarantee Scheme.

Funds of the Scheme.

5. The funds of the Scheme shall consist of—

- (a) monies appropriated by Parliament for the purposes of the Scheme;
- (b) income generated from the proceeds of the Scheme;
- (c) income from investments made by the Administrator for the purposes of the Scheme;
- (d) grants, donations, bequests or other gifts made to the Administrator for the purposes of the Scheme; and

- (e) monies from any other source as may be approved by the Cabinet Secretary.

PART III – ADMINISTRATION OF THE SCHEME

Steering Committee.

6. (1) The Scheme shall be overseen by a committee to be known as the Steering Committee which shall consist of—

- (a) the Principal Secretary in the Ministry responsible for matters relating to finance, who shall be the chairperson, or the Principal Secretary's representative;
- (b) the Principal Secretary in the Ministry responsible for matters relating to micro, small and medium enterprises or the Principal Secretary's representative;
- (c) the Attorney-General or the Attorney-General's representative;
- (d) the Governor of the Central Bank of Kenya or the Governor's representative; and
- (e) three independent members, not being public officers, appointed by the Cabinet Secretary for a period not exceeding three years, renewable once, who shall comprise of—
 - (i) one person with experience in banking or finance;
 - (ii) one person with experience in insurance; and
 - (iii) one person with experience as an entrepreneur in a micro, small or medium enterprise.

(2) A person shall be eligible for appointment as a member of the Steering Committee under paragraph (1) (e) if that person—

- (a) possesses a degree in a relevant field from a university recognised in Kenya; and
- (b) meets the requirements of Chapter Six of the Constitution.

Functions of the Steering Committee.

7. The Steering Committee shall—

- (a) oversee the administration of the Scheme;
- (b) advise the Cabinet Secretary generally on the administration of the Scheme;
- (c) develop policy guidelines relating to guarantees by the Scheme;
- (d) monitor the uptake of guarantees for credit facilities extended to micro, small and medium enterprises and make recommendations for improvement thereof;
- (e) review applications for participation in the Scheme from institutions and advise the Cabinet Secretary on the suitability of the applicants to participate in the Scheme;
- (f) advise the Cabinet Secretary on the designation of other entities as participating financial intermediaries;
- (g) receive reports on the performance of the Scheme;
- (h) review the criteria for the issuance of credit guarantees under the Scheme including guarantee fees, maximum loan sizes, guarantee coverage rates and credit standards defining eligible borrowers to be included in the scheme;
- (i) monitor and evaluate the activities of the Scheme; and
- (j) perform such other functions that, in the opinion of the Cabinet Secretary, shall promote the objects of the Scheme.

[Subsidiary]

Administrator of the Scheme.

8. (1) The Administrator of the Scheme shall be the Principal Secretary in the Ministry responsible for matters relating to finance or a person designated by the Principal Secretary in writing for that purpose.

(2) The Administrator shall —

- (a) open and operate bank accounts for the purposes of the Scheme;
- (b) supervise and control the administration of the Scheme;
- (c) consult with the Steering Committee on matters relating to the administration of the Scheme;
- (d) determine the maximum amounts of guarantees that the Scheme may extend to a participating financial intermediary;
- (e) cause to be kept books of accounts and other books and records in relation to the Scheme of all activities and undertakings financed and guaranteed by the Scheme;
- (f) enter into and sign agreements with financial intermediaries for the purpose of offering guarantees for part of the credit advanced to viable micro, small and medium enterprises; and
- (g) open an electronic ledger which shall contain the following details—
 - (i) the names of participating financial intermediaries; and
 - (ii) the names of micro, small and medium enterprises that participating financial intermediaries have extended credit facilities indicating enterprises whose owners or proprietors are women, persons with disability and the youth;

Scheme Manager and staff.

9. (1) The day to day operations of the Scheme shall be undertaken by a Scheme Manager and staff.

(2) The Scheme Manager and staff of the Scheme shall be appointed by the Cabinet Secretary from among the officers of the Ministry responsible for matters relating to finance.

(3) Notwithstanding paragraph 2, the Cabinet Secretary may appoint any other person as a member of staff of the Scheme if that person's knowledge and skills are found to be necessary for the performance of the functions of the Scheme.

Eligible borrowers.

10. (1) An enterprise to which a credit facility has been extended shall be eligible for a partial guarantee of the credit facility under the Scheme if that enterprise —

- (a) is a micro, small or medium enterprise;
- (b) is registered as a business or company under the relevant laws;
- (c) is a registered taxpayer and is in compliance with the relevant tax laws;
- (d) is registered by a county government and holds a valid business permit or trade licence;
- (e) is not part of any group or enterprise which would otherwise not be eligible for a credit guarantee under these Regulations;

- (f) intends to use the credit advanced for business purposes, including —
 - (i) working capital requirements of the enterprises;
 - (ii) acquisition of assets; or
 - (iii) rebuilding businesses affected by natural disasters or other financial crises;
- (g) is credit-worthy;
- (h) does business in Kenya; and
- (i) satisfies any other condition that may be imposed by the Steering Committee before the credit guarantee is granted.

(2) A guarantee for a credit facility under paragraph (1) shall be for a portion of the credit facility.

Ineligible borrowers.

11. An enterprise shall not be eligible for a credit guarantee under the Scheme if —

- (a) the credit facility relates to risks which are already covered by the Government, any other credit guarantee, insurer or indemnity, to the extent so covered;
- (b) the credit facility is inconsistent with any prudential guidelines issued by the Central Bank of Kenya or under any other written law;
- (c) the enterprise already enjoys a credit guarantee for another credit facility under these Regulations and the lending institution has invoked the guarantee;
- (d) the enterprise has been sanctioned by a financial intermediary against collateral security or third-party guarantee;
- (e) the enterprise is a financial intermediary or a state corporation;
- (f) the enterprise is not a micro, small or medium enterprise; or
- (g) the credit facility is intended for an unlawful purpose.

Eligible financial intermediaries.

12. (1) A financial intermediary shall be eligible to participate in the Scheme if the financial intermediary —

- (a) is an institution licensed by Central Bank of Kenya or any other institution as may be designated by the Cabinet Secretary on the advice of the Steering Committee;
- (b) has experience in extending and managing credit facilities to micro, small and medium enterprises;
- (c) commits to extend credit facilities to micro, small and medium enterprises which shall be at least four times the amount that the Scheme will guarantee;
- (d) has a wide geographical branch network or outreach;
- (e) has a wide sectoral coverage in its portfolio of credit facilities that have been extended to micro, small and medium enterprises; and
- (f) has maintained a portfolio quality that is above a minimum level as may be determined by the Steering Committee on credit facilities that have been extended to micro, small and medium enterprises.

(2) The Scheme shall enter into a written agreement with each eligible financial intermediary before the financial intermediary is allowed to participate in the Scheme which shall specify how the financial intermediaries shall participate in the Scheme.

[Subsidiary]

Applications by financial intermediaries.

13. (1) An eligible financial intermediary which wishes to participate in the Scheme shall apply in writing to the Administrator.

(2) The application under paragraph (1) shall indicate the —

- (a) minimum number of times of the guarantee value that the financial intermediary expects to extend as credit to micro, small and medium enterprises;
- (b) size of credit extended by the financial intermediary to micro, small and medium enterprises both in total amount and as a proportion of total lending;
- (c) performance of the credit facilities the financial intermediary has extended to micro, small and medium enterprises, including the ratio of non-performing credit facilities;
- (d) sectors covered in the financial intermediary's micro, small and medium enterprise borrowers;
- (e) geographical distribution of the financial intermediary's branch network or outreach; and
- (f) any other relevant information that may be required by the Administrator.

(3) Before an eligible financial intermediary is allowed to participate in the Scheme, the financial intermediary shall undertake in writing to submit to the Administrator reports on the value of credit extended to micro, small and medium enterprises under these Regulations in accordance with regulation 19.

Conditions for guarantee by the Scheme.

14. (1) A participating financial intermediary shall—

- (a) evaluate applications for credit facilities by using prudent lending criteria;
- (b) exercise business discretion and use due diligence in approving commercially viable applications for credit facilities;
- (c) conduct the account of the borrowers with normal banking prudence; and
- (d) provide access to affordable credit facilities to micro, small and medium enterprises on the basis of the partial guarantees committed under the Scheme.

(2) The participating financial intermediary shall not use more than one per cent of the allocated portfolio on any single individual micro, small or medium enterprise.

(3) The participating financial intermediary shall use at least thirty per cent of guarantee funds available on credit advanced to enterprises owned by women, youth and persons living with disabilities.

(4) The participating financial intermediary shall —

- (a) monitor the borrower account;
- (b) provide basic business support to the borrower that the participating financial intermediary provides its regular clients;
- (c) safeguard the primary securities taken from the borrower in respect of the credit facility in good and enforceable condition; and
- (d) ensure that the guarantee claim in respect of the credit facility and borrower is lodged with the Scheme in the form and manner specified by the Scheme.

(5) The participating financial intermediary shall —

- (a) exercise all the necessary precautions and maintain its recourse to the borrower for the entire amount of the credit facility owed to it and initiate such necessary action for recovery of the outstanding amount, including such action as may be recommended by the Steering Committee;
- (b) comply with the directions of the Cabinet Secretary in facilitating recoveries of the defaulted credit facility or safeguarding its interest as a guarantor;
- (c) in respect of any defaulted account, exercise the same diligence in recovering the amount in default, and safeguarding the interest of the Scheme in all the ways open to it as it might have exercised in the normal course if no guarantee had been furnished by the Scheme;
- (d) refrain from any act or omission, either before or subsequent to invocation of the guarantee, which may adversely affect the interest of the Scheme;
- (e) ensure, through a stipulation in an agreement with the borrower, that it shall not create any charge on the security held in the account covered by the guarantee for the benefit of any account not covered by the guarantee, with itself or in favour of any other creditor without advance written permission from the Cabinet Secretary; and
- (f) secure for the Scheme through a stipulation in an agreement with the micro, small and medium enterprise the right to share the enterprise's details and any other information provided by the borrower under these Regulations.

(6) Where a participating financial institution considers that the debt is more likely to be recovered if the borrower is allowed to pay the debt over a period of time, it may enter into an agreement with the borrower to pay the debt over that period and at such intervals, and subject to such terms and conditions, as provided for by relevant laws relating to the extension of credit facilities.

(7) A participating financial intermediary shall hold lien on assets created out of the credit facility extended to the borrower, on its own behalf and on behalf of the Scheme.

Invoking a guarantee.

15. (1) A participating financial intermediary may invoke the guarantee in respect of a credit facility if the following conditions are satisfied—

- (a) the amount in default in respect of the credit facility has not been paid;
- (b) the credit facility has been classified as non-performing in accordance with the Central Bank of Kenya prudential guidelines;
- (c) the guarantee in respect of the credit facility was in force at the time the facility was classified as non-performing;
- (d) the participating financial intermediary has not invoked any credit life insurance with respect to the credit facility;
- (e) a period of three months has elapsed from the date of the last disbursement of the credit facility to the borrower without payment by the borrower or the date of payment of the guarantee fee in respect of the credit facility by the borrower, whichever is the later; and
- (f) the credit facility has been recalled and recovery proceedings have been initiated.

(2) The claim for the guarantee shall be preferred by the financial intermediary in such manner and within such time as may be specified by the Administrator.

[Subsidiary]

(3) In this regulation, "amount in default" means the principal amount outstanding in the borrower's account in respect of a credit facility as at —

- (a) the date of the credit facility becoming non-performing;
- (b) the date the claim is lodged; or
- (c) such other reasonable date as may be specified by the Scheme for preferring any claim against the guarantee which shall be subject to the maximum level guaranteed, whichever is earlier.

(4) A claim under paragraph (1) shall be accompanied by the following details—

- (a) the name of the micro, small or medium enterprise to which a credit facility was extended;
- (b) a certified copy of the certificate of registration or incorporation of the micro, small or medium enterprise;
- (c) demand letters by the participating financial intermediary to the micro, small or medium enterprise;
- (d) evidence that the credit facility was used for the intended purpose;
- (e) the balance of the credit facility that is outstanding at the time of the default;
- (f) a statement by the participating financial intermediary that all reasonable collection efforts, excluding conclusion of litigation or other judicial processes for the recovery of the credit facility, have been exhausted;
- (g) a statement that the participating financial intermediary has classified the outstanding credit amount as non-performing in accordance with the Central Bank of Kenya prudential guidelines; and
- (h) any other information or documents that the Administrator may require in order to validate the claim.

(5) Once the Administrator has received all the documentation or information required to validate a claim, the Administrator shall, within thirty days of receiving the documentation or information—

- (a) validate the authenticity of the claim; and
- (b) notify the participating financial intermediary in writing of the approval or denial of the claim.

Payment of claims.

16. (1) Where the Administrator approves the payment of a claim, the Scheme Manager shall pay the participating financial intermediary—

- (a) fifty per cent of the guaranteed amount within sixty days from the date the claim was received by the Administrator; and
- (b) fifty per cent of the guaranteed amount within fourteen days of receipt by the Administrator of a notice of exhaustion of available remedies to recover the principal amount outstanding from the borrower or within six months after the claim was first lodged, whichever comes first.

(2) The payment of claims by the Scheme Manager to participating financial intermediaries shall not take away the responsibility of the financial intermediaries to recover the outstanding amounts of the credit facilities that are due from defaulting micro, small and medium enterprises.

(3) Any money paid by the Scheme Manager on a guarantee shall be a debt due to the national government from the micro, small or medium enterprise whose credit facility was guaranteed and be recoverable as a debt due to the national government.

(4) Where the Scheme Manager has paid a claim, and thereafter the participating financial intermediary recovers any funds owed by the micro, small or medium enterprise, the participating financial intermediary shall, within ninety days from the date of the recovery, reimburse the Scheme according to the risk-sharing ratio, after deducting any reasonable expenses incurred in the recovery of the funds, but shall not deduct interest charged by the participating financial intermediary on the outstanding amount that is higher than the interest charged on the credit facility before the default.

Record of recovery costs.

17. The participating financial intermediary shall keep a record of all expenses incurred in the recovery process.

Claim to be paid in sixty days.

18. The Scheme Manager shall pay each guarantee claim within sixty days from the date the claim was lodged.

Reports by participating financial intermediaries.

19. (1) A participating financial intermediary shall submit to the Administrator at least once in each month a report on the credit facilities for which guarantees have been issued under these Regulations.

(2) The participating financial intermediary shall submit the report under paragraph (1) within ten days after the end of the previous month.

(3) The report under paragraph (1) shall include information on —

- (a) all credit facilities extended by the financial intermediary under the Scheme during that period;
- (b) the total value of the credit committed by the participating financial intermediary under the Scheme during that period;
- (c) all credit guarantees given to the participating financial intermediary which shall be disaggregated into enterprises owned by women, youth and persons living with disability whose credit facilities have been guaranteed;
- (d) credit guarantees given to the participating financial intermediary disaggregated into the number of micro, small and medium enterprises whose credit facilities have been guaranteed and by county of operation; and
- (e) any other relevant information required by the Scheme Administrator.

(4) Each participating financial intermediary shall submit at least once in each month a list of all credit facilities issued under these Regulations during the previous month.

(5) The participating financial intermediary shall list each credit facility by the account number and provide the—

- (a) name of the micro, small or medium enterprise;
- (b) micro, small or medium enterprise's county of business operations;
- (c) value of the credit facility that has been guaranteed;
- (d) interest rate charged on the credit facility;
- (e) outstanding balance on the credit facility;

[Subsidiary]

- (f) date of approval of the credit facility;
- (g) date of the first payment by the micro, small or medium enterprise;
- (h) number of instalments to be paid by the micro, small or medium enterprise in the repayment of the credit facility; and
- (i) such other details as the Administrator may require.

(6) At least once in each month, each participating financial intermediary shall submit a report to the Administrator of all credit facilities which are in default for thirty days or more specifying the —

- (a) name of the micro, small or medium enterprise;
- (b) sector of the economy that the micro, small or medium enterprise is engaged in;
- (c) value of the credit facility that was guaranteed;
- (d) outstanding balance on the credit facility;
- (e) value of the unpaid instalment of the credit facility;
- (f) date of first unpaid instalment on the credit facility;
- (g) number of days in delay in the repayment of the credit facility; and
- (h) reasons for the non-repayment of the credit facility.

(7) The report under paragraph (6) shall describe the measures taken by the bank to carry out collections and may reference the letters sent, follow-up notices, and warnings through legal channels.

(8) The participating financial intermediary shall report on the status of any defaulted credit facility for which the Scheme Manager has paid either partial or full coverage amounts.

(9) The participating financial intermediary shall report on each defaulted credit facility until —

- (a) the guarantee payment has been recovered by the financial intermediary from the micro, small or medium enterprise; or
- (b) the financial intermediary has fully provisioned for the credit facility in accordance with the Central Bank of Kenya prudential guidelines.

(10) Notwithstanding any other provisions of this regulation, the participating financial intermediary shall also report on the following matters in a manner and at intervals specified by the Administrator —

- (a) the number and values of rejected credit facilities, repaid credit facilities and a projection of the credit facilities to be extended in the forthcoming period of three months; and
- (b) the impact of the credit facilities on micro, small and medium enterprises in the manner specified by the Administrator.

Reports by the Scheme Manager.

20. The Scheme Manager shall prepare and submit to the Administrator regular reports on the credit guarantees given under the Scheme including —

- (a) financial and technical reports on guarantees made during the period including information on —
 - (i) the products and sectors for which guarantees have been issued;
 - (ii) the number of beneficiary micro, small and medium enterprises;
 - (iii) the value of credit guaranteed;
 - (iv) the repayment periods; and
 - (v) the guarantees which have been liquidated;
- (b) reports on repayments made on outstanding credit facilities and details of any outstanding payments;
- (c) reports on delinquent guarantees and the stage of recovery;
- (d) reports on the size and quality of the guaranteed portfolio;
- (e) reports on the liquidity position of the Scheme; and
- (f) the risk assessment of the credit guarantees or classes of guarantees.

Cabinet Secretary may prescribe additional conditions.

21. (1) The Cabinet Secretary may impose additional conditions with respect to the issuance of guarantees for credit facilities advanced to borrowers under these Regulations.

(2) Without prejudice to the generality of subsection (1), such additional conditions may include the —

- (a) maximum size of the credit facilities that may be guaranteed under these Regulations with respect to a credit facility or class of credit facilities;
- (b) contributions by the financial intermediaries for purposes of expanding the Scheme and contributing to job creation;
- (c) extent of the liability of the Scheme to a participating financial intermediary if the participating financial intermediary fails to comply with these Regulations;
- (d) variation of the terms and conditions of an agreement if a participating financial intermediary fails or refuses to comply with these Regulations;
- (e) the documents, information and reports that the participating financial intermediaries may be required to submit to the Scheme;
- (f) manner of giving of information to the Scheme for the purposes of the making of an agreement;
- (g) requirements in relation to the transfer of any rights and liabilities under a credit facility agreement; and
- (h) such other matters as the Cabinet Secretary may consider necessary for the purposes of the Scheme.

PART IV – MISCELLANEOUS PROVISIONS

Offences and penalties.

22. (1) A person who —

- (a) wilfully applies any proceeds of a guaranteed credit facility to any purpose other than the purpose for which the credit was approved;
- (b) having obtained a guaranteed credit facility, wilfully destroys or misappropriates any security given in relation to the guaranteed facility;
- (c) knowingly gives false information; or
- (d) wilfully destroys any asset used as a collateral by a participating financial intermediary,

commits an offence and shall be liable on conviction to the penalties specified in section 199 of the Act.

(2) Where an offence under this section is committed by a body corporate, every person who at the time of the commission of the offence was—

- (a) a director, general manager, secretary of the company or other similar officer of the body corporate; or
- (b) purporting to act in any such capacity as provided in paragraph (a),

also commits that offence and shall be liable on conviction to the penalties specified in section 199 of the Act.

Waiver under section 77

THE COURT FEES WAIVER

[L.N. 59/2020]

IN EXERCISE of the powers conferred by section 77 of the Public Finance Management Act (Cap. 412A) the Cabinet Secretary for the National Treasury and Planning waives court fees in respect of commercial disputes where the value of the suit does not exceed one million shillings, for a period of two years.

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THE PUBLIC FINANCE MANAGEMENT (COUNTY GOVERNMENTS) REGULATIONS

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THE PUBLIC FINANCE MANAGEMENT (COUNTY GOVERNMENTS) REGULATIONS

[L.N. 35/2015, L.N. 230/2015]

Citation.

1. These Regulations may be cited as the Public Finance Management (County Governments) Regulations.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

"Act" means the Public Finance Management Act (Cap. 412A);

"Accountant-General" means the officer of the National Treasury designated as the Accountant-General;

"Accounting Standards Board" has the meaning assigned to it under section 2 of the Act;

"Accounting Unit" means organizational division in a government entity responsible for accounting and financial services;

"appointing authority" means—

- (a) in case of a county government entity which is a county ministry or department, the accounting officer designated by the County Executive Committee Member for finance as such; or
- (b) in case of a county government entity which is a county corporation or any other county government entity, the body mandated by enabling instrument to manage that county government entity;

"Appropriation-in-Aid" means any revenue which a county government entity receives and is approved by Parliament for application by that entity to finance its activities;

"Appropriation Act" has the meaning as assigned to it under section 2 of the Act;

"budget ceilings" means the maximum amount that the county government allocates in a given year to target sector or expenditure category;

"Budget Circular" means a written instruction issued by the Cabinet Secretary providing broad guidelines on the budget process of the national government or means written instruction issued by the County Executive Committee Member for Finance providing broad guidelines on the budget process of the county government;

"benefit deduction" means a deduction on a payroll system against an official's salary for a debt arising from employment benefits;

"basic salary" means an officer's salary excluding allowances;

"Cabinet Secretary" means the Cabinet Secretary, for the time being responsible for matters relating to the National Treasury;

"Cash flow statement" means a financial statement that shows planned inflow and outflow of resources over a period covering the financial year in line with the activity level;

"chief officer" has the same meaning assigned to it under section 2 of the Act;

"collector of revenue" has the meaning assigned to it under section 2 of the Act;

"collective agreement deduction" means a deduction on a government payroll system against an official's salary arising from a collective agreement between the government and a union and is registered in accordance with applicable law;

"Contingencies Fund" has the meaning assigned to it under section 2 of the Act;

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"Corporate governance" is the process and structure used to direct and manage business affairs of the county government entities towards enhancing prosperity and good governance with the ultimate objective of realizing national long-term value while taking into account the interest of all stakeholders;

"County Allocation of Revenue Bill" means the Bill annually introduced into Parliament and enacted under Article 218(b) of the Constitution;

"county corporation" has the same meaning assigned to it under section 2 of the Act;

"County Emergencies Fund" has the same meaning assigned to it under section 2 of the Act;

"County Executive Committee" has the same meaning assigned to it in the County Government Act;

"County Executive Committee Member" has the same meaning assigned to it under section 2 of the Act;

"county government entity" has the same meaning assigned to it under section 2 of the Act;

"County Public Debt" has the same meaning as assigned to it under section 2 of the Act;

"County Revenue Fund Services" means a service the expense of which is charged directly against and payable from the County Revenue Fund under or by virtue

of an Act of Parliament or any Act of County Assembly, other than an Appropriation Act;

"debt" means an amount of money owed and already payable by an official to any person and for the purposes of these Regulations, includes insurance premiums deducted in terms of policies with long and short-term insurers;

"deduction code" means a code issued by the Accountant- General to enable a person to deduct money from an individual paid via the government payroll system;

"discretionary deduction" means a deduction on the government payroll system against an official's salary, other than benefit, collective agreement, state or statutory deductions;

"disposal" in relation to a capital asset, includes—

- (a) the demolition, dismantling or destruction of the capital asset; or
- (b) any other process applied to a capital asset which results in loss of ownership of the capital asset otherwise than by way of transfer of ownership;

"Division of Revenue Bill" means the Bill annually introduced into Parliament and enacted under Article 218(a) of the Constitution;

"donation" has the meaning assigned to it under section 138 of the Act;

"economy" means minimizing the cost of resources used or required to achieve priority objectives;

"effectiveness" means the extent to which a programme intervention has attained, or is expected to attain, its objectives efficiently in a sustainable manner;

"efficiency" means a measure of how economically resources or inputs (including fund, expertise and time) are converted to results;

"estimates of expenditure" means—

- (a) estimates of expenditure based on programmes and sub-programmes prepared on a three fiscal year rolling basis, specifying the resources to be allocated and the outcomes to be achieved and outputs to be delivered, the estimates for the first

year of every such period of three fiscal years requiring appropriation by the County Assembly; or

- (b) supplementary estimates of expenditure appropriated by the County Assembly;

"fair market value" in relation to a capital asset, means the value at which a knowledgeable willing buyer would buy and a knowledgeable willing seller would sell the capital asset in an arm's length transaction;

"financial statements" has the meaning assigned to it under section 2 of the Act;

"financial year" means the period of twelve months ending on the 30th June in each year;

"governing body" means a body of persons managing a public entity and includes a commission, a board of trustees, a board of directors and a management board;

"grant" has the meaning assigned to it under sections 47 and 138 of the Act;

"grant recipient" has the meaning assigned to it under sections 47 and 138 of the Act;

"intended beneficiaries" has the meaning assigned to it under section 47 and 138 of the Act;

"internal control" means a set of systems to ensure that financial and other records are accurate, reliable, complete and ensure adherence to the management policies of the Ministry, department or other agency of Government, for the orderly and efficient conduct of the Ministry, department or agency, and the proper recording and safeguarding of its assets and resources;

"irregular expenditure" means expenditure, other than unauthorised expenditure, incurred in contravention of or that is not in accordance with a requirement of any relevant legislation, including—

- (a) the Act;
- (b) these Regulations;
- (c) the Public Procurement Act, 2005, or any Regulations made in accordance with that Act; or
- (d) any county legislation providing for procurement procedures in that county government; and
- (e) any other Act of Parliament legislation of that county government;

"medium term" has the meaning assigned to it under section 2 of the Act;

"national government entity" has the meaning assigned to it under section 2 of the Act;

"Principal Secretary" has the meaning assigned to under section 2 of the Act;

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

"public money" has the meaning assigned to it under section 2 of the Act;

"public officer" has the meaning assigned to it in under Article 260 of the Constitution;

"programme" means a group of independent, but closely-related, activities designed to achieve a common outcome;

"receiver of revenue" has the meaning assigned to it under section 2 of the Act;

"regulatory agency" means a national government entity established by an Act of Parliament to ensure compliance with the provisions of the Act that established it;

[Subsidiary]

"revenue" has the meaning assigned to it under the Commission on Revenue Allocation Act (Cap. 428);

"revised estimates" refers to the supplementary budget estimates and approved budget reallocations prepared and submitted under section 43 of the Act;

"spending unit" refers to a government component for which appropriation is allocated within the budget and which is authorized to spend;

"sinking fund" means an account or pot of money or securities set aside to pay for a bond, repurchase or early redemption of Treasury Bonds;

"standing committee" means the Public Finance Management Standing Committee established under regulation 18 of these Regulations;

"statutory appropriation" means the authority to spend money allocated to the executive in accordance with the purposes specified in the Constitution or an Act of Parliament;

"statutory deduction" means a deduction on government payroll system against a public officer's salary, which is required or permitted by a law, court order or arbitration award;

"subscription statement" is a statement showing the investor's holdings as registered on the Central Depository Securities (CDS) Register at the Central Bank of Kenya;

"supplementary budget estimates" means additional request of funds by the county government to County Assembly;

"third party" has the meaning assigned to it under section 47 and 138 of the Act;

"unutilized balances" means any amounts withdrawn from the Consolidated Fund and Appropriation-in-Aid collections for purposes of provision of basic services under an Appropriations Act and not expended at the end of the financial year;

"unauthorised expenditure" means—

- (a) overspending of a vote or programme within a vote; or
- (b) expenditure not in accordance with the purpose of a vote or, in the case of a programme, not in accordance with the purpose of the programme;

"value for money" means the economic, efficient and effective utilization of resources;

"vote" has the meaning assigned to it under section 2 of the Act;

"vote-on-account" means a special provision by which the county government obtains the authority of the County Assembly for a sum sufficient to incur expenditure on various items for a part of the year, pending the consideration and approval of budget estimates for that year; and

"wasteful expenditure" has the meaning assigned to under section 2 of the Act.

[L.N. 230/2015, r. 3.]

Application of the Regulations.

3. These Regulations shall apply to—

- (a) county governments;
- (b) county government entities;
- (c) County Public funds established under section 116 of the Act; and
- (d) any other person performing any act or doing such thing that is provided for under the Act.

Object and Purpose of the Regulations.

4. The object and purpose of these Regulations is—

- (a) to provide means of administering of the powers vested in Cabinet Secretary under the Constitution, the Act and any other related legislation;
- (b) to provide means of administering the powers vested in the County Executive Committee Member under the Act, and any other related legislation;
- (c) to harmonize and standardize their application throughout the county governments with a view controlling and managing the finances;
- (d) to set out a standardized financial management system for use in county government which is capable of producing accurate and reliable accounts free from errors, fraud and which will be useful in management decisions and statutory reporting;
- (e) to provide for the conduct of fiscal relations between the national and county governments; and
- (f) to ensure accountability, transparency and the effective, economic and efficient collection and utilization of public resources.

Officers to be conversant with Regulations.

5. The Accounting Officers shall ensure that all public officers under their control have access to copies of these Regulations and the public officers shall ensure they are fully conversant with the contents of the Regulations.

Openness and accountability.

6. (1) Subject to national security considerations, the public shall be provided with full access to financial information in a timely manner for purposes of seeking public input by—

- (a) establishing a focal point to facilitate access to financial information; or
- (b) making information available in the media or;
- (c) presenting information in the national language in summarised and user-friendly forms; or
- (d) making financial information available on websites that allow for information to be downloaded.

(2) The County Treasuries shall arrange for effective public participation during the development of their annual budget estimates including the publication of citizens' budgets which shall explain and summarize the budget proposals.

(3) The dates for the sectoral forums and the venues shall be publicly announced one week in advance, and an annual calendar of events released at the start of the financial year.

County Executive Committee Member to publish process and procedures for public participation.

7. (1) For purposes of public participation in the planning and budgeting process, there shall be participatory structures and processes that shall encompass a broad range of strategies including—

- (a) open forums, written submissions, online platform and media;
- (b) specification of venues of public participation; and
- (c) dates of public participation.

[Subsidiary]

(2) The County Executive Committee Member shall notify the general public through a notice in the gazette or at least two newspapers of county wide circulation on the venue or manner of submitting written submissions.

(3) The documents submitted to County Assembly and any other published documents shall be published and publicized within 7 days of presentation.

(4) The County Executive Committee Member shall give a responsibility statement confirming the extent to which general public was consulted particularly on the County Strategy Paper and Sector Working Groups.

Monetary unit, accounting and reporting currency.

8. (1) The Kenyan shilling shall be the unit of account for drawing up and implementing the county budgets, presenting and reporting accounts.

(2) Despite the provisions of paragraph (1), certain operations may be carried out in international currencies subject to conditions laid down in these Regulations or other financial instruments.

Financial management forms and manuals.

9. (1) County Treasury shall Publish financial manuals and forms which may be used by county government entities to support implementation of these Regulations.

(2) The financial manuals and forms, issued in accordance with these Regulations shall facilitate adoption of international standards and emerging best practices.

(3) The publications under paragraph (1) shall be made with the approval of the County Executive Committee Member.

(4) The financial manuals shall contain relevant procedures for the budget preparation, budget execution, keeping of books of accounts, formats of financial statements and

Government standard chart of accounts issued by the National Treasury.

Accounting Officer's responsibility not diminished by audit.

10. The responsibilities of internal and external auditors exercised in accordance with the Constitution, the Act and other legislation shall not diminish the Accounting Officers' responsibility to maintain financial discipline as required by the Act and these Regulations.

Responsibility for handover by financial officers.

11. The accountability of a public officer vacating an office shall not be completed until the financial and accounting records kept by him or her have been property handed over in writing to an officer taking over his duties and attested by their supervisor:

Provided that this does not preclude the public officer from handing over any other documents required under any other law or government Policy.

Application of secure signatures.

12. (1) Any county public officer signing any document or record pertaining to a financial transaction shall ensure that the signature is given in such a manner so as to preclude subsequent alteration or addition to the information contained in such document or record.

(2) The signature of any county public officer shall not be binding on an Accounting Officer or a public officer performing a financial function unless a specimen of the signature is duly communicated in advance to the relevant county public officer or any other person performing a financial function.

(3) If a county public officer no longer occupies a public office, the Accounting Officer shall nullify that officer's specimen signature and communicate the same to all relevant county public officers or any other person performing a financial function within a reasonable time.

Signing blank or blind accountability documents.

13. (1) In no circumstances shall a county public officer sign a blank or incomplete cheque, record or other document, pertaining to a financial transaction.

(2) It is the duty of any county public officer signing any document or record pertaining to a financial transaction to read and satisfy himself or herself that it is proper to give his or her signature and his or her signature shall be evidence of acceptance of responsibility for the document, whether the public officer read it or not.

(3) The signing of a document contrary to paragraphs (1) and (2) shall constitute an offence under the Act.

Restricted use of green ink.

14. No county public officer except the Governor shall use green ink or green pencil in recording or transacting any official financial transaction.

Restricted use of brown ink.

15. No county public officer other than the County Executive Committee Member, the County Assembly Clerk, the Chief Officer, the County Head of Internal Audit Services or Head of Internal Audit shall use brown ink or brown pencil in recording or transacting any official financial transaction.

[L.N. 230/2015, r. 4.]

Signing blank or blind accountability documents.

16. (1) Financial records and documents shall be written in indelible ink.

(2) An entry in a financial record or document shall not be obliterated, erased or altered by being written over.

(3) Payment in connection with any document bearing an alteration, obliteration or erasure shall be refused by the relevant public officer or any other person unless countersigned, but this shall not apply to a cheque and official receipt.

(4) A person who contravenes paragraphs (1), (2) or (3) commits an offence under the Act.

PART II – CORPORATE MANAGEMENT

Corporate governance.

17. (1) Every county government entity to which the Act and these Regulations apply shall include in their annual financial report as provided in section 164 of the Act, a statement by each entity's Accounting Officer on compliance of the entity with these Regulations under this part

(2) Where the entity is not fully compliant with these Regulations, the Accounting Officer of that entity shall identify the reasons for non-compliance and indicate the steps being taken to become compliant.

(3) The statements made in the report under this regulation shall be submitted to the County Executive Committee Member.

[Subsidiary]

Establishment of Public Finance Management Standing Committee.

18. (1) There is established in every county government entity a public finance management standing committee to provide strategic guidance to the entity on public finance management matters.

(2) Each standing committee shall comprise of the following—

- (a) the Accounting Officer as chairperson of the committee;
- (b) an officer designated by the accounting officer as secretary of the committee and who shall be either the head of the finance or accounts units or head of both finance and accounts units of the entity; and
- (c) heads of departments or administrative units dealing with public finance management matters.

(3) The Standing Committee shall meet as often as is necessary, but at least once every quarter so as to coordinate management of public finance for entities and shall be accountable to the County Executive Committee Member responsible for the entity or in case of County Assembly, to the Speaker.

(4) The Standing Committee may establish sub-committees for the better carrying out of its roles and responsibilities under this regulation.

Roles and responsibilities of the standing committee.

19. (1) The Standing Committee shall generally be responsible for the following—

- (a) ensuring that there is prioritization on resources allocated to a county government entity for the smooth implementation of the entities mission, strategy, goals, risk policy plans and objectives;
- (b) regularly review, monitor budget implementation and advice on the entities accounts, major capital expenditures and review performance and strategies at least on a quarterly basis;
- (c) identifying risks and implementation of appropriate measures to manage such risks or anticipated changes impacting on the entity;
- (d) review on a regular basis the adequacy and integrity of the entity's internal control, acquisition and divestitures and management information systems including compliance with applicable laws, Regulations, Rules and guidelines;
- (e) establish and implement a system that provides necessary information to the stakeholders including stakeholder communication policy for the entity in line with Article 35 of the Constitution;
- (f) monitor the effectiveness of the corporate governance practices under which the entity operates and propose revisions as may be required from time to time;
- (g) monitoring timely resolution of audit issues; and
- (h) any other matter referred to it from time to time by the responsible County Executive Committee Member or in the case of County Assembly, the Speaker.

(2) The Standing Committee shall submit a quarterly report of its work including any recommendations to the responsible County Executive Committee Member or in case of County Assembly, to the Speaker.

Governor's Warrants.

20. (1) Once the Annual County Appropriation Bill or County Supplementary Bill(s) have been assented to, the County Executive Committee Member shall obtain Governor's warrants

authorizing issues from the County Revenue Fund in accordance with the respective County Appropriation legislation.

(2) The Governor's warrants in paragraph (1) shall then be transmitted to the Controller of Budget by the County Executive Committee Member to authorize withdrawals in accordance with Article 228 of the Constitution.

County Treasury warrant.

21. On receipt of the Governor's warrants, the County Executive Committee Member shall issue a County Treasury warrant granting authority to Accounting Officers to incur expenditure for the year in respect of their votes.

Responsibilities of Accounting Officers.

22. (1) Accounting Officers shall in accordance with Article of 226(2) of the Constitution and section 149 (1) of the Act, be accountable to the County Assembly—

- (a) for ensuring the most effective means of achieving desired program outcomes are used;
- (b) for maintaining effective systems of internal Control and the measures taken to ensure that they are effective; and
- (c) for measures taken to prepare the financial reports that reflect a true and fair financial position of the entity.

(2) In addition to the responsibilities of Accounting Officers provided in the Act, an Accounting Officer designated under the Act or any other Act, shall—

- (a) comply with any tax, levy, duty, pension, commitments and audit commitments as may be provided for by legislation;
- (b) if he or she reasonably believes that an unauthorized, or irregular expenditure has occurred, he or she shall immediately report, in writing, particulars of the expenditure to the relevant authority with a copy to the County Treasury; or
- (c) before transferring any funds to an entity within or outside the county government, ensure that there is a written assurance from the entity that that entity implements effective, efficient and transparent financial management and internal control systems, or, if such written assurance is not or cannot be given, render the transfer of the funds subject to conditions and remedial measures requiring the entity to establish and implement effective, efficient and transparent financial management and internal control systems;
- (d) enforce compliance with any prescribed conditions if the county government entity gives financial assistance to any other county government entity or person in accordance with the law;
- (e) take into account all relevant financial considerations, including issues of propriety, regularity and value for money, when policy proposals affecting the Accounting Officer's responsibilities are considered, and when necessary, bring those considerations to the attention of the relevant authority;
- (f) promptly consult and seek the prior views of the County Treasury on economic viability and financial implications on any new county government entity which a county department intends to establish or in the establishment of which it took the initiative;
- (g) not commit county government entity to any liability for which money has not been appropriated provided that expenditure for projects or programs implemented beyond one financial year is provided for in the subsequent financial years; and

[Subsidiary]

- (h) comply, and ensure compliance by county government entities with the provisions of the Act and these Regulations.

Delegation by the Accounting Officer.

23. (1) The Accounting Officer of a county government entity may delegate to a public officer, in writing, any of the Accounting Officer's powers or functions under the Act or these Regulations.

(2) In exercising powers and functions under a delegation, the public officer shall comply with any lawful directions of the Accounting Officer.

(3) The delegation in this regulation may include the authority to incur expenditure in accordance with any limits prescribed by the Accounting Officer.

(4) Delegation of power does not take away the responsibility of the accountability from the Accounting Officer.

Designation of Authority to Incur Expenditure by the Accounting Officer.

24. (1) An accounting officer may authorize a public officer Designation of under their county government entity to be an Authority to Incur Authority to Incur Expenses (AIE) Holder.

(2) An accounting officer who finds it necessary to authorize a public officer in another county government entity or a national government entity to incur official expenditure on his or her behalf, should do so by issuing an Authority to Incur Expenditure addressed to the Accounting Officer of the county government entity or national government entity.

(3) The designation of AIE Holder shall be in writing in the form prescribed by the National Treasury.

(4) An accounting officer shall maintain a register of all AIE Holders designated under this Act.

(5) Where an accounting officer delegates this authority, the accounting officer shall remain responsible for any expenditure incurred as a result of that delegation.

PART III – COUNTY FISCAL STRATEGY

Fiscal responsibility principles.

25. (1) In addition to the fiscal responsibility principles set out in section 107 of the Act, the following fiscal responsibility principles shall apply in the management of public finances—

- (a) the County Executive Committee Member with the approval of the County Assembly shall set a limit on the county government's expenditure on wages and benefits for its public officers pursuant to section 107(2) of the Act;
- (b) the limit set under paragraph (a) above, shall not exceed thirty five (35) percent of the county government's total revenue;
- (c) for the avoidance of doubt, the revenue referred to in paragraph (b) shall not include revenues that accrue from extractive natural resources including as oil and coal;
- (d) the county public debt shall never exceed twenty (20%) percent of the county governments total revenue at any one time;
- (e) the county annual fiscal primary balance shall be consistent with the debt target in paragraph (d);

- (f) the approved expenditures of a county assembly shall not exceed seven per cent of the total revenues of the county government or twice the personnel emoluments of that county assembly, whichever is lower;
- (g) pursuant to section 107(5) of the Act, if the county government actual expenditure on development shall be at least thirty percent in conformity with the requirement under section 107(2)(a) of the Act;
- (h) if the county government does not achieve the requirement of regulation 25(1)(f) above at the end of the financial year, the county executive committee member for finance shall submit a responsibility statement to county assembly explaining the reasons for the deviation and provide a plan on how to ensure annual actual expenditure outturns as well as medium term allocation comply with the provisions of Section 107 (2) (a) of the Act and these regulations in the subsequent years; and
- (i) the compliance plan above shall be binding and the county executive committee member for finance shall ensure implementation.

(2) In line with prudent management of risks envisioned in section 107(2)(f) of the Act, the County Executive Committee Member shall in the County Fiscal Strategy Paper include a statement of fiscal risks outlining the potential policy decisions and key areas of uncertainty that may have a material effect on the fiscal outlook and the statement shall include—

- (a) potential policy decisions affecting revenue, tax payer behavioural responses and court decisions that are likely to affect revenue bases and overall tax and revenue collections and government income, including tax concessions ('r' tax expenditures), increase in tax rates, tax minimisation and avoidance by tax and rates payers;
- (b) potential policy decisions that could increase or decrease expenses depending on decisions taken, and which constitute risks to the fiscal forecasts only to the extent that they cannot be managed within existing baselines or budget allowances;
- (c) potential capital decisions that are risks to the fiscal forecasts only to the extent that they cannot be managed within existing county government balance sheet;
- (d) matters dependent on external factors such as the outcome of negotiations or international obligations; and
- (e) a list of contingent liability including debt guarantees.

(3) The County Executive Committee Member shall disclose the specific fiscal risks if—

- (a) their impact in his or her view is significant enough;
- (b) a decision has not yet been taken but it is reasonably possible (but not probable) that the matter will be approved or the situation will occur;
- (c) it is reasonably probable that the matter will be approved or the situation will occur, but the matter cannot be quantified or assigned to particular years with reasonable certainty; and
- (d) any other matters, the County Treasury considers, using their best professional judgement, that the matters may have a material effect on the fiscal and economic outlook, but are not certain enough to include in the fiscal forecasts.

[Subsidiary]

County Fiscal Strategy Paper.

26. (1) For the avoidance of doubt, the County Fiscal Strategy Paper submitted under section 117 of the Act, shall contain an assessment of the current state of the county economic environment which may include—

- (a) the medium term macroeconomic framework and its outlook as contained in the Budget Policy Statement and how it impacts on the county economic environment;
- (b) a medium-term fiscal framework defining a top-down aggregate resource envelope and broad expenditure levels;
- (c) indicative allocation of available resources among county government entities;
- (d) the economic assumptions underlying the county budgetary and fiscal policy over the medium term; and
- (e) a statement of fiscal responsibility principles, as specified in the Act and these Regulations indicating whether the fiscal strategy adheres to these principles.

(2) In addition, county fiscal strategy paper shall contain a fiscal risk statement as provided for under regulation 25.

(3) Before tabling a report containing recommendations on the County Fiscal Strategy Paper for adoption by the County Assembly in accordance with section 117(6) of the Act, the relevant committee of the County Assembly shall seek the views of the County Executive Committee member on its recommendations.

(4) Once the County Fiscal Strategy Paper is adopted by the County Assembly it shall serve as the basis of expenditure ceilings specified in the fiscal framework.

(5) The County Executive Committee member shall submit a copy of the adopted County Fiscal Strategy Paper to the National Treasury.

(6) The ceiling for the development expenditure and personnel spending of the county government budget shall be approved by the County Assembly and be binding for the next two budget years.

(7) The County Treasury shall include a statement explaining any deviation to the provisions of paragraph (4) of this regulation.

Contents of a fiscal framework.

27. (1) The fiscal framework in the County Fiscal Strategy Paper shall contain—

- (a) updated forecasts expressed in Kenya shillings for the current budget year and three further years and actual results for the previous budget years for the consolidated county government budgets for—
 - (i) level of budgetary revenues by classification of the main categories of revenues;
 - (ii) level of budgetary expenditures by economic and functional classifications;
 - (iii) capital expenditures;
 - (iv) the overall balance and primary balance position;
 - (v) level of county public debt;
 - (vi) sensitivity analysis taking account of possible changes in macroeconomic and other conditions; and
 - (vii) any other information the County Executive Committee Member determines is material to fiscal strategy;

- (b) an explanation of the fiscal policies in relation to fiscal responsibility principles, and any temporary measures to be implemented to ensure compliance, if necessary;
- (c) an analysis and explanation of—
 - (i) revenue policy, including planned changes to taxes and policies affecting other revenues;
 - (ii) deficit and debt policy, including an analysis of county debt sustainability; and
 - (iii) expenditure policy including expenditure priorities, aggregate expenditure intentions, including the county consolidated budgets, and expenditure ceilings and other targets of limits implied by or required by the fiscal responsibility principles; and
- (d) an analysis of the consistency of the updated fiscal strategies with the previous fiscal strategies, providing all explanation of any significant changes.

(2) The County Executive Committee Member shall gazette effective dates and give general guidelines and formats for preparing a consolidated county government accounts for statistical purposes.

(3) The guidelines and formats under paragraph (2) shall be in conformity with the ones issued by the Cabinet Secretary.

Revision to the fiscal framework.

28. The fiscal framework in regulation 27, may be revised as a result of—

- (a) a significant and unexpected change in county macroeconomic indicators and assumptions;
- (b) policy changes arising from change of government.

PART IV – BUDGET PREPARATION

Responsibility for preparing annual estimates of expenditure.

29. (1) The accounting officer shall ensure that the draft estimates relating to her or his department are prepared in conformity with the Constitution, the Act and these Regulations.

(2) The accounting officer is responsible, in particular for ensuring that—

- (a) all services which can be reasonably foreseen are included in the estimates and that they are within the capacity of her or his county government entity during the financial year;
- (b) the estimates have been prepared are complete and accurate as possible;
- (c) the estimates have been framed with regard to economy and efficiency;
- (d) the requisite authority has been obtained, where necessary, before provision is made in the estimates; and
- (e) the estimates are submitted to the County Treasury in the manner and format to be gazetted by the Cabinet Secretary.

Budget preparation process.

30. (1) The budget preparation process for the following financial year (N+1) shall start not later than the 30th August of the current financial year (N) with the issuance of the annual budget circular by the County Executive Committee Member and in compliance with formats

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and recommendations contained in the annual budget preparation circular or guidelines, instructions and the financial manual—

- (a) on the basis of budget sector ceilings contained in the County Budget Review and Outlook Paper (C-BROP), the budget sector working groups shall submit by January of each year (N) the sector reports to the County Treasury which shall include printed estimates for the current year (N) and for the forthcoming financial year (N+1) and two outer years on a rolling basis (N+2), (N+3);
 - (b) the estimates for the sector referred to in paragraph (a) shall be consistent with regulation (27); and
 - (c) budget proposals shall be submitted in the prescribed formats that support program-based budgeting and classification of expenditure in economic classes.
- (2) All budget Proposals shall be supported by the county government entity strategic plan.
- (3) The preparation and submission of estimates shall be done exclusively through prescribed automated integrated financial management systems.
- (4) The proposed sector ceilings for the next three financial years contained in C-BROP, may be firmed up or readjusted in the County Fiscal Strategy Paper submitted in February of financial year (N) and adopted by County Assembly by the 15th March of same financial year (N).
- (5) The approved County Fiscal Strategy Paper shall be published on the County Treasury website.
- (6) County government entities, or agencies when required, shall readjust their estimates following the approval of the County Fiscal Strategy Paper and finalize and submit their estimates for years (N+1), (N+2) and (N+3) by the 10th April of financial year (N) to the County Executive Committee Member.
- (7) Budget estimates shall be reviewed and consolidated and the draft budget estimates submitted to County Executive Committee by April the 20th of the financial year (N).
- (8) Budget estimates of county government entities shall be reviewed and consolidated and the annual budget estimates submitted to the County Assembly, by April the 30th of financial year (N).

Budget guidelines.

31. Unless provided otherwise in the Act, these Regulations or any other guidelines developed in furtherance of the Act or these Regulations, the following guidelines shall be observed at all times during budget formulation and approval—

- (a) all revenue and expenditure shall be entered into the county government budget estimates;
- (b) expenditure entered in county government budget estimates shall be authorised for one financial year only;
- (c) budget revenue and expenditure appropriations shall be balanced;
- (d) the Kenyan Shillings shall be the unit of account for drawing up and implementation of the county government budgets, as well as the presentation of those accounts;

- (e) total budget revenue shall cover total budget expenditure and therefore—
 - (i) except as provided by legislation, there shall be no use of specific revenue to finance specific expenditure; and
 - (ii) appropriation shall be for a specific purpose or a specific programme or item of expenditure; and
- (f) budget estimates, shall take into account expenditure priorities, which contributes to the realization of the required output and desired policy outcome.

Determination of budget ceilings.

32. The budget ceiling contained in the County Fiscal Strategy Paper shall take into account—

- (a) the aggregate resource envelope following the forecast of major revenue (including the equitable share) and expenditure categories (the latter according to both, economic and administrative classification);
- (b) the non-discretionary expenditure (debt service, wages and other related items);
- (c) the overall expenditure taking into consideration the fiscal rules;
- (d) breakdown of the overall expenditure into recurrent and development expenditure by sector ceilings; and
- (e) expenditure priorities as set out in county government policies.

Audit of Budget Estimates.

33. (1) Each Accounting Officer may cause any proposed budget estimates to be examined and reported on by the internal audit unit of that county government entity.

(2) The Accounting Officer in paragraph (1) shall take into account any recommendations made in respect thereto before submitting estimates to the County Treasury.

(3) A person who fails under paragraph (1) to provide information, or submits information which that person knows to be misleading or incorrect shall have committed an offence under the Act.

Budget hearing processes.

34. (1) On receipt of estimates from Accounting Officers, the County Executive Committee Member shall cause to be conducted budget hearings to review strategic plans and estimates of the entities concerned in order to ensure that these plans and estimates are in accordance with the county economic policy and fiscal framework.

(2) Where the budget hearings in paragraph (1) necessitates changes, the County Executive Committee Member may require an Accounting Officer to make adjustments to his or her estimates.

Provisions in Appropriation Bills.

35. County Appropriation Bills shall provide for—

- (a) the Votes and programs of the financial year;
- (b) financial provision in respect of certain activities of the county governments during that financial year; and
- (c) enabling the withdrawal out of the County Revenue Fund, or any other county public fund.

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Vote on account.

36. (1) Where the County Appropriation Act is not assented to or is not likely to be assented to before the first working day of the financial year, the Speaker to the County Assembly, with approval of County Assembly, shall communicate to the County Executive Committee Member grant of authority to withdraw from the County Revenue Fund of monies of an amount not exceeding one-half of the amount included in the estimates in accordance with section 134 of the Act.

(2) Accounting officers shall make necessary entries in their books in respect of the amount of the vote on account approved.

(3) Moneys withdrawn under paragraph (1) shall be for the purpose of meeting expenditure on the county government's programmes and activities in respect of the financial year—

- (a) up to fifty (50%) percent of the estimates of budget for the financial year submitted to the County Assembly; or
- (b) until such a time the Appropriation Act is assented to, whichever is earlier.

(4) Funds withdrawn from the County Revenue Fund under this regulation may be utilized only for services for which funds have been provided for in the budget estimates submitted to County Assembly.

(5) The funds provided for in paragraph (2) shall be regarded as forming part of the funds appropriated in the relevant annual budget estimates for that financial year.

Approval of the Annual Budget Estimates by the County Assembly.

37. (1) Where a county assembly approves any changes in the annual estimates of budget under section 131 of the Act, any increase or reduction in expenditure of a Vote, shall not exceed one (1%) percent of the Vote's ceilings'.

(2) Following the approval of any changes in the annual estimates of budget envisaged under paragraph (1)—

- (a) the speaker of the County Assembly shall submit a copy of annual budget estimates to the County Executive Committee Member within seven days of its approval; and
- (b) the County executive Committee Member shall in turn submit a copy of the approved budget estimates to the National Treasury and the Controller of Budget within 14 days of its approval.

[L.N. 230/2015, r. 5.]

Expenditure before approval of budget estimates by County Assembly.

38. (1) If estimates of budget submitted to the County Assembly for a financial year have not been approved by the County Assembly or are not likely to be approved by the County Assembly, by the beginning of the financial year, the Controller of Budget may authorize withdrawals from the County Revenue Fund based on the last approved budget by the County Assembly up to fifty (50%) percent for the purposes of meeting expenditure of the County government for the financial year.

(2) The authority under paragraph (1) shall cease upon assent of the Appropriation Act for the financial year.

(3) The expenditure incurred under paragraph (1), shall form part of expenditures for the financial year.

Supplementary budgets estimates.

39. (1) Each Accounting Officer shall within the guidelines of the supplementary budget circular and in conformity with budget guidelines issued by the County Executive Committee Member, prepare revised budget estimates in the format to be issued by the Cabinet Secretary.

(2) Prior to incurring any expenditure under paragraph (1), Accounting Officers shall seek the approval of the County Treasury, and if approval is granted by the County Executive Committee Member, it shall be communicated to the Accounting Officers through a notification which shall be copied to the Auditor-General and the Controller of Budget.

(3) The purpose for which approval is sought for a supplementary budget shall be—

- (a) unforeseen and unavoidable, in circumstances where no budget provision was made; or
- (b) unavoidable, in circumstances where there is an existing budgetary provision which, however, is inadequate.

(4) For purposes of paragraph (3), the following shall not be considered unforeseen and unavoidable expenditure—

- (a) expenditure that, although known when finalizing the estimates of the original budget, could not be accommodated within allocations; and
- (b) tariff adjustments and price increases.

(5) Accounting Officers may seek supplementary budget if the expenditure cannot be met by budget reallocation under section 154 of the Act.

(6) The request for supplementary budget in paragraph (5) shall be presented in a format that facilitates comparison with the original budget and shall contain all the information necessary to enable a decision on the application to be reached and shall include—

- (a) the Vote, program, sub-programme and broad expenditure category which it is desired to supplement, the original sum voted thereon and any supplements which may have since been added;
- (b) the actual expenditure and the outstanding liabilities or commitments against the item on the date when the request is made;
- (c) the amount of the supplement required, the reasons why the supplement is necessary and why it has not been possible to keep within the voted provision;
- (d) the basis for the calculation underpinning the supplementary;
- (e) the proposed source of financing of the additional expenditure;
- (f) an analysis of the fiscal impact of the additional expenditure, or of the implications, if any, for the planned outputs and outcomes of the affected programmes;
- (g) any implied deviation from the Medium Term Expenditure Framework (MTEF) and the financial objectives; and
- (h) the latest fiscal projections.

(7) The county government entity requesting additional funds through a supplementary budget process shall submit a memorandum to the County Treasury, on a date determined by County Treasury.

(8) For avoidance of doubt, budget allocations for new policy options and service delivery initiatives shall only be considered when introduced in the annual estimates of budget in accordance with the procedure laid down in the Act and these Regulations.

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(9) In approving any estimates under sections 135 and 154 of the Act, that County Assembly approval shall not exceed ten (10%) percent of the approved budget estimates of a program of Sub-Vote unless it is for an unforeseen and unavoidable need as defined in section 112 of the Act.

(10) The County Executive Committee member shall submit a copy of the budget estimates approved under this regulation to the National Treasury.

Budget classification and the standard chart of accounts.

40. (1) Each county government's budget estimates shall be prepared, accounted for and reported in accordance with the Government of Kenya budget classification and standard chart of accounts issued by the National Treasury.

(2) As much as practicable, these classifications shall be designed to support financial and economic reporting requirements in the Act and generally accepted international standards.

PART V – BUDGET EXECUTION

General rules relating to budget Execution.

41. (1) Overall control of county government budget execution shall be exercised through strict application of the following general rules, which shall apply to all transactions with the specific exception of debt service payments—

- (a) aggregate reallocations for a particular appropriation line in a given fiscal year may not exceed the amount appropriated for that line in the annual Appropriations Act amended from time to time through budgetary reallocations made pursuant to section 154 of the Act and any supplementary Appropriations Acts enacted under section 135;
- (b) total payments for a detailed budget line in a given fiscal year may not exceed the reallocations issued against that budget line.

(2) Debt service payments shall be a first charge on the County Revenue Fund and the Accounting Officer shall ensure this is done to the extent possible that the county government does not default on debt obligations.

(3) Debt payments shall be made whether or not they meet the general rules, provided that the County Executive Committee Member reports of any excess over appropriations, with full explanations of the circumstances, to County Assembly in the next quarterly reporting cycle.

(4) Other than temporary treasury liquidity management operations, no payment shall be made from the County Revenue Fund as a direct charge, except under an item identified in the annual budget estimates.

Accounting Officers to exercise budgetary control measures.

42. An Accounting Officer shall—

- (a) sign financial statements thereby making himself or herself responsible for their correctness;
- (b) ensure that public funds entrusted to their care are properly safeguarded and are applied for purposes for only which they were intended and appropriated by the County Assembly;
- (c) ensure all appropriation-in-aid due to county government entity are collected and properly accounted for in accordance with the relevant laws, rules and Regulations;
- (d) manage control and ensure that policies are carried out efficiently and wastage of public funds is eliminated; and

- (e) ensure each county government entity has an audit committee in place.

Accounting Officers to request cash on the basis of an approved quarterly cash disbursement schedule.

43. (1) Accounting Officers shall provide the County Treasury with an annual cash flow plans as a requisition for funds needed for that financial year.

(2) County government entities shall execute their approved budgets based on the annual appropriation legislation, and the approved annual cash flow plan with the exception of unforeseen and unavoidable spending dealt with through the County Emergency Fund, or supplementary estimates.

(3) The annual cash flow plans prepared by Accounting Officers shall be broken down into a three month rolling basis and shall be adjusted to reflect any implementation realities in consultation with the County Treasury.

(4) As far as possible, quarterly cash flow projections prepared by the Accounting Officers shall be supported by a procurement plan approved in accordance with the Public Procurement and Disposal Act (Cap. 412C).

Consolidation and approval of cash limits issued to accounting officers.

44. (1) The County Treasury shall consolidate all expenditure requirements and projections as forwarded by Accounting Officers, compare with the projected revenues including county net domestic borrowing, and thereafter in consultation with Accounting Officers, agree on an indicative annual cash flow forecast limit for that financial year.

(2) The County Treasury shall issue a County Treasury circular communicating cash flow projections agreed with the Accounting Officers.

(3) In the event of unanticipated cash flow fluctuations, the County Treasury shall inform the Accounting Officers through a circular requesting them to review and submit revised cash flow projections in line with the guideline set out in the circular.

Release of funds to meet expenditure.

45. (1) The basis for requisition of funds for grant of credit by the Controller of Budget on the account of the accounting officer from the county exchequer account shall be based on the approved cash flow plans communicated to that accounting officer by the County Treasury.

(2) Release of Funds from the County Revenue Fund to County government entities shall be in accordance with the authority granted by the Controller of Budget together with the written instructions of the County Treasury.

(3) The County Treasury shall make requisition from the Controller of Budget as necessary for the exchequer withdrawal of funds which shall be placed to the credit of an accounting officers' entity account.

(4) Pursuant to the grant of credit in paragraph (3), the County Treasury shall issue an exchequer notification informing the accounting officer of the amounts authorized.

(5) The County Treasury may require accounting officers to review their cash flow plans in line with changes in revenue realization, shortfalls in borrowing and unforeseen expenditures.

(6) The County Treasury shall publish and publicize the quarterly liquidity position reports reflecting the impact of revenue collection efforts, spending and county public debt operations on the cash position of county government.

Budget Variation.

46. (1) The Accounting Officer shall inform his or her responsible County Executive Committee Member immediately of any circumstances that are likely to affect materially the

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budgetary results either through revenue and expenditure or other receipts and payments of the county government entity

(2) The Accounting Officer shall inform his responsible County Executive Committee Member of actions taken to mitigate any budget variations.

(3) The responsible County Executive Committee Member shall take the necessary steps to bring to the notice of the County Executive Committee, any warnings of significant or material budget variations.

Budget reallocation.

47. (1) For purposes of section 154(3) of the Act, Accounting Officers, may authorize reallocation of funds within programmes or sub-votes provided that—

- (a) this does not affect the total voted provision;
- (b) the provisions in the budget of the programme or sub-vote from within which the funds are to be transferred are unlikely to be utilized;
- (c) reallocation is in accordance with donor conditions in the case of reallocation impacting on donor-funded expenditure;
- (d) the reallocation does not affect the voted provisions from wage to non-wage expenditure or from capital to recurrent expenditure; and
- (e) allocations earmarked by the County Treasury for a specific purpose may not be used for other purposes, except with Treasury's approval.

(2) Accounting Officers shall keep a register of all budgetary reallocations and use it to prepare a report of all reallocations to the County Treasury not later than the 10th day of each month and the report shall state measures taken by the Accounting Officer to mitigate against future reallocations.

(3) The report referred to in paragraph (2) shall state the impact that the reallocations may have had on program objectives, planned program outputs and outcomes.

(4) The County Treasury shall consolidate all reallocations and include them in the next revised budget.

(5) The reallocations under this regulation shall be approved by the respective Accounting Officer of the entity.

Reallocation between programmes and sub-votes.

48. The reallocations by the County Treasury in terms of section 154(2) of the Act shall be included in the next revised budget for submission to and approval by the County Assembly.

Advances from the County Emergency Fund.

49. (1) Where an Accounting officer accesses the County Emergency Fund in accordance with section 112 of the Act, that accounting officer shall first identify resources within his or her vote through identification of savings for re-allocation before applying for financing from the County Emergency Fund.

(2) If an accounting officer is satisfied that there are no savings within his or her vote and the need meets the criteria set under section 112 of the Act and paragraph (1), the accounting officer shall—

- (a) give reasons why he or she believes the need meets the criteria under section 112 of the Act;
- (b) issue a certificate confirming that the need meets the criteria under section 21 of the Act and paragraph (1) of this regulation;

- (c) the certificate shall be countersigned by the County Executive Committee Member for that entity; and
- (d) submit the request to the County Executive Committee Member responsible for Finance for consideration.

(3) The County Executive Committee Member shall consider the request and assess if the need meets the criteria set under section 112 of the Act and may approve it or reject it.

Commitment for goods or services.

50. (1) All commitments for supply of goods or services shall be done not later than the 31st May each year except with the express approval of the accounting officer in writing.

(2) Expenditure commitments for goods and services shall be controlled against spending and procurement plans approved by the responsible Accounting Officer, based on allocations and allotments from approved budgets.

(3) The Accounting Officer of that government entity shall make an expenditure commitment only against the procurement plan approved for that entity in accordance with the Public Procurement and Disposal Act and Regulations made thereunder.

(4) At minimum, a procurement plan shall include proper descriptions of the procuring items, unit cost, the estimated contract value, and the procurement method relating to the annual portion of a multi-year contract and delivery schedule.

(5) Any changes to approved procurement plan during the year shall be approved by the responsible Accounting Officer in consultation with the county executive committee member responsible for that entity.

(6) Any public officer who contravenes the provisions this regulation commits an offence.

Vote Control Procedures.

51. Any public officer who holds any post involving, in any degree, the management of public funds, and in particular every officer to whom is delegated the power to expend or receive such funds shall, in the county government's interest and in his own interest, be aware of the essentials of vote control procedures outlined here below—

- (a) no public officer shall spend or commit funds until he or she has been properly authorized by means of an Authority to Incur Expenditure (AIE) to do so;
- (b) AIE holders shall be made to understand that the limit to which they may spend is that prescribed by the authority and not their expectations, however justified these may seem;
- (c) the AIE issued to a public officer shall in the minimum contain—
 - (i) the AIE number and to whom issued;
 - (ii) the authorized total expenditure;
 - (iii) a description of the expenditure item; and
 - (iv) the account code to which the expenditure is to be debited;
- (d) when the AIE is issued by the county department or agency, the allocation shall be entered as a commitment in the county department's or agency's master vote book so as to ascertain at all times the availability of uncommitted funds;
- (e) accounting officers whose votes cover field programmes, sub-county and projects shall issue AIE's to their field programmes, sub-county and project officers not later the 15th day of each quarter;

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- (f) public officers issued with AIE's shall also be informed in writing that the actual expenditures shall not exceed the limit authorized in the AIE's;
- (g) sub-AIE's may be issued by AIE holders where necessary and where subcounty treasuries have been established;
- (h) all AIE's to field public officers shall show the following details at the minimum and copies submitted to the Auditor-General—
 - (i) the gross total amount of funds per Vote allocated and applied against the AIE issued; and
 - (ii) the total amount of AIA to be collected;
- (i) each accounting officer shall cause records to be kept in such a form as shall clarify at any time, in respect of each of his or her votes—
 - (i) the total amount of expenditure sanctioned for service of the year;
 - (ii) the amount of the expenditure charged;
 - (iii) any further known liabilities in respect of the year; and
- (j) the AIE holders shall note the following in terms of control of expenditure—
 - (i) there shall be no divided responsibility, only the officer to whom the AIE has been issued is permitted to commit or incur expenditure against it; and
 - (ii) an AIE holder shall not wait for suppliers to submit invoices in order to clear his commitment, but he or she shall regularly have his outstanding commitments checked and enquiries made from the suppliers.

Receipt of goods and services beyond the stipulated period.

52. (1) A local purchase order or local service order shall be valid for a period of thirty days from the date of issue.

(2) Any public officer who receives goods or services beyond the stipulated period specified in paragraph (1) commits an offence under the Act.

(3) Any public officer involved in the processing of a payment with regard to goods or services delivered after due date shall inform the accounting officer of this anomaly before proceeding to process the payment.

(4) The public officer in charge who fails to ensure the local service order or local purchase order is cancelled after thirty days commits an offence under the Act.

Unauthorized spending.

53. (1) Except as provided for in the Act and these Regulations, an Accounting Officer of an entity may not authorize payment to be made out of funds earmarked for specific activities for purposes other than those activities.

(2) A public officer who makes a payment contrary to paragraph (1) commits an offence under the Act.

Monthly reporting obligations by Accounting Officers.

54. (1) An Accounting Officer of a county government entity shall not later than the 10th day of each month submit a monthly financial and non-financial budgetary report in the format to be issued by the Cabinet Secretary relating to the activities of his or her county government entity for the preceding month to the County Treasury with copies to the Controller of Budget and the Auditor-General.

(2) The contents of the report under paragraph (1) shall include—

- (a) actual revenues, including appropriations in aid;

- (b) expenditures classified in economic classification as follows—
 - (i) compensation to employees;
 - (ii) use of goods and services;
 - (iii) transfer to other levels of government; and
 - (iv) capital expenditure;
- (c) pending payments with an age of over ninety days;
- (d) projection of expected expenditure and revenue collection for the remainder of the financial year;
- (e) when necessary, an explanation of any material variances; and
- (f) a summary of the steps that are to be taken to ensure that the projected expenditure and revenue remain within budget.

Contracts with multi-year financial implications.

55. (1) A county government entity may enter into a contract which will impose financial obligations on the county government entity beyond a financial year.

(2) Contracts imposing financial obligations in excess of one year may be concluded by the accounting officer only if—

- (a) the accounting officer discloses all finalized and signed contracts by the beginning of a financial year;
- (b) the finalized and signed contracts are budgeted for first, before new projects are considered by the accounting officer of the county government entity; and
- (c) the accounting officer secures the resources required in line with the financing requirements set out in the contracts.

Reorganisation of government functions.

56. (1) The county government may make policy changes in a financial year leading to—

- (a) creation of an additional county government entities; or
- (b) transferring certain functions or services of an existing county government department and agencies to—
 - (i) another existing county government department or agency;
 - (ii) a new county government department or agency; or
- (c) abolition of an existing county government department or Agency and transferring its functions or services to one or more county government department or agency.

(2) Before embarking on accounting entries and other adjustments to reflect the changes in paragraph (1), it shall be necessary to agree on the Actual status of the vote in respect of the following aspects of the affected functions and services based on the ledger balances of a trial balance to be drawn on a date to be communicated by the County Treasury—

- (a) the gross budgetary provision;
- (b) the approved appropriation in aid, if any, and whether in cash or credit purchase;
- (c) the approved development partner assistance and county government entity own revenue whether in cash or credit purchase if any;
- (d) the net budgetary provision;
- (e) the gross expenditure incurred;

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- (f) the amount of county government entity own revenue and development partner assistance applied in cash or in credit purchases; and
- (g) the sharing of amounts held in the below-the-line group of accounts.

(3) When a county department or agency is abolished, its vote shall cease to function and consequently it shall be necessary to extract a trial balance as at the date of abolition and to ascertain the state of financial affairs of that vote which shall include—

- (a) the budgetary provision;
- (b) expenditure incurred; and
- (c) cash balance.

(4) The statement shall also be accompanied by analysis of the below the line group of accounts, on the basis of which, it should then be agreed on the amount of the related budget provision, expenditure incurred and the below the line balances to be shared out, if necessary.

(5) The supplementary Appropriation Act will provide the details of the affected votes, and the County Treasury, shall inform the affected Accounting Officers of the effective date when they shall effect accounting entries in their books and other necessary inter-vote adjustments.

(6) The book-keeping entries of a new vote shall be effected as outlined in the National Treasury Guidelines issued.

PART VI – MANAGEMENT OF REVENUE AND OTHER RECEIPTS

Classification of County Government Revenues.

57. (1) County government receipts may be classified into domestic receipts and external receipts.

(2) Domestic receipts under paragraph (1) shall comprise of —

- (a) domestic loans receipts;
- (b) tax revenues; and
- (c) non tax revenues including exchequer non tax receipts and Appropriation-in-Aid.

(3) External receipts under paragraph (1) shall comprise of—

- (a) external loans including national exchequer loan receipts and credit purchase; and
- (b) external grants including national exchequer grant receipts and direct payments.

Format of estimates of revenue.

58. (1) The estimates of revenues shall be in the format issued by the Cabinet Secretary and shall include—

- (a) the description of the source of revenue in terms of head code;
- (b) estimated revenues;
- (c) the receiver of revenue;
- (d) for each revenue head, there shall be shown revenue items; and
- (e) the amounts and the nature of receipts.

(2) The estimates of revenue shall include the actual revenue for the two previous financial years (N-2) (N-1), the current financial year revenue estimates (N), and the projected revenue estimates for the next two outer years (N+1) and (N+2).

Basic principles in deciding whether sums shall be applied as AIA.

59. (1) The following shall be the basic principles in deciding whether sums shall be applied as Appropriation-in-Aid—

- (a) receipts arising directly out of expenditure on a service, the primary purpose of which is not collection of revenue (including user charges, user fees and sale of stores) and may be Appropriated in Aid of the vote from which expenditure on the service is met;
- (b) Appropriations in Aid shall be applied against a vote;
- (c) where miscellaneous receipts are individually and collectively small, and circumstances of receipt unimportant in themselves, such receipts may be credited to Appropriations in Aid; and
- (d) sums due as Appropriations in Aid in the previous year shall be credited to the Appropriations in Aid head of the year in which they are actually received.

(2) Despite the provision under paragraph (1), the County Executive Committee Member may designate any type of Appropriations in Aid as revenue in furtherance of certain county government policies.

Main forms of receipts in development estimates.

60. The following shall be the main forms of receipts which occur in development estimates—

- (a) Appropriations in Aid inform of receipts collected by any authorized county government agency or derived from the sale of goods and services directly derived from projects contained in the appropriate expenditure head;
- (b) credit purchases charged to the appropriate head representing expenditure on the cost of goods or services supplied and credited to the county government entity, but such transactions may be carried out only after County Treasury's advice;
- (c) direct payments from grants from external sources charged to the appropriate head representing expenditure on the cost of goods or services supplied and credited to the county government entity of which may be carried out only after County Treasury's advice;
- (d) loan and grant receipts through the county exchequer account; and
- (e) tax and non-tax revenue through the county exchequer account.

Receivers of revenue.

61. (1) A receiver of revenue designated by the County Executive Committee Member under section 157 of the Act, shall be responsible for the collection of and accounting for, such items of revenue as the County Executive Committee Member may specify.

(2) A letter for the designation of receiver of revenue under paragraph (1) shall indicate his or her responsibility and the manner in which he or she may delegate the duties of collection of revenue to officers under him or her or of another county government entity.

(3) Despite the provisions of paragraph (2), the receiver of revenue for loans and grants funds shall be the Chief Officer to the County Treasury, and the County Executive Committee Member shall specify such items of revenue in the designation letter.

Collection of revenue.

62. (1) The receiver of revenue shall, in accordance with section 158 of the Act, authorize a public officer or any of the county government entities to be a collector of revenue for county

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government for the collection of, and accounting for, such items of revenue as the receiver of revenue may specify.

(2) Except with the specific authority of the collector of revenue, in no case may a public officer whose duty involves the posting of assessment registers, rent rolls and similar documents be authorized to collect public moneys or to post collections into a cash book.

Responsibility for revenue management.

63. (1) An accounting officer and a receiver of revenue are personally responsible for ensuring that—

- (a) adequate safeguards exist and are applied for the prompt collection and proper accounting for, all county government revenue and other public moneys relating to their county departments or agencies;
- (b) adequate measures, including legal action where appropriate, are taken to obtain payment;
- (c) official receipts are issued for all moneys paid to county government.

(2) An accounting officer or receiver of revenue who experiences difficulty in collecting revenues due to the county government shall report the circumstances to the County Executive Committee Member without delay.

(3) Except with the authority of the County Executive Committee Member, no receiver of revenue Or collector of revenue, may convert public moneys received in local currency into foreign currency and vice versa.

(4) All public moneys collected by a receiver of revenue or collector of revenue or collected and retained by a county government entity, shall be paid into the designated bank accounts of the county government and shall not be used by any public officer in any manner between the time of their receipts and payment into the bank except as provided by law.

(5) An Accounting Officer or receiver of revenue or collector of revenue shall take disciplinary measures in line with the relevant legislation against a public officer who contravenes paragraph (4) of this regulation.

(6) An accounting officer or receiver of revenue or collector of revenue shall ensure adequate books of accounts are kept relating to revenue collection and management.

(7) A public officer who makes payment from monies collected under this regulation commits an offence under the Act.

In-year reporting of revenue collection.

64. (1) The Accounting Officer or receiver of revenue or collector of revenue shall prepare a quarterly report not later than the 15th day after the end of the quarter.

(2) The quarterly report in paragraph (1) shall include—

- (a) a statement of receipts and disbursements in such form as the Public Sector Accounting Standards Board may determine;
- (b) a statement of arrears of revenue which shall be classified by financial year; and
- (c) reasons for material differences between approved estimates and the actual revenue collected.

(3) The accounting officer or receiver of revenue or collector of revenue shall include in the report under paragraph (1), the following details in respect of each waiver or variation—

- (a) the full name of each person benefiting from the waiver or variation;
- (b) the amount of tax, fee or charge affected by the waiver or variation;

- (c) the year to which the waiver or variation relates;
- (d) the reasons for the waiver or variation; and
- (e) the law in terms of which the waiver or variation was granted.

(4) The quarterly report under paragraph (1) shall be submitted to the County Treasury, with a copy to the Auditor General and to County Assembly.

[L.N. 230/2015, r. 6.]

Fees for services rendered by the county government.

65. (1) The Accounting Officer of a county government entity may when finalising their budgets, review all fees, charges or the rates, scales or tariffs of fees and charges that are not fixed by any law and that relate to revenue accruing to the County Revenue Fund.

(2) An Accounting Officer shall obtain approval from the County Treasury for the proposed tariff structure.

(3) Information on the tariff structure shall be disclosed in the annual report, including information on exemptions, discounts, free services and any other aspect of material influence on the revenue yield.

Agency services and revenue management.

66. (1) When a county government entity renders agency services to another county government entity or national government entity, all revenue receipts collected shall be accounted for fully by the agent to the receiver of revenue or collector of revenue or accounting officer.

(2) Any exceptional to paragraph (1) on the expenses arising from the revenue administration costs shall be expressly agreed between the county government entity and the respective receiver of revenue or collector of revenue or accounting officers based on a service level agreement signed between them.

(3) Claims for agency services rendered on behalf of another county government entity level of government, shall be based on actual revenue collected and accounted for and shall be supported by original vouchers and shall be reflected in the books of accounts of transacting institutions.

Refund of revenue.

67. (1) Refunds of revenue may become necessary because of collections or overcollections made in error or because, although properly collected in accordance with an Act or these Regulations, provision exists under the Act or Regulations for the revenue to be reclaimed under certain circumstances in the form of a rebate or drawback.

(2) Refunds of revenue and drawbacks under paragraph (1) shall be in accordance with the relevant legislation.

(3) Any refunds under paragraph (1) shall be provided for under an expenditure item appropriated by County Assembly in a County Appropriation Act.

(4) Where the collection, over-collection or drawback is made in the same financial year as that in which the revenue was originally collected, it may be authorized by the officer prescribed in the relevant legislation to be charged as a debit item in the appropriate revenue head.

(5) A Receiver of revenue or collector of revenue shall prepare estimates of refunds from taxes or fees or charges for the following financial year, and submit the budget to the County Executive Committee Member for consideration and inclusion in the budget estimates of the County Treasury for appropriation by County Assembly.

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(6) The estimates of refunds submitted under paragraph (5) by the receiver or collector of revenue shall include assumptions underpinning the refund estimates.

Format of annual and quarterly statements submitted by the receivers of revenue.

68. The annual, quarterly and monthly statements by a receiver of revenue submitted to the County Treasury under sections 158(3) and 165 of the Act, shall be in the format gazetted by the Cabinet Secretary and at the minimum shall include—

- (a) the actual revenue received by the receiver and transmitted to the county exchequer account;
- (b) the actual revenue received by the receiver and not transmitted to the county exchequer account;
- (c) the revenue arrears due but not collected; and
- (d) a responsibility statement by the receiver of revenue on the revenue statement.

PART VII – MANAGEMENT OF GRANTS AND DONATIONS

Definition of terms.

69. For purposes of this Part—

- (a) "grant agreement" means an instrument that gives the power to an agency to furnish money, Property or materials to a grantee and the grantee has freedom to pursue the grants stated purpose, but the agency does not specify the matter of performance of the work and is not substantially involved in it;
- (b) "financing agreements" are documents detailing commitments for provision of goods, services and activities to be performed by an organization for the awarding agency and contain specific objectives, direction, specifications, costs or methods of performance; and
- (c) "donor or development partner or external financier" is used in this Part interchangeably to refer to the providers of external resources.

Approval of Regulations under section 139 of the Act.

70. The Regulations prepared by the County Executive Committee Member under section 139 of the Act and Approved by the County Assembly shall comply with the provisions under this Part.

Grants, donations and sponsorships.

71. (1) Upon approval by the County Executive Committee Member, an Accounting Officer may receive any grant, donation, or, sponsorship made in favour of the county government entity irrespective of whether such sponsorship or grant or donation is in cash or in kind provided that the Accounting Officer confirms with the relevant county government entity that donations given in kind—

- (a) are not harmful to health and the environment; and
- (b) are in good and serviceable conditions.

(2) All cash grants and donations shall be deposited in the County Revenue Fund provided that—

- (a) such grants, donations and sponsorships are from a credible source and from persons or entities in good standing with the Government of Kenya; and
- (b) such grants, donations and sponsorships are intended to address government development policies.

(3) Where the purpose of the gift, donation, or sponsorship is not apparent, the County Executive Committee Member shall have the discretion to instruct the Accounting Officers on its application.

(4) A county government entity is not allowed to give a county government entity cash donations to augment the budgetary resources of designated departments.

(5) Gifts, donations or sponsorships received during the year shall be disclosed in the annual and quarterly financial statements.

Grants administration.

72. (1) Projects implemented through grants, donations and sponsorships shall be aligned to the national and county development policies.

(2) In identification and designing of projects funded by development partners, the areas covered and amount allocated shall be determined by objective criteria and as far as possible on need-based formula which may include geographical area, population and poverty index.

(3) The Accounting officer shall disclose the details under paragraph (2).

(4) Grants and donations shall be disbursed through the revenue mode of disbursement or supply of goods and services in which case development partners shall undertake to submit expenditure returns in a prescribed format by the County Treasury in the grant agreement.

(5) All grants shall be appropriated by County Assembly before commencement of disbursements.

(6) Issues to do with tax exemptions, issuance of work permits, counter-part personnel, counter-part funding, office space, demand driven technical assistance, community contribution either in cash or in kind shall be clearly spelt out in the grant agreements, and the county government and community contribution shall be properly assessed and quantified in all grant supported projects.

(7) County governments shall ensure grants are factored in the budgets and counterpart funds appropriated accordingly.

Disclosure of authorization and disbursement.

73. (1) Where authorisation has been granted for the project to start, the Accounting Officer shall ensure public disclosure to the intended beneficiaries within thirty days of the allocation and disbursement of the grants.

(2) After disbursement of grants, the accounting officer shall report within fifteen days after the end of each quarter to the intended beneficiaries on the expenditures and performance achieved in relation to the grant.

(3) During the project identification and design, the intended beneficiaries shall be involved through public participatory approach for planning.

(4) The views of the indented beneficiaries shall be received during public forums provided for under paragraph (3) above and their views will be considered appropriately or during budgeting process of the next budget cycle.

(5) Where non-compliance by an accounting officer with grant conditions is established through an audit or fiduciary review process, the County Executive Committee Member may suspend the disbursements and institute measures to recover any amounts misappropriated by the public officer.

ACCOUNTING AND REPORTING ON DONATIONS AND GRANTS

Monies received by way of grants and donations to be paid into a designated account.

74. (1) All monies received by way of grants and donations shall constitute public monies and shall be paid into the County Revenue Fund.

(2) The County Executive Committee Member shall make provisions in the budget estimates for grants and donations receivable in kind such as commodity aid for purposes of raising cash locally.

(3) Where the quantum of the grant or donation referred to in paragraph (2) is not known, a provision shall be included in the estimates and when the quantum becomes known a supplementary estimate shall be raised for the amount involved.

(4) Where grants and donations are receivable in kind, the value of such donations shall be determined and included in the estimate and reflected as expenditure in the financial year.

(5) Monies received for specified projects which have been paid into the County Revenue Fund, shall be released when required to the appropriate project bank account.

(6) An accounting officer of a county government entity shall—

- (a) cause to be kept and maintained proper books of accounts and records in respect of all projects and donations;
- (b) ensure that whenever projects are completed, the project assets including buildings, plant, vehicles, furniture, fittings and equipment are properly recorded and handed over to the accounting officer in accordance with the financing agreement;
- (c) where no time frame is provided for the project, ensure that the assets are handed over within three months from the date of the closure of the project; and
- (d) in the absence of any instructions to the contrary, any unexpended balance standing in the credit of the project account shall be paid into the County Revenue Fund.

Project selection criteria.

75. It shall be the responsibility of the County Treasury to ensure that any project approved for financing through grants and donations—

- (a) has been approved by the accounting officer; and
- (b) the project feasibility study report has been inspected and approved by the relevant county government entity.

Project bank account.

76. (1) For the purpose of disbursement of project funds, there shall be opened and maintained a project account for every project at Central Bank of Kenya unless it is exempted by the Cabinet Secretary in writing where the CBK has no branch or banking facilities, into which all funds shall be kept and such an account shall be known by the name of the project for which it is opened and each project shall maintain only one bank account.

(2) All foreign currency designated bank accounts shall be kept at the Central Bank of Kenya for county government entities unless exempted in writing by the Cabinet Secretary under paragraph (1) of this regulation.

(3) Every payment or instruction for payment out of the project account shall be strictly on the basis of the approved estimates of budget and financing agreement.

Records of receipts and disbursements.

77. The Accounting Officer of a project shall compile and maintain a record showing all receipts, disbursements and actual expenditure on a monthly basis in respect of every project and subproject and shall—

- (a) make monthly interim financial returns;
- (b) make quarterly financial management returns; and
- (c) submit a summary of the records for each quarter and year to the division responsible for external resources in the County Treasury not later than fifteen (15) days after the end of every quarter.

Responsibilities of NGOs where the project is implemented by NGO.

78. (1) Non Governmental Organisations that implement development programs funded by public funds, including donor funding shall be accountable through regular financial reporting and submission of audited annual financial statements to the relevant accounting officer in a format prescribed by the Public Sector Accounting Standards Board.

(2) NGO's in paragraph (1) of this regulation, shall be registered by the responsible national licensing authority and in accordance with the relevant law under which that authority is established.

Documents to be attached by NGOs where the project is implemented by NGO.

79. (1) Documents to be attached to the financial reports and annual audited accounts in regulation 78 shall include a certificate of registration confirming that the NGO—

- (a) is a body corporate and separate from its members, with perpetual succession;
- (b) can engage in public interest activities and public fund raising within the county; and
- (c) is eligible for such fiscal or other benefits and privileges, as may be applicable to NGOs from time to time.

(2) In addition to requirements under paragraph (1) of this regulation, the NGO shall also submit—

- (a) its annual performance report outlining the activities undertaken by the NGO in the year;
- (b) an annual return reflecting details of its trustees, directors, office bearers and auditors;
- (c) its sources of funding;
- (d) in the event of any amendment to its constitution or governance instrument during the financial year, a certified copy of such amendment; and
- (e) in the event of any amendment to its constitution or governance instrument during the financial year, a certified copy of such amendment.

PART VIII – COUNTY TREASURY AND CASH MANAGEMENT

Composition of County Revenue Fund.

80. (1) The County Treasury shall administer the County Revenue Fund in accordance with the Constitutional provisions in Article 207 and 209 (3) and (4) in controlling revenue receipts to ensure that—

- (a) all revenue receipts by the county government are paid into the County Exchequer Account, except revenue receipts reasonably excluded by the Act, or any other Act of Parliament or an Act of County Assembly; and
- (b) withdrawals from the County Revenue Fund are done—
 - (i) in accordance with an appropriation by an Act of County Assembly; or
 - (ii) as a direct charge against the County Revenue Fund authorized by the Act, an Act of Parliament or an Act of County Assembly.

(2) The administrator of the County Revenue Fund shall keep proper books of accounts of the County Revenue Fund in accordance with standards and formats prescribed by the Public Sector Accounting Standards Board.

Process of receipts into County Revenue Fund.

81. (1) Receivers of revenue shall promptly deposit into the County exchequer account all receipts due to the County Revenue Fund.

(2) The receivers of revenue shall promptly pay the revenue received into the County Revenue Fund, as soon as possible and in any case not later than five (5) working days after receipt thereof.

(3) The County Treasury shall issue a receipt to a receiver of revenue to acknowledge the receipt of revenue thereof.

CASH AND BANKING ARRANGEMENTS

Criteria for approval of opening and operating county government entities bank accounts.

82. (1) Subject to the provisions of section 119 of the Act, the following criteria shall be considered by the County Treasury before granting approval to a county government entity to open and operate a county government bank account—

- (a) all county exchequer accounts shall be opened at the Central Bank of Kenya;
- (b) for avoidance of doubt, all county government bank accounts shall be opened at the Central Bank of Kenya except for imprest bank accounts for petty cash.

(2) All county government entities operating bank accounts outside the provisions of paragraph (1), shall comply with the provisions under this Regulation within six (6) months from the date of commencement of these Regulations.

(3) Except with the prior authority of the County Treasury, no accounting officer may open a bank account for the deposit, custody or withdrawal of public moneys or other moneys for which he or she is responsible in his or her official capacity or for the transaction of official banking business.

(4) The authority of County Treasury shall be conveyed in writing to the responsible Accounting Officer with a copy to the Controller of Budget and the Auditor-General.

(5) County Treasury may prescribe the banking rules and the maximum balance which may be held in any official County Treasury Single Account sub account or other bank accounts, and if at any time this balance seems likely to be exceeded, the officer operating the accounts shall consult County Treasury on the action to be taken.

(6) No official county government bank account shall be overdrawn, nor shall any advance or loan be obtained from a bank account for official purposes beyond the limit authorized by the County Treasury in line with section 119 (4) of the Act.

(7) The authority in paragraph (7) shall be conveyed in writing to the responsible Accounting Officer and copied to the Auditor-General.

(8) Personal cheques shall not be deposited in an official bank account.

Guiding principles for cash management.

83. (1) The County Treasury shall be responsible for establishing sound cash management systems, procedures and processes, to ensure efficient and effective banking and cash management practices.

(2) For purposes of this regulation, sound cash management includes—

- (a) assessing the cash inflows and outflows expected at any one time;
- (b) ensuring payments, including transfers to Other levels of government and county-government entities are made when due for efficient, effective and economical programme delivery and the county government's normal terms for account; or
- (c) avoiding accumulation of idle balances;
- (d) using short term borrowing only when it is necessary;
- (e) avoiding prepayments for goods or services unless required by the contractual arrangements with the supplier;
- (f) accepting discounts to effect early payment only when the payment has been included in the monthly cash flow estimates provided to the County Treasury;
- (g) pursuing debtors with appropriate sensitivity and rigour to ensure that amounts receivable by the county government are collected and banked promptly; and
- (h) recognizing the time value of money and managing inventories to the minimum level necessary for efficient and effective programme delivery, and selling surplus or under-utilised assets.

(3) County government overdraft at the Central Bank of Kenya shall be retired by the end of the financial year.

Surrender of End-of-Year Surplus Cash Balances.

84. Not later than the 31st January each year, each Accounting Officer shall surrender to the County exchequer account unexpended voted money or excess Appropriations-in-Aid, as confirmed by Auditor-General in the audit report.

Cheques and electronic payments.

85. (1) All signatories in respect of cheques, or electronic payments and fund transfers shall be designated by the Accounting Officer and any changes in signatories shall be authorized by him or her.

(2) There shall be two authorized signatories to sign a cheque drawn or electronic payment or fund transfer on a county government bank account.

(3) The names and designation of those officers in paragraph (1) and their specimen signatures shall be advised to the bank where the account is held by the accounting officer, with copies of the advice sent to the County Treasury, and any change in signatories shall be advised in writing.

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(4) The signatories under this regulation shall—

- (a) initial the counterfoil or enter with their personal passwords;
- (b) be equally responsible for the regularity of the payment; and
- (c) thoroughly scrutinize the documents supporting the payment.

(5) Spoilt cheques shall be marked prominently with the stamp "cancelled", and fixed securely to the cheque-list used for controlling the cheques issued each day.

Cash Management Advisory Committee.

86. (1) The County Executive Committee Member may establish a Cash Management Advisory Committee.

(2) The Cash Management Advisory Committee under paragraph (1) shall be comprised of—

- (a) Chief Officer of the County Treasury who shall be the chairperson or an Officer designated by him or her;
- (b) the department responsible for accounting policy within the County Treasury, which shall also provide the secretariat;
- (c) the department responsible for economic affairs in the County Treasury;
- (d) the department responsible for public debt management in the County Treasury; and
- (e) the department responsible for budget matters in the County Treasury.

(3) The responsibilities of the Cash Management Advisory Committee shall be determined by the County Executive Committee Member during its establishment.

Registers and records of county government bank accounts.

87. (1) The County Head of Accountancy Services shall maintain a register of all CTSA sub accounts and other bank accounts opened by County government entities including public funds and donor funded projects.

(2) The office of the County Head of Accountancy Services shall reconcile periodically the government bank accounts list, with the records maintained by the Central Bank of Kenya.

(3) The Accounting Officer of a county government entity shall, by the 30th September of each year, provide the County Treasury with an up-dated list of bank accounts held by the county government entity.

(4) The list referred to under paragraph (3) shall include the following information—

- (a) name of the bank where the account is held;
- (b) name of the bank account;
- (c) type of bank account;
- (d) signatories of the bank account;
- (e) date on which the bank account was opened;
- (f) the bank account number;
- (g) purpose for the bank Account, if different from the main operational bank account of the government entity;
- (h) the bank account balances as at 30th June each year; and

- (i) the reference number and date of the County Treasury, letter granting approval for opening and operating the bank account.

Authority to have access to county government bank accounts.

88. (1) The County Treasury shall, when granting authority to Accounting Officers to open and operate bank accounts, require them to include as a pre-condition to that bank, that the County Executive Committee Member may request bank statements for that account without any reference to the authorized bank signatories of that bank account.

(2) The County Executive Committee Member may suspend the operations of any county government bank account or impose certain conditions, if he or she reasonably believes the purpose of that account no longer exists, or that fraud or fraudulent transactions are being undertaken in that specific account and shall institute investigations immediately.

(3) Where in the opinion of the County Executive Committee Member finds it necessary, he or she may share the report of the investigation carried out in paragraph (2) with the Auditor-General and the Controller of Budget.

Security for cash in transit.

89. The Accounting Officers shall ensure that adequate arrangements are made to protect both cash and staff for cash in transit and such measures shall include the following—

- (a) safe or strong rooms and restricted access to the cash handling locations;
- (b) police or armed security escorts;
- (c) the security bags locked to the vehicle; and
- (d) suitable transport and variation of movement, times, and routes.

Reconciliation of bank accounts.

90. (1) Accounting Officers shall ensure bank accounts reconciliations are completed for each bank account held by that Accounting Officer, every month and submit a bank reconciliation statement not later than the 10th of the subsequent month to the County Treasury with a copy to the Auditor-General.

(2) Similar reconciliations shall be carried out when responsibility for any bank account or cheque book is handed over from one officer to another and on the occasion of any surprise inspection or survey.

(3) Accounting Officers shall ensure any discrepancies noted during bank reconciliation exercise are investigated immediately and appropriate action taken including updating the relevant cash books.

(4) The County Treasury shall analyze and review the bank reconciliation statements submitted under paragraph (3) of this regulation and take the necessary action.

MANAGING IMPREST TRANSACTIONS

Nature of imprest.

91. (1) For the purposes of this subpart, an imprest is a form of cash advance or a float which the Accounting Officer may authorize to be issued to officers who in the course of duty are required to make payments which cannot conveniently be made through the cash office of a government entity or bank account.

(2) The officer authorized to hold and operate an imprest shall make formal application for the imprest through an imprest warrant.

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(3) Funds disbursed for imprest shall not be kept or held in an official bank account, but in a separate or personal bank account operated by the imprest holder or in the form of cash under safe.

Determination of imprest levels.

92. (1) The Accounting Officer or Authority to Incur Expenditure (AIE) holder shall approve the establishment of an imprest facility including the maximum amount for the specific purpose of that facility.

(2) In determining the level of an imprest, many factors shall be considered, but in the interest of economy and as a matter of prudence, an imprest shall be fixed at the lower figure compatible with requirements and in any case a standing imprest shall not exceed one month's estimated expenditure on the intended purpose.

Classes of imprest.

93. (1) An imprest shall be issued for a specific purpose, and any payments made from it, shall be only for the purposes specified in the imprest warrant.

(2) There are two types of imprests namely—

- (a) Temporary or Safari imprest; and
- (b) Standing Imprest.

(3) Temporary imprests shall be issued mainly in respect of official journeys and are intended to provide officers with funds with which they can meet travelling, accommodation and incidental expenses.

(4) Before issuing temporary imprests under paragraph (2), the Accounting Officer shall ensure that—

- (a) the main objective of the journey cannot be achieved by other cheaper means;
- (b) the applicant has no outstanding imprests;
- (c) the applicant imprest has been recorded in the imprest register including the amount applied for; and
- (d) that adequate funds are available against the relevant items of expenditure to meet the proposed expenditure.

(5) A holder of a temporary imprest shall account or surrender the imprest within seven (7) working days after returning to duty station.

(6) In the event of the imprest holder failing to account for or surrender the imprest on the due date, the Accounting Officer shall take immediate action to recover the full amount from the salary of the defaulting officer with an interest at the prevailing Central Bank Rate.

(7) If the Accounting Officer does not recover the temporary imprest from the defaulting officer as provided for in this regulation he or she commits an offence as provided under the Act.

(8) In order to effectively and efficiently manage and control the issue of temporary imprests, an accounting officer or AIE Holder shall ensure that no second imprest is issued to any officer before the first imprest is surrendered or recovered in full from his or her salary.

(9) If the accounting officer or AIE Holder under paragraph (8) does not comply with the provisions of this paragraph, he or she commits an offence as provided under the Act.

(10) If an imprest is to be recovered from any public officer by instalments, the Accounting Officer shall personally authorize such recovery and such moneys shall no longer be an imprest but an unauthorized advance from county government funds, and in addition to

the interest charged under paragraph (6), the Accounting Officer shall take appropriate disciplinary action against the officer concerned for the abuse of the imprest.

(11) Standing imprest shall be intended to be in operation for a time and requires bringing the cash level of the advance continuously up to the agreed fixed level by systematic reimbursement of expenses

(12) Standing imprest shall involve personal responsibility as it shall be issued to an officer in his or her own name, and not to the holder of an office.

(13) When an imprest holder leaves the service, or is transferred, he or she shall surrender the total standing imprest which includes cash plus payment vouchers which together amount to the fixed level of the imprest, and a new imprest issued to his successor.

(14) The holder of a standing imprest shall keep a memorandum cash book to record all receipts and payments and the balance on hand shall agree with the cash balance recorded in the memorandum cash book, and in the absence of any receipts, the actual cash balances plus the expenses paid shall equal at all times the fixed level of the imprest for which the imprest holder is personally responsible.

(15) When the imprest holder needs to have his or her funds replenished, he or she shall send an abstract and analysis of his or her memorandum cash book, plus originals of the supporting payment vouchers to accounts division.

(16) If the accounts division in paragraph (15) is satisfied that the expenditure has actually been incurred, and that it has been incurred for the intended purposes, and there is no irregularity in the payment vouchers, it shall arrange for the analysed expenditure to be posted to the various heads and items, and arrange for the cash to be transferred to the imprest holder so as to "top-up" his or her fund.

(17) In addition to paragraph (15) the head of accounts division shall also ensure that frequent spot checks are made of the standing imprest itself by a responsible officer as follows—

- (a) count the cash on hand;
- (b) Confirm that the actual cash on hand corresponds with the balance on hand as recorded in the memorandum cash book;
- (c) ensure that the documents justify the difference between the fixed imprest level and the actual cash balance; and
- (d) report on any anomalies found to the head of the accounts section.

Duties of Imprest Holders.

94. An officer holding an imprest shall ensure that—

- (a) the imprest issued to him or her shall be used for the intended purpose only;
- (b) the imprest moneys and any payment vouchers awaiting replenishment are adequately safeguarded at all times;
- (c) proper cash sale receipts are received for all payments out of the imprest;
- (d) the full amount of the imprest can be accounted for at all times in cash, stamps, money at bank and completed payment vouchers; and
- (e) goods purchased through imprest are taken on charge and certificate issued.

COUNTY TREASURY SINGLE ACCOUNT

Establishment of a County Treasury Single Account.

95. (1) Each County Treasury hereby establishes a (.....) County Treasury Single Account (CTSA) pursuant to section 119 (2) of the Act, which shall become operational within six (6) months after the commencement of these Regulations and shall be kept at the Central Bank of Kenya.

(2) The County Executive Committee Member shall from time to time issue County Treasury Single Account guidelines to accounting officers for the operations of the County Treasury Single Account.

Operation of a Treasury Single Account.

96. (1) The County Treasury shall ensure operating cash balances in the CTSA sub accounts are kept to a minimum through consolidation into a County Treasury Single Account.

(2) The County Treasury Single Account shall reflect at the minimum the following features—

- (a) unified banking arrangements to enable the County Treasury to have proper oversight of county government cash inflows and outflows on these bank accounts;
- (b) that no county government entity shall operate bank accounts outside the County Treasury Single Account unless expressly authorized by the County Executive Committee Member; and
- (c) the comprehensive consolidation of county government controlled public monies encompassing all government cash resources, including county exchequer account, special funds, trust funds and other public funds unless expressly exempted by the County Executive Committee Member.

(3) County government deposits or exchequer releases to County government entities by the County Treasury shall be deposited in the CTSA sub-accounts and shall form part of cash balances of these accounts.

(4) Unless exempted by an Act of Parliament or by judicial order, all deposit bank accounts of the county government's entities shall be sub-accounts of the County Treasury Single Account for the county governments.

PART IX – ACCOUNTING AND REPORTING**FORM AND BASIC STRUCTURE OF GOVERNMENT ACCOUNTS**

Accounting period.

97. (1) The accounts of the county government entities shall record transactions which take place during a financial year running from the 1st July to the 30th June.

(2) Government accounts may be kept open for adjustments or a financial year may be kept open for a month in the following financial year for completion of the following end of year accounting processes—

- (a) in respect of the transactions up to the 30th June each year to capture expenditure for field services;
- (b) for carrying out certain inter-departmental agency adjustments; and
- (c) for closing the accounts of special funds and suspense accounts.

(3) Adjustments may also be made after the close of the year by journal entries for the correction of accounts due to miss-postings or misclassifications impacting on fair presentation of financial statements that may be noticed after the 30th June each year.

(4) An actual cash transaction taking place after the 30th June, shall not, however, be treated as pertaining to the previous financial year even though the accounts for that year may be open for the purposes referred to in paragraphs (2) and (3) of this regulation

(5) The County Treasury shall issue guidelines on the closure of the financial year not later than the 15th May each year.

Charging of expenditure to year of accounts.

98. (1) The date of payment of any amount shall determine the date of the recording of the transaction in the accounts.

(2) No advance payment shall be paid to suppliers of goods and services unless provided for in the contractual terms and conditions contained in a valid contract signed between the procuring entity and the supplier.

Account codes and standard chart of accounts.

99. (1) As a general rule, the classification of financial transactions in county government entity's accounts shall be based on the standard chart of accounts approved by the National Treasury.

(2) The approved estimates of expenditure shall form the basis of the accounts for the financial year.

(3) Every entry in the accounts shall be supported by a voucher or other approved document gazetted by the Cabinet Secretary containing the full details, clear narrations and particulars of the item or items to which it relates.

Books of accounts to be kept by Accounting officers.

100. Accounting Officers shall keep in all offices concerned with receiving cash or making payments a cash book showing the receipts and payments and shall maintain such other books and registers as may be necessary for the proper maintenance and production of the accounts of the Vote for which he or she is responsible.

Recording and reporting basis.

101. (1) The structure of the reporting formats shall be based on the requirements of the Act.

(2) The Cabinet Secretary may from time to time amend the Schedule in accordance with the prescribed standards set by the Public Sector Accounting Standards Board.

(3) The National Treasury shall issue financial instructions and guidelines on application of accounting policies, bases, standards and classification to be applied in financial reporting in line with the standards set by the Public Sector Accounting Standards Board.

(4) An Accounting Officer shall prepare the financial statements in a form that complies with the relevant accounting standards prescribed by the Public Sector Accounting Standards Board, not later than three months after the end of the financial year and submit them to the Auditor-General with a copy to the County Treasury, the Controller of Budget and the National Treasury.

Financial records and automation of financial operations.

102. (1) Financial records may be maintained in manual and or electronic form.

(2) An Accounting Officer shall take all reasonable precautions to guard against damage, destruction of or falsification of any financial record required to be kept by the Act or these Regulations.

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(3) An Accounting Officer shall satisfy himself or herself that where an alteration of a financial record requires the authorization, approval or deletion of any transaction or data, whether electronic or manual by any means other than in writing, that there is sufficient audit trail which shall identify the person who approved the transaction.

Accounting adjustments journal.

103. (1) Journal entries prepared for all adjustments shall be authorized by the accounting officer or an officer designated by him or her before posting them in a financial record.

(2) In all cases journal vouchers shall be supported by sufficient explanations, authorisations and documentation to facilitate accounting adjustments to be understood.

Vouchers.

104. (1) All receipts and payments vouchers of public moneys shall be properly supported by pre-numbered receipt and payment vouchers and shall be supported by the appropriate authority and documentation.

(2) All receipt and payment vouchers shall be or made out in indelible ink and shall contain adequate narration of the particulars of the services, goods or works procured and being paid for.

(3) All amounts appearing in a voucher shall be written in words as well as in figures.

Powers to delegate voucher approval.

105. (1) An Accounting Officer or any other officer delegated in writing by him or her may authorize payment vouchers on his or her behalf for expenditure chargeable to his or her vote, provided such expenditure is in respect of and within the provision of the services in a County Treasury warrant, in accordance with the law, regulations, tariff, contract or agreement that may be applicable, and does not require special authority in terms of any law, regulation or County Treasury instruction.

(2) Accounting Officers may prescribe the financial limits and other conditions within which this authority in paragraph (1) may be exercised.

Deposit accounts.

106. Unless otherwise exempted by an Act of Parliament, any deposit which has remained unclaimed for 5 years may, with the approval of the County Executive Committee Member, be paid into County Revenue Fund and thereafter the County Executive Committee Member may refund the deposit to any person entitled thereto, if he or she is satisfied that the claim is authentic.

Clearance and suspense accounts.

107. (1) All the transactions relating to clearance and suspense accounts shall be supported by authentic and verifiable source documents, clearly indicating the approved allocation.

(2) Where it is necessary, to account for revenue and expenditure transactions in a clearing or suspense account, the Accounting Officer shall ensure that—

- (a) amounts included in clearing or suspense accounts are cleared and correctly allocated to the relevant cost centres on a monthly basis;
- (b) monthly reconciliation's are performed to confirm the balance of each account; and
- (c) reports on uncleared items are prepared on a monthly basis and submitted to the County Treasury.

(3) The National Treasury shall prescribe in the financial manual procedures to be used for management of balances in suspense or clearing accounts.

Payments to beneficiaries residing outside Kenya.

108. Wherever practicable all payments of public monies made to persons outside Kenya shall be made by direct payment or payment advice through the Central Bank of Kenya to such persons' banks account or use of banker's draft or through the national payment system.

Use of electronic systems for financial operations.

109. (1) For efficient and effective utilization of electronic systems in processing financial data, the National Treasury shall develop and regularly issue standard operating procedures and instructions on the automated integrated financial management system operations, use and maintenance.

(2) The Principal Secretary shall designate a person or persons in writing to administer the automated integrated financial management system.

(3) The system administrator shall ensure compliance of assigned responsibilities and when necessary take appropriate measures.

Restricted access to systems.

110. (1) The Accounting Officer for a county government entity shall institute appropriate access controls needed to minimize breaches of information confidentiality, data integrity and loss of business continuity.

(2) Access controls to be instituted shall include—

- (a) uniform application forms for registration of new users, deregistration of users and modification of user roles;
- (b) processes of safeguarding completed application forms;
- (c) segregation of duties;
- (d) use of multi-factor authentication including standardization of user primary identity linked to national identification numbers, payroll numbers and assigned responsibilities; and
- (e) utilization of appropriate password length for login.

(3) Users of the system under this regulation shall—

- (a) not use or attempt to use the automated public financial management system without authorization of the system administrator;
- (b) take all reasonable steps to maintain the integrity of passwords and other security mechanisms;
- (c) where a password becomes insecure or potentially insecure, as soon as is practicable, implement a new secure password;
- (d) not do anything that damages, restricts, jeopardizes, impairs or undermines the performance, usability, reliability, confidentiality or accessibility of any digital information system, programme, or other stored information data;
- (e) not alter, delete or in any other way interfere with, any information, data or files;
- (f) be responsible for any unlawful entry on the automated public financial management system using such persons password;
- (g) undertake any tasks assigned; and

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- (h) take all measures to ensure that on the last day of each month, the financial period of the month is closed.

(4) Failure to adhere to the closing of financial periods or to adhere to operational protocols in paragraph (3) of this regulation constitutes an offence under the Act.

PART X – EXPENDITURE MANAGEMENT

County Revenue Fund Services.

111. (1) Where an Act of Parliament or a county legislation provides for some specific categories of expenditure to be a direct charge on the County Revenue Fund, such expenditures shall be included in the recurrent budget estimates of the county government as part of the County Revenue Fund Services.

(2) Subject to an Act of Parliament and for the avoidance of doubt, the County Revenue Fund Services shall be limited to the following—

- (a) county public debt; and
- (b) salaries and allowances of the Governor and the Deputy-Governor.

(3) The County Revenue Fund Services shall be provided for in the recurrent estimates, but shall not be subject to County Assembly debate nor to the expenditure limited by estimates nor vote on account.

(4) County Revenue Fund Services shall be administered by the County Treasury.

(5) The County Treasury may arrange for another Accounting Officer to make payment in the first place on its behalf against subsequent reimbursement from the appropriate Vote of the County Revenue Fund Services.

Excess vote.

112. If an Accounting Officer finds, after Appropriation Accounts are completed, that he or she has spent more than the total vote, that Accounting Officer shall seek County Assembly approval through the County Executive Committee Member for that Excess Vote.

Payments to which an Accounting Officer objects.

113. (1) An Accounting Officer who is instructed by his or her County Executive Committee Member to make payment which for any reasons the accounting officer has concerns, he or she shall raise those concerns in writing to his or her County Executive Committee Member.

(2) In the event his or her County Executive Committee Member approves for the processing of the payment despite the concerns raised by the Accounting Officer, he or she shall obey the instructions without further responsibility.

(3) Upon payment, the accounting officer may bring those concerns in writing under paragraph (1) of this regulation, to the attention of the County Assembly with a copy to the Auditor-General.

Goods, works and services to be procured according to an approved procurement plan.

114. (1) All purchases of goods, works and services from suppliers, including capital investments, shall comply with the provisions prescribed in the Public Procurement and Disposals Act, 2005 and the Regulations made thereunder and shall have the prior approval of the Accounting Officer.

(2) Every year a procurement plan shall be prepared by Accounting Officers to form the basis for procurement activities undertaken by government entities in the fiscal year.

(3) The procurement plan in paragraph (2) of this regulation shall, where necessary, include estimated costs of procurement, insurance, clearing, forwarding, warehousing and demurrage charges for goods imported and have to undergo clearing and forwarding through ports of entry into the country.

Recovery, disallowance and adjustment of payments.

115. (1) Amounts charged to Voted Funds, which are recovered in the financial year in which payment was made, shall on or before the closing of books of that financial year, be allocated to the budget item that was originally debited.

(2) Such amounts which are recovered after the closing of books of a financial year shall be paid to the County Revenue Fund, provided that such amounts have not been allocated to a clearing or suspense account during the financial year in which payment was made.

Re-Vote of Budget.

116. (1) Where an AIE holder observes that it will not be possible to utilize all the funds allocated for a particular project in a given financial year, the AIE holder shall inform the accounting officer not later than the 15th February each year.

(2) The Accounting Officer shall then surrender the resources to the County Treasury and the County Treasury shall ensure that the funds are re-voted for the project in the following financial year in order to continue the implementation of the project.

Accountable documents.

117. (1) Accountable documents whether manual or electronic shall be under strict control at all times and they shall include—

- (a) indent forms (for supplies from government printer or government stores);
- (b) local purchase order;
- (c) local service order;
- (d) authority to incur expenditure;
- (e) cheques;
- (f) receipt books;
- (g) imprest warrants; and
- (h) Central Bank Kenya overseas payment authority form.

(2) The Accounting officer shall keep his or her stock of accountable documents whether manual under lock and key, issuing them in accordance with the daily needs of the service, and keeping an accurate up-to-date record of their use by means of continuity control sheets.

(3) Where the accountable documents are in electronic form, the accounting officer shall ensure appropriate mechanism are put in place for safeguarding and tracking them.

Preservation of accountable documents, books and records.

118. (1) Accounting Officers shall, subject to the provisions of the relevant national legislation, retain certain documents, of whatever kind, which shall be preserved in the following circumstances—

- (a) where they may be of value to the national archives;
- (b) if they are the subject of unfinished audit enquiries; or
- (c) if they are likely to be needed for pension purposes (including salary records).

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(2) After the expiry of the retention periods under paragraph (3) of this regulation, the information may, if required, be secured in an alternative form that ensures the integrity and reliability of the data and ensures that the information can be reproduced, where necessary.

(3) Subject to the overriding consideration under paragraph (1) of this regulation, certain classes of documents and records are to be preserved for a stipulated minimum period of time as detailed in the table below:

<i>S/No Type of document</i>	<i>Preservation period</i>
1. Principal ledger	10 years
2. Cash books	10 years
3. Journals	3 years
4. Payment vouchers	5 years
5. Paid cheques or electronic payments	3 years
6. Completed indent warrants	12 months after the end of the financial year to which they relate.
7. Completed order forms	12 months after the end of the financial year to which they relate.
8. Duplicate receipts	12 months after the end of the financial year to which they relate.
9. Duplicate payment vouchers	12 months after the end of the financial year to which they relate.
10. Receipt books:	
(a) Fully used Obsolete, partly used	6 months after date of completion but must be inspected by the Auditor-General and the disposal noted in the main counterfoils receipts, book registers.

EXPENDITURE IN RELATION TO HUMAN RESOURCES

Expenditure in relation to human resources.

119. (1) Personnel management activities relating to gazettement of appointments, the authorization of payments and the recording of those payments may not be performed by the same officer.

(2) The budgetary allocation for personnel costs shall be determined on the basis of a detailed costing of a human capital plan of a county government entity as approved by the responsible county department for public service management matters, the County Public Service Board and County Treasury.

(3) The Accounting Officer of a county government entity shall ensure that the personnel cost of all appointees, as well as promotion and salary increases, can be met within the budgetary allocation voted for the county government entity.

(4) The responsible county government department for public service management matters, the County Public Service Board, shall only approve establishment of new public service positions after getting confirmation of availability of budgetary provisions from the County Treasury.

(5) For purposes of ensuring a sustainable wage bill, where the County Executive Committee Member intends to approve any changes under this regulation, he or she may consult the Salaries and Remuneration Commission.

(6) No change relating to the above matters shall be introduced into the expenditure estimates of the respective county government entity without the requisite authority.

Payroll certification by accounting officer.

120. (1) Personnel costs shall be classified based on the Government Finance Statistics Manual and the standard chart of accounts used in capturing government expenditure.

(2) Each employee shall be linked to a program in the budget of a county government entity's Vote.

(3) At least once every month, the accounting officer shall certify the correctness of the payroll.

Deduction codes to be assigned to all payroll deductions.

121. (1) The County Treasury shall set requirements for issuing payroll deduction codes for all discretionary and non-discretionary deductions.

(2) The Accounting Officer shall specify the purpose for which the code is applied for.

(3) The County Treasury may levy a fee on the discretionary deductions which shall be paid by the receiving institution.

Remuneration of members of committees and commissions of inquiry.

122. (1) Remunerative benefits and other allowances for members and the staff of the secretariat of special committees and commissions of inquiry shall be determined by the county government entity responsible for matters relating to public service management in consultation with the County Public Service Board and the County Executive Committee Member taking into account any recommendations by the Salaries and Remuneration Commission.

(2) The remuneration of all members of a commission or committee shall be disclosed as foot notes to the financial statements of the county government entity by the accounting officer.

Services rendered by members during private time.

123. Where the chairperson requests a non-official member of a commission or committee to render services in his or her private time, other than the normal preparations for meetings, the person may be paid an allowance as determined by the relevant Accounting Officer.

Compensation and ex-gratia payment.

124. No offer of compensation in settlement of any claim against the county government or *ex-gratia* payment may be made without prior authority of the County Treasury, except where powers are available to accounting officer to settle such claims.

BENEFITS AND ALLOWANCES OF PUBLIC OFFICERS

Authority for loans and advances.

125. (1) The accounting officer may only authorize salary advances for public officers under him or her to be paid if there exists a budgetary provision in his or her Vote.

(2) No staff loan or advance which is properly chargeable to a head of expenditure shall be debited to a salary advance expenditure item.

Benefits and allowances for Public Officers.

126. (1) The County Executive Committee Member may by way of a gazette establish a mechanism for public officers to access loans including car loans, mortgage, housing loans and bicycle loans which shall be within the guidelines issued by the Cabinet Secretary.

(2) Despite the provisions of paragraph (1) of this regulation, the county executive committee member may issue guidelines on benefits and allowances for county public officers by way of a notice in Kenya *Gazette* within the guidelines issued by the Cabinet Secretary.

LEASE FINANCING AND JOINT COUNTY INFRASTRUCTURE INVESTMENTS

Lease financing transactions by accounting officers of county governments.

127. (1) For the purpose of this regulation, a lease is regarded as a contract that gives the lessee (the renter) the right to the use of property, plant or equipment for a fixed period of time with a fixed schedule of payments to the lessor (the owner).

(2) The accounting officer of a county government entity may, for the purpose of conducting the entity's business, enter into finance lease transactions.

(3) The accounting officer of a county government entity may under no circumstances enter into finance leases (non-operating lease) without the approval of the relevant County Treasury.

(4) For the purpose of paragraph (3) of this regulation, a lease is considered to be a finance lease if—

- (a) the lease transfers ownership of the asset to the government entity by the end of the lease period;
- (b) the government entity has the option to purchase the asset at a price which is expected to be sufficiently lower than the fair value at the date the option becomes exercisable, so that at the inception of the lease it is reasonably certain that the option will be exercised;
- (c) the lease term is for the economic life of the asset even if the title is not transferred;
- (d) at the inception of the lease, the present value of the minimum lease payments amount to at least 90% of the fair value of the leased asset;
- (e) the leased asset is of a specialized nature such that only the government entity can use the asset without major modifications being made;
- (f) the lessor's losses associated with cancellation of the lease by the lessee is borne by the lessee; and
- (g) the leased asset cannot be easily replaced by another asset.

(5) The County Treasury shall monitor all finance lease transactions and report associated obligations.

Joint Infrastructure Investments.

128. (1) For purposes of this regulation, "joint infrastructure investment" means any capital project(s) initiated and undertaken as a joint venture between two or more county governments which involve development expenditures for the project(s) where—

- (a) the nature and costs of the project(s) is beyond the means of one county government;
- (b) the project traverses more than one county government territory; or
- (c) the project benefits can be enjoyed by more than one county government.

(2) A joint infrastructure investment shall be solemnized through an intergovernmental agreement which shall be filed with the office of the Attorney-General and the Department of Justice and shall specify—

- (a) the county governments involved;
- (b) the management and administrative structure of the joint investment project;
- (c) the description of the joint investment project and its objectives;

- (d) the description of the joint investment project and its objectives;
- (e) the responsibilities and obligations of each county government involved;
- (f) the joint investment project implementation modalities including procurement procedures and administrator of the project;
- (g) the joint investment project financing options;
- (h) the dispute resolution mechanisms between the county governments involved and the arbitrator in case of any dispute;
- (i) the reporting mechanism including the regularity of the reports by the management to all county governments involved; and
- (j) the apportionment of sharing of the benefits and maintenance costs, if any, between the county governments involved.

PART XI – MONITORING AND REPORTING

Responsibility for monitoring, evaluation and reporting.

129. (1) The County Executive Committee Member responsibly for matters relating to planning shall prescribe a framework for monitoring and reporting on non-financial performance for use by accounting officers in evaluation of programmes and projects by measuring—

- (a) financial indicators which shall capture expenditures on the implementation of programmes and projects;
- (b) outputs indicators which shall measure what is directly supplied through the implementation of the programmes and projects; and
- (c) outcome or results indicators of the programme or projects which capture the expected effects on intended beneficiaries of the programme or project.

(2) The County Executive Committee Member responsible for matters relating to planning, shall also set up a system that shall facilitate efficient and effective data collection, storage and exchange to monitor and report on non-financial performance of the county government entity's individual programmes and projects.

(3) An Accounting Officer shall put in place efficient and effective systems to monitor and report on non-financial performance for his or her county government entity's individual programmes and projects based on the prescribed format under paragraphs (1) and (2) of this regulation and submit a report to the County Executive Committee Member responsible for planning with a copy to the Auditor-General.

(4) The County Executive Committee Member responsible for planning shall consolidate all the reports received under paragraph (2) of this regulation, and submit a report to the County Executive Committee Member for the County Treasury and publish and publicize it within seven (7) days after submitting it to the County Executive Committee Member.

Footnotes to appropriation accounts.

130. (1) An Accounting Officer shall provide footnotes to the annual financial statements prepared and submitted to the Auditor-General pursuant to section 164 of the Act.

(2) The footnotes to the financial statements referred to under paragraph (1) of this regulation, shall at the minimum include—

- (a) the details of Appropriation-in-Aid;
- (b) excess Appropriation-in-Aid, if any;

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- (c) reasons for material differences between approved estimates and actual expenditure, or actual collection of Appropriation-in-Aid;
- (d) losses and write offs;
- (e) nugatory and similar payments, compensation and *ex-gratia* payments;
- (f) arrears of Appropriation-in-Aid and Appropriation-in-Aid abandoned; and
- (g) advances appropriately analyzed including imprests.

(3) Where, in respect of any footnotes referred to, in this regulation, there is nil return that particular footnote shall be omitted entirely.

Special county public funds and County corporations additional reporting responsibilities.

131. An accounting officer of a county government entity shall disclose in the annual financial and non-financial report a list of special funds or county corporations controlled by that county government entity.

PART XII – ASSET MANAGEMENT

Responsibility for assets management.

132. (1) The Accounting Officer of a county government entity shall take full responsibility and ensure that proper control systems exist for assets and that—

- (a) preventative mechanisms are in place to eliminate theft, security threats, losses, wastage and misuse;
- (b) movement and conditions of assets can be tracked; and
- (c) stock levels are at an optimum and economical level.

(2) The Accounting Officer shall ensure that processes and procedures both electronic and manual are in place for the effective, efficient, economical and transparent use of the county government entity's assets.

(3) The County Treasury shall provide guidelines on county government assets management after seeking the views of the Cabinet Secretary which shall be given in fourteen (14) days.

Responsibility for county government entity inventory.

133. (1) Accounting Officer shall be responsible for the proper custody, care and use of government inventories under their control including imported goods in vessels awaiting discharge and in customs warehouses awaiting clearance.

(2) Despite paragraph (1) of this regulation, an Accounting Officer shall be responsible for the general management of government inventories held within that county government entity.

(3) Accountability shall only be discharged when government inventories have been—

- (a) consumed in the course of public business and records are available to show that the government inventories have been consumed; or
- (b) worn out in the normal course of public business and removed from the stores records and has been approved by accounting officer or they have been disposed of in accordance with the Public Procurement and Disposals Act, 2005; or
- (c) lost, stolen, destroyed, damaged or rendered unserviceable other than by fair wear and tear, and if removed from the store's records and has been approved in line with section 150 of the Act.

(4) If accounting officer is satisfied that the retention of any government inventories is no longer in the public interest, the accounting officer may authorize disposal in accordance with the Public Procurement and Disposals Act and its Regulations.

(5) Removal from the store's records under paragraph (3) shall be reported to County Treasury by the accounting officer.

(6) Where an Accounting Officer has reason to believe that any person—

- (a) has received county government inventory and has not duly handed it over; or
- (b) has received county government inventory for which the person is accountable but has not duly accounted for it; or
- (c) has in hand county government inventory which has not duly been applied to the purpose for which they were collected,

the Accounting Officer shall serve a notice on the public officer requesting that within a time specified in the notice, the person shall pay for, account for, or apply the inventory and submit to the Accounting Officer satisfactory evidence that this has been done.

(7) The Accounting Officer of a county government entity shall in consultation with a technical department review, at least annually when finalizing the budget, all fees, charges, rates, tariffs or scales of fees or other charges relating to the letting of state property to ensure sound financial planning and management.

Accounting Officers' responsibilities upon transfer of assets and liabilities.

134. (1) When assets or liabilities of a government entity are transferred to another government entity or other institution in terms of legislation or following a re-organization of government functions, the Accounting Officer for the transferring county government entity shall be required to—

- (a) identify an inventory of such assets and liabilities; and
- (b) provide the Accounting Officer for the receiving government entity or other institution with necessary records, including human resource records of staff to be transferred.

(2) Both the Accounting Officer for the transferring county government entity and the Accounting Officer for the receiving county government entity or other institution shall sign the inventory when the transfer takes place.

(3) The Accounting Officer for the transferring county government entity shall file a copy of the signed inventory with the County Treasury and the Auditor-General within two weeks of the transfer.

Assets accruing to the county government by operation of law.

135. Where any money, property or right accrues to the County government by operation of law, the County Treasury, may exercise all powers, authority and prerogatives, and fulfil any obligation on behalf of county government.

Register of assets.

136. (1) The Accounting Officer shall be responsible for maintaining a register of assets under his or her control or possession as prescribed by the relevant laws.

(2) The register of land and buildings shall record each parcel of land and each building and the terms on which it is held, with reference to the conveyance, address, area, dates of acquisition, disposal or major change in use, capital expenditure, lease hold terms, maintenance contracts and other pertinent management details.

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(3) All major items including furniture and equipment issued for a government's quarters or offices, large tools for county government works, plant, equipment, vehicles or (launches) large motor boat shall be recorded in a register.

(4) All acquisitions or assignment of immovable property shall be notified to the County Treasury.

(5) All acquisitions or assignment of land with or without buildings shall be notified to the County Treasury.

Purchase and capacity of official vehicles for certain county government officers.

137. (1) Official vehicles purchased for use by Governors, shall not exceed 2600 cc for saloon cars and 3000 cc for 4 x 4 utility vehicles.

(2) Official vehicles purchased for use by the Deputy Governors, Speakers of the County Assembly and County Executive Committee members, shall not exceed 2400 cc for saloon cars and 3000 cc for 4 x 4 utility vehicles.

(3) Official vehicles purchased for use by chief officers, clerks of county assemblies other officers on Job Group R and Chief Executives of county corporations shall not exceed 2000 cc for saloon cars and 2900 cc for 4 x 4 utility vehicles.

(4) The County Committee Member for Finance may by way of notice in the gazette specify category of offices and the category of vehicles to be used by those public officers.

(5) Any person who contravenes the provisions of this regulation commits an offence.

LOSSES AND WRITE-OFFS

Definition.

138. For purposes of this Part, the term losses is defined to include—

- (a) actual loss or destruction of, or damage (other than fair wear and tear) to, or failure to account for the disposal of public money, stamps, securities or property, movable or immovable (including any money or other property not belonging to the county government which is held or used by an officer in his official capacity either alone or jointly with any other person); or
- (b) non-collection of any moneys due or belonging to a county government, or for collection of which the county government is responsible; or
- (c) payments made or liabilities incurred without or in excess of any statutory, administrative or any other authority, including nugatory and similar payments and payments arising from incorrect certificates, and irregular or excess issues of stores, rations, etc.; or
- (d) unauthorized use of county government stores, vehicles, buildings, equipment or any other property, or of service (e.g. repair workshops) provided for official purposes; or
- (e) compensation and similar payments (including third party claims in respect of vehicle accidents) legal and court costs and any other additional expenditure or liability which was avoidable and need not have been incurred.

Accounting officers responsibility for a county government entity.

139. When a loss as defined in this regulation is discovered, the Accounting Officer shall investigate the circumstances of the loss—

- (a) to ascertain the extent and amount of the loss;

- (b) to determine whether control or operational arrangements need to be improved in order to prevent the occurrence of similar losses in the county government entity; or
- (c) to determine whether any offence or other fault of a public officer has been revealed by the loss.

Disclosure of offences.

140. The investigation of a loss does not constitute a disciplinary enquiry and if the investigation reveals that an offence has been committed, it shall be dealt with in accordance with the relevant laws pertaining to that offence, as appropriate, and the relevant disciplinary measures.

Procedure for handling losses.

141. (1) A loss may be revealed by defalcation or loss due to any cause, and thereafter investigation proceedings shall be commenced immediately and a report made to the Accounting Officer and where necessary, to the police.

(2) The report referred to under paragraph (1) of this regulation, shall give details of the amount involved and any other information available including a brief account of actions to prevent further loss, and effect recovery.

(3) On receipt of the report, the accounting officer shall give instructions regarding accounting entries, if any, to be made and any other action which appears to him or her to be necessary.

(4) Where a liability has been established for a third party, payment shall be made, provided that there is no reason to suspect that the third party had any responsibility for the loss and the payment shall not await the results of the investigations of the loss.

(5) If the loss falls within the accounting officers powers under section 150(1) of the Act, he or she shall authorize the write off of the loss up to an amount not exceeding hundred thousand (KSh. 100,000) shillings in any one incidence and submit a report to the County Treasury and the Auditor-General.

(6) If the loss falls within the County Executive Committee Member's powers under section 150 (2) of the Act, the accounting officer shall seek the approval of the County Executive Committee Member to authorize him or her to write off the loss of an amount exceeding the one hundred thousand (KSh. 100,000) shilling but not exceeding one percent of the county governments' entity's approved estimates excluding the County Revenue Fund Services in any one incidence.

(7) The approval of the County Executive Committee Member shall be communicated to the accounting officer in writing with a copy to the Auditor-General.

(8) Any loss exceeding the threshold set for the County Executive Committee Member for finance shall fall within the County Executive Committee powers under section 150 (3) of the Act, the Accounting Officer shall—

- (i) Seek the approval of the County Executive Committee through the County Executive Committee Member to authorize him or her to write off the loss exceeding one percent of the county government entity's approved budget in any one incidence;
- (ii) The approval of the County Executive Committee shall be communicated to the Accounting Officer through the County Executive Committee Member in writing with a copy to the Auditor General;

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- (iii) The accounting officer shall also make a disclosure in the financial statements of that county government entity.

(9) The accounting officer shall also make a disclosure in the financial statements of that county government entity.

Categories of losses.

142. (1) For the purposes of this regulation, cash deficiency is a loss arising from a deficiency of cash or other negotiable instrument, whether it arises from a simple cash shortage or from the use of fictitious entries or vouchers to conceal the existence of a deficiency.

(2) Revenue losses may arise from—

- (a) uncollectable revenue when debts due to county government cannot be collected by reason that the debtor cannot be traced or is insolvent; and
- (b) loss of revenue, arising from failure to assess or collect in circumstances which preclude subsequent assessment or collection, and include any loss of interest caused by delay in making payments into the appropriate public funds or from the making of irregular advances.

(3) Expenditure losses may arise from—

- (a) irrecoverable overpayments, when an excess payment has been made by error and recovery cannot be effected because the recipient cannot be traced or is otherwise incapable of making repayment; or
- (b) nugatory payments, which arise in circumstances such as, the incurrance of a penalty in which a county government entity has been legally obliged to make payment, but for which no corresponding receipt of goods or services has been derived; or
- (c) fraudulent payments which arise from transactions which involve a breach of the criminal code, by the use of falsified documents or certificates to steal money or other property belonging to a county government and it is not recoverable.

(4) Inventory and equipment losses may arise from—

- (a) deficiencies, including fraudulent issues of stores from stock and issues of stores without proper evidence of use; or
- (b) damage or deterioration of goods in stock; or
- (c) loss by accident in so far as they relate to equipment and inventories in use.

(5) Financial losses may arise from—

- (a) irrecoverable advances and loans when money due to a county government entity cannot be recovered by reason of a debtors default and include default on county government guarantees; or
- (b) irregular advances and loans when money cannot be recovered because a county government entity cannot establish a claim against any person or institution, as in the case of expenditure wrongly charged to advances, or advances and loans made without agreement for recovery;
- (c) reduction of financial asset where the value of any financial asset has to be reduced by reason of failure or capital restructuring of an enterprise; or
- (d) losses on sale of securities where the losses are aggregated with gains over the financial year, and any net loss is written off at the end of the year.

(6) Miscellaneous losses may arise from—

- (a) loss of fixed fee receipts; or
- (b) the loss of safe keys of any county government safe or the compromise of any combination lock; or
- (c) the cost of altering locks and providing new keys or combinations;
- (d) the value of any missing items from the safe; or
- (e) irrecoverable claims dealt with as laid down in these Regulations.

Investigation of every case of loss.

143. (1) The accounting officer of a county government entity shall cause an investigation to be conducted into every reported case of loss, and where the accounting officer of that entity is implicated in the loss, the County Executive Committee Member shall be the appropriate authority to cause investigation to be conducted.

(2) In the case where the investigation report implicates the accounting officer, the County Executive Committee Member shall revoke the designation and also report the matter to the relevant authority.

Defective systems.

144. If the report of the investigating authority indicates that systems currently in operation, including those for the training of staff are defective, the accounting officer of the county government entity shall consult with the County treasury to consider measures for rectification.

Financial liability of officers.

145. (1) Recovery of the value of a loss, whether by recovery proceedings under these Regulations, shall constitute a settlement of a civil claim against the officer arising from the loss.

(2) Recovery of a loss shall not be a substitute for criminal prosecution or disciplinary proceedings.

Annual statement of losses.

146. The Accounting officer shall maintain a register of all losses incurred by his or her county government entity and attach a list of all losses incurred during that year to the financial statements submitted to the Auditor-General for audit with a copy to the County Treasury.

Clarifications on classification of losses.

147. Where any doubt arises on the correct classification of a loss or the accounting procedure required the directions of the County Treasury shall be sought.

Claims on damaged or incomplete goods.

148. Where goods are received damaged or incomplete and such goods are subject to a claim on suppliers, insurers or carriers, they shall not constitute a loss until the claims prove irrecoverable.

Investigation of losses.

149. (1) The fact that losses arise from uncollectable revenue, irrecoverable overpayments, or irrecoverable claims at the time of disposal does not preclude the prior investigation of circumstances of the losses.

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(2) Applications for write-off shall be accompanied by an investigation report indicating whether remedial accounting or other action is necessary.

Writing off of losses.

150. (1) An Accounting Officer may only write off losses owed to the State if he or she is satisfied that—

- (a) all reasonable steps have been taken to recover the loss and the loss is irrecoverable; or
- (b) he or she is convinced that—
 - (i) recovery of the losses would be uneconomical; and
 - (ii) it would be to the advantage of the county government entity to effect a settlement of its claim or to waive the claim.

(2) An Accounting officer shall ensure that all losses written Off are done in accordance with this Act, these Regulations or any other relevant legislation.

Interest payable on recoverable losses.

151. Interest may be charged on recoverable losses arising from cases of losses reported to the county government at the Central Bank Rate.

Right of the Auditor-General.

152. The authorization of disposal of a case of loss does not prejudice the right of the Auditor-General to carry out further investigation.

PART XIII – INTERNAL AUDIT AND AUDIT COMMITTEES

Mandate of internal auditors.

153. Internal auditors shall—

- (a) review and evaluate budgetary performance, financial management, transparency and accountability mechanisms and processes in county government entities, including County Assembly;
- (b) have a duty to give reasonable assurance through the audit committee on the state of risk management, control and governance within the organization; and
- (c) review the effectiveness of the financial and non-financial performance management systems of the entities.

Compliance with professional standards and code of ethics.

154. Internal auditors shall comply with the International Professional Practices Framework as issued by the Institute of Internal Auditors from time to time and shall conduct audits in accordance with policies and guidelines issued by the Public Sector Accounting Standards Board to ensure uniformity and consistency across county government.

Independence of the internal auditor.

155. (1) The Head of Internal Audit unit in a county government entity shall enjoy operational independence through the reporting structure by reporting administratively to the Accounting Officer and functionally to the Audit Committee.

(2) An Accounting Officer shall ensure that the organizational structure of the internal audit unit facilitate—

- (a) the entity to accomplish its internal audit responsibilities;

- (b) internal auditor with sufficient authority to promote independence and to ensure broad internal audit coverage, adequate consideration of audit reports;
- (c) appropriate action to be taken on internal audit recommendations; and
- (d) the internal auditor to be independent of the programs, operations and activities he or she audits to ensure the impartiality and credibility of the audit work undertaken.

(3) The internal auditor shall have unrestricted, direct and prompt access to all records, officials or Personnel holding any contractual status and to all the premises and properties of the entity.

(4) The internal auditor shall respect the confidential nature of information and shall use such information with discretion and only in so far as it is relevant to reach an audit opinion.

(5) All internal audit activities shall remain free of influence by any element in the organization, including matters of audit selection, scope, procedures, frequency, timing, or report content to permit maintenance of an independent and objective mental attitude necessary in rendering reports.

(6) Internal Auditors shall have no direct operational responsibility or authority over any of the activities they review. Accordingly, they shall not develop nor install systems or procedures, prepare records, or engage in any other activity which would normally be audited.

THE COUNTY HEAD OF INTERNAL AUDIT SERVICES OF THE COUNTY TREASURY

Independence of County Head of Internal Audit services.

156. The County Head of Internal Audit Services shall be an office in the County Treasury.

Functions of County Head of Internal Audit services.

157. The County Head of Internal Audit Services, in leading the internal audit function within the County Treasury, is responsible for operational aspects of internal audit function within the county government entities including—

- (a) advising the County Executive Committee Member and the Chief Officer on emerging issues in internal auditing;
- (b) developing and implementing the use of innovative approaches in performing independent assessment of systems, controls and efficiencies guided by professional standards;
- (c) promoting county government-wide risk management and provide the management with consulting services to improve the overall county government operations;
- (d) providing capacity building for county government entities including developing curriculum, training materials and undertake training for audit committees; and
- (e) reporting annually to the County Treasury on the internal audit function performance.

The role of Accounting Officer in risk management.

158. The Accounting Officer shall ensure that—

- (a) the county government entity develops risk management strategies, which include fraud prevention mechanism; and
- (b) the county government entity develops a system of risk management and internal control that builds robust business operations.

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Performance appraisal.

159. (1) Each year the head of internal audit unit shall assess its own effectiveness through an internal performance appraisal and shall carry out annual review of the performance of the internal audit activity commenting on its effectiveness in the annual report to County Treasury.

(2) Each year the Audit Committee shall carry out annual review of the independence, performance and competency of the internal audit unit and comment on their effectiveness in the annual report.

(3) At least once every three years, but not more than five years, internal audit unit shall undergo a professional assessment of its effectiveness undertaken by a professionally recognized body or institution.

Reporting material breaches and persistent material breaches.

160. (1) When indications of fraud, material breaches and wasteful expenditure have been identified in a county government entity in accordance with section 92 of the Act, the head of the internal audit unit shall immediately notify the County Executive Committee Member.

(2) The County Executive Committee Member may notify the Cabinet Secretary of the findings of paragraph (1) in this regulation with a copy to the Auditor-General.

Prohibition from conducting assurance services.

161. An internal auditor shall not perform audit assignments for providing assurance relating to activities and structures on which he or she has provided consulting services or in which he or she had been employed over in the last twenty four months.

Disciplinary liability on internal auditors.

162. Heads of internal audit and the internal auditors shall bear legal and disciplinary liability for failure to discharge their responsibilities under the Act and these Regulations:

Provided that assurance procedures alone even when performed with due professional care shall not be a guarantee that all significant risk shall be identified.

INTERNAL AUDIT PLANNING, PERFORMANCE AND REPORTING

Risk based audit assessment strategic plan.

163. (1) Internal audit planning shall be carried out on the basis of risk assessment and shall be set out in a three-year strategic plan, on the basis of which an annual internal audit activity plan shall be developed.

(2) The annual work plan developed in paragraph (1) shall be—

- (a) submitted to the audit committee by 15th February each financial year; and
- (b) approved by the audit committee and shared with the Accounting Officer of that entity, in sufficient time for inclusion in the budget of that entity.

Communicating results.

164. (1) The findings and recommendations arising from each internal audit assignment shall be promptly reported to the accounting officer.

(2) The final report, including the actions taken by the accounting officer should be reported to the audit committee in a format to be gazetted by the Cabinet Secretary.

(3) When updating the management of the progress of an audit assignment, the internal auditor shall—

- (a) give an oral preliminary report which shall be confirmed in writing within seven (7) days;
- (b) discuss the findings, conclusions and recommendations with the auditee;
- (c) issue a signed written report after each internal audit assignment that is objective, clear, concise and timely;
- (d) give reports which clearly present the purpose, scope and results of the audit; and
- (e) give reports with recommendations for potential improvement, suggestions of corrective actions and acknowledgement of satisfactory performance.

IMPLEMENTATION OF AUDIT RECOMMENDATIONS

Enforcement of Internal Audit recommendations.

165. (1) The accounting officer of the concerned entity shall be responsible for the implementation of the recommendations made in the audit reports and shall develop response and action plan which they shall submit to the chairperson of the audit committee within fourteen days.

(2) The response and action plan submitted to chairperson of internal audit committee in paragraph (1) of this regulation shall be followed up to ensure its implementation.

Preparation and submission of quarterly and annual audit reports.

166. (1) Each head of internal audit unit shall prepare a quarterly internal audit report which shall cover areas provided for in guidelines and shall be in a format issued by the Cabinet Secretary.

(2) The quarterly report in paragraph (1) of this regulation shall be submitted within 14 days of the end of the quarter to the Accounting Officer of the concerned entity, the Audit Committee and the County Treasury.

(3) At the end of each financial year, the County Head of Internal Audit Services shall prepare for the county government clear and comprehensible annual report that consolidates the quarterly audit assurance reports prepared by all internal audit units activities in county government entities, in accordance with formats prescribed by the Public Sector Accounting Standards Board.

AUDIT COMMITTEES

Establishment of audit committees.

167. (1) Subject to paragraph (2) of this regulation, each county government entity shall have an audit committee.

(2) The County Treasury, where deemed necessary, may approve the sharing of one audit committee by two or more county government entities.

(3) In the case of a shared audit committee referred to in paragraph (2) of this regulation, the appointing authorities of the concerned entities shall jointly appoint the chairperson and members of the joint audit committee in consultation with the County Treasury.

(4) There shall be a minimum of three members, excluding a person who shall be appointed to represent the County Treasury in each audit committee and a maximum of five of whom at least two shall be from recognized professional bodies.

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(5) The chairperson of an audit committee shall be independent to the County government entities, be knowledgeable of the organization, have the requisite business and leadership skills and shall not be a political office holder.

(6) In addition to paragraph (5) of this regulation, majority of members appointed to the audit committee shall not be past or present employees of the entity, and shall not have served as an employee or agent of a business organization which has carried out any business with the concerned entity in the last two years.

(7) All members of an audit committee shall—

- (a) hold a first degree in relevant field from a recognized university;
- (b) have a good understanding of county government operating, financial reporting or auditing; and
- (c) have a good understanding of the objects, principles and functions of the entity to which they are to be appointed.

(8) Each accounting officer of a county government entity shall ensure that, the audit committee is adequately funded and supported.

(9) The chairperson of an audit committee shall not serve concurrently as a member of any other committee of the concerned county government entity, however its members can serve in up to a maximum of three audit committees at the same time.

(10) The Public Sector Accounting Standards Board shall prescribe guidelines for appointment of audit committees to be approved and gazetted by the Cabinet Secretary.

[L.N. 230/2015, r. 7.]

Duties of the audit committees.

168. The main function of the audit committee shall be to—

- (a) support the accounting officers with regard to their responsibilities for issues of risk, control and governance and associated assurance:

Provided that the responsibility over the management of risk, control and governance processes remains with the management of the concerned county government entity; and
- (b) follow up on the implementation of the recommendations of internal and external auditors.

Composition of audit committees.

169. (1) The Accounting Officer of a county government entity shall not be a member of the audit committee, but shall attend meetings of the audit committee by the invitation of the chairperson of the committee.

(2) Audit Committee members shall be persons of integrity and in compliance with the requirements of Chapter six of the Constitution.

Terms of appointment.

170. (1) Members of audit committees shall be appointed, for a term of three years and shall be eligible for re-appointment for a further one term only.

(2) Despite the provision of paragraph (1) of this regulation, after expiry of every term, at least one third of the committee shall retire and not be eligible for re-appointment.

(3) The roles and responsibilities of the audit committee shall be laid out in the guidelines issued by the Public Sector Accounting Standards Board.

Vacancy of office.

171. (1) A person shall cease to be a member of an audit committee if—

- (a) that person is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months; or
- (b) that person is absent from three consecutive regular meetings of the committee without leave of absence; or
- (c) that person resigns, in writing, from the audit committee; or
- (d) that persons' term of office expires; or
- (e) that person ceases to be a member by virtue of withdrawal of his or her nomination to the board by the nominating institution; or
- (f) that person becomes an employee or officer of the concerned entity; or
- (g) that person is discovered to have a conflict of interest as described in his or her letter of appointment at the time of his or her appointment and failed to disclose it; or
- (h) the audit committee is disbanded.

(2) The County Treasury shall be informed of any contemplated termination of the services of a person serving on an audit committee for its concurrence.

FUNCTIONS AND RESPONSIBILITIES OF THE AUDIT COMMITTEE

Meetings of the audit committee.

172. (1) The audit committee shall meet at least once in every three months.

(2) Each member of the audit committee shall have one vote.

(3) The audit committee shall make decisions by resolution

(4) In the event of a tie vote, the chair shall be entitled to cast a second vote.

(5) A majority of the members of the audit committee that includes at least fifty percent plus one member shall constitute a quorum for the meetings of the committee.

(6) The chair of the audit committee shall—

- (a) ensure that minutes are taken at each meeting and provided to the members of the Committee before the next meeting;
- (b) have access to management, the head of internal audit and external auditors; and
- (c) send or cause to be sent—
 - (i) notice of audit committee meetings at least fourteen days before the meeting; and
 - (ii) all minutes of audit committee meetings.

(7) If at any meeting of the audit committee the chair is not present, the members shall elect a chair for purposes of conducting that meeting.

Code of conduct.

173. Any code of conduct of public officers shall also apply to members of the audit committee in relations to their functions, powers and duties as members of the committee.

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Remuneration and compensation.

174. (1) Members of the audit committee shall be paid an allowance on account of attendance of audit committee meetings as determined by County Treasury in consultation with other relevant entities.

(2) A county government entity shall reimburse members of its audit committee for expenses incurred while attending to audit committee duties.

Capacity building for audit committees.

175. The accounting officer shall—

- (a) provide capacity building to all public county government entity audit committees;
- (b) provide policies and guidelines on audit committees;
- (c) monitor the effectiveness of audit committees; and
- (d) provide periodic updates of audit committee activities through the website.

PART XIV – PUBLIC DEBT MANAGEMENT

Guiding principles for county government borrowing.

176. County government borrowing shall be guided by the following principles—

- (a) need to ensure stability of domestic financial markets;
- (b) promotion of inter-generational equity in the sharing of burdens and benefits of public borrowing;
- (c) determination of thresholds of borrowing rights for both levels of government;
- (d) use of objective criteria for evaluating county government eligibility for national government debt guarantee; and
- (e) prudence and equity in setting limits for debt stock levels for each county government.

Borrowing powers for county governments.

177. (1) The County Executive Committee Member derives powers to raise loans for the County Government from section 140 of the Act.

(2) A county government may from time to time borrow within and outside Kenya such sums of money in such amount and on such terms and conditions as to interest, repayment, disbursement or otherwise as the County Executive Committee Member may think fit, in any of the following manners—

- (a) by issuing County Treasury bonds;
- (b) by bank overdraft facility from the Central Bank of Kenya; and
- (c) by any other loan or credit evidenced by instruments in writing.

(3) Any borrowing by a county government under paragraph (2) (a) and (c) of this regulation shall require a national government guarantee pursuant to section 58 of the Act.

(4) Any borrowing under paragraph (2) (b) of this regulation, shall be in accordance with section 142 of the Act and shall be deemed guaranteed by the Cabinet Secretary and that guarantee shall be secured by the county equitable share of the revenue raised nationally.

Borrowing Purposes.

178. The county governments may borrow in pursuant to the requirements of sections 140 of the Act for the purpose of—

- (a) financing county government budget deficits; or
- (b) cash management; or
- (c) refinancing outstanding debt or repaying a loan prior to its date of repayment; or
- (d) mitigation against adverse effects caused by an urgent and unforeseen event in cases where the Emergency Fund has been depleted; or
- (e) meeting any other development policy objectives that the County Executive Committee Member shall deem necessary, consistent with the law, and as County Assembly may approve.

County total public debt threshold.

179. (1) Pursuant to section 50(5) of the Act, a county public debt shall not exceed twenty percent (20%) of the county government's most recent audited revenues, as approved by county assembly.

(2) The annual debt service cost of a county government shall not exceed fifteen (15%) percent of the most recent audited revenue of that county government, as approved by county assembly.

(3) Parliament may review the limit under paragraph (1) of this regulation five years after the commencement date of these Regulations.

Setting Debt Limit in the County Medium Term Debt Management Strategy.

180. (1) Pursuant to Section 141 (2) of the Act, 2012, the debt limit at any given time shall not exceed the nominal value of the total county public debt that is determined county assembly within the limits set under Section 50(5) of the Act and in accordance with fiscal responsibility principles under regulation 25 of these Regulations.

(2) The debt limit under paragraph (1) of this regulation shall be specified annually in the county fiscal strategy paper and the medium term debt management strategy paper.

(3) The annual new government debt shall be consistent with the debt limits set out under paragraph (1) of this regulation.

(4) For the purposes of monitoring compliance with the limits under paragraph (1), the amount of county government debts which are not denominated in Kenya shillings shall be recalculated at the prevailing exchange rate of the Central Bank of Kenya.

Eligibility and evaluation criteria for guarantee requests by county government.

181. (1) Pursuant to the provisions of section 58 of the Act, the capital project expenditures of county governments for which a guarantee for issuance of domestic government security is requested, shall meet the following requirements—

- (a) the county government shall demonstrate that the project could not be financed on reasonable terms and conditions without a county government loan;
- (b) an economic analysis is made demonstrating the projects cash flow clearly setting out a borrowing and repayment plan;
- (c) it is a feasible project that has been approved by the county 'government entity as may be required by county legislation;

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- (d) the county government meets all the fiscal responsibility principles set out in the Act and these Regulations;
- (e) the borrowing shall be for financing a devolved function capital project; and
- (f) any other requirements as the Cabinet Secretary may prescribe in the gazette.

(2) Pursuant to the provisions of section 58 of the Act, the capital project expenditures of county governments for which a guarantee is requested, shall meet the following requirements—

- (a) the county government shall demonstrate that the project could not be financed on reasonable terms and conditions without a government loan;
- (b) provide the projected cash flow clearly setting out a projected disbursement Schedule and repayment plan;
- (c) the county government shall contribute a substantial portion of project funds from their own resources and in any case not less than fifteen (15) percent;
- (d) a county government that defaults on a loan shall not be eligible for a loan guarantee and shall only be eligible upon successful completion a financial recovery programme agreed by the County Treasury and National Treasury;
- (e) it is a feasible project that has been approved by the county government entity as may be required by national or county legislation;
- (f) the application of the guarantee shall be submitted with a signed loan agreement but only for loans on concessional terms in the case of external loans;
- (g) any county government applying for a national government guarantee shall meet all the fiscal responsibility principles set out in the Act and these Regulations unless exempted under certain conditions by the Cabinet Secretary;
- (h) the borrowing shall be financing a devolved function capital project in line with the Fourth Schedule of the Constitution;
- (i) the lender is of good credibility and standing with the Government of Kenya;
- (j) the guarantee is in the public interest; and
- (k) any other guidelines as Cabinet Secretary may prescribe in the gazette.

Criteria for issuance of county government securities.

182. (1) The issuance of county government securities to raise debt capital shall be by way of auction or such other method as County Executive Committee Member may determine with the concurrence of the Cabinet Secretary.

(2) Despite the provisions of paragraph (1) of this regulation, the auction of domestic county government securities shall take into account the following factors—

- (a) pricing of the domestic county government securities;
- (b) refinancing risk of the domestic county government securities;
- (c) the domestic market stability when taking up domestic county government securities; and
- (d) the borrowing programme which is consistent with the county medium term debt strategy and county fiscal strategy paper.

Process of issuance of Treasury Bonds on behalf of county governments.

183. (1) Pursuant to section 144 of the Act, a county government which intends to issue a Treasury Bond shall be guided by the following procedures—

- (a) before seeking the national government guarantee, the County Executive Committee Member for finance shall develop and submit the cash plan, indicating the borrowing requirements to the County Executive Committee for approval of the borrowing including its terms and conditions;
 - (b) after approval by the County Executive Committee, the County Executive Committee Member shall submit the cash plan referred to above to the County Assembly for approval of the borrowing including its terms and conditions;
 - (c) upon approval by the County Assembly, the County Executive Committee Member shall submit the final cash plan and the approval of the County Assembly to the Cabinet Secretary requesting for the guarantee of the Treasury Bond and their inclusion in the issuance calendar;
 - (d) the Cabinet Secretary to the National Treasury, after receiving the request from the county government, shall seek the recommendations of the Intergovernmental Budget and Economic Council in fulfillment of the requirements of section 58(2) (i) of the Act;
 - (e) the Cabinet Secretary to the National Treasury may, upon taking into account the recommendations of the Intergovernmental Budget and Economic Council, approve or reject the request;
 - (f) the Cabinet Secretary shall reject a request for loan guarantee with reasons and communicate the same to the concerned County Executive Member;
 - (g) upon approval of a loan guarantee request, the Cabinet Secretary to the National Treasury shall submit the request to Parliament with recommendations seeking its approval;
 - (h) the Cabinet Secretary to the National Treasury shall communicate the decision of Parliament on the draft loan guarantee to the respective County Executive Committee Member for finance;
 - (i) upon approval by Parliament, the Cabinet Secretary shall include such authorized Treasury Bonds in the overall national issuance calendar;
 - (j) once the issuance calendar is known, when the national governments advertises its bond issuance for a specific month it shall also incorporate those to be issued on behalf of county governments;
 - (k) on the issuance day, the county whose bond is being issued, shall be represented in the auction committee meeting by the County Executive Committee Member or his or her representative; and
 - (l) after the National Treasury and the county government sign an on-lending agreement, the National Treasury shall transfer the proceeds of the Treasury Bond to the Revenue Fund of that county government and such on-lending transactions shall attract a fee to be determined by the National Treasury.
- (2) The cash plan prepared under paragraph (1) above shall indicate—
- (a) financing amounts from the issuance of Treasury Bond;
 - (b) the timing of the bond issuance;

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- (c) redemption and interest payment of previously issued Treasury Bonds plus the interest payment of the intended Treasury Bond; and
- (d) the county government's cash plan to be integrated into the national government borrowing program to prepare the market for issuance.

Process for applying for a national government guarantee for external borrowing.

184. (1) Pursuant to the provisions of section 58 of the Act and before a county government seeks a guarantee from the national government, the following requirements shall be met—

- (a) the County Executive Committee member for finance shall submit the borrowing proposal to the County Executive Committee for approval of the borrowing including its terms and conditions;
- (b) after approval by the County Executive Committee, the County Executive Committee member for finance shall submit the signed loan agreement and a sessional paper to the County Assembly for approval of the borrowing, including its broad terms and conditions;
- (c) after obtaining the approval of the County Assembly, the County Executive Committed member for finance shall submit the final draft loan financing agreement and the approval of the County Assembly to the Cabinet Secretary requesting for the guarantee of the final loan financing agreement;
- (d) the Cabinet Secretary, after receiving the request from the county government, shall seek the recommendations of the Intergovernmental Budget and Economic Council in fulfillment of the requirements of section 58(2)(i) of the Act;
- (e) the Cabinet Secretary to the National Treasury, after receiving recommendations of IBEC, shall seek the recommendations of the Attorney-General;
- (f) the Cabinet Secretary may, upon taking into account the recommendations of the Intergovernmental Budget and Economic Council and the Attorney-General, approve or reject the request;
- (g) the Cabinet Secretary shall reject a request for loan guarantee with reasons and communicate the same to the concerned County Executive Member for finance;
- (h) upon approval of a loan guarantee request, the Cabinet Secretary shall submit a sessional paper to Parliament with recommendations seeking its approval;
- (i) the Cabinet Secretary shall communicate the decision of Parliament on the draft loan guarantee to the respective County Executive Committee Member for finance; and
- (j) upon approval by Parliament the Cabinet Secretary shall issue a loan guarantee.

(2) After receiving the communication of the decision of Parliament on the draft loan guarantee, the County Executive Committee member shall report to the County Assembly of the decision.

Use of moneys borrowed and credits obtained.

185. All sums borrowed under the Act shall be expended only on the activities included in the approved estimates of expenditure of the county government entities.

Objectives of county public debt management.

186. The objectives of public debt management are to ensure that the county government's financing needs and payment obligations are met at the lowest possible cost over the medium to long term, with a prudent degree of risk, and to promote development of the domestic debt

market while ensuring the equitable sharing of benefits and burdens of public debt between the current and future generation.

County government medium term debt management strategy.

187. (1) Any borrowing by the county government shall be informed by the county government medium term debt management strategy and shall set out the framework for the management of county public debt.

(2) The medium term debt management strategy, which is reviewed annually, shall be prepared and executed by the County Treasury.

(3) Medium term debt management strategy shall be formulated annually on a three year rolling basis.

(4) The Strategy shall be approved by the County Executive Committee.

(5) The county medium term debt management strategy shall be prepared taking into account—

- (a) the borrowing needs of the county governments;
- (b) fiscal responsibility principles set out in section 107 of the Act and regulation 25 of these Regulations;
- (c) prevailing macro-economic conditions;
- (d) prevailing conditions of the financial markets; and
- (e) any other relevant factors.

(6) The county medium term debt management strategy shall include measures for minimising borrowing costs with a prudent degree of risks.

Annual county government borrowing programme.

188. (1) The county medium term debt management strategy shall be implemented through the annual county government borrowing programme for each fiscal year.

(2) The annual borrowing programme shall include issuance of county government securities, external guaranteed loans and disbursements for the fiscal year and show indicative dates of such issuance and disbursements.

Formalization of agreements for loans.

189. Negotiation with foreign governments and agencies for external loans shall culminate into and shall be formalized into one of the following recognized instruments in addition to the national government guarantee—

- (a) loan agreements; or
- (b) exchange of letters that constitute an agreement; or
- (c) subscription statement in regard to domestic government securities; or
- (d) national government guarantee.

Modes of payment (disbursement) of loan funds.

190. The procedure to be followed in the disbursement of loan funds shall be defined in the respective agreement and shall generally assume one or more of the following methods—

- (a) credit purchase; or
- (b) direct disbursement to the County Revenue Fund; or

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- (c) reimbursement, where the county government pays for goods and services supplied and later on claim reimbursement from the financier.

Credit purchases.

191. Where development partner have opted to give loans through credit purchase or commodity loan arrangements, for the purposes of budgeting and accounting, the following procedures shall be followed—

- (a) the amount of expenditure and matching direct payment as agreed and as applicable, shall be included in the development estimates under separate items;
- (b) accounting officer shall apply through the County Treasury for utilisation of the credit purchase facility in the prescribed manner as set-out in the loan instrument;
- (c) after supplying goods or services, the development partner shall notify County Treasury of the amount disbursed against the loan;
- (d) the County Treasury shall record the amounts disbursed as a drawing against each loan facility;
- (e) the County Treasury shall forward invoices and debit advices to the accounting officer concerned to bring the expenditure involved into account;
- (f) the accounting officer shall, on satisfying herself or himself of receipt of goods and services, record the transactions in the stores ledger card and the accounting officer shall notify the County Treasury on the receipt of goods and services; and
- (g) upon receipts of the notification under paragraph (f) of this regulation, the County Treasury shall notify the Cabinet Secretary of the receipt of goods and services.

Redemption, conversion and consolidation of loans.

192. The County Executive Committee Member may, on such terms and conditions as he or she may determine, and when necessary, with the concurrence of the lender and the Cabinet Secretary—

- (a) repay any loan prior to the redemption date of that loan; or
- (b) convert the loan into any other loan; or
- (c) consolidate two or more loans into an existing or new loan.

County government entities to provide data on debt.

193. A County Treasury shall submit to the National Treasury a report on county public debt as prescribed in these Regulations.

County annual debt reporting.

194. (1) Not later than three months after the end of each financial year, the County Executive Committee Member shall prepare and submit an annual report to the county assembly on public debt.

(2) The annual public debt report shall be in the format gazetted by the Cabinet Secretary and shall include the following information—

- (a) review of previous year's financing of budget deficit;
- (b) composition of domestic debt;
- (c) composition of external debt;
- (d) on-lent loans and contingent liabilities;

- (e) debt strategy and debt sustainability;
- (f) outlook for the medium term; and
- (g) any commitment fees and penalties paid on any undisbursed amounts of a loan.

(3) The County Treasury shall maintain an inventory of all loans made to the county government and make the record available to the county assembly within seven days of request.

(4) The following information shall be included in the inventory under paragraph 3 of this regulation—

- (a) the principal of the loan and the terms and conditions of the loan, including interest and other charges payable and terms of repayment and location of the project financed; and
- (b) the amount of the loan advanced at any particular time.

Roles and responsibilities of accounting officers in debt management operations and loan administration.

195. For the purposes of debt management operations and loan administration, the accounting officers of a county government entity shall be responsible for the following—

- (a) preparing project proposals and submitting them for approval to the County Treasury;
- (b) where authorisation has been granted for the project to start, the accounting officer shall ensure public disclosure to intended beneficiaries within thirty days of the allocation and disbursement of the loan;
- (c) after disbursement of loans, the loan recipient accounting officer shall report within fifteen days after the end of each quarter to the intended beneficiaries on the expenditures and performance achieved in relation to the loan;
- (d) during the project identification and design, the intended beneficiaries shall be involved through the public participatory approach to planning through public forums to enhance leadership, ownership, social accountability and sustainability of the project;
- (e) preparing expected disbursements profiles;
- (f) submitting loan disbursement claims for approval by the County Treasury;
- (g) making comments on draft loan agreement from the County Treasury;
- (h) participating in all consultations and negotiations of all loan agreements for projects and programmes under their jurisdiction; and
- (i) implementing, monitoring and evaluating, in close collaboration with the county government entity responsible for county planning, all projects and programmes within their jurisdiction.

Default of payment of guaranteed loan.

196. In case of default of payment of a guaranteed loan by a county government, the provisions of section 61 and 94 of the Act shall apply.

PART XV – PUBLIC FUNDS

Criteria for the establishment of a county public fund.

197. (1) The establishment of a county public Fund shall at the minimum meet the following requirements—

- (a) be initiated through a proposal by the County Executive Committee Member responsible for the county government entity under which the functions of the Fund fall, clearly setting out the justifications and submit it to the County Executive Committee Member;
- (b) the County Executive Committee Member responsible for the county government entity shall certify in writing that the functions and the public services to be delivered through the Fund cannot be delivered through the structure of budget appropriations;
- (c) provide a clear justification as to why a Fund structure is deemed appropriate for improved service delivery in light of the legislative and policy mandate of the county government entity;
- (d) the administration costs of the Fund shall be a maximum of three (3%) percent of the approved budgets of the Fund;
- (e) the County Executive Committee Member responsible for the county government entity functions shall confirm in writing that the establishment of the Fund and its continued existence will not depend on annual financing from the county exchequer;
- (f) a Fund that has a lifespan of less than two years shall not be approved unless it is for unforeseen and urgent need;
- (g) the County Executive Committee Member shall grant approval in writing before establishment of the Fund;
- (h) the County Executive Committee Member responsible for the entity shall demonstrate how the activities of the proposed County Public Fund will fit in the overall Medium Term Plan and County Fiscal Strategy Paper; and
- (i) the initial approval for establishment of a county public Fund shall be for a maximum period of ten (10) years, beyond which the County Executive Committee and County Assembly approvals shall be sought.

(2) Despite the provisions of paragraph (1) of this regulation, the County Executive Committee Member may from time to time issue further guidelines on the establishment of county public Funds.

Management and winding up of a county public fund.

198. The County Executive Committee Member shall provide for the management, operation and winding up procedure in the guidelines for establishing each Fund which shall be in accordance with the Act and these Regulations.

Winding up of a county public Fund.

199. (1) Where the lifespan of a Fund lapses, the process of winding up shall commence within six (6) months from the date of the lapse.

(2) The final report after winding up the Fund shall be submitted to the Auditor-General for audit and the County Assembly.

(3) A county public Fund may also be dissolved if the County Executive Committee Member responsible for a department operating a county public Fund considers that the county public Fund has successfully completed the specific objective for which it was created.

PART XVI – COUNTY CORPORATIONS

Definitions.

200. For the purposes of this Part—

"governing body" in relation to a public entity means a commission, a board of directors, a board of trustees, board of governors, and council.

"government owned enterprise" means an organisation which—

- (a) is a legal person under the ownership and control of a county government;
- (b) has been assigned financial and operational powers to carry on a business activity;
- (c) as its main business, supplies goods or services in accordance with ordinary commercial principles; and
- (d) is financed wholly or substantially from sources that do not require annual appropriation by County Assembly, or imposition of a tax, levy or other charge under legislation.

Declaration of County government entities and classification of state corporation.

201. (1) Pursuant to section 5 of the Act, the County Committee Member may by notice in the *Gazette* declare and classify county government entities in accordance with the Schedules as indicated in this Regulation.

(2) County Government owned enterprises operating on the basis of commercial principles shall be listed as Schedule 2 county government entities.

(3) Regulatory agencies shall be categorised as Schedule 3 county government entities.

(4) Executive agencies, and county referral health institutions, boards and commissions fully or partially funded through the county government budget shall be categorised as Schedule 4 county government entities.

(5) County Public Funds established under the county legislation or subsidiary county legislation shall be classified as Schedule 5 county government entities.

(6) The County Executive Committee Member for Finance shall have powers to amend the Schedules classified under this regulation in accordance with the provisions of the Act and this regulation.

Guiding principles for the establishment of county corporations.

202. The following principles shall apply when determining the need for the establishment of a county corporation under section 182 of the Act—

- (a) there shall be a role for a county government entity to fill a gap left by the market forces through—
 - (i) social inclusion, where the county government entity addresses social inequity by redistributing resources in ways that improve opportunity and support for individuals, families and communities, allowing them to participate in the economy and society consistent with the county government's social inclusion agenda; or
 - (ii) correction of market failure, where the county government entity's activity shall address market failures by improving social and economic welfare

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through improved resource allocation, where the benefits of county government intervention outweigh its cost;

- (b) activities promoted by the county corporation shall have clear and consistent objectives and be effective in achieving their county objectives and represent value for money for the expenditure of taxpayer funds;
- (c) a county government owned enterprise shall operate on commercial principles and with a defined commercial income stream that substantially supports the associated commercial activities;
- (d) where activities involving tax expenditures demonstrate that public expenditure is less effective in achieving the county government objective but can effectively be undertaken on a commercial basis; and
- (e) there is no overlap or duplication of functions when establishing a county corporation within the county government.

Criteria for establishing county corporations.

203. (1) In exercising the powers under section 182 of the Act, the County Executive Committee and County Assembly shall be guided by regulation 202, this regulation and any other relevant regulation of these Regulations.

(2) A County corporation may be established only with the prior approval of the County Executive Committee, with reference to a legislation enacted to govern the establishment, management and dissolution of such county corporation.

(3) In order to establish a county corporation or a subsidiary of a county corporation—

- (a) the responsible County Executive Committee Member shall submit a written business case to the County Executive Committee Member, with detailed justification for establishing the county corporation or the subsidiary; and
- (b) the business case in paragraph 3(a) shall be informed by a feasibility assessment of the proposed county corporation or the subsidiary for the purpose of ascertaining—
 - (i) the economic and financial viability of establishing a county corporation;
 - (ii) whether the proposed activity cannot be conducted through an existing corporation or the parent department;
 - (iii) whether or not there is need to establish a new corporation;
 - (iv) the functions and objective that its establishment is supposed to attain;
 - (v) how the activities of the proposed corporation will fit in the county department's legislative mandate and medium term strategy, and aid the realization of the objectives of the programmes associated with that department;
 - (vi) how the activities of the proposed county corporation will fit in the overall medium term plan of county government;
 - (vii) how they impact the fiscal position of the county government; and
 - (viii) the amount of county government share.

(4) The feasibility and viability assessment conducted under paragraph (3)(b) of this regulation shall be submitted to the County Executive Committee for approval.

(5) Upon approval of the business case by the County Executive Committee, the necessary establishment processes shall be undertaken by the relevant department as required by a legislation on formation, management and dissolution of County corporations to allow it perform the functions stipulated in the instruments for incorporation.

(6) The county government entity responsible for investment portfolio management in the County Treasury shall be constantly updated on the progress of a county corporation.

(7) The County Executive Committee Member responsible for investment portfolio management in the County Treasury shall conduct regular review of county corporation to assess the relevance of the mandate and the justification for their continued existence and where necessary make recommendations to the County Executive Committee for the dissolution or merger of corporations.

Dissolution of County corporations.

204. (1) A County corporation may be dissolved only with the prior approval of the County Executive Committee, with reference to a legislation enacted to govern the establishment, management and dissolution of such county corporation.

(2) Subject to the provisions of a legislation enacted for the formation, management and dissolution of a county corporation, a county corporation may be dissolved—

- (a) upon expiry of the lifespan of the county corporation as may be defined in the instrument of establishment;
- (b) where a county corporation has carried out the mandate for which it was created;
- (c) upon reorganization of the corporation and associated government functions; and
- (d) upon a merger of the corporation with another.

(3) The accounting officer responsible for the corporation in question shall follow-up implementation of the findings and eventual recommendations for dissolution to ensure compliance.

(4) The County Executive Committee member may by notice in the gazette prescribe guidelines for dissolution and mergers of county corporations.

(5) Upon approval by County Executive Committee of the recommendations to dissolve or merge a county corporation, the County Executive Committee Member shall cause the dissolution or merge the corporation with another.

(6) Upon dissolution of a county corporation, the funds corresponding to county government equity in the county corporation shall be deposited into the County Revenue Fund.

(7) Upon ceasing of an entity to be a public entity, the County Executive Committee Member shall vest all the assets and liabilities of the county government entity concerned to the responsible county government entity.

(8) No county corporation shall vest its assets in another entity without prior approval of the County Executive Committee Member.

Annual budget.

205. (1) The County Executive Committee Member responsible for the county corporation shall approve the estimates of budget of the county corporation and shall, not later than end of January every year, submit to the County Treasury for approval of those estimates for the following financial year.

(2) The National Treasury shall provide guidelines and the format on which the budget shall be prepared

(3) Budget estimates submitted under paragraph (1) of this regulation shall be classified as follows—

- (a) compensation of employees;

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- (b) use of goods and services;
- (c) transfers to other levels of government; and
- (d) capital.

Dividend policy and surplus funds.

206. (1) The County Treasury shall prepare and issue dividend policy guidelines on how county government entities shall declare and remit dividends and surplus funds to the County Treasury.

(2) A regulatory authority established by an Act of Parliament and referred to under regulation, shall remit into County Revenue Fund, ninety per centum of its surplus funds reported in the audited financial statements after the end of each financial year.

(3) A regulatory authority to which this section applies shall be exempt from the income tax.

(4) The governing body of a public entity listed in Schedule 2 referred to under regulation 201(2), shall formulate an appropriate dividend policy in line with the policy guidelines referred under paragraph (1) of this regulation, and submit to the National Treasury and the respective County Treasury.

Quarterly reporting by county corporations.

207. (1) An accounting officer of a county corporation shall prepare and submit quarterly financial and non-financial statements in the format gazetted by the Cabinet Secretary within 15 days after the end of each quarter to the County Executive Committee Member responsible for the county corporation with a copy to the County Treasury and the Auditor-General.

(2) The quarterly reports prepared under paragraph (1) of this regulation shall include information on—

- (a) revenue, including funding from grants;
- (b) expenditure;
- (c) borrowing, including any outstanding loan arrears; and
- (d) amount of profit or loss of the county corporation for the quarter.

Annual financial statements.

208. Pursuant to section 165(5) of the Act, the accounting officer for a county corporation shall prepare and submit annual financial and non-financial statements in the format gazetted by the Cabinet Secretary within three months after the end of the financial year to the Auditor-General with copies to the responsible County Executive Committee member and the County Treasury.

PART XVII – COUNTY BUDGET AND ECONOMIC FORUM

The role of County Budget and Economic Forum.

209. (1) For certainty, County Budget and Economic Forums established under section 137 of the Act, shall consult on—

- (a) national and county government policies and legislations relating to planning and financial matters affecting county government interests;
- (b) matters arising from Intergovernmental Budget and Economic Council and other intergovernmental forums;
- (c) consult on planning and financial matters relating to cities and urban areas affecting the county government; and

- (d) any other matter as may be referred to the forum by the Governor.
- (2) The forum shall meet at least twice a year and the Governor shall decide the time and agenda for the meeting of the forum in consultation with other members of the forum.
- (3) The forum may determine its own rules and procedures in such a manner as it considers appropriate.
- (4) The forum may invite other persons with relevant expertise to attend any of its meetings.
- (5) The County Treasury shall provide secretarial services to forum for effective performance of its functions.

PART XVIII – COMPLIANCE AND ENFORCEMENT

Offences of financial misconduct.

210. A public officer employed by a county government or a county government entity commits an offence of financial misconduct if, without lawful authority, the officer—

- (a) issues public government securities, or varies their terms and conditions; or
- (b) opens a bank account in the name of the government; or
- (c) lends money on behalf of the government; or
- (d) issues guarantees or indemnities on behalf of the county government; or
- (e) issues securities for loans made to the government; or
- (f) disposes of property belonging to, or under the control of that government or entity; or
- (g) fails to pay into a government bank account any public money entrusted to the officer or received by the officer for or on behalf of that government or that entity; or
- (h) incurs expenditure or makes a commitment on behalf of that government or entity; or
- (i) incurs wasteful expenditure on behalf of that county government or entity; or
- (j) fails to deliver to that government or entity a gift or donation made on a public or official occasion in accordance with the Public Officers Ethics Act (Cap. 185B); or
- (k) fails to provide any information in the officer's possession, or under the officer's control, in relation to the financial management, financial performance, or banking activities of that government or entity or in relation to the management or control of an asset or liability of that government or entity when required to do so, except where such refusal or failure is required or authorised by this Act or any other written law; or
- (l) fails to keep proper records or conceals, or wrongfully destroys, information that is required to be recorded; or
- (m) intentionally or recklessly obstructs or hinders a person while that person is acting in the performance or exercise of the person's functions or powers under this Act; or
- (n) makes any statement or declaration, or gives any information or certificate, lawfully required by or under this Act knowing it to be false or misleading in a material respect for the purpose of procuring for the public officer or any other person or organisation; or

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- (o) makes improper payment of public money belonging to or entrusted to that government or entity, or makes improper use of any public property of that government or entity; or
- (p) fails to remit revenue received contrary to the provisions of sections 158(2) of this Act.

PART XIX – MISCELLANEOUS

Gazettement of financial accounting and reporting formats.

211. The Cabinet Secretary shall gazette the financial, accounting and reporting formats listed for use by county governments and county government entities soon upon commencement date of these Regulations.

EXPLANATORY MEMORANDUM TO THE PUBLIC FINANCE MANAGEMENT (COUNTY GOVERNMENT) REGULATIONS

1. The Purpose of Public Finance Management (County Government) Regulations, 2015.

The purpose of these Regulations is to:

- (i) to provide means of administering the powers vested in the Cabinet Secretary for the National Treasury under the Constitution, the Act and any other related legislation;
- (ii) to harmonize and standardize their application throughout government service in controlling and managing the finances;
- (iii) to set out a standardized financial management system for use in Government service which is capable of producing accurate and reliable accounts free from errors, fraud and which will be useful in management decisions and statutory reporting;
- (iv) to provide for the conduct of fiscal relations between the county governments; and
- (v) to ensure accountability, transparency and the effective, economic and efficient collection and utilization of public resources.

2. The Legislative Context

The process of developing a comprehensive PFM Regulations started in 2012 after enactment of the Public Finance Management Act (Cap. 412A) which consolidated all Public Finance Management legislations catering for both the National and County Governments.

The development of the PFM Regulations was guided by the following considerations;

- (i) ensuring financial autonomy of National and County Governments within a unitary system of government and guided by provisions in the Constitution such as Article 6 and the Public Finance Management Act (Cap. 412A). As

a result, functions of PFM institutions at the national and county levels of government were mirrored;

- (ii) ensuring the PFM Regulations encapsulates best international practices; and
- (iii) the need to separate the PFM Regulations for national and county governments to capture the unique needs of each level of government.

These PFM Regulations, 2015 are therefore firmly anchored in Chapter 12 of the Constitution and gives effect to the provisions of the Public Finance Management Act (Cap. 412A).

3. Policy Background

Parliament enacted the Public Finance Management (PFM) Act (Cap. 412A) in August, 2012 and over the past two years Kenya has been rolling out devolution as envisaged in the Constitution. The Act on its own, however, is not sufficient since it does not provide guidelines on all matters relating to public finance management at the national and county levels of government. In order to provide further clarity on various aspects of public finance management, it is therefore necessary to have regulations.

An efficient and effective PFM system is a necessary condition for achieving Vision 2030 and our development objectives. Investors, both foreign and local, require assurance that a country's PFM system can be relied upon to maintain fiscal discipline and in particular contain public debt both at the National and County level. Without a credible public financial management system, our ability to borrow or even attract donor funds will be curtailed. In addition, an effective PFM system is very critical in supporting the mobilization of resources to be equitably shared between the two levels of government.

In order to make the regulations user friendly and to capture the unique needs of the two levels of government, two volumes of Regulations have been prepared — one for the National Government and the other for the County Governments. The provisions of Parts I to XVI in the two sets of Regulations are largely mirrored but tailored to each level of government. Parts XVII onwards, however, include provisions that are specific to each level of government.

Further, there is need to ensure prudent use of public resources in line with Article 201 of the Constitution by providing ceilings in both the Public Finance Management Act (Cap. 412A) and PFM (County) Regulations for expenditures of County Assemblies.

It is considered that the provisions of the proposed Public Finance Management (County Governments) Regulations will provide a sufficient level of economic,

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fiscal and financial detail and adequate time for the legislatures at the National and County Governments to perform their oversight role in an effective manner.

On the basis of the foregoing, it is considered prudent to anchor the fundamental concepts of a modern public financial management system and its application in Kenya in a comprehensive PFM law.

Some of the salient features of these regulations are:—

- The Regulations provide additional Fiscal responsibility principles such as—
 - ° compensation of national and county government employees shall not exceed 35% of either level of government equitable revenue share;
 - ° the approved expenditures of a county assembly shall not exceed seven per cent of the total revenues of the county government or twice the personnel emoluments of that county assembly, whichever is lower; and
 - ° national public debt shall not exceed 50% of GDP in terms of NPV among others;
- Provides for expenditures before approval of budget estimates by national and county assemblies under extreme circumstances;
- Provides any request for expenditures from the Emergency Fund to have a certificate of the relevant County Executive Committee Member for Finance confirming compliance with PFM Act provisions.
- Provides all Government Bank Accounts for County Governments will be held at the Central Bank of Kenya except where the cabinet Secretary has expressly granted exemption and approved.
- Provides that the Cabinet Secretary shall provide further guidelines for loans and advances including benefits and allowances for public officers and the County Executive Committee Members for Finance may provide further guidelines for their respective counties in line with the Cabinet Secretaries guidelines.
- Provides for lease financing transactions by accounting officers.

Provides for equitable transfers before approval of County Allocation of Revenue Bill.

- Provides for various thresholds for approval of losses and write-offs including responsibility for Accounting Officers, County Executive Committee Member for Finance, County Executive Committee and County Assembly.
- Provides for guiding principles for county government borrowing; borrowing purposes and objectives of public debt management, the criteria for issuance of government securities both domestic and external, sets the overall debt limit for the country at 50% of the net present value of GDP while the debt limit for county

governments is set at 20% of the audited total annual revenue and approved by the county assembly.

- Provides for establishment of a Sinking Fund for debt redemption county level of government.
- Provides for criteria for establishment of public funds, management and winding up of a county public fund.
- Provides the guiding principles for establishment of county corporations, criteria for establishment of a state or county corporations as well as dissolution of county corporations; evaluation of state or county corporation performance.
- Provides for the powers of the Cabinet Secretary to gazette financial, accounting and reporting formats.

4. Public Consultations

The PFM Regulations have taken into account the views of key stakeholders such as the Commission on Revenue Allocation, the Commission for the Implementation of the Constitution, Accounting Officers, Council of Governors, County Executive Committee Members of finance, civil society, the general public and international and local experts on public financial management.

It is important to appreciate that one of the key recommendation from different stakeholders was to separate the Regulations governing National and County levels of Governments. In order to address this recommendation, the Regulations were separated to deal each level of Government, hence the reason why we have submitted two volumes of Public Finance Management Regulations; PFM (National Government) Regulations and PFM (County Government) Regulations. This will give flexibility on the application of the Regulations to each level of Government and ensure maximum impact of the Regulations on public finance accountability architecture.

5. Guidance

The National Treasury and County Treasuries will sensitize stakeholders including Parliament, accounting officers of national and county governments and the general public, on the provisions of the public finance management (County Governments) Regulations, the accountability mechanism, the monitoring and evaluation mechanism and the need to ensure regular reporting to Parliament and the relevant County Assemblies.

6. Review of the Regulations

The National Treasury shall monitor the application of the PFM Regulations. This will be done through quarterly reports sent by the relevant accounting officer of the county government. In addition, the National and County Treasury will also carry out regular monitoring and evaluation of the specific provisions of these Regulations through interaction with the implementers of these Regulations, studying various reports by Constitutional Commissions, Independent Offices, Civil Society and the general public.

It is important to note that the Regulations shall apply to the level of government as indicated in their headings from the commencement date of these Regulations. In this respect, a review thereof will be done by the National Treasury with the approval of Parliament in line with Section 205 of the Public Finance Management Act (Cap. 412A).

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7. National Treasury Contact Person

The contact person at the National Treasury is the Cabinet Secretary, Mr. Henry Rotich or the Principal Secretary, Dr. Kamau Thugge, EBS.

THE PUBLIC FINANCE MANAGEMENT (NATIONAL GOVERNMENT) REGULATIONS

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MANAGEMENT (NATIONAL GOVERNMENT) REGULATIONS, 2015**

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THE PUBLIC FINANCE MANAGEMENT (NATIONAL GOVERNMENT) REGULATIONS

[L.N. 34/2015, L.N. 229/2015, L.N. 141/2018, L.N. 90/2019, L.N. 155/2019, L.N. 89/2022]

PART I – PRELIMINARY**Citation.**

1. These Regulations may be cited as the Public Finance Management (National Government) Regulations.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

"Act" means the Public Finance Management Act (Cap. 412A)

"Accountant-General" means the officer of the National Treasury designated as the Accountant-General;

"Accounting Standards Board" has the meaning assigned to it under section 2 of the Act;

"Accounting Unit" means organizational division in a government entity responsible for accounting and financial services;

"appointing authority" means—

- (a) in case of a national Government entity which is a ministry or department, the accounting officer designated by the Cabinet Secretary as such; or
- (b) in case of national government entity which is a state corporation or any other national government entity, the body mandated by enabling instrument to manage that national government entity;

"Appropriation-in-Aid" means any revenue which a national government entity receives and is approved by Parliament for application by that entity to finance its activities;

"Appropriation Act" has the meaning as assigned to it under section 2 of the Act;

"budget ceilings" means the maximum amount that the government allocates in a given year to target sector or expenditure category;

"Budget Circular" means a written instruction issued by the Cabinet Secretary providing broad guidelines on the budget process of the national government;

"benefit deduction" means a deduction on a payroll system against an official's salary for a debt arising from employment benefits;

"basic salary" means an officer's salary excluding allowances;

"Cabinet Secretary" has the meaning assigned to it under section 2 of the Act;

"Cash flow" means a financial statement that shows planned inflow and outflow of resources over a period covering the financial year in line with the activity level;

"collector of revenue" has the meaning assigned to it under section 2 of the Act;

"collective agreement deduction" means a deduction on a government payroll system against an official's salary arising from a collective agreement between the government and a union and is registered in accordance with applicable law;

"Consolidated Fund Services" means a service the expense of which is charged directly against and payable from the Consolidated Fund under or by virtue of the Constitution or any Act of Parliament other than an Appropriations Act;

"Contingencies Fund" has the meaning assigned to it under section 2 of the Act;

"Corporate governance" means the process and structure used to direct and manage business affairs of the national government entities towards enhancing prosperity and good governance with the ultimate objective of realizing national long- term value while taking into account the interest of all stakeholders;

"County Allocation of Revenue Bill" means the Bill annually introduced into Parliament and enacted under Article 218(b) of the Constitution;

"County Emergencies Fund" has the same meaning assigned to it under section 2 of the Act;

"County Government entity" has the same meaning assigned to it under section 2 of the Act;

"County Public Debt" has the same meaning assigned to it under section 2 of the Act;

"debt" means an amount of money owed and already payable by an official to any person and for the purposes of these Regulations, includes insurance premiums deducted in terms of policies with long and short-term insurers;

"deduction code" means a code issued by the Accountant-General to enable a person to deduct money from an individual paid via the government payroll system;

"discretionary deduction" means a deduction on the government payroll system against an official's salary, other than benefit, collective agreement, state or statutory deductions;

"disposal" in relation to a capital asset, includes—

- (a) the demolition, dismantling or destruction of the capital asset; or
- (b) any other process applied to a capital asset which results in loss of ownership of the capital asset otherwise than by way of transfer of ownership;

"Division of Revenue Bill" means the Bill annually introduced into Parliament and enacted under Article 218(a) of the Constitution;

"donation" has the meaning assigned to it under section 47 of the Act;

"economy" means minimizing the cost of resources used or required to achieve priority objectives;

"effectiveness" means the extent to which a programme intervention has attained, or is expected to attain, its objectives efficiently in a sustainable manner;

"efficiency" means a measure of how economically resources or inputs (including fund, expertise and time) are converted to results;

"estimates of expenditure" means—

- (a) annual estimates of expenditure based on programmes and sub-programmes prepared on a three-fiscal year rolling basis, specifying the resources to be allocated and the outcomes to be achieved and outputs to be delivered, the estimates for the first year of every such period of three fiscal years requiring appropriation by the National Assembly; or
- (b) supplementary estimates of expenditure appropriated by the National Assembly;

"fair market value" in relation to a capital asset, means the value at which a knowledgeable willing buyer would buy and a knowledgeable willing seller would sell the capital asset in an arm's length transaction;

"financial statements" has the meaning assigned to it under section 2 of the Act;

"financial year" means the period of twelve months ending on the 30th June in each year;

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"governing body" means a body of person managing a public entity and includes a commission, a board of trustees, a board of directors and a management board;

"grant" has the meaning assigned to it under sections 47 of the Act;

"grant recipient" has the meaning assigned to it under sections 47 of the Act;

"intended beneficiaries" has the meaning assigned to it under section 47 of the Act;

"internal control" means a set of systems to ensure that financial and other records are accurate, reliable, complete and ensure adherence to the management policies of the Ministry, department or other agency of Government, for the orderly and efficient conduct of the Ministry, department or agency, and the proper recording and safeguarding of its assets and resources;

"irregular expenditure" means expenditure, other than unauthorized expenditure defined under this section, incurred in contravention of or that is not in accordance with a requirement of any relevant legislation, including—

- (a) the Act;
- (b) these Regulations;
- (c) the Public Procurement and Asset Disposal Act (Cap. 412C) or any Regulations made in accordance with that Act; or
- (d) any county legislation providing for procurement procedures in that county government; or
- (e) any other Act of Parliament;

"medium term" has the same meaning as assigned to it in the Act;

"national government entity" has the meaning assigned to it under section 2 of the Act;

"Principal Secretary" has the meaning assigned to under section 2 of the Act;

"State corporation" has the meaning assigned to it under section 2 of the Act;

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

"public money" has the meaning assigned to it under section 2 of the Act;

"public officer" has the meaning assigned to it in under Article 260 of the Constitution;

"programme" means a group of independent, but closely-related, activities designed to achieve a common outcome;

"receiver of revenue" has the meaning assigned to it under section 2 of the Act;

"regulatory agency" means a national government entity established by an Act of Parliament to ensure compliance with the provisions of the Act that established it;

"revenue" has the meaning assigned to it under the Commission on Revenue Allocation Act (Cap. 428);

"revised estimates" refers to the supplementary budget estimates and approved budget reallocations prepared and submitted under section 43 of the Act;

"spending unit" refers to a government component for which appropriation is allocated within the budget and which is authorized to spend;

"sinking fund" means an account or pot of money or securities set aside to pay for a bond, repurchase or early redemption of Treasury Bonds;

"statutory appropriation" means the authority to spend money allocated to the executive in accordance with the purposes specified in the Constitution or an Act of Parliament;

"statutory deduction" means a deduction on government payroll system against a public officer's salary, which is required or permitted by a law, court order or arbitration award;

"subscription statement" is a statement showing the investor's holdings as registered on the Central Depository Securities (CDS) Register at the Central Bank of Kenya;

"supplementary budget estimates" means additional request of funds by the national government to Parliament;

"third party" has the meaning assigned to it under section 47 of the Act;

"unutilized balances" means any amounts withdrawn from the Consolidated Fund and appropriation in aid collections for purposes of provision of basic services under an Appropriations Act and not expended at the end of the financial year;

"unauthorised expenditure" means—

- (a) overspending of a vote or programme within a vote; or
- (b) expenditure not in accordance with the purpose of a vote or, in the case of a programme, not in accordance with the purpose of the programme;

"value for money" means the economic, efficient and effective utilization of resources;

"vote" has the meaning assigned to it under section 2 of the Act;

"vote-on-account" means a special provision by which the national government obtains the authority of the National Assembly for a sum sufficient to incur expenditure on various items for a part of the year, pending the consideration and approval of budget estimates for that year; and

"wasteful expenditure" has the meaning assigned to it under section 2 of the Act.

[L.N. 229/2015, r. 3.]

Application of the Regulations.

3. These Regulations shall apply to—

- (a) State departments;
- (b) National government entities under Regulation 211 (2), (4) and (5) of these Regulations;
- (c) Public Funds under regulation 211(6) of these Regulations;
- (d) any other person performing any act or doing such thing that is provided for under this Act.

Object and Purpose of the Regulations.

4. The object and purpose of these Regulations shall be—

- (a) to provide means of administering the powers vested in the Cabinet Secretary for the National Treasury under the Constitution, the Act and any other related legislation;
- (b) to harmonize and standardize their application throughout government service in controlling and managing the finances;
- (c) to set out a standardized financial management system for use in Government service which is capable of producing accurate and reliable accounts free from

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errors, fraud and which will be useful in management decisions and statutory reporting;

- (d) to provide for the conduct of fiscal relations between the national and county governments;
- (e) to ensure accountability, transparency and the effective, economic and efficient collection and utilization of public resources.

Officers to be conversant with Regulations.

5. All Accounting Officers shall ensure that all public officers under their control have access to copies of these Regulations and the public officers shall ensure they are fully conversant with the contents of these Regulations.

Openness and accountability.

6. (1) Subject to national security considerations, the public shall be provided with full access to financial information in a timely manner for purposes of seeking public input by—

- (a) establishing a focal point to facilitate access to financial information; or
- (b) making information available in the media or;
- (c) presenting information in national languages, summarised and user-friendly forms; or
- (d) making financial information available on websites that allow for information to be downloaded.

(2) The National Treasury shall arrange for effective public participation during the development of their annual budget estimates including the publication of citizens' budgets which shall explain and summarize the budget proposals.

(3) The dates for the sectoral forums and the venues shall be publicly announced one week in advance, and an annual calendar of events released at the start of the financial year.

Cabinet Secretary to publish process and procedures for public participation.

7. (1) For purposes of public participation in planning and budgeting process there shall be participatory structures and processes that shall encompass a broad range of strategies, including—

- (a) open forums, written submissions, online platform and media;
- (b) specification of venues of public participation; and
- (c) indicative dates of public participation.

(2) The Cabinet Secretary shall notify the general public through a notice in the *gazette* or at least two newspapers of wide circulation on the venue or manner of submitting written submissions.

(3) The documents submitted to Parliament and any other published documents shall be published and publicised within 7 days of presentation.

(4) The Cabinet Secretary shall give a responsibility statement confirming the extent to which general public was consulted particularly on the Budget Policy Statement and Sector Working Groups.

Monetary unit, accounting and reporting currency.

8. (1) The Kenyan shilling shall be the unit of account for drawing up and implementing the county budgets, presenting and reporting accounts.

(2) Despite the provisions of paragraph (1) of this regulation, certain operations may be carried out in international currencies subject to conditions laid down in these Regulations or other financial instruments.

Financial management forms and manuals.

9. (1) National Treasury shall Publish financial manuals and forms which may be used by national government entities to support implementation of these Regulations.

(2) The financial manuals and forms issued in accordance with these Regulations shall facilitate adoption of international standards and emerging best practices.

(3) The publications under paragraph (1) of this regulation shall be made with the approval of the Cabinet Secretary.

(4) The financial manuals shall contain relevant procedures for the budget preparation, budget execution, keeping of books of accounts, formats of financial statements and Government standard chart of accounts issued by the National Treasury.

Accounting responsibility not diminished by audit.

10. The responsibilities of internal and external auditors exercised in accordance with the Constitution, the Act and other legislation shall not diminish the Accounting Officers' responsibility to maintain financial discipline as required by the Act and these Regulations.

Responsibility for hand-over by financial officers.

11. The accountability of a public officer vacating an office shall not be completed until the financial and accounting records kept by him or her have been properly handed over in writing to an officer taking over his or her duties and attested by their supervisor, but this does not preclude the public officer from handing over any other documents required under any other law or government policy.

Application of secure signatures.

12. (1) Any public officer signing any document or record pertaining to a financial transaction shall ensure that the signature is given in such a manner so as to preclude subsequent alteration or addition to the information contained in such document or record.

(2) The signature of any public officer shall not be binding on an Accounting Officer or a public officer performing a financial function unless a specimen of the signature is duly communicated in advance to the relevant public officer or any other person performing a financial function.

(3) If a public officer no longer occupies a public office, the Accounting Officer shall nullify that officer's specimen signature and communicate the same to all relevant public officers or any other person performing a financial function, within a reasonable time.

Signing blank or blind accountability documents.

13. (1) A public officer shall not sign a blank or incomplete cheque, record or other document, pertaining to a financial transaction.

(2) It shall be the duty of any public officer signing any document or record pertaining to a financial transaction to read and satisfy himself or herself that it is proper to give his or her signature and his or her signature shall be evidence of acceptance of responsibility for the document, whether the public officer read it or not.

(3) The signing of a document contrary to paragraph (1) and (2) shall constitute an offence under the Act.

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Restricted use of green ink.

14. A public officer, except the President or the Auditor-General, shall not use green ink or green pencil in recording or transacting any official financial transaction.

Restricted use of brown ink.

15. A public officer other than the Cabinet Secretary, the Principal Secretary, the Internal Auditor-General or Head of Internal Audit, shall not use brown ink or brown pencil in recording or transacting any official financial transaction.

Use of indelible ink.

16. (1) Financial records and documents shall be written in indelible ink.

(2) An entry in a financial record or document shall not be obliterated, erased or altered by being written over.

(3) Payment in connection with any document bearing an alteration, obliteration or erasure shall be refused by the relevant public officer or any other person unless countersigned, but this shall not apply to a cheque or official receipt.

(4) A person who contravenes the provisions of this regulation commits an offence under the Act.

PART II – CORPORATE MANAGEMENT

Corporate governance.

17. (1) Every national government entity to which the Act and these Regulations apply shall include in their annual financial report as provided in section 81 of the Act, a statement by each entity's Accounting Officer on compliance of the entity with these Regulations under this part.

(2) Where the entity is not fully compliant with these Regulations, the Accounting Officer of that entity shall identify the reasons for non-compliance and indicate the steps being taken to become compliant.

(3) The statements made in the report under this regulation shall be submitted to the Cabinet Secretary.

Establishment of Public Finance Management Standing Committees.

18. (1) There is established in every national government entity a committee to be known as the Public Finance Management Standing Committee (hereinafter referred to as the "Standing Committee) to provide strategic guidance to the entity on public finance management matters.

(2) Each standing committee shall comprise of the following—

- (a) the Accounting Officer as chairperson of the Standing Committee;
- (b) an officer designated by the Accounting Officer as secretary of the Standing Committee and who shall be either the head of the finance or accounts units or head of both finance and accounts units of the entity; and
- (c) heads of departments or administrative units dealing with public finance management matters.

(3) The Standing Committee shall meet as often as is necessary but at least once every quarter so as to coordinate management of public finance for entities and shall be accountable to the Cabinet Secretary responsible for the entity or in case of Parliament, Judiciary, Independent Offices and Commissions, to the head of that entity.

(4) The Standing Committee may establish sub-committees for the better carrying out of its roles and responsibilities under this regulation.

Roles and responsibilities of the standing committee.

19. (1) The Standing Committee shall generally be responsible for the following—

- (a) ensuring that there is prioritization on resources allocated to a national government entity for the smooth implementation of the entities mission, strategy, goals, risk policy plans and objectives;
- (b) regularly reviewing, monitoring budget implementation and advice on the entities accounts, major capital expenditures and reviewing performance and strategies at least on a quarterly basis;
- (c) identifying risks and implementation of appropriate measures to manage such risks or anticipated changes impacting on the entity;
- (d) reviewing on a regular basis the adequacy and integrity of the entity's internal control, acquisition and divestitures and management information systems including compliance with applicable laws, regulations, rules and guidelines;
- (e) establishing and implementing a system that provides necessary information to the stakeholders including stakeholder communication policy for the entity in line with Article 35 of the Constitution;
- (f) monitoring the effectiveness of the corporate governance practices under which the entity operates and propose revisions as may be required, from time to time;
- (g) monitoring timely resolution of audit issues; and
- (h) any other matter referred to it from time to time by the responsible Cabinet Secretary or in the case of Parliament, Judiciary, independent office and commissions, the head of that entity.

(2) The Standing Committee shall submit a quarterly report of its work including any recommendations to the responsible Cabinet Secretary or in case of Parliament, Judiciary, Independent Offices and Commissions, to the head of that entity.

Duties and responsibilities of the office of the Accountant-General.

20. The Accountant-General Department shall be responsible for—

- (a) advising the national government on accounting and reporting matters;
- (b) overseeing the implementation of the approved government accounting standards;
- (c) designing and development of governments' accounting systems both manual and computerized;
- (d) providing advice to national government on the best and appropriate financial reporting formats;
- (e) providing link between local and international accounting standards bodies on matters relating to public sector financial reporting;
- (f) developing guidelines for accounting staffing levels and training to ensure technical competence and knowledge of financial accounting and reporting, advising on accounting and financial matters;
- (g) overseeing the implementation of the approved government accounting standards, policies, bases and concepts;
- (h) advising governments on cash and treasury management;

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- (i) administering the Consolidated, Equalization and Contingencies Funds;
- (j) advising the Public Accounts Committee of Parliament on accounting matters;
- (k) administering the Scheme of Service for Accountants; and
- (l) policy development and research.

Presidential warrants.

21. (1) Once the Annual Appropriation Bill or Supplementary Bill has been assented to, the Cabinet Secretary shall obtain presidential warrants authorizing issues from the Consolidated Fund in accordance with the respective Appropriation Acts.

(2) The Presidential Warrants in paragraph (1) of this regulation shall be transmitted to the Controller of Budget by the Cabinet Secretary to authorize withdrawals in accordance with Article 228 of the Constitution.

National Treasury warrant.

22. On receipt of the Presidential warrant, the Cabinet Secretary shall issue a National Treasury warrant granting authority to Accounting Officers to incur expenditure for the year in respect of their votes.

Responsibilities of Accounting Officers.

23. (1) Accounting Officers shall in accordance with Article 226(2) of the Constitution and section 68(1) of the Act, be accountable to the National Assembly—

- (a) for management of their departments public finances, including whether sufficient resources have been allocated to a particular program;
- (b) for ensuring the most effective means of achieving desired program outcomes are used;
- (c) for maintaining effective systems of internal control and the measures taken to ensure that they are effective; and
- (d) for measures taken to prepare the financial reports that reflect a true and fair financial position of the entity;
- (e) for implementation of the recommendations of Parliament arising from the reports by the Auditor-General and the Controller of Budget.

(2) In addition to the responsibilities of Accounting Officers provided for in the Act, an Accounting Officer designated under the Constitution, the Act or any other Act, shall—

- (a) comply with any tax, levy, duty, pension, commitments and audit commitments as may be provided for by legislation;
- (b) where he or she reasonably believes that an unauthorized, or irregular expenditure has occurred, immediately report, in writing, particulars of the expenditure to the relevant authority with a copy to the National Treasury; or
- (c) before transferring any funds to an entity within or outside government, ensure that there is a written assurance from the entity that it shall implement effective, efficient and transparent financial management and internal control systems, or, if such written assurance is not or cannot be given, render the transfer of the funds subject to conditions and remedial measures requiring the entity to establish and implement effective, efficient and transparent financial management and internal control systems;

- (d) enforce compliance with any prescribed conditions if the respective government entity gives financial assistance to any other entity or person in accordance with the law;
- (e) take into account all relevant financial considerations, including issues of propriety, regularity and value for money, where policy proposals affecting the Accounting Officer's responsibilities are considered, and where necessary, bring those considerations to the attention of the relevant authority;
- (f) promptly consult and seek the prior views of the National Treasury on economic viability and financial implications on any new entity which a state department, or state organ intends to establish or in the establishment of which it took the initiative;
- (g) not commit national government entities to any liability for which money has not been appropriated provided that expenditure for projects or programs implemented beyond one financial year is provided for in the subsequent financial years; and
- (h) comply, and ensure compliance by national government entities with the provisions of the Act and these Regulations.

[L.N. 229/2015, r. 4.]

Delegation by the Accounting Officer.

24. (1) The Accounting Officer of a national government entity may delegate to a public officer, in writing, any of the Accounting Officer's powers or functions under the Act or these Regulations.

(2) In exercising powers and functions under a delegation, the public officer shall comply with any lawful directions of the Accounting Officer.

(3) The delegation in this regulation may include the authority to incur expenditure in accordance with any limits prescribed by the Accounting Officer.

(4) Delegation of power does not take away the responsibility of the accountability from the Accounting Officer.

Designation of public officers as AIE Holder.

25. (1) An accounting officer may authorize a public officer under their national government entity to be an Authority to Incur Expenditure (AIE) Holder.

(2) An Accounting Officer who finds it necessary to authorize a public officer in another Ministry or county government to incur official expenditure on his or her behalf, shall do so by issuing an Authority to Incur Expenditure addressed to the Accounting Officer of the national government or county government entity.

(3) The designation of AIE Holder shall be in writing in the form prescribed by the National Treasury

(4) An Accounting Officer shall maintain a register of all AIE Holders designated under the Act.

(5) Where an Accounting Officer delegates this authority, the accounting officer shall remain responsible for any expenditure incurred as a result of that delegation.

PART III – FISCAL STRATEGY AND MACRO-ECONOMIC FRAMEWORK

Fiscal responsibility principles.

26. (1) In addition to the fiscal responsibility principles set out in section 15 of the Act, the following fiscal responsibility principles shall apply in the management of public finances—

- (a) national government's expenditure on the compensation of employees (including benefits and allowances) shall not exceed 35 percent of the national government's equitable share of the revenue raised nationally plus other revenues generated by the national government pursuant to Article 209 (4) of the Constitution;
- (b) for the avoidance of doubt, the revenue referred to in paragraph (a) shall not include revenues that accrue from extractive natural resources, including oil and coal;
- (c) pursuant to the provision of section 50(2) of the Act, the public debt shall not exceed ten trillion shillings;
- (d) the annual fiscal primary balance shall be consistent with the debt target in paragraph (b);
- (e) for avoidance of doubt, the requirement under section 15(2)(a) of the Act shall exclude the loan redemption receipts for on-lent loans but shall include loan interest receipts and penalties on loans; and
- (f) pursuant to section 15(5) of the Act, the national government expenditure on development shall be at least thirty percent in line with the requirement under Section 15(2)(a) of the Act;
- (g) if the national government does not achieve the requirement of regulation 15(l) (f) above at the end of that financial year, the Cabinet Secretary shall submit a responsibility statement to Parliament explaining the reasons for the deviation and provide a plan on how to comply with the provisions of section 15(2)(a) of the Act in the subsequent years.

(2) The Cabinet Secretary shall, in line with prudent management of risks envisioned in section 15(2)(e) of the Act, in the budget policy statement, include a statement of fiscal risks outlining the potential policy decisions and key areas of uncertainty that may have a material effect on the fiscal outlook and the statement and shall further include—

- (a) fiscal risks arising from macroeconomic shocks, including matters touching on real GDP growth, inflation, commodity prices, and interest and exchange rates and adverse impacts from regional and international economy;
- (b) potential policy decisions affecting revenue, tax payer behavioural responses and court decisions that are likely to affect revenue bases and overall tax collections and revenue and government income, which may include tax concessions (or tax expenditures), increase in tax rates, tax minimisation and avoidance by tax payers and rates;
- (c) potential policy decisions that could increase or decrease expenses depending on decisions taken, and which constitute risks to the fiscal forecasts only to the extent that they cannot be managed within existing baselines or budget allowances;
- (d) potential capital decisions that are risk to the fiscal forecasts only to the extent that they cannot be managed within existing national government balance sheet;
- (e) matters dependent on external factors such as the outcome of negotiations or international obligations; and
- (f) a list of contingent liability, including debt guarantees, pension liability and pending bills.

(3) Despite the provisions of paragraph (2) of this regulation, the Cabinet Secretary may exempt from disclosure items of risk if in his or her opinion the disclosure—

- (a) may prejudice substantial economic interests of Kenya, security or defines of Kenya, International relations of the government and on-going litigation and negotiation; or
- (b) may compromise the government in a material way in negotiation, litigation or commercial activity; or
- (c) may result in a material loss of value to the government.

(4) The Cabinet Secretary may disclose the specific fiscal risks if—

- (a) their impact in his or her view is significant enough;
- (b) a decision has not yet been taken but it is reasonably possible (but not probable) that the matter shall be approved or the situation is likely to occur;
- (c) it is reasonably probable that the matter will be approved or the situation will occur, but the matter cannot be quantified or assigned to particular years with reasonable certainty;
- (d) any other matters the National Treasury considers, using their best professional judgement that the matters may have a material effect on the fiscal and economic outlook but are not certain enough to include in the fiscal forecasts.

[L.N. 155/2015, r. 2, L.N. 89/2022, r. 2.]

Budget Policy Statement.

27. (1) For the avoidance of doubt, the Budget Policy Statement submitted under section 25(2) of the Act, shall contain an assessment of the current state of domestic economy by—

- (a) providing an assessment of the impacts of regional and international economy on the medium macroeconomic framework and its outlook;
- (b) indicating allocation of available resources between the national and county levels of government and among county governments;
- (c) providing a macroeconomic framework underlying the budgetary and fiscal policy over the medium term;
- (d) providing a medium-term fiscal framework defining a top-down aggregate resource envelope;
- (e) providing a statement of fiscal responsibility principles, as specified in the Act and these Regulations and indicating whether the fiscal strategy adheres to these principles; and
- (f) providing a summary of programmes that are of national interest for the forthcoming year.

(2) In addition to the provisions under section 25(4) of the Act, the Budget Policy Statement shall contain a fiscal risk statement, including, any commitments and contingent liabilities not included in the fiscal forecasts, and all other circumstances which may have a material effect on the fiscal and economic forecasts and which have not already been incorporated into the fiscal forecasts as well as information on the losses and outstanding payments of the State Corporations.

(3) Before tabling a report containing recommendations on the Budget Policy Statement for adoption by Parliament in accordance with section 25(7) of the Act, the relevant committee of Parliament shall seek the views of the Cabinet Secretary on its recommendations.

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(4) Once the Budget Policy Statement is adopted by Parliament, it shall serve as the basis of expenditure ceilings specified in the fiscal framework.

(5) The ceiling for the development expenditure and personnel spending of the national government budget shall be approved by Parliament and be binding for the next two budget years.

(6) The National Treasury shall include a statement explaining any deviation to the provisions of paragraph (4).

Macroeconomic framework.

28. The macroeconomic framework shall contain information on the macroeconomic situation and forecasts for—

- (a) the current budget year and three further years and actual out-turns for the previous budget years including—
 - (i) gross domestic product and its components;
 - (ii) consumer prices and gross domestic product deflator;
 - (iii) current account position of the balance of payments;
 - (iv) savings and investment balance;
 - (v) assumptions underpinning the forecasts; and
- (b) the medium term macroeconomic forecasts affecting fiscal policy.

Contents of a fiscal framework.

29. (1) The fiscal framework in the Budget Policy Statement shall contain—

- (a) updated forecasts expressed in Kenya shillings and as a percentage of gross domestic product for the current budget year and three further years and actual results for the previous budget years for the consolidated general government budgets for—
 - (i) level of budgetary revenues by classification of the main categories of revenues;
 - (ii) level of budgetary expenditures by economic and functional classifications;
 - (iii) capital expenditures;
 - (iv) the overall balance and primary balance position;
 - (v) level of public debt and publically guaranteed debt;
 - (vi) key assumptions on which the above numbers are based;
 - (vii) sensitivity analysis taking account of possible changes in macroeconomic and other conditions; and
 - (viii) any other information the Cabinet Secretary determines is material to fiscal strategy.
- (b) an explanation of the fiscal policies in relation to fiscal responsibility principles, and any temporary measures to be implemented to ensure compliance, if necessary;
- (c) an analysis and explanation of—
 - (i) revenue policy, including planned changes to taxes and policies affecting other revenues;
 - (ii) deficit and debt policy, including an analysis of debt sustainability; and
 - (iii) expenditure policy, including expenditure priorities, aggregate expenditure intentions, including for the consolidated budget, county consolidated

budgets; and expenditure ceilings and other targets or limits implied by or required by the fiscal responsibility principles;

- (d) an analysis of the consistency of the updated fiscal strategies with the previous fiscal strategies, providing an explanation of any significant changes.

(2) The Cabinet Secretary shall *gazette* effective dates and give general guidelines and formats for preparing a consolidated general government accounts for statistical purposes.

Revisions to the fiscal framework.

30. The fiscal framework in regulation 29, may be revised as a result of—

- (a) a significant and unexpected change in macroeconomic indicators and assumptions; or
- (b) policy changes arising from change of government.

PART IV – BUDGET PREPARATION

Responsibility for preparing annual estimates of expenditure.

31. (1) The Accounting Officer shall ensure that the draft estimates relating to her or his department are prepared in conformity with the Constitution, the Act and these Regulations.

(2) The Accounting Officer is responsible, in particular for ensuring that—

- (a) all services which can be reasonably foreseen are included in the estimates and that they are within the capacity of her or his national government entity during the financial year;
- (b) the estimates have been prepared are complete and accurate as possible;
- (c) the estimates have been framed with regard to economy and efficiency;
- (d) the requisite authority has been obtained, where necessary, before provision is made in the estimates; and
- (e) the estimates are submitted to the National Treasury in the manner and format to be issued by the Cabinet Secretary.

Budget preparation process.

32. (1) The budget preparation process for the following financial year (N+1) shall start not later than the 30th August of the current financial year (N) with the issuance of the annual budget circular by the Cabinet Secretary and in compliance with formats and recommendations contained in these circulars or guidelines, instructions and the financial manual.

(2) The budget sector working groups shall, on the basis of budget sector ceilings contained in the Budget Review and Outlook Paper (BROP), submit by January of each year (N) the sector reports to the National Treasury which shall include printed estimates for the current year (N) and for the forthcoming financial year (N+1) and two outer years on a rolling basis (N+2), (N+3).

(3) The estimates for the sector referred to in paragraph (1) shall be consistent with regulation 29.

(4) Budget proposals shall be submitted in the prescribed formats that support program-based budgeting and classification of expenditure in economic classes.

(5) All budget proposals shall be supported by the national government entity' strategic plan.

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(6) The preparation and submission of estimates shall be done exclusively through prescribed automated integrated financial management systems.

(7) On receipt of sector reports from sector chairs, the Cabinet Secretary shall convene public sector forums to receive inputs from the public.

(8) The proposed sector ceilings for the next three financial years contained in the Budget Review and Outlook Paper (BROP) may be firmed up or readjusted in the Budget Policy Statement submitted in February of financial year (N) and adopted by Parliament by February 28 of same financial year (N).

(9) The approved Budget Policy statement shall be published on the National Treasury website.

(10) Following the approval of the Budget Policy Statement, the national government entities, or agencies shall finalize their estimates for years (N+1), (N+2) and (N+3) by March 31 of Financial year (N) and submit to the Cabinet Secretary.

(11) Budget estimates shall be reviewed and consolidated and the draft budget estimates submitted to Cabinet by April 15th of the financial year (N).

(12) Budget estimates of the national government entities, or agencies shall be reviewed and consolidated and the annual budget estimates submitted to Parliament, by April 30 of financial year (N).

Budget guidelines.

33. Unless provided otherwise in the Act, these Regulations or any other guidelines developed in furtherance of the Act or these Regulations, the following guidelines shall be observed at all times during budget formulation and approval—

- (a) all revenue and expenditure shall be entered into the national government budget estimates;
- (b) expenditure entered in national government budget estimates shall be authorised for one financial year only;
- (c) budget shall be balanced;
- (d) the Kenyan shillings shall be the unit of account for drawing up and implementation of the national government budgets, as well as the presentation of those accounts;
- (e) total budget revenue shall cover total budget expenditure and therefore—
 - (i) except as provided by legislation, there shall be no use of specific revenue to finance specific expenditure; and
 - (ii) appropriation shall be for a specific purpose or a specific programme or item of expenditure; and
- (f) budget estimates shall take into account expenditure priorities which contributes to the realization of the required output and desired policy outcome.

Determination of budget ceilings.

34. The budget ceiling contained in the Budget Policy Statement shall take into account—

- (a) the aggregate resource envelope following the forecast of major revenue and expenditure categories (the latter according to both economic and administrative classification);
- (b) the non-discretionary expenditure (debt service, wages and other related items);
- (c) the overall expenditure taking into consideration the fiscal rules;

- (d) breakdown of the overall expenditure into recurrent and development expenditure by sector ceilings; and
- (e) expenditure priorities as set out in national government policies.

Budget estimates audit.

35. (1) Each Accounting Officer may cause any proposed budget estimates to be examined and reported on by the internal audit unit of that national government entity.

(2) The Accounting Officer referred to in paragraph (1) shall take into account any recommendations made in respect thereto before submitting estimates to the National Treasury.

(3) A person who fails under this regulation to provide information, or submits information which that person knows to be misleading or incorrect shall have committed an offence under the Act.

Budget review process.

36. (1) On receipt of estimates from Accounting Officers the Cabinet Secretary shall cause to be conducted Budget discussions to review estimates of the entities concerned in order to ensure that these plans and estimates are in accordance with the macro-economic policy and fiscal framework.

(2) Where the budget hearings in paragraph (1) necessitates changes, the Cabinet Secretary, may require an Accounting Officer to make adjustments to the estimates.

Provisions in Appropriation Bills.

37. Appropriation Bills shall provide for—

- (a) the Votes and programs of the financial year;
- (b) financial provision in respect of certain activities of the national governments during that financial year; and
- (c) enabling the withdrawal out of the Consolidated Fund, or any other national public fund.

Vote on account.

38. (1) Where the Appropriations Act is not assented to or is not likely to be assented before the first working day of the financial year, the Speaker to the National Assembly, with approval of National Assembly, shall communicate to the Cabinet Secretary grant of authority to withdraw from the Consolidated Fund of monies of an amount not exceeding one-half of the amount included in the estimates in accordance with section 39(7) of the Act.

(2) Accounting officers shall make necessary entries in their books in respect of the amount of the vote on account approved.

(3) Moneys withdrawn under paragraph (1) shall be for the purpose of meeting expenditure on the government's programmes and activities in respect of the financial year —

- (a) up to fifty (50%) percent of the estimated of budget for the financial year submitted to the National Assembly; or
- (b) until such a time the Appropriation Act is assented to.

(4) Funds withdrawn from the Consolidated Fund under this regulation may be utilized only for services for which funds have been provided for in the budget estimates submitted to National Assembly.

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(5) The funds provided for in paragraph (2) shall be regarded as forming part of the funds appropriated in the relevant annual budget estimates for that financial year.

39. Deleted by L.N. 229/2015, r. 5.

Supplementary budgets estimates.

40. (1) Each Accounting Officer shall, within the guidelines of the supplementary budget circular and in conformity with budget guidelines issued by the Cabinet Secretary, prepare revised budget estimates in the format to be issued by the Cabinet Secretary.

(2) Prior to incurring any expenditure under paragraph (1), Accounting Officers shall seek the approval of the National Treasury, and if approval is granted by the Cabinet Secretary, it shall be communicated to the Accounting Officers through a notification which shall be copied to the Auditor-General and the Controller of Budget.

(3) The purpose for which approval is sought for a supplementary budget shall be—

- (a) unforeseen and unavoidable, in circumstances where no budget provision was made; or
- (b) unavoidable, in circumstances where there is an existing budgetary provision which, however, is inadequate.

(4) For purposes of paragraph (3), the following shall not be considered unforeseen and unavoidable expenditure—

- (a) expenditure that, although known when finalizing the estimates of the original budget, could not be accommodated within allocations; and
- (b) tariff adjustments and price increases.

(5) Accounting Officers may seek supplementary budget if the expenditure cannot be met by budget reallocation under section 43 of the Act.

(6) The request for supplementary budget in paragraph (5) shall be presented in a format that facilitates comparison with the original budget and shall contain all the information necessary to enable a decision on the application to be reached and shall include—

- (a) the Vote, program, sub-programme and broad expenditure category which it is desired to supplement, the original sum voted thereon and any supplements which may have since been added;
- (b) the actual expenditure and the outstanding liabilities or commitments against the item on the date when the request is made;
- (c) the amount of the supplement required, the reasons why the supplement is necessary and why it has not been possible to keep within the voted provision;
- (d) the basis for the calculation underpinning the supplementary;
- (e) the proposed source of financing of the additional expenditure;
- (f) an analysis of the fiscal impact of the additional expenditure, or of the implications, if any, for the planned outputs and outcomes of the affected programmes;
- (g) any implied deviation from the Medium Term Expenditure Framework (MTEF) and the financial objectives; and
- (h) the latest fiscal projections.

(7) The national government entity requesting additional funds through a supplementary budget process shall submit a memorandum to the National Treasury on a date determined by National Treasury.

(8) For avoidance of doubt, budget allocations for new policy options and service delivery initiatives shall only be considered when introduced in the annual estimates of budget in accordance with the procedure laid down in the Act and these Regulations.

(9) In approving any estimates under sections 43 and 44 of the Act, the National Assembly approval shall not exceed ten (10) percent of the total approved budget unless it is for unforeseen and unavoidable need as defined in section 21 of the Act.

[L.N. 229/2015, r. 6.]

Budget classification and the standard chart of accounts.

41. (1) The national government budget estimates and each county government's budget estimates shall be prepared, accounted for and reported in accordance with the Government of Kenya budget classification and chart of accounts issued by the National Treasury.

(2) As much as practicable, these classifications shall be designed to support financial and economic reporting requirements in the Act and generally accepted international standards.

PART V – BUDGET EXECUTION

General rules relating to budget Execution.

42. Overall control of national government budget execution shall be exercised through strict application of the following general rules, which shall apply to all transactions with the specific exception of debt service payments—

- (a) debt service payments shall be a first charge on the Consolidated Fund and the Accounting Officer shall ensure this is done to the extent possible that the government does not default on debt obligations;
- (b) debt payments shall be made whether or not they meet the general rules provided that the Cabinet Secretary reporting of any excess over appropriations, with full explanations of the circumstances, to Parliament in the next quarterly reporting cycle; and
- (c) other than temporary treasury liquidity management operations, no payment shall be made from the Consolidated Fund as a direct charge, except under an item identified in the annual budget estimates.

Accounting Officers to exercise budgetary control measures.

43. An Accounting Officer shall—

- (a) sign financial statements thereby making himself or herself responsible for their correctness;
- (b) ensure that public funds entrusted to their care are properly safeguarded and are applied for purposes for only which they were intended and appropriated by the National Assembly;
- (c) ensure all appropriation-in-aid due to national government entity are collected and properly accounted for in accordance with the relevant laws, rules and regulations;
- (d) manage control and ensure that policies are carried out efficiently and wastage of public funds is eliminated; and
- (e) ensure each national government entity has an audit committee in place.

Accounting Officers to request cash on the basis of an approved quarterly cash disbursement schedule.

44. (1) Accounting Officers shall provide the National Treasury with an annual cash flow plan as a requisition for funds needed for that financial year.

(2) National government entities shall execute their approved budgets based on the annual appropriation legislation, and the approved annual cash flow plan with the exception of unforeseen and unavoidable spending dealt with through the Contingencies Fund, or supplementary estimates.

(3) The annual cash flow plans prepared by Accounting Officers shall be broken down into a three months rolling basis and shall be adjusted to reflect any implementation realities in consultation with the National Treasury.

(4) As far as possible, quarterly cash flow projections prepared by the Accounting Officers shall be supported by a procurement plan approved in accordance with the Public Procurement and Asset Disposal Act (Cap. 412C).

Consolidation and approval of cash limit to be communicated to accounting officers.

45. (1) The National Treasury shall consolidate all expenditure requirements and projections as forwarded by Accounting Officers, compare with the projected revenues including net domestic borrowing, and thereafter in consultation with Accounting Officers, agree on an indicative annual cash flow forecast limit for that financial year.

(2) The National Treasury shall issue a National Treasury circular communicating the cash flow projections agreed with the Accounting Officers.

(3) In the event of unanticipated cash flow fluctuations, the National Treasury shall inform the Accounting Officers through a circular requesting them to review and submit revised cash flow projections in line with the guideline set out in the circular.

Release of funds to meet expenditure.

46. (1) The basis for requisition of funds for grant of credit on the account of the accounting officer for authorization of a withdrawal by the Controller of Budget from the national exchequer account shall be based on the approved cash flow plans communicated to that accounting officer to the National Treasury.

(2) Release of Funds from the Consolidated Fund to national government entities shall be in accordance with the authority granted by the Controller of Budget together with the written instructions of the National Treasury.

(3) The National Treasury shall make requisition from the Controller of Budget as necessary for the exchequer withdrawal of funds which shall be placed to the credit of an accounting officers' entity account.

(4) Pursuant to the grant of credit in paragraph (3), the National Treasury shall issue an exchequer notification informing the accounting officer of the amounts authorized.

(5) The National Treasury may require accounting officers to review their cash flow plans in line with changes in revenue realization, shortfalls in borrowing and unforeseen expenditures.

(6) The National Treasury shall publish and publicize the quarterly liquidity position reports reflecting the impact of revenue collection efforts, spending and public debt operations on the cash position of government.

Budget Variation.

47. (1) The Accounting Officer shall inform his or her responsible Cabinet Secretary immediately of any circumstances that are likely to affect materially the budgetary results either through revenue and expenditure or other receipts and payments of the national government entity.

(2) The Accounting Officer shall inform his or her responsible Cabinet Secretary of actions taken to mitigate any budget variations.

(3) The responsible Cabinet Secretary shall take the necessary steps to bring to the notice of the Cabinet Secretary, any warnings of significant or material budget variations.

Budget reallocation.

48. (1) For purposes of section 43(3) of the Act, Accounting Officers, may authorize reallocation of funds within programmes or sub-votes provided that—

- (a) this does not affect the total voted provision;
- (b) the provisions in the budget of the programme or sub-vote from within which the funds are to be transferred are unlikely to be utilized;
- (c) reallocation is in accordance with donor conditions in the case of reallocation impacting on donor-funded expenditure;
- (d) the reallocation does not affect the voted provisions from wage to non-wage expenditure or from capital to recurrent expenditure; and
- (e) allocations earmarked by the National Treasury for a specific purpose may not be used for other purposes, except with Treasury's approval.

(2) Accounting Officers shall keep a register of all budgetary reallocations and use it to prepare a report of all reallocations to the National Treasury not later than the 10th day of each month and the report shall state measures taken by the Accounting Officer to mitigate against future reallocations.

(3) The report referred to in paragraph (2) shall state the impact that the reallocations may have had on program objectives, planned program outputs and outcomes.

(4) The National Treasury shall consolidate all reallocations and include them in the next revised budget.

(5) The reallocations under this regulation shall be approved by the respective Accounting Officer of the entity.

Reallocation between programmes and sub-votes.

49. The reallocations by the National Treasury in terms of section 43(2) of the Act shall be included in the next revised budget for submission to and approval by the National Assembly.

Advances from the Contingencies Fund.

50. (1) For an accounting officer to access the contingencies fund in accordance with section 21 of the Act, that accounting officer shall first identify resources within his or her vote through identification of savings for re-allocation before applying for financing from the Contingencies Fund.

(2) If an accounting officer is satisfied that there are no savings within his or her vote and the need meets the criteria set under section 21 of the Act and paragraph (1), the accounting officer shall—

- (a) give reasons why he or she believes the need meets the criteria under section 21 of the Act;

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- (b) issue a certificate, countersigned by the Cabinet Secretary of that entity, confirming that the need meets the criteria under section 21 of the Act and paragraph (1); and
- (c) submit the request to the Cabinet Secretary for consideration.

(3) The Cabinet Secretary shall consider the request and assess if the need meets the criteria set under section 21 of the Act and may approve it or reject it.

Commitment for goods or services.

51. (1) All commitments for supply of goods or services shall be done not later than May 31st each year except with the express approval of the accounting officer in writing.

(2) Expenditure commitments for goods and services shall be controlled against spending and procurement plans approved by the responsible Accounting Officer, based on allocations and allotments from approved budgets.

(3) The Accounting Officer of that government entity shall make an expenditure commitment only against the procurement plan approved for that entity in accordance with the Public Procurement and Asset Disposal Act (Cap. 412C) and the Regulations made thereunder.

(4) At minimum, a procurement plan shall include proper descriptions of the procuring items, unit cost, the estimated contract value, and the procurement method relating to the annual portion of a multi-year contract and delivery schedule.

(5) Any changes to approved procurement plan during the year shall be approved by the responsible Accounting Officer in consultation with the Cabinet Secretary of the entity.

(6) Any public officer who contravenes the provisions of this regulation commits an offence.

Vote Control Procedure.

52. Any public officer who holds any post involving, in any degree, the management of public funds, and in particular every officer to whom is delegated the power to expend or receive such funds shall in the Government's interest and in his own interest, be aware of the essentials of vote control procedures—

- (a) no public officer can spend or commit funds until he or she has been properly authorized by means of an Authority to Incur Expenditure (AIE) to do so;
- (b) AIE holders shall be made to understand that the limit to which they may spend is that prescribed by the authority and not their expectations, however justified these may seem;
- (c) the AIE issued to a public officer shall in the minimum contain—
 - (i) the AIE number and to whom it is issued;
 - (ii) the authorized total expenditure;
 - (iii) a description of the expenditure item; and
 - (iv) the account code to which the expenditure is to be debited;
- (d) when the AIE is issued by the Ministry or State Department or Agency, the allocation shall be entered as a commitment in the Ministry's or State Department's or Agency's master vote book so as to ascertain at all times the availability of uncommitted funds;
- (e) accounting officers whose votes cover field programmes and projects shall issue AIE's to their field officers not later the 15th day of each quarter;

- (f) public officers issued with AIE's shall also be informed in writing that the actual expenditures should not exceed the limits authorized in the AIE's;
- (h) all AIE's to field public officers shall show the following details at the minimum and copies submitted to the Internal Audit Department of the National Treasury and the Auditor-General—
 - (i) the gross total amount of funds per vote allocated and applied against the AIE issued; and
 - (ii) the total amount of AIA to be collected;
- (j) each accounting officer shall cause records to be kept in such a form as shall clarify at any time, in respect of each of his or her votes—
 - (i) the total amount of expenditure sanctioned for service of the year;
 - (ii) the amount of the expenditure charged; and
 - (iii) any further known liabilities in respect of the year;
- (k) the AIE holders shall note the following in terms of control of expenditure—
 - (i) there shall be no divided responsibility and only the officer to whom the AIE has been issued is permitted to commit or incur expenditure against it; and
 - (ii) an AIE holder shall not wait for suppliers to submit invoices in order to clear his or her commitment, but he or she shall regularly have his or her outstanding commitments checked and enquiries made from the suppliers, particularly in the last three months of the financial year.

Receipt of goods and services beyond the stipulated period.

53. (1) A local purchase order or local service order shall be valid for a period of thirty days from the date of issue.

(2) Any public officer who receives goods or services beyond the stipulated period specified in paragraph (1) commits an offence under the Act.

(3) Any public officer involved in the processing of a payment with regard to goods or services delivered after due date shall inform the accounting officer of this anomaly before proceeding to process the payment.

(4) The public officer in charge who fails to ensure the local service order or local purchase order is cancelled after thirty days commits an offence under the Act.

Unauthorized spending.

54. (1) Except as provided for in the Act and these Regulations, an Accounting Officer of an entity may not authorize payment to be made out of funds earmarked for specific activities for purposes other than those activities.

(2) A public officer who makes a payment contrary to paragraph (1) commits an offence under the Act.

Monthly reporting obligations by Accounting Officers.

55. (1) An Accounting Officer of a national government entity shall not later than the 10th day of each month submit a monthly financial and non-financial budgetary report in the format to be issued by the Cabinet Secretary relating to the activities of his or her national government entity for the preceding month to the National Treasury with copies to the Controller of Budget and the Auditor-General.

(2) The contents of the report under paragraph (1) shall include—

- (a) actual revenues, including appropriations in aid;

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- (b) actual expenditures classified in economic classification as follows—
 - (i) compensation to employees;
 - (ii) use of goods and services;
 - (iii) transfer to other levels of government;
 - (iv) capital expenditure;
- (c) pending payments with an age of over ninety days;
- (d) a projection of expected expenditure and revenue collection for the remainder of the financial year;
- (e) when necessary, an explanation of any material variances; and
- (f) a summary of the steps that are to be taken to ensure that the projected expenditure and revenue remain within budget.

Contracts with multi-year financial implications.

56. (1) A national government entity may enter into a contract which will impose financial obligations on the national government entity beyond a financial year.

(2) Contracts imposing financial obligations in excess of one year may only be concluded by the accounting officer only if—

- (a) the accounting officer discloses all finalized and signed contracts by the beginning of a financial year;
- (b) they are budgeted for first before new projects are budgeted by the accounting officer of the national government entity; and
- (c) the accounting officers secure the resources required in line with the financing requirements set out in the contracts.

Reorganization of government functions.

57. (1) The national government may make policy changes in a financial year leading to—

- (a) creation of an additional Ministry or State Department and national government entities;
- (b) transferring certain functions or services of an existing Ministry, State Department and agencies to—
 - (i) another existing Ministry, State Department, or Agency;
 - (ii) a new Ministry or State Department or Agency;
- (c) abolition of an existing Ministry or State Department or Agency and transferring its functions or services to one or more Ministry or State Department or Agency.

(2) Before embarking on accounting entries and other adjustments, it shall be necessary to agree on the actual status of the vote in respect of the following aspects of the affected functions and services based on the ledger balances of a trial balance to be drawn on a date to be communicated by the National Treasury—

- (a) the gross budgetary provision;
- (b) the approved A.I.A, if any, and whether in cash or credit purchase;
- (c) the approved development partner assistance and entity own revenue whether in cash or credit purchase, if any;
- (d) the net budgetary provision;

- (e) the gross expenditure incurred;
- (f) the amount of entity own revenue and development partner assistance applied in cash or in credit purchases; and
- (g) the sharing of amounts held in the below-the-line group of accounts.

(3) When a Ministry or State Department or Agency is abolished, its vote shall cease to function and consequently it shall be necessary to extract a trial balance as at the date of abolition and to ascertain the state of financial affairs of that vote which shall include—

- (a) the budgetary provision;
- (b) expenditure incurred; and
- (c) cash balance.

(4) The statement shall be accompanied by analysis of the below the line group of account on the basis of which it should then be agreed on the amount of the related budget provision, expenditure incurred and the below the line balances to be shared out, if necessary.

(5) The Supplementary Appropriation Act shall provide the details of the affected votes and the National Treasury shall inform the affected Accounting Officers of the effective date when they shall effect accounting entries in their books and other necessary inter-vote adjustments.

(6) The book-keeping entries of a new vote shall be affected as outlined in the National Treasury Guidelines issued.

PART VI – MANAGEMENT OF REVENUE AND OTHER RECEIPTS

Classification of Government Revenues.

58. (1) Government receipts may be classified into domestic receipts and external receipts.

(2) Domestic receipts under paragraph (1) shall comprise of—

- (a) domestic loans receipts;
- (b) tax revenues; and
- (c) non tax revenues including exchequer, non tax receipts and Appropriation- in-Aid.

(3) External receipts under paragraph (1) shall comprise of—

- (a) external Loans including exchequer loan receipts and direct payments or credit purchase; and
- (b) external grants including exchequer grant receipts and direct payments.

Format of estimates of revenue.

59. (1) The estimates of revenues shall be in the format issued by the National Treasury and shall include—

- (a) the description of the source of revenue in terms of head code;
- (b) estimated revenues;
- (c) the receiver of revenue;
- (d) for each revenue head, there shall be shown revenue items; and
- (e) the amounts and the nature of receipts.

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(2) The estimates of revenue shall include the actual revenue for the two previous financial years (N-2) (N-1), the current financial year revenue estimates (N), and the projected revenue estimates for the next two outer years (N+1) and (N+2).

Basic principles in deciding whether sums shall be applied as AIA.

60. (1) The following shall be the basic principles in deciding whether sums shall be applied as Appropriation-in-Aid—

- (a) receipts arising directly out of expenditure on a service, the primary purpose of which is not collection of revenue such as user fees, user charges, or sale of stores and may be Appropriated-In-Aid of the vote from which expenditure on the service is met;
- (b) Appropriations-in-Aid shall be applied against a vote;
- (c) where miscellaneous receipts are individually and collectively small, and circumstances of receipt unimportant in themselves, such receipts may be credited to Appropriations-in-Aid; and
- (d) sums due as Appropriations-in-Aid in the previous year shall be credited to the Appropriations in Aid head of the year in which they are actually received.

(2) Despite the provision under paragraph (1), the Cabinet Secretary may designate any type of Appropriations-in-Aid as revenue in furtherance of certain government policies.

Main forms of receipts in development estimates.

61. The following shall be the main forms of receipts which occur in development estimates—

- (a) Appropriations-in-Aid inform of receipts collected by any authorized national government agency or derived from the sale of goods and services directly derived from projects contained in the appropriate expenditure head;
- (b) direct payments or Credit Purchases charged to the appropriate head representing expenditure on the cost of goods or services supplied and credited to the national government entity, but such transactions may be carried out only after National Treasury's advice;
- (c) loan and grant receipts through the national exchequer account; and
- (d) Tax and non-tax revenue through the national exchequer account.

Receiver of revenue.

62. (1) A receiver of revenue designated by the Cabinet Secretary under section 75 of the Act shall be responsible for the collection of, and accounting for, such items of revenue as the Cabinet Secretary may specify.

(2) A letter for the designation of receiver of revenue under paragraph (1) shall indicate his or her responsibility and the manner in which he or she may delegate the duties of collection of revenue to officers under him or her or of another national government entity.

(3) Notwithstanding the provisions of paragraph (2), the receiver of revenue for loans and grants funds shall be the Principal Secretary to the National Treasury, and the Cabinet Secretary shall specify such items of revenue in the designation letter.

Collector of revenue.

63. (1) In accordance with section 76 of the Act, the receiver of revenue shall authorize a public officer or any of the national government entities to be a collector of revenue for

national government for the collection of, and accounting for, such items of revenue as the receiver of revenue may specify.

(2) Except with the specific authority of the collector of revenue, in no case may a public officer whose duty involves the posting of assessment registers, rent rolls and similar documents be authorised to collect public moneys or to post collections into a cash book.

Responsibility for revenue management.

64. (1) An accounting officer and a receiver of revenue are personally responsible for ensuring that—

- (a) adequate safeguards exist and are applied for the prompt collection and proper accounting for, all national government revenue and other public moneys relating to their Ministries, departments or agencies;
- (b) adequate measures, including legal action where appropriate, are taken to obtain payment;
- (c) official receipts are issued for all moneys paid to Government of Kenya.

(2) An accounting officer or receiver of revenue who experiences difficulty in collecting revenues due to the national government shall report the circumstances to the Cabinet Secretary without delay.

(3) Except with the authority of the Cabinet Secretary, no receiver of revenue or collector of revenue, may convert public moneys received in local currency into foreign currency and vice versa.

(4) All public moneys collected by a receiver of revenue or collector of revenue or collected and retained by a national government entity, shall be paid into the designated bank accounts of the national government and shall not be used by any public officer in any manner between the time of their receipts and payment into the bank except as provided by law.

(5) An Accounting Officer or receiver of revenue or collector of revenue shall take disciplinary measures in line with the relevant legislation against a public officer who contravenes the provisions of paragraph (4).

(6) An accounting officer or receiver of revenue or collector of revenue shall ensure adequate books of accounts are kept relating to revenue collection and management.

(7) A public officer who makes payment from monies collected under this regulation commits an offence under the Act.

In-year reporting of revenue collection.

65. (1) The Accounting Officer or receiver of revenue or collector of revenue shall prepare a quarterly report not later than the 15th day after the end of the quarter.

(2) The quarterly report in paragraph (1) shall include—

- (a) a statement of receipts and disbursements in such form as the Public Sector Accounting Standards Board may determine;
- (b) a statement of arrears of revenue which shall be classified by financial year; and
- (c) reasons for material differences between approved estimates and the actual revenue collected.

(3) The accounting officer or receiver of revenue or collector of revenue shall include in the report under paragraph (1), the following details in respect of each waiver or variation—

- (a) the full name of each person benefiting from the waiver or variation;
- (b) the amount of tax, fee or charge affected by the waiver or variation;

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- (c) the year to which the waiver or variation relates;
- (d) the reasons for the waiver or variation; and
- (e) the law in terms of which the waiver or variation was granted.

(4) The quarterly report under paragraph (1) shall be submitted to the National Treasury with a copy to the Auditor-General and to Parliament.

[L.N. 229/2015, r. 7.]

Fees for services rendered by the national government.

66. (1) The Accounting Officer of a national government entity may, when finalising their budgets, review all fees, charges or the rates, scales or tariffs of fees and charges that are not fixed by any law, and that relate to revenue accruing to the Consolidated Fund.

(2) An Accounting Officer shall obtain approval from the National Treasury for the proposed tariff structure.

(3) Information on the tariff structure shall be disclosed in the annual report, including information on exemptions, discounts, free services and any other aspect of material influence on the revenue yield.

Agency services and revenue management.

67. (1) When a national government entity renders agency services to another national government entity or a county government, all revenue receipts collected shall be accounted for fully by the agent to the receiver of revenue or collector of revenue or accounting officer.

(2) Any exception to paragraph (1) on the expenses arising from the revenue administration costs shall be expressly agreed between the national government entity and the respective receiver of revenue or collector of revenue or accounting officer based a service level agreement signed between them.

(3) When a national government entity renders agency services to a county government all revenue receipts including agency receipts collected shall be accounted for fully by the agent to the receiver of revenue or collector of revenue or accounting officer and the expenses arising from the revenue administration costs shall be agreed between the national government entity and the respective county government based a service level agreement signed between them.

(4) When a county government entity renders agency services to a national government entity, all revenue receipts including agency receipts collected shall be accounted for fully by the agent to the receiver of revenue or collector of revenue or accounting officer and the expenses arising from the revenue administration costs shall be agreed between the county government and the respective receiver of revenue or collector of revenue or accounting based a service level agreement signed between them.

(5) Claims for agency services rendered on behalf of another government entity, level of government, shall be based on actual revenue collected and accounted for and shall be supported by original vouchers and shall be reflected in their books of accounts of transacting institutions.

Refund of Revenue.

68. (1) Refunds of revenue may become necessary because of collections or over-collections made in error or because, although properly collected in accordance with an Act or regulation, provision exists under the Act or regulation for the revenue to be reclaimed under certain circumstances in the form of a rebate or drawback.

(2) Refunds of revenue and drawbacks under paragraph (1) shall be in accordance with the relevant legislation.

(3) Any refunds under paragraph (1) shall be provided for under an expenditure item appropriated by Parliament in an Appropriation Act.

(4) Where the collection, over-collection or drawback is made in the same financial year as that in which the revenue was originally collected it may be authorised by the officer prescribed in the relevant legislation to be charged as a debit item in the appropriate revenue head.

(5) The receiver or collector of revenue shall together with the refunds in paragraph (1) include assumptions underpinning the refund estimates.

(6) The estimates of refunds submitted under paragraph (5) by the receiver or collector of revenue shall include assumptions underpinning the refund estimates.

Format of annual and quarterly statements submitted.

69. The annual, quarterly and monthly statements by a receiver of revenue submitted to the National Treasury under section 76(3) of the Act shall be in the format to be *gazetted* by the Cabinet Secretary and shall at the minimum include—

- (a) the actual revenue received by the receiver and transmitted to the national exchequer account;
- (b) the actual revenue received by the receiver and not transmitted to the national exchequer account;
- (c) the revenue arrears due but not collected; and
- (d) a responsibility statement by the receiver of revenue on the revenue statement.

PART VII – MANAGEMENT OF GRANTS AND DONATIONS

Definition of terms.

70. For purposes of this Part—

- (a) "grant agreement" means an instrument that gives the power to an agency to furnish money, property or materials to a grantee and the grantee has freedom to pursue the grants stated purpose, but the agency does not specify the matter of performance of the work and is not substantially involved in it;
- (b) "financing agreements" are a document detailing commitments for provision of goods, services and activities to be performed by an organisation for the awarding agency and contain specific objectives, direction, specifications, costs or methods of performance; and
- (c) "donor or development partner or external financier" is used in this Part interchangeably to refer to the providers of external resources.

Grants, donations and sponsorships.

71. (1) Upon approval by the Cabinet Secretary, an Accounting Officer may receive any grants, donation, sponsorship made in favour of the government entity irrespective of whether such sponsorship or grants or donation is in cash or in kind provided that the Accounting Officer confirms with the relevant national government entity that donations given in kind are—

- (a) not harmful to health and the environment; and
- (b) in good and serviceable condition.

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(2) All cash grants, donations or sponsorships shall be deposited in the Consolidated Fund provided that—

- (a) such grants, donation and sponsorship are from a credible source from a person in good standing with the Government of Kenya;
- (b) such grants, donation and sponsorship are intended to address government development policies.

(3) Where the purpose of the grant, donation, or sponsorship is not apparent, the Cabinet Secretary shall have the discretion to instruct the Accounting Officers on its application.

(4) A national government entity is not allowed to give another national government entity cash donations to augment the budgetary resources of designated departments.

(5) Grant, donations or sponsorships received during the year shall be disclosed in the annual and quarterly financial statements.

Grants administration.

72. (1) Projects implemented through grants, donations and sponsorships shall be aligned to the national development policies.

(2) In identification and designing of projects funded by development partners, the areas covered and amounts allocated shall be determined by objective criteria and as far as possible on need-based formula which may include geographical area, population and poverty index.

(3) The Accounting officer shall disclose the details under paragraph (2).

(4) All grants and donations shall be appropriated by national assembly before commencement of disbursements.

(5) Issues to do with tax exemptions, issuance of work permits, counter-part personnel, counter-part funding, office space, demand driven technical assistance, community contribution either in cash or in kind shall be clearly spelt out in the grant agreements, and the government and community contribution shall be properly assessed and quantified in all grant supported projects.

(6) National government shall ensure grants are factored in the budgets and counterpart funds appropriated accordingly.

Disclosure of authorization and disbursement.

73. (1) Where authorisation has been granted for the project to start, the Accounting Officer shall ensure public disclosure to the intended beneficiaries within thirty days of the allocation and disbursement of the grants.

(2) After disbursement of grants, the accounting officer shall report within fifteen days after the end of each quarter to the intended beneficiaries on the expenditures and performance achieved in relation to the grant.

(3) During the project identification and design, the intended beneficiaries shall be involved through public participatory approach for planning.

(4) The views of the indented beneficiaries shall be received during public forums provided for under paragraph (3) and their views shall be considered appropriately or during budgeting process of the next budget cycle.

(5) Where non-compliance by an accounting officer with grant conditions is established through an audit or fiduciary review process, the Cabinet Secretary may suspend the disbursements and institute measures to recover any amounts misappropriated by the public officer.

ACCOUNTING AND REPORTING ON DONATIONS AND GRANTS

Monies received by way of grants and donations to be paid into a designated account.

74. (1) All monies received by way of grants and donations shall constitute public monies and shall be paid into the Consolidated Fund.

(2) The Cabinet Secretary shall make provisions in the budget estimates for grants and donations receivable in kind such as commodity aid for purposes of raising cash locally.

(3) Where the quantum of the grant or donation referred to in paragraph (2) is not known, a provision shall be included in the estimates and when the quantum becomes known a supplementary estimate shall be raised for the amount involved.

(4) Where grants and donations are receivable in kind, the value of such donations shall be determined and included in the estimate and reflected as expenditure in the financial year.

(5) Monies received for specified projects which have been paid into the Consolidated Fund shall be released when required to the appropriate project bank account.

(6) An accounting officer of a national government entity shall—

- (a) cause to be kept and maintained proper books of accounts and records in respect of all projects and donations;
- (b) ensure that whenever projects are completed, the project assets including buildings, plant, vehicles, furniture, fittings and equipment are properly recorded and handed over to the accounting officer in accordance with the financing agreement;
- (c) where no time frame is provided for the project, ensure that the assets are handed over within three months from the date of the closure of the project; and
- (d) in the absence of any instructions to the contrary, ensure that any unexpended balance standing in the credit of the project account is paid into the Consolidated Fund.

Project selection criteria.

75. It shall be the responsibility of the National Treasury to ensure that—

- (a) any project approved for financing through grants and donations has been approved by the accounting officer; and
- (b) the project feasibility study report has been inspected and approved by the relevant national government entity.

Project bank accounts.

76. (1) For the purpose of disbursement of project funds, there shall be opened and maintained a project account for every project at Central Bank of Kenya unless it is exempted by the Cabinet Secretary, in writing, into which all funds shall be kept and such an account shall be known by the name of the project for which it is opened and each project shall maintain only one bank account.

(2) All foreign currency designated bank accounts shall be kept at the Central Bank of Kenya for national government entities unless exempted in writing by the Cabinet Secretary under paragraph (1).

(3) Every payment or instruction for payment out of the project account shall be strictly on the basis of the approved estimates of budget and financing agreement.

Records of receipts and disbursements.

77. The Accounting Officer of a project shall compile and maintain a record showing all receipts, disbursements and actual expenditure on a monthly basis in respect of every project and subproject and shall—

- (a) make monthly interim financial returns;
- (b) make quarterly financial management returns; and
- (c) submit a summary of the records for each quarter and year to the division responsible for external resources in the National Treasury not later than fifteen (15) days after the end of every quarter.

Responsibilities of NGOs where the project is implemented by NGO.

78. (1) Non Governmental Organisations (NGO's) that implement development programs funded by public funds, including donor funding shall be accountable through regular financial reporting and submission of audited annual financial statements to the relevant accounting officer in a format prescribed by the Public Sector Accounting Standards Board.

(2) NGO's referred to under paragraph (1) shall be registered by the responsible national licensing authority and in accordance with the relevant law under which that authority is established.

Documents to be attached by NGOs where the project is implemented by NGO.

79. (1) Documents to be attached to the financial reports and annual audited accounts in regulation 78 shall include a certificate of registration confirming that the NGO—

- (a) is a body corporate and separate from its members, with perpetual succession;
- (b) can engage in public interest activities and public fundraising throughout Kenya; and
- (c) is eligible for such fiscal or other benefits and privileges, as may be applicable to NGOs from time to time.

(2) In addition to requirements under paragraph (1), the NGO shall also submit—

- (a) its annual performance report outlining the activities undertaken by the NGO in the year;
- (b) an annual return reflecting details of its trustees, directors, office bearers and auditors;
- (c) its sources of funding;
- (d) in the event of any amendment to its Constitution or governance instrument during the financial year, a certified copy of such amendment; and
- (e) any such other information the NGO considers necessary.

PART VIII – TREASURY AND CASH MANAGEMENT**CONSOLIDATED FUND**

Composition of the Consolidated Fund.

80. (1) The National Treasury shall administer the Consolidated Fund in accordance with the constitutional provisions in Articles 206 and 209 (1), (2) and (4) in controlling revenue receipts to ensure that—

- (a) all revenue receipts by the national government are paid into the national exchequer account, except revenue receipts reasonably excluded by the Constitution, the Act, or another Act of Parliament; and
- (b) withdrawals from the Consolidated Fund shall be done—
 - (i) in accordance with an appropriation by an Act of Parliament;
 - (ii) in accordance with Articles 222 or 223 of the Constitution;
 - (iii) as a direct charge against the Consolidated Fund as authorised by the Constitution or an Act of Parliament.

(2) The administrator of the Consolidated Fund shall keep proper books of accounts of the Consolidated Fund in accordance with standards and formats prescribed by the Public Sector Accounting Standards Board.

Process of receipts into Consolidated Fund.

81. (1) Receivers of Revenue shall promptly deposit into National Exchequer Account all receipts due to the Consolidated Fund.

(2) The Receivers of Revenue shall promptly pay the revenue received into the Consolidated Fund as soon as possible and in any case not later than five (5) days after receipt thereof.

(3) The National Treasury shall issue a receipt to a Receiver of Revenue to acknowledge the receipt of revenue thereof.

CASH AND BANKING ARRANGEMENTS

Criteria for approval of opening and operating national government entities bank accounts.

82. (1) Subject to the provisions of section 28 of the Act, the following criteria shall be considered by the National Treasury before granting approval to a national government entity to open and operate a national government bank account—

- (a) all national government bank accounts shall be opened at the Central Bank of Kenya, except—
 - (i) where the Central Bank of Kenya has no branch;
 - (ii) it is expressly provided for under a financing agreement and with approval of the Cabinet Secretary;
 - (iii) where Central Bank of Kenya has confirmed in writing it is unable to offer banking facilities;
 - (iv) where the National Treasury has granted authority to an accounting officer or receiver of revenue or collector of revenue to open and operate a bank account in a commercial bank for purposes of revenue collection, and that commercial bank shall have a wide branch network and is government linked;
- (b) any national government entity which draws over seventy five (75) percent of its resources from the National Exchequer Account shall apply for opening and

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operating bank accounts at the Central Bank of Kenya, unless exempted under paragraph (1).

(2) Where a national government entity is unable to comply with the provisions under paragraph (1), it may apply for grant of Cabinet Secretary approval to open and operate a bank account in a commercial bank under special circumstances.

(3) All national government entities operating bank accounts outside the provisions of paragraph (1) of this regulation, shall comply with the provisions under paragraph (1) within six (6) months from upon publication of these Regulations.

(4) Except with the prior authority of the National Treasury, no accounting officer may open a bank account for the deposit, custody or withdrawal of public moneys or other moneys for which he or she is responsible in his or her official capacity or for the transaction of official banking business.

(5) The authority of National Treasury shall be conveyed in writing to the responsible Accounting Officer with a copy to the Controller of Budget and the Auditor-General.

(6) National Treasury may prescribe the banking rules and the maximum balance which may be held in any official Treasury Single Account sub-account or other bank accounts, and if at any time this balance seems likely to be exceeded the officer operating the accounts shall consult National Treasury on the action to be taken.

(7) No official government bank account shall be overdrawn, nor shall any advance or loan be obtained from a bank account for official purposes beyond the limit, authorized by the National Treasury in line with section 28(4) of the Act.

(8) The authority in paragraph (7) shall be conveyed in writing to the responsible Accounting Officer and copied to the Auditor-General.

(9) Personal cheques shall not be deposited in an official bank account.

Guiding principles for cash management.

83. (1) The National Treasury shall be responsible for establishing sound cash management systems, procedures and processes, to ensure efficient and effective banking and cash management practices.

(2) For purposes of this regulation, sound cash management includes—

- (a) assessing the cash inflows and outflows expected at any one time;
- (b) ensuring payments, including transfers to other levels of government and national-government entities are made when due for efficient, effective and economical programme delivery and the government's normal terms for account;
- (c) avoiding accumulation of idle balances;
- (d) using short term borrowing only when it is necessary;
- (e) avoiding prepayments for goods or services unless required by the contractual arrangements with the supplier;
- (f) accepting discounts to effect early payment only when the payment has been included in the monthly cash flow estimates provided to the National Treasury;
- (g) pursuing debtors with appropriate sensitivity and rigour to ensure that amounts receivable by the government are collected and banked promptly;
- (h) recognising the time value of money and managing inventories to the minimum level necessary for efficient and effective programme delivery, and selling surplus or under-utilised assets.

(3) National government overdraft at the Central Bank of Kenya shall be retired by the end of the financial year.

Surrender of End-Year Surplus Cash Balances.

84. Not later than the 31st January each year, each Accounting Officer shall surrender to the National Exchequer Account unexpended voted money or excess Appropriations-in-Aid, as confirmed by Auditor-General in the audit report.

Cheques and electronic payments.

85. (1) All signatories in respect of cheques, or electronic payments and fund transfers shall be designated by the Accounting Officer and any changes in signatories shall be authorized by him.

(2) There shall be two authorized signatories to sign a cheque drawn or electronic payment or fund transfer on a national government bank account.

(3) The names and designation of those officers in paragraph (1) and their specimen signatures shall be advised to the bank where the account is held by the accounting officer, with copies of the advice sent to the National Treasury, and any change in signatories shall be advised in writing.

(4) The signatories under this regulation shall—

- (a) initial the counterfoil or enter with their personal passwords;
- (b) be equally responsible for the regularity of the payment; and
- (c) thoroughly scrutinize the documents supporting the payment.

(5) Spoilt cheques shall be marked prominently with the stamp "Cancelled", and fixed securely to the cheque-list used for controlling the cheques issued each day.

Cash Management Advisory Committee.

86. (1) The Cabinet Secretary may establish a Cash Management Advisory Committee.

(2) The Cash Management Advisory Committee established under paragraph (1) shall be comprised of—

- (a) the Principal Secretary of the National Treasury who shall be the chair person or an officer designated by him or her;
- (b) the department responsible for matters relating to accounting policy within the Nat
- (c) the department responsible for matters relating to economic affairs in the National Treasury;
- (d) the office of the public debt management in the National Treasury; and
- (e) the department responsible for matters relating to budget matters in the National Treasury.

(3) The responsibilities of the Cash Management Advisory Committee shall be determined by the Cabinet Secretary during its establishment.

Registers and records of government bank accounts.

87. (1) The office of the Accountant-General shall maintain a register of all Treasury Single Account sub-accounts and other bank accounts opened by national government entities, including public funds and donor funded projects.

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(2) The office of the Accountant-General shall reconcile periodically with the government bank accounts list, maintained by the Central Bank of Kenya.

(3) The Accounting Officer of a national government entity shall, by the 30th September of each year, provide the National Treasury with an up-dated list of bank accounts held by the national government entity.

(4) The list referred to under paragraph (3) shall include the following information—

- (a) name of the bank where the account is held;
- (b) name of the bank account;
- (c) type of bank account;
- (d) signatories of the bank account;
- (e) date on which the bank account was opened;
- (f) the bank account number;
- (g) purpose for the bank Account, if different from the main operational bank account of the government entity;
- (h) the bank account balances as at 30th June each year; and
- (i) the reference number and date of the National Treasury, letter granting approval for opening and operating the bank account.

Authority to have access to government bank accounts.

88. (1) The National Treasury, shall when granting authority to Accounting Officers to open and operate bank accounts, require them to include as a pre-condition to that bank, that the Cabinet Secretary may request bank statements for that account without any reference to the authorized bank signatories of that bank account.

(2) The Cabinet Secretary may suspend the operations of any government bank account or impose certain conditions, if he or she reasonably believes the purpose of that account no longer exists, or that fraud or fraudulent transactions are being undertaken in that specific account and shall institute investigations immediately.

(3) The Cabinet Secretary may, where in his or her opinion finds it necessary, share the report of the investigation carried out in paragraph (2) with the Auditor-General and the Controller of Budget.

Security for cash in transit.

89. The Accounting Officers shall ensure that adequate arrangements are made to protect both cash and staff for cash in transit and such measures shall include the following—

- (a) safe or strong rooms and restricted access to the cash handling locations;
- (b) police or armed security escorts;
- (c) the security bags locked to the vehicle; and
- (d) suitable transport and variation of movement, times, and routes.

Reconciliation of bank accounts.

90. (1) Accounting Officers shall ensure bank accounts reconciliations are completed for each bank account held by that Accounting Officer, every month and submit a bank reconciliation statement not later than the 10th of the subsequent month to the National Treasury with a copy to the Auditor-General.

(2) Similar reconciliations shall be carried out when responsibility for any bank account or cheque book is handed over from one officer to another and on the occasion of any surprise inspection or survey.

(3) Accounting Officers shall ensure any discrepancies noted during bank reconciliation exercise, are investigated immediately and appropriate action taken including updating the relevant cash books.

(4) The National Treasury shall analyse and review the bank reconciliation statements submitted under paragraph (3) of this regulation and take the necessary action.

MANAGING IMPREST TRANSACTIONS

Definition of imprest.

91. (1) For the purposes of this regulation and Regulations 92, 93, and 94, an imprest means a form of cash advance or a float which the Accounting Officer may authorize to be issued to officers who in the course of duty are required to make payments which cannot conveniently be made through the cash office of a government entity or bank account.

(2) The officer authorized to hold and operate an imprest shall make formal application for the imprest through an imprest warrant.

(3) Funds disbursed for imprest shall not be kept or held in an official bank account, but in a separate or personal bank account operated by the imprest holder or in the form of cash under safe.

Determination of imprest levels.

92. The Accounting Officer or AIE holder shall approve the establishment of an imprest facility including the maximum amount for the specific purpose of that facility.

Classes of imprest.

93. (1) There shall be three types of imprests, namely—

- (a) Temporary or Safari imprest;
- (b) Standing Imprest; and
- (c) Special imprest.

(2) An imprest shall be issued for a specific purpose, and any payments made from it, shall be only for the purposes specified in the imprest warrant.

(3) Temporary imprests shall be issued mainly in respect of official journeys and are intended to provide officers with funds with which they can meet travelling, accommodation and incidental expenses.

(4) Before issuing temporary imprests under paragraph (2), the Accounting Officer shall ensure that—

- (a) the main objective of the journey cannot be achieved by other cheaper means;
- (b) the applicant has no outstanding imprests;
- (c) the applicant has been recorded in the imprest register including the amount applied for;
- (d) adequate funds are available against the relevant items of expenditure to meet the proposed expenditure.

(5) A holder of a temporary imprest shall account or surrender the imprest within 7 working days after returning to duty station.

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(6) In the event of the imprest holder failing to account for or surrender the imprest on the due date, the Accounting Officer shall take immediate action to recover the full amount from the salary of the defaulting officer with an interest at the prevailing Central Bank Rate.

(7) If the Accounting Officer does not recover the temporary imprest from the defaulting officer as provided for in this regulation the Accounting Officer commits an offence as provided for under the Act.

(8) In order to effectively and efficiently manage and control the issue of temporary imprests, an accounting officer or AIE holder shall ensure that no second imprest is issued to any officer before the first imprest is surrendered or recovered in full from his or her salary.

(9) If the accounting officer or AIE Holder fails to comply with the provisions of paragraph (8), he or she commits an offence as provided for under the Act.

(10) If an imprest is to be recovered from any public officer by instalments, the Accounting Officer shall personally authorize such recovery and such moneys shall no longer be an imprest but an unauthorized advance from Government Funds, and in addition to the interest charged under paragraph (6), the Accounting Officer shall take appropriate disciplinary action against the officer concerned for the abuse of the imprest.

(11) Standing Imprest shall be intended to be in operation for a time and requires bringing the cash level of the advance continuously up to the agreed fixed level by systematic reimbursement of expenses.

(12) Standing imprest shall involve personal responsibility as it shall be issued to an officer in his or her own name, and not to the holder of an office.

(13) When an imprest holder leaves the service, or is transferred, he or she shall surrender the total standing imprest which includes cash plus payment vouchers which together amount to the fixed level of the imprest, and a new imprest issued to his or her successor.

(14) The holder of a standing imprest shall keep a memorandum cash book to record all receipts and payments and the balance on hand shall agree with the cash balance recorded in the cash book, and in the absence of any receipts, the actual cash balances plus the expenses paid shall equal at all times the fixed level of the imprest for which the imprest holder is personally responsible.

(15) When the imprest holder needs to have his or her funds replenished, he or she shall send an abstract and analysis of his memorandum cash book, plus originals of the supporting payment vouchers to accounts division.

(16) If the accounts division in paragraph (15) is satisfied that the expenditure has actually been incurred, that it has been incurred for the intended purposes, and there is no irregularity in the payment vouchers, it shall arrange for the analysed expenditure to be posted to the various heads and items, and arrange for the cash to be transferred to the imprest holder so as to "top-up" his or her fund.

(17) In addition to paragraph (16) the head of accounts division shall also ensure that frequent spot checks are made of the standing imprest itself by a responsible officer as follows—

- (a) count the cash on hand;
- (b) confirm that the actual cash on hand corresponds with the balance on hand as recorded in the cash book;
- (c) confirm that all movements (expenses and receipts) since the last check have been properly recorded and are properly documented;

- (d) ensure that the documents justify the difference between the fixed imprest level and the actual cash balance; and
- (e) report on any anomalies found to the head of the accounts section.

(18) Any Special Imprest utilized for any expenditure on services of a confidential nature, the purpose add the particulars of which cannot be made public, shall be supported by a certificate that the money has been paid, and a declaration by the Cabinet Secretary responsible for the national government entity and the relevant Accounting Officer that they have satisfied themselves that the money has been properly expended, and has not been used to supplement the emoluments of any officer.

Duties of Imprest holders.

94. An officer holding an imprest shall ensure that—

- (a) the imprest issued to him or her shall be used for the intended purpose only;
- (b) the imprest moneys and any payment vouchers awaiting replenishment are adequately safeguarded at all times;
- (c) proper cash sale receipts are received for all payments out of the imprest;
- (d) the full amount of the imprest can be accounted for at all times in cash, stamps, money at bank and completed payment vouchers; and
- (e) goods purchased through imprest are taken on charge and certificate issued.

TREASURY SINGLE ACCOUNT

Establishment of a Treasury Single Account.

95. (1) The National Treasury hereby establishes a Treasury Single Account (TSA) pursuant to section 28(2) of the Act, which Account. shall become operational within six (6) months upon commencement of these Regulations and shall be kept at the Central Bank of Kenya.

(2) The Cabinet Secretary shall from time to time issue Treasury Single Account guidelines to accounting officers for the operations of the Treasury Single Account.

Operation of a Treasury Single Account.

96. (1) The National Treasury shall ensure operating cash balances in the Treasury Single Account sub-accounts are kept to a minimum through consolidation into a Treasury Single Account.

(2) The Treasury Single Account shall reflect at the minimum the following features—

- (a) unified banking arrangements to enable the National Treasury to have proper oversight of national government cash inflows and outflows on these bank accounts;
- (b) that no national government entity shall operate bank accounts outside the Treasury Single Account unless expressly authorized by the Cabinet Secretary;
- (c) notwithstanding the requirement under sub-paragraph (b), the Cabinet Secretary may authorize exemption from the requirements of sub-paragraph (b); and
- (d) the comprehensive consolidation of government controlled public monies encompassing all government cash resources, including National Exchequer Account, special funds, trust funds and other public funds unless expressly exempted by the Cabinet Secretary.

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(3) National government deposits or exchequer releases to national government entities by the National Treasury shall be deposited in the Treasury Single Account sub-accounts and shall form part of cash balances of these accounts.

(4) Unless exempted by an Act of Parliament or by judicial order, all deposit bank accounts of the national government's entities shall be sub-accounts of the Treasury Single Account for the national governments.

PART IX – ACCOUNTING AND REPORTING

FORM AND BASIC STRUCTURE OF GOVERNMENT ACCOUNTS

Accounting period.

97. (1) The accounts of the national government entities shall record transactions which take place during a financial year running from the 1st July to the 30th June.

(2) Government accounts may be kept open for adjustments or a financial year may be kept open for a month in the following financial year for completion of the following end of year accounting processes—

- (a) in respect of the transactions of the 30th June each year to capture expenditure for field services;
- (b) for carrying out certain inter-departmental agency adjustments; and
- (c) for closing the accounts of special funds and Suspense accounts.

(3) Adjustments may also be made after the close of the year by journal entries for the correction of accounts due to miss-postings or mis-classifications impacting on fair presentation of financial statements that may be noticed after 30th June each year.

(4) An actual cash transaction taking place after the 30th June, shall not, however, be treated as pertaining to the previous financial year even though the accounts for that year may be open for the purposes mentioned under paragraphs (2) and (3).

(5) The National Treasury shall issue guidelines on the closure of the financial year not later than the 15th May of each year.

Charging of expenditure to year of accounts.

98. (1) The date of payment of any amount shall determine the date of the recording of the transaction in the accounts.

(2) Advance payment shall not be paid to suppliers of services and goods unless provided for in the contractual terms and conditions contained in a valid contract signed between the procuring entity and the supplier.

Account codes and standard chart of accounts.

99. (1) As a general rule, the classification of financial transactions in national government entity's accounts shall be based on the standard chart of accounts approved by the National Treasury.

(2) The approved estimates of expenditure shall form the basis of the accounts for the financial year.

(3) Every entry in the accounts shall be supported by a voucher or other approved document *gazetted* by the Cabinet Secretary containing the full details, clear narrations and particulars of the item or items to which it relates.

Books of accounts to be kept by Accounting Officers.

100. Accounting Officers shall keep in all offices concerned with receiving cash or making payments a cash book showing the receipts and payments and shall maintain such other books and registers as may be necessary for the proper maintenance and production of the accounts of the Vote for which he or she is responsible.

Recording and reporting basis.

101. (1) The structure of the reporting formats shall be based on the requirements of the Act.

(2) The Cabinet Secretary may from time to time amend the reporting formats in accordance with the prescribed standards set by the Public Sector Accounting Standards Board.

(3) The National Treasury shall issue financial instructions and guidelines on application of accounting policies, bases, standards and classification to be applied in financial reporting in line with the standards set by the Public Sector Accounting Standards Board.

(4) An Accounting Officer shall prepare the financial statements in a form that complies with the relevant accounting standards prescribed by the Public Sector Accounting Standards Board, not later than three months after the end of the financial year and submit them to the Auditor General with a copy to the County Treasury, the Controller of Budget and the National Treasury.

(5) Any expenditure on services of a confidential nature, the purpose and the particulars of which cannot be made public, shall be supported in the accounts by a certificate that the money has been paid, and a declaration by the Cabinet Secretary responsible for the national government entity and the relevant Accounting Officer that they have satisfied themselves that the money has been properly expended, and has not been used to supplement the emoluments of any officer.

(6) For the purposes of this Regulation, an accounting officer shall only classify expenditure as confidential expenditure, if the expenditure—

- (a) is likely to prejudice the security, defence or international relations of the Government of the Republic of Kenya;
- (b) is likely to involve the disclosure of confidential deliberations or decisions of the Cabinet or of a committee of the Cabinet;
- (c) is likely to divulge any confidential information communicated in confidence by the national government to a county government or by a county government to the national government and which would prejudice national security or relations between the two levels of government;
- (d) would unfairly prejudice the commercial interests of anybody or person; and
- (e) likely, for any other reason, to form the basis for a claim by a foreign state or persons on the national government or county government in a judicial proceeding.

(7) The Accounting Officer shall be required under a closed door session, and is permitted, to disclose to a special or joint committee of Parliament and the President information or any other document on the nature of confidential expenditure under this Regulation.

Financial records and automation of financial operations.

102. (1) Financial records may be maintained in manual and or electronic form.

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(2) An Accounting Officer shall take all reasonable precautions to guard against damage, destruction of or falsification of any financial record required to be kept by the provisions of the Act and these Regulations.

(3) An Accounting Officer shall satisfy himself or herself that where an alteration of a financial record requires the authorization, approval and, or deletion of any transaction or data whether electronic or manual by any means other than in writing, that there is sufficient audit trail which shall identify the person who approved the transaction.

Accounting adjustments journal.

103. (1) Journal entries prepared for all adjustments shall be authorized by the accounting officer or an officer designated by him or her before posting them in a financial record.

(2) In all cases journal vouchers shall be supported by sufficient explanations, authorisations and documentation to facilitate accounting adjustments to be understood.

Vouchers.

104. (1) All receipts and payments vouchers of public moneys shall be properly supported by pre-numbered receipt and payment vouchers and shall be supported by the appropriate authority and documentation.

(2) All receipt and payment vouchers shall be or made out in indelible ink and shall contain adequate narration of the particulars of the services, goods or works procured and being paid for.

(3) All amounts appearing in a voucher shall be written in words as well as in figures.

Powers to delegate voucher approval.

105. (1) An Accounting Officer or any other officer delegated in writing by him or her may authorize payment vouchers on his or her behalf for expenditure chargeable to his or her vote, provided such expenditure is in respect of and within the provision of the services in a National Treasury warrant, in accordance with law, regulations, tariff, contract or agreement that may be applicable, and does not require special authority in terms of any law, regulation or National Treasury instruction.

(2) Accounting Officers may prescribe the financial limits and other conditions within which this authority in paragraph (1) may be exercised.

Deposit accounts.

106. Unless otherwise exempted by an Act of Parliament, any deposit which has remained unclaimed for 5 years may, with the approval of the Cabinet Secretary, be paid into Consolidated Fund and thereafter the Accountant-General may refund the deposit to any person entitled thereto, if he or she is satisfied that the claim is authentic.

Clearance and suspense accounts.

107. (1) All the transactions relating to clearance and suspense accounts shall be supported by authentic and verifiable source documents, clearly indicating the approved allocation.

(2) Where it is necessary to account for revenue and expenditure transactions in a clearing or suspense account, the Accounting Officer shall ensure that—

- (a) amounts included in clearing or suspense accounts are cleared and correctly allocated to the relevant cost centres on a monthly basis;
- (b) monthly reconciliations are performed to confirm the balance of each account; and

- (c) reports on uncleared items are prepared on a monthly basis and submitted to the National Treasury.

(3) The National Treasury shall prescribe in the financial manual procedures to be used for management of balances in suspense or clearing accounts.

Payments to beneficiaries residing outside Kenya.

108. Wherever practicable all payments of public monies made to persons outside Kenya shall be made by direct payment or payment advice through the Central Bank of Kenya to such persons' banks account or use of banker's draft or through the national payment system.

Use of electronic systems for financial operations.

109. (1) For efficient and effective utilization of electronic systems in processing financial data, the National Treasury shall develop and regularly issue standard operating procedures and instructions on the automated integrated financial management system operations, use and maintenance.

(2) The Principal Secretary shall designate a person or persons in writing to administer the automated integrated financial management system.

(3) The system administrator shall ensure compliance of assigned responsibilities and when necessary take appropriate measures.

Restricted access to systems.

110. (1) The Accounting Officer for a national government entity shall institute appropriate access controls needed to minimize breaches of information confidentiality, data integrity and loss of business continuity.

(2) Access controls to be instituted shall include—

- (a) uniform application forms for registration of new users, deregistration of users and modification of user roles;
- (b) processes of safeguarding completed application forms;
- (c) segregation of duties;
- (d) use of multi-factor authentication including standardization of user primary identity linked to national identification numbers, payroll numbers and assigned responsibilities; and
- (e) utilization of appropriate password length for login.

(3) Users of the system under this regulation shall—

- (a) not use or attempt to use the automated public financial management system without the authorisation of the system administrator;
- (b) take all reasonable steps to maintain the integrity of passwords and other security mechanisms;
- (c) where a password becomes insecure or potentially insecure, as soon as is practicable, implement a new secure password;
- (d) not do anything that damages, restricts, jeopardises, impairs or undermines the performance, usability, reliability, confidentiality or accessibility of any digital information system, programme, or other stored information data;
- (e) not alter, delete or in any other way interfere with, any information, data or files;
- (f) be responsible for any unlawful entry on the automated public financial management system using such persons password;

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- (g) undertake any tasks assigned; and
- (h) take all measures to ensure that on the last day of each month, the financial period of the month is closed.

(4) Failure to adhere to the closing of financial periods or to adhere to operational protocols in paragraph (3) shall be an offence under the Act.

Procedures for the Public Sector Accounting Standards Board.

111. (1) The Public Sector Accounting Standards Board shall be accountable to the Cabinet Secretary for matters relating to finance for the effective, efficient and economical fulfilment of its purpose and objectives.

(2) The Public Sector Accounting Standards Board shall prepare and submit to the Cabinet Secretary a report indicating—

- (a) their annual work plan demonstrating its priorities and agenda on how it intends to meet its objectives and responsibilities for following financial year; and
- (b) their annual activities demonstrating the extent to which its plans and mandate were achieved.

(3) The Cabinet Secretary may from time to time request a report from the Public Sector Accounting Standards Board on its mandate and such report shall be submitted within two weeks from the date of the request.

PART X – EXPENDITURE MANAGEMENT AND CONTROL

Consolidated Fund Services.

112. (1) Where the Constitution or an Act of Parliament provides for some specific categories of expenditure to be a direct charge on the Consolidated Fund, such expenditures shall be included in the recurrent budget estimates of the national government as part of the Consolidated Fund Services.

(2) The Consolidated Fund Services shall be provided for in the recurrent estimates, but shall not be subject to Parliamentary debate nor to the expenditure limited by estimates nor vote on account.

(3) Consolidated Fund Services shall be administered by the National Treasury.

(4) The National Treasury may arrange for another Accounting Officer to make payment in the first place on its behalf against subsequent reimbursement from the appropriate Vote of the Consolidated Fund Services.

Excess vote.

113. If an Accounting Officer finds, after Appropriation Accounts are completed, that he or she has spent more than the total vote, that Accounting Officer shall seek Parliamentary approval of the National Assembly through the Cabinet Secretary for that Excess Vote.

Payments to which an Accounting Officer objects.

114. (1) An Accounting Officer who is instructed by his or her Cabinet Secretary to make payment which for any reasons the accounting officer has concerns, the Accounting Officer shall raise those concerns in writing to the Cabinet Secretary.

(2) In the event that the Cabinet Secretary approves in writing for the processing of the payment despite the concerns raised by the Accounting Officer under paragraph (1), the Accounting Officer shall obey the instructions without further responsibility.

(3) Upon payment, the accounting officer may proceed as provided for under section 68(3) of the Act, and may send a copy of the report to the Auditor-General.

Goods, works and services to be procured according to an approved procurement plan.

115. (1) All purchases of goods, works and services from suppliers, including capital investments, shall comply with the provisions prescribed in the Public Procurement and Asset Disposals Act (Cap. 412C) and the Regulations made thereunder and shall have the prior approval of the Accounting Officer.

(2) Every year a procurement plan shall be prepared by Accounting Officers to form the basis for procurement activities undertaken by government entities in the fiscal year.

(3) The procurement plan in paragraph (2) shall, where necessary, include estimated costs of procurement, insurance, clearing, forwarding, warehousing and demurrage charges for goods imported and have to undergo clearing and forwarding through ports of entry into the country.

Recovery, disallowance and adjustment of payments.

116. (1) Amounts charged to Voted Funds, which are recovered in the financial year in which payment was made, shall on or before the closing of books of that financial year, be allocated to the budget item that was originally debited.

(2) Such amounts which are recovered after the closing of books of a financial year shall be paid to the Consolidated Fund, provided that such amounts have not been allocated to a clearing or suspense account during the financial year in which payment was made.

Re-Vote of Budget.

117. (1) Where an A.I.E holder observes that it will not be possible to utilize all the funds allocated for a particular project in a given financial year, the AIE holder shall inform the accounting officer not later than February.

(2) The Accounting Officer will then surrender the resources to the National Treasury and the National Treasury shall ensure that the funds are re-voted for the project in the following financial year in order to continue the implementation of the project.

Accountable documents.

118. (1) Accountable documents whether manual or electronic shall be under strict control at all times and they shall include—

- (a) indent forms (for supplies from government printer or government stores);
- (b) local purchase order;
- (c) local service order;
- (d) authority to incur expenditure;
- (e) cheques;
- (f) receipt books; and
- (g) imprest warrants.

(2) The Accounting officer shall keep his or her stock of accountable documents whether manual under lock and key, issuing them in accordance with the daily needs of the service, and keeping an accurate up-to-date record of their use by means of continuity control sheets.

(3) Where the accountable documents are in electronic form, the accounting officer shall ensure appropriate mechanism are put in place for safeguarding and tracking them.

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Preservation of accountable documents, books and records.

119. (1) Accounting Officers shall, subject to the provisions of the relevant national legislation, retain certain documents, of whatever kind and such documents shall be preserved in the following circumstances—

- (a) where they may be of value to the national archives; or
- (b) if they are the subject of unfinished audit enquiries; or
- (c) if they are likely to be needed for pension purposes.

(2) After the expiry of the retention periods under paragraph (3) of this regulation, the information may, if required, be secured in an alternative form that ensures the integrity and reliability of the data and ensures that the information can be reproduced, where necessary.

(3) Subject to the overriding consideration under paragraph (1), certain class of documents and records are to be preserved for a stipulated minimum period of time as detailed in the Table below—

<i>S/No</i>	<i>Type of document</i>	<i>Preservation period</i>
1.	Principal ledger	10 years
2.	Cash books	10 years
3.	Journals	3 years
4.	Payment vouchers	5 years
5.	Paid cheques or electronic payments	3 years
6.	Completed indent warrants	12 months after the end of the financial year to which they relate.
7.	Completed order forms	12 months after the end of the financial year to which they relate.
8.	Duplicate receipts	12 months after the end of the financial year to which they relate.
9.	Duplicate payment vouchers	12 months after the end of the financial year to which they relate.
10.	Receipt books: (a) Fully used (b) Obsolete, partly used	6 months after date of completion but must be inspected by the Auditor General and the disposal noted in the main counterfoils receipts, book registers.

Expenditure in relation to human resources.

120. (1) Personnel management activities relating to the authorization of appointments, the authorization of payments and the recording of those payments may not be performed by the same officer.

(2) The budgetary allocation for personnel costs shall be determined on the basis of a detailed costing of a human capital plan of a national government entity as approved by the state department responsible for public service management matters, the Public Service Commission and National Treasury.

(3) The Accounting Officer of a government entity shall ensure that the personnel cost of all appointees, as well as promotion and salary increases, can be met within the budgetary allocation voted for the national government entity.

(4) The responsible national government state department responsible for public service management matter, the public service commission, shall only approve establishment of new public service positions after getting confirmation of availability of budgetary provisions from the National Treasury.

(5) For purposes of ensuring sustainable wage bill, where the Cabinet Secretary intends to approve any changes under this regulation, he or she may consult the Salaries and Remuneration Commission.

(6) No change relating to the above matters shall be introduced into the expenditure estimates of the respective national government entity without the requisite authority.

Payroll certification by accounting officer.

121. (1) Personnel costs shall be classified based on the Government Finance Statistics Manual and the standard chart of accounts used in capturing government expenditure.

(2) Each employee shall be linked to a program in the budget of a national government entity's Vote.

(3) At least once every month, the accounting officer shall certify the correctness of the payroll.

Deduction codes to be assigned to all payroll deductions.

122. (1) The National Treasury shall set requirements for issuing payroll deduction codes for all discretionary and non-discretionary deductions.

(2) The Accounting Officer shall specify the purpose for which the code is applied for.

(3) The National Treasury may levy a fee on the discretionary deductions which shall be paid by the receiving institution.

Remuneration of members of committees and commissions of inquiry.

123. (1) Remunerative benefits and other allowances for members and the staff of the secretariat of special committees and commissions of enquiry shall be determined by, the national government entity responsible for matters relating to public service management in consultation with the Public Service Commission and the Cabinet Secretary taking into account the recommendations by the Salaries and Remuneration Commission.

(2) The remuneration of all members of a commission or committee shall be disclosed as foot notes to the financial statements of the national government entity by the accounting officer.

Services rendered by members during private time.

124. Where the chairperson requests a non-official member of a commission or committee to render services in his or her private time, other than the normal preparations for meetings, the person may be paid an allowance as determined by the relevant Accounting Officer.

Compensation and ex-gratia payment.

125. No offer of compensation in settlement of any claim against the Government or ex-gratia payment may be made without a prior authority of the National Treasury, except where powers are available to the Accounting Officer.

BENEFITS AND ALLOWANCES OF PUBLIC OFFICERS

Authority for loans and advances.

126. (1) The accounting officer may only authorize salary advances for public officers under him or her to be paid if there exists a budgetary provision in his or her Vote.

(2) No staff loan or advance which is properly chargeable to a head of expenditure shall be debited to a salary advance expenditure item.

Benefits and allowances for Public Officers.

127. (1) The Cabinet Secretary may by way of a *gazette* establish a mechanism for public officers to access loans including car loans, mortgage housing loans, motor cycle and bicycle loans.

(2) Despite the provisions of paragraph (1), the Cabinet Secretary may issue guidelines on benefits and allowances for public officers by way of a notice in Kenya *Gazette*.

LEASE FINANCING

Lease financing transactions by accounting officers of state and county departments.

128. (1) For the purpose of this regulation, a lease is regarded as a contract that gives the lessee (the renter) the right to the use of property, plant or equipment for a fixed period of time with a fixed schedule of payments to the lessor (the owner).

(2) The accounting officer of a state or county department may, for the purpose of conducting the government entity's business, enter into operating lease transactions.

(3) The accounting officer of a state or county department may under no circumstances enter into finance leases (non-operating lease) without the approval of the relevant National Treasury.

(4) For the purpose of paragraph (3), a lease is considered to be a finance lease if—

- (a) the lease transfers ownership of the asset to the government entity by the end of the lease period;
- (b) the government entity has the option to purchase the asset at a price which is expected to be sufficiently lower than the fair value at the date the option becomes exercisable, so that at the inception of the lease it is reasonably certain that the option will be exercised;
- (c) the lease term is for the economic life of the asset even if the title is not transferred;
- (d) at the inception of the lease, the present value of the minimum lease payments amount to at least 90% of the fair value of the leased asset;
- (e) the leased asset is of a specialised nature such that only the government entity can use the asset without major modifications being made;
- (f) the lessor's losses associated with cancellation of the lease by the lessee is borne by the lessee; and
- (g) the leased asset cannot be easily replaced by another asset.

(5) The National Treasury shall monitor all finance lease transactions and report.

MANAGEMENT OF INTERGOVERNMENTAL TRANSFERS

Definitions of terms.

129. For purposes of Regulations 130, 131, 132, 133, 134 and 135—

- (a) "national Accounting Officer" refers to an Accounting Officer of a national government entity; and
- (b) "county Accounting Officer" refers to an Accounting Officer of a county government entity.

Duties of National Government Accounting Officers in managing intergovernmental transfers to counties.

130. (1) A national government accounting officer transferring a conditional or unconditional allocation to a county government in accordance with an Act of Parliament shall be responsible for—

- (a) ensuring that transfers to a county government—
 - (i) are made in accordance with the frameworks governing the conditional and unconditional transfers to county governments;
 - (ii) are deposited only into the County Revenue Fund of a County Government; and
 - (iii) are made in accordance with the relevant Act of Parliament unless the allocations are withheld or stopped in terms of Article 225 of the Constitution;
- (b) ensuring that the transfer of funds is done only after information required in terms of the laws and frameworks governing intergovernmental transfers has been secured and all relevant information has been provided to the National Treasury.

(2) Upon approval of the County Allocation of Revenue Bill by Parliament, the Cabinet Secretary shall communicate the frameworks under paragraph (1)(b), to county governments within fifteen days after the approval.

(3) A national government accounting officer who transfers any conditional allocation to a county government shall, in addition to any other requirement in terms of the Act or any other applicable law or framework governing the allocation, monitor and evaluate the financial and non-financial performance of programmes, fully or partially funded by the allocation and submit to the National Treasury—

- (a) a quarterly report within 30 days after the end of each quarter;
- (b) an annual report within three months after the end of the financial year;
- (c) the attendant conditions of any conditional grant to a county accounting officers.

(4) The reports referred to in paragraph (3) shall include information that—

- (a) indicate the total amount of funds transferred to each county government;
- (b) indicate the amount of funds withheld or stopped from any county government, the reason for withholding or stopping and the action taken by the national government Accounting Officer and the county government Accounting Officer to deal with the matters that necessitated the withholding or the stoppage of the transfer;
- (c) indicate any reductions or additions of conditional or unconditional allocations to county governments authorized by the National Treasury;

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- (d) indicate the funds, if any, spent by the national government Accounting Officer on the administration of the transfer to the counties; and
- (e) that may be required under the relevant law or framework governing the transfer by the National Treasury.

Duties of County government Accounting Officers in managing intergovernmental transfers.

131. A county government Accounting Officer—

- (a) shall be responsible for ensuring compliance with requirements of the relevant law and frameworks governing the management of conditional and unconditional transfers from the national government;
- (b) shall ensure all transfers from the national government are included separately in the County Government's Appropriation Bill;
- (c) shall monitor and evaluate the financial and non-financial performance of programmes funded by a conditional and unconditional transfer from the national government and prepare and submit to the relevant national accounting officer—
 - (i) a quarterly report within 15 days after the end of each quarter in a format prescribed by the Public Sector Accounting Standards Board;
 - (ii) an annual report within two months after the end of each financial year in a format prescribed by the Public Sector Accounting Standards Board;
- (d) the reports submitted in paragraph (1)(c) under this regulation shall specify—
 - (i) actual transfers received by the county government from the national government;
 - (ii) actual expenditure incurred in respect of the transfer;
 - (iii) any reallocations authorised by the relevant national accounting officer;
 - (iv) to what extent the county government complied with the provisions of the Act, these Regulations and met the conditions provided for in the relevant framework of such a transfer;
 - (v) the steps taken to deal with non-compliance with any of the provisions of the Act and these Regulations or the conditions provided for in the relevant frameworks of such a transfer;
 - (vi) the extent to which the objectives and outputs of the transfer were achieved;
 - (vii) any other information as may be specified in the relevant framework for that transfer and any other information accounting officer may determine.

Formats of annual reports on intergovernmental transfers.

132. The National Treasury may provide additional guidelines on how national government Accounting Officers and County government Accounting Officers reports on conditional transfers on a quarterly and annual basis, to facilitate the audit of transfers to county governments.

Transfer made in error or fraudulently.

133. (1) Despite the provisions of any other law, where it is determined that the transfer of funds to a county government was done in error or fraudulently such a transfer shall be regarded as not legally due to that county government.

(2) An erroneous transfer contemplated in paragraph (1), may be recovered immediately or set-off against future transfers to that county government, which would otherwise become due to the county government.

Equitable transfer before approval of County Allocation of Revenue Bill.

134. (1) If the County Allocation of Revenue Bill submitted to Parliament for a financial year has not been approved by Parliament or is not likely to be approved by Parliament, by the beginning of the financial year, the Controller of Budget may authorize withdrawals of up to fifty (50%) percent from the Consolidated Fund based on the last County Allocation of Revenue Act approved by Parliament for the purposes of meeting expenditure of the county governments for the financial year.

(2) The authority under paragraph (1) shall cease upon accent of the County Allocation of Revenue Act for the financial year.

(3) The transfer to county governments made under paragraph (1) under this regulation shall form part of their equitable transfer for the financial year.

Liability for costs incurred in violation of principles of cooperate governance and intergovernmental relations.

135. (1) Any state organ involved in an intergovernmental dispute regarding any provision of this Act or any division of revenue matter or allocation shall, before approaching a court to resolve such dispute, make every effort to settle the dispute with the other state organ concerned, including exhausting all alternative mechanisms provided for resolving disputes in relevant legislation.

(2) If a court is satisfied that a state organ, in an attempt to resolve a dispute has not exhausted all the mechanisms for alternative dispute resolutions as contemplated in section 35 of the Intergovernmental Relations Act, 2012, (No. 2/2012) and refers the dispute back for the reason that the state organ has not complied with subsection (1), the expenditure incurred by that state organ in approaching the court shall be regarded as wasteful expenditure.

(3) The costs in respect of such wasteful expenditure referred to in paragraph (2) shall, in accordance with a prescribed procedure, be recovered without delay from the person who caused the state organ not to comply with the requirements of paragraph (1).

PART XI – MONITORING AND REPORTING

Responsibility for monitoring, evaluation and reporting.

136. (1) The Cabinet Secretary responsible for matters relating to planning shall prescribe a framework for monitoring and reporting on non-financial performance for use by accounting officers in evaluation of programmes and projects by measuring—

- (a) financial indicators which shall capture expenditures on the implementation of programmes and projects;
- (b) outputs indicators which shall measure what is directly supplied through the implementation of the programmes and projects; and
- (c) outcome or results indicators of the programme or projects which capture the expected effects on intended beneficiaries of the programme or project.

(2) The Cabinet Secretary responsible for matters relating to planning, shall also set up a system that shall facilitate efficient and effective data collection, storage and exchange to monitor and report on non-financial -performance of the national government entity's individual programmes and projects.

(3) An Accounting Officer shall put in place efficient and effective systems to monitor and report on non-financial performance for his or her national government entity's individual programmes and projects based on the prescribed format under paragraphs (1) and (2) and submit a report to the Cabinet Secretary responsible for planning with a copy to the Auditor-General.

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(4) The Cabinet Secretary responsible for planning shall consolidate all the reports received under paragraph (2), and submit a report to the Cabinet Secretary and publish and publicize it within seven (7) days after submitting it to the Cabinet Secretary.

Footnotes to appropriation accounts.

137. (1) An Accounting Officer shall provide footnotes to the annual financial statements prepared and submitted to the Auditor- General pursuant to section 81 of the Act

(2) The footnotes to the financial statements referred to under paragraph (1) of this regulation, shall at the minimum include—

- (a) the details of Appropriation-in-Aid;
- (b) excess Appropriation-in-Aid, if any;
- (c) reasons for material differences between approved estimates and actual expenditure, or actual collection of Appropriation-in-Aid;
- (d) losses and write-offs;
- (e) nugatory and similar payments, compensation and ex-gratia payments;
- (f) arrears of Appropriation-in-Aid and Appropriation-in-Aid abandoned; and
- (g) advances appropriately analysed, including imprests.

(3) Where, in respect of any footnotes referred to, in this regulation, there is nil return that particular footnote shall be omitted entirely.

Special public funds and state corporations additional reporting responsibilities.

138. An accounting officer of a national government entity shall disclose in the annual financial and non-financial report a list of special funds or state corporations controlled by national government entity.

PART XII – ASSET MANAGEMENT

Responsibility of an accounting officer of a national government entity on assets.

139. (1) The Accounting Officer of a national government entity shall take full responsibility and ensure that proper control systems exist for assets and that—

- (a) preventative mechanisms are in place to eliminate theft, security threats, losses, wastage and misuse;
- (b) movement and conditions of assets can be tracked; and
- (c) stock levels are at an optimum and economical level.

(2) The Accounting Officer shall ensure that processes and procedures both electronic and manual are in place for the effective, efficient, economical and transparent use of the government entity's assets.

(3) The National Treasury shall provide guidelines on assets management.

Responsibility for national government entity inventory.

140. (1) Accounting Officer shall be responsible for the proper custody, care and use of government inventories under their control, including imported goods in vessels awaiting discharge and in customs warehouses awaiting clearance.

(2) Despite paragraph (1) under this regulation, an Accounting Officer shall be responsible for the general management of government inventories held within that national government entity.

(3) Accountability shall only be discharged when government inventories have been—

- (a) consumed in the course of public business and records are available to show that the government inventories have been consumed;
- (b) worn out in the normal course of public business and removed from the stores records and has been approved by accounting officer or they have been disposed of in accordance with the Public Procurement and Asset Disposals Act (Cap. 412C); or
- (c) lost, stolen, destroyed, damaged or rendered unserviceable other than by fair wear and tear, and if removed from the store's record and has been approved in line with section 69 of the Act.

(4) If accounting officer is satisfied that the retention of any government inventories is no longer in the public interest, the accounting officer may authorize disposal in accordance with the Public Procurement and Asset Disposals Act (Cap. 412C) and the Regulations made thereunder.

(5) Removal from the store's record under paragraph (3) shall be reported to National Treasury by the accounting officer.

(6) Where an Accounting Officer has reason to believe that any person—

- (a) has received government inventory and has not duly handed it over;
- (b) has received government inventory for which the person is accountable but has not duly accounted for it; or
- (c) has in hand government inventory which has not duly been applied to the purpose for which they were collected,

the Accounting Officer shall serve a notice on the public officer requesting that within a time specified in the notice, the person shall pay for, account for, or apply the inventory and submit to the Accounting Officer satisfactory evidence that this has been done.

(7) The Accounting Officer of a government entity shall in consultation with a technical department review, at least annually when finalising the budget, all fees, charges, rates, tariffs or scales of fees or other charges relating to the letting of state property to ensure sound financial planning and management.

Accounting officers' responsibilities upon transfer of assets and liabilities.

141. (1) When assets or liabilities of a government entity are transferred to another government entity or other institution in terms of legislation or following a reorganization of government functions, the Accounting Officer for the transferring government entity shall be required to—

- (a) identify an inventory of such assets and liabilities; and
- (b) provide the Accounting Officer for the receiving government entity or other institution with necessary records, including human resource records of staff to be transferred.

(2) Both the Accounting Officer for the transferring national government entity and the Accounting Officer for the receiving national government entity or other institution shall sign the inventory when the transfer takes place.

(3) The Accounting Officer for the transferring national government entity shall file a copy of the signed inventory with the National Treasury and the Auditor-General within two weeks of the transfer.

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Assets accruing to the Government by Operation of Law.

142. Where any money, property or right accrues to the national government by operation of law, the National Treasury, may exercise all powers, authority and prerogatives, and fulfill any obligation on behalf of national governments.

Register of assets.

143. (1) The Accounting Officer shall be responsible for maintaining a register of assets under his or her control or possession as prescribed by the relevant laws.

(2) The register of land and buildings shall record each parcel of land and each building and the terms on which it is held, with reference to the conveyance, address, area, dates of acquisition, disposal or major change in use, capital expenditure, lease hold terms, maintenance contracts and other pertinent management details.

(3) All items of furniture and equipment issued for a government's quarters or offices, large tools for government works, plant, equipment, vehicles or launches (large motor boats) shall be recorded in a register.

(4) All acquisitions or assignment of immovable property shall be notified to the National Treasury.

(5) All acquisitions or assignment of land with or without buildings shall be notified to the National Treasury.

Purchase and the capacity of official vehicles for certain government officers.

144. (1) Official vehicles purchased for use by Cabinet Secretaries, Speakers of the National Assembly and the Senate, Chief Justice, the Attorney-General, Secretary to the Cabinet and the Head of Public Service, shall not exceed 2600 cc for saloon cars and 3000 cc for 4 x 4 utility vehicles.

(2) Official vehicles purchased for use by Principal Secretaries, Accounting Officers, Judges of the Supreme Court and Court of Appeal, Director of Public Prosecution, Clerk of the National Assembly and the Senate, Heads of Constitutional Commissions and Independent Offices, commissioners of constitutional commissions, Inspector-General of Police shall not exceed 2400 cc for saloon cars and 3000 cc for 4 x 4 utility vehicles.

(3) Official vehicles purchased for use by other officers on Job Group R and above and High Court Judges and Chief Executive of state corporations shall not exceed 2000 cc for saloon cars and 2900 cc for 4 x 4 utility vehicles.

(4) This section shall not apply in case of vehicles for official use by the President and the Deputy President.

(5) The Cabinet Secretary may by way of notice in the *gazette* specify category of offices and the category of vehicles to be used by those public officers.

(6) Any person who contravenes the provisions of this regulation commits an offence.

LOSSES AND WRITE OFFS

Definition.

145. For purposes of this Sub-Part, the term losses includes—

- (a) actual loss or destruction of, or damage (other than fair wear and tear) to, or failure to account for the disposal of public money, stamps, securities or property, movable or immovable (including any money or other property not belonging to the national government which is held or used by an officer in his official capacity either alone or jointly with any other person); or

- (b) non-collection of any moneys due or belonging to national government, or for collection of which the national government is responsible; or
- (c) payments made or liabilities incurred without or in excess of any statutory, administrative or any other authority, including nugatory and similar payments and payments arising from incorrect certificates, and irregular or excess issues of stores, rations, *etc.*; or
- (d) unauthorized use of national government stores, vehicles buildings, equipment or any other property, or of service (e.g. repair workshops) provided for official purposes; or
- (e) compensation and similar payments (including third party claims in respect of vehicle accidents) legal and court costs and any other additional expenditure or liability which was avoidable and need not have been incurred.

Accounting officers responsibility for a national government entity.

146. When a loss as defined in this regulation is discovered, the Accounting Officer shall investigate the circumstances of the loss—

- (a) to ascertain the extent and amount of the loss; or
- (b) to determine whether control or operational arrangements need to be improved in order to prevent the occurrence of similar losses in the national government entity; or
- (c) to determine whether any offence or other fault of a public officer has been revealed by the loss.

Revelation of offence.

147. Where investigations reveals that an offence has been committed, it shall be dealt with in accordance with the relevant laws pertaining to criminal offences, as appropriate, and the relevant disciplinary measures but the investigation of a loss shall not constitute a disciplinary enquiry.

Procedure for handling losses.

148. (1) A loss may be revealed by defalcation or loss due to any cause, and thereafter investigation proceedings shall be commenced immediately and a report made to the Accounting Officer and where necessary to the police.

(2) The report referred to under paragraph (1), shall give details on the amount involved and any other information available including a brief account of actions to prevent further loss, and effect recovery.

(3) On receipt of the report, the accounting officer shall give instructions regarding accounting entries, if any, to be made and any other action which appears to him or her to be necessary.

(4) Where a liability has been established for a third party, payment shall be made, provided that there is no reason to suspect that the third party had any responsibility for the loss and the payment shall not await the results of the investigations of the loss.

(5) If the loss falls within the accounting officers powers under section 69(1) of the Act, he or she shall authorize the write off of the loss up to an amount not exceeding hundred thousand (KSh. 100,000) shillings in any one incidence and submit a report to the National Treasury and the Auditor-General.

(6) If the loss falls within the Cabinet Secretary's powers under section 69 (2) of the Act, the accounting officer shall seek the approval of the Cabinet Secretary to authorize him or her to

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write off the loss of an amount exceeding the one hundred thousand (KSh. 100,000) shillings but not exceeding one percent of the national governments' entity's approved estimates excluding the Consolidated Fund Services in any one incidence.

(7) The approval of the Cabinet Secretary shall be communicated to the accounting officer in writing with a copy to the Auditor-General.

(8) Any loss exceeding the threshold for the Cabinet Secretary shall fall within the Cabinet powers under section 69 (3) of the Act, the Accounting Officer shall—

- (a) seek the approval of the Cabinet through the Cabinet Secretary to authorize him or her to write off the loss exceeding one percent of the national government entity's approved budget in any one incidence;
- (b) the approval of the Cabinet shall be communicated to the Accounting Officer through the Cabinet Secretary in writing with a copy to the Auditor General;
- (c) the approval of the Cabinet shall be communicated to the Accounting Officer through the Cabinet Secretary in writing with a copy to the Auditor General.

(9) The accounting officer shall also make a disclosure in the financial statements of that national government entity.

Categories of losses.

149. (1) For the purposes of this regulation, cash deficiency is a loss arising from a deficiency of cash or other negotiable instruments, whether it arises from a simple cash shortage or from the use of fictitious entries or vouchers to conceal the existence of a deficiency.

(2) Revenue losses may arise from—

- (a) uncollectable revenue when debts due to national government cannot be collected by reason that the debtor cannot be traced or is insolvent; and
- (b) failure to assess or collect in circumstances which preclude subsequent assessment or collection, and include any loss of interest caused by delay in making payments into the appropriate public funds or from the making of irregular advances.

(3) Expenditure losses may arise from—

- (a) irrecoverable overpayments, when an excess payment has been made by error and recovery cannot be effected because the recipient cannot be traced or is otherwise incapable of making repayment;
- (b) nugatory payments, which arise in circumstances such as, the incurrance of a penalty in which a national government entity has been legally obliged to make payment, but for which no corresponding receipt of goods or services has been derived;
- (c) fraudulent payments which arise from transactions which involve a breach of the Criminal Code (Cap. 75), by the use of falsified documents or certificates to steal money or other property belonging to a Government and it is not recoverable.

(4) Inventory and equipment losses may arise from—

- (a) deficiencies, including fraudulent issues of stores from stock and issues of stores without proper evidence of use;
- (b) damage or deterioration of goods in stock; or
- (c) loss by accident in so far as they relate to equipment and inventories in use.

(5) Financial losses may arise from—

- (a) irrecoverable advances and loans when moneys due to a national government entity cannot be recovered by reason of a debtors default and include default on National Government Guarantees;
- (b) irregular advances and loans when money cannot be recovered because a national government entity cannot establish a claim against any person or institution, as in the case of expenditure wrongly charged to advances, or advances and loans made without agreement for recovery;
- (c) reduction of financial asset where the value of any financial asset has to be reduced by reason of failure or capital restructuring of an enterprise; or
- (d) losses on sale of securities where the losses are aggregated with gains over the financial year, and any net loss is written off at the end of the year.

(6) Miscellaneous losses may arise from—

- (a) loss of fixed fee receipts; or
- (b) the loss of safe keys of any government safe or the compromise of any combination lock; or
- (c) the cost of altering locks and providing new keys or combinations; or
- (d) the value of any missing items from the safe; or
- (e) irrecoverable claims dealt with as laid down in these Regulations.

Investigation of every case of loss.

150. (1) The accounting officer of a national government entity shall cause an investigation to be conducted into every reported case of loss, and where the accounting officer of that entity is implicated in the loss, the Cabinet Secretary shall be the appropriate authority to cause investigation to be conducted.

(2) In the case where the investigation on report implicates the accounting officer, Cabinet Secretary shall revoke the designation and also report the matter to the relevant authority.

Defective systems.

151. If the report of the investigating authority indicates that systems currently in operation, including those for the training of staff are defective, the accounting officer of the national government entity shall consult with the National Treasury to consider measures for rectification.

Financial liability of officers.

152. (1) Recovery of the value of a loss, whether by recovery proceedings under these Regulations, shall constitute a settlement of a civil claim against the officer arising from the loss.

(2) Recovery of a loss shall not be a substitute for criminal prosecution or disciplinary proceedings.

Annual statement of losses.

153. The Accounting officer shall maintain a register of all losses incurred by his or her national government entity and attach a list of all losses incurred during that year to the financial statements submitted to the Auditor-General for audit with a copy to the National Treasury.

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Clarifications on classification of losses.

154. Where any doubt arises on the correct classification of a loss or the accounting procedure required the directions of the National Treasury shall be sought.

Claims on damaged or incomplete goods.

155. Where goods are received damaged or incomplete and such goods are subject to a claim on suppliers, insurers or carriers, they shall not constitute a loss until the claims prove irrecoverable.

Investigation of losses.

156. (1) The fact that losses arise from un-collectable revenue, irrecoverable overpayments, or irrecoverable claims at the time of disposal does not preclude the prior investigation of circumstances of the losses.

(2) Applications for write off shall be accompanied by an investigation report indicating whether remedial accounting or other action is necessary.

Writing off of losses.

157. (1) An Accounting Officer may only write off losses if he or of she is satisfied that—

- (a) all reasonable steps have been taken to recover the losses and the loss is irrecoverable; or
- (b) he or she is convinced that—
 - (i) recovery of the loss would be uneconomical;
 - (ii) it would be to the advantage of the state to effect a settlement of its claim or to waive the claim.

(2) An Accounting Officer shall ensure that all losses written off are done in accordance with this Act, these regulations or any other relevant legislation.

Interest payable on recoverable losses.

158. Interest may be charged on recoverable losses at the Central Bank Rate.

Right of the Auditor-General.

159. The authorization of disposal of a case of loss does not prejudice the right of the Auditor- General to carry out further investigation.

PART XIII – INTERNAL AUDIT AND AUDIT COMMITTEES

Mandate of internal auditors.

160. Internal auditors shall—

- (a) review and evaluate budgetary performance, financial management, transparency and accountability mechanisms and processes in national government entities, including Parliament and Judiciary;
- (b) have a duty to give reasonable assurance through the audit committee on the state of risk management, control and governance within the organization; and
- (c) review the effectiveness of the financial and non-financial performance management systems of the entities.

Compliance with professional standards and code of ethics.

161. Internal auditors shall comply with the International Professional Practices Framework as issued by the Institute of Internal Auditors from time to time and shall conduct

audits in accordance with policies and guidelines issued by the Public Sector Accounting Standards Board to ensure uniformity and consistency across national government.

Independence of the internal auditor.

162. (1) The Head of Internal Audit unit under a national government entity shall enjoy operational independence through the reporting structure by reporting administratively to the Accounting Officer and functionally to the Audit Committee.

(2) An Accounting Officer shall ensure that the organizational structure of the internal audit unit facilitates—

- (a) the entity to accomplish its internal audit responsibilities;
- (b) the internal auditor with sufficient authority to promote independence and to ensure broad audit coverage, adequate consideration of internal audit reports;
- (c) appropriate action to be taken on internal audit recommendations; and
- (d) the internal auditor to be independent of the programs, operations and activities he or she audits to ensure the impartiality and credibility of the internal audit work undertaken.

(3) The internal auditor shall have unrestricted, direct and prompt access to all records, officials or personnel holding any contractual status and to all the premises and properties of the entity.

(4) The internal auditor shall respect the confidential nature of information and shall use such information with discretion and only in so far as it is relevant to reach an internal audit opinion.

(5) All internal audit activities shall remain free of influence by any element in the organization, including matters of audit selection, scope, procedures, frequency, timing, or report content to permit maintenance of an independent and objective mental attitude necessary in rendering reports.

(6) Internal auditors shall have no direct operational responsibility or authority over any of the activities they review, and accordingly, they shall not develop nor install systems or procedures, prepare records, or engage in any other activity which would normally be audited.

THE INTERNAL AUDITOR-GENERAL DEPARTMENT OF THE NATIONAL TREASURY

Independence of Internal Auditor-General.

163. The office of the Internal Auditor-General shall be an office in the National Treasury.

Functions of Internal Auditor-General Department.

164. The Internal Auditor-General, in leading the internal audit function within the National Treasury, is responsible for policy formulation and strategic direction of internal audit function within the national government entities including—

- (a) advising the Cabinet Secretary and the Principal Secretary on emerging issues in internal auditing;
- (b) developing and implementing the use of innovative approaches in performing independent assessment of systems, controls and efficiencies guided by professional standards;
- (c) supporting the entities efforts to achieve their objectives;
- (d) promoting national government-wide risk management and provide the management with consulting services to improve the overall national government operations;

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- (e) providing capacity building for both levels of governments including developing curriculum, training materials and undertake training for audit committees; and
- (f) reporting annually to the National Treasury on the internal audit function performance.

The role of Accounting Officer in risk management.

165. The Accounting Officer shall ensure that the national government entity develops—

- (a) risk management strategies, which include fraud prevention mechanism; and
- (b) a system of risk management and internal control that builds robust business operations.

Performance appraisal.

166. (1) Each year the internal audit unit of a national government entity shall assess its own effectiveness through an internal performance appraisal and shall carry out annual review of the performance of the internal audit activity commenting on its effectiveness in the annual report to National Treasury.

(2) Each year the Audit Committee shall carry out annual review of the independence, performance and competency of the internal audit unit and comment on their effectiveness in the annual report.

(3) At least once every three years but not more than five years, internal audit unit shall undergo a professional assessment of its effectiveness undertaken by a professionally recognized body or institution.

Reporting material breaches and persistent material breaches.

167. When indications of fraud, material breaches and wasteful expenditure have been identified in a State Organ, or any other national government entity in sections 92 of the Act, the head of the internal audit unit shall immediately notify the Cabinet Secretary.

Prohibition from conducting assurance services.

168. An internal auditor shall not perform audit assignments for providing assurance relating to activities and structures on which he or she has provided consulting services or in which he had been employed over in the last twenty four months.

Disciplinary liability on internal auditors.

169. Heads of internal audit units and the internal auditors shall bear legal and disciplinary liability for failure to discharge their responsibilities under the Act and these Regulations:

Provided that assurance procedures alone even when performed with due professional care shall not be a guarantee that all significant risk shall be identified.

INTERNAL AUDIT PLANNING, PERFORMANCE AND REPORTING

Risk based audit assessment strategic plan.

170. (1) Internal audit planning shall be carried out on the basis of risk assessment and shall be set out in a three-year strategic plan, on the basis of which an annual internal audit unit plan shall be developed.

(2) The annual work plan developed in paragraph (1) of this regulation shall be—

- (a) submitted to the audit committee by the 15th February each financial year; and
- (b) approved by the audit committee and shared with the Accounting Officer of that entity, in sufficient time for inclusion in the budget of that entity.

Communicating results.

171. (1) The findings and recommendations arising from each internal audit assignment shall be promptly reported to the accounting officers.

(2) The final report, including the actions taken by the accounting officer shall be reported to the audit committee in the format determined by the Cabinet Secretary.

(3) When updating the management of the progress of an audit assignment, the internal auditor shall—

- (a) give an oral preliminary report which shall be confirmed in writing within seven (7) days;
- (b) discuss the findings, conclusions and recommendations with the auditee;
- (c) issue a signed written report after each internal audit assignment that is objective, clear, concise, constructive and timely;
- (d) give reports which clearly present the purpose, scope and results of the audit; and
- (e) give reports with recommendations for potential improvement, suggestions of corrective actions and acknowledgement of satisfactory performance.

IMPLEMENTATION OF AUDIT RECOMMENDATIONS

Enforcement of internal audit recommendations.

172. (1) The accounting officer of the concerned entity shall be responsible for the implementation of the recommendations made in the audit reports and shall develop response and action plan which he or she shall submit to the Chairperson of the audit committee within fourteen days.

(2) The response and action plan submitted to chairperson of the audit in paragraph (1) of this regulation shall be submitted to the Audit Committee for follow up to ensure their implementation.

Preparation and submission of quarterly and annual audit reports.

173. (1) Each head of internal audit shall prepare a quarterly internal audit report which shall cover areas provided for in guidelines and shall be in the format issued by the Cabinet Secretary.

(2) The quarterly report in paragraph (1) of this regulation shall be submitted within 14 days of the end of the quarter to the accounting officer of the concerned entity, the Audit Committee and the National Treasury.

(3) At the end of each financial year, the Internal Auditor- General shall prepare for the national government clear and comprehensible annual report that consolidates the quarterly audit assurance reports prepared by all internal audit units in national government entities, in accordance with formats prescribed by the Accounting Standards Board.

AUDIT COMMITTEES

Establishment of audit committees.

174. (1) Subject to paragraph (2) of this regulation, each national government entity shall have an audit committee.

(2) The National Treasury, where deemed necessary, may approve the sharing of one audit committee by two or more entities.

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(3) In the case of a shared audit committees referred to in paragraph (2), the appointing authorities of the concerned entities shall jointly appoint the chairperson and members of the joint audit committee in consultation with the National Treasury.

(4) There shall be a minimum of three members, excluding a person who shall be appointed to represent the National Treasury in each audit committee and a maximum of five of whom at least two shall be from recognized professional bodies.

(5) The chairperson of an audit committee shall be independent of the national government entities, be knowledgeable of the organization, have the requisite business and leadership skills and shall not be a political office holder.

(6) In addition to paragraph (5), majority of members appointed to the audit committee shall not be past or present employees of the entity, and shall not have served as an employee or agent of a business organisation which has carried out any business with the concerned entity in the last two years.

(7) All members of an audit committee shall—

- (a) be holders of at least a first degree from a recognized university in Kenya;
- (b) have a good understanding of government operation, financial reporting or auditing; and
- (c) have a good understanding of the objects, principles and functions of the entity to which they are to be appointed.

(8) Each Accounting Officer of an entity shall ensure that the audit committee is adequately funded and supported.

(9) The chairperson of an audit committee shall not serve concurrently as a member of any other audit committee of the concerned national government entity, but its members can serve in up to a maximum of three audit committees at the same time.

(10) Deleted by L.N. 229/2015, r. 8(d).

[L.N. 229/2015, r. 8.]

Duties of the audit committees.

175. The main function of the audit committee shall be to—

- (a) support the Accounting Officers with regard to their responsibilities for issues of risk, control and governance and associated assurance but the responsibility over the management of risk, control and governance processes remains with the management of the concerned entity; and
- (b) follow up on the implementation of the recommendations of internal and external auditors.

Composition of audit committees.

176. (1) The Accounting Officer of a national or county government entity shall not be a member of the audit committee, but shall attend a meeting of the audit committee by the invitation of the chairperson of the committee.

(2) Audit Committee members shall be persons of integrity and meet the requirements of Chapter Six of the Constitution.

Terms of appointment.

177. (1) Members of audit committees shall be appointed, for a term of three years and shall be eligible for re-appointment for a further term of three years.

(2) Despite the provision of paragraph (1), after expiry of every term at least one third of the committee shall retire and not be eligible for re-appointment.

(3) The roles and responsibilities of the audit committee shall be laid out in the guidelines issued by the Public Sector Accounting Standards Board.

Vacancy of office.

178. (1) A person shall cease to be a member of an audit committee if—

- (a) that person is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months; or
- (b) that person is absent from two consecutive regular meetings of the committee without leave of absence; or
- (c) that person resigns, in writing, from the audit committee; or
- (d) that persons' term of office expires; or
- (e) that person ceases to be a member by virtue of withdrawal of his or her nomination to the audit committee by the nominating institution; or
- (f) that person becomes an employee or officer of the concerned entity; or
- (g) that person is discovered to have a conflict of interest as described in at the time of his appointment and failed to disclose it; or
- (h) the audit committee is disbanded.

(2) The National Treasury shall be informed of any contemplated termination of the services of a person serving on an audit committee for its concurrence.

FUNCTIONS AND RESPONSIBILITIES OF THE AUDIT COMMITTEE

Meetings of the audit committee.

179. (1) The audit committee shall meet at least once in every three months.

(2) Each member of the audit committee shall have one vote.

(3) The audit committee shall make decisions by resolution.

(4) In the event of a tie vote, the chair shall be entitled to cast a second vote.

(5) A majority of the members of the audit committee that includes at least fifty (50%) percent plus one member shall constitute a quorum for the meetings of the committee.

(6) The chair of the audit committee shall—

- (a) ensure that minutes are taken at each meeting and provided to the members of the committee before the next meeting;
- (b) have access to management, the head of internal audit and external auditors; and
- (c) send or cause to be sent—
 - (i) all notices of audit committee meetings at least fourteen days before the meeting; and
 - (ii) all minutes of audit committee meetings.

(7) If at any meeting of the audit committee the chair is not present, the members shall elect a chair for purposes of conducting that meeting.

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Code of conduct.

180. Any code of conduct of public officers shall also apply to members of the audit committee in relations to their functions, powers and duties as members of the committee.

Remuneration and compensation.

181. (1) Members of the audit committee shall be paid an allowance on account of attendance of audit committee meetings as determined by National Treasury in consultation with the Salaries and Remuneration Commission.

(2) A national government entity shall reimburse members of its audit committee for expenses incurred while attending to audit committee duties.

[L.N. 229/2015, r. 10.]

Capacity building for Audit Committees.

182. The accounting officer shall—

- (a) provide capacity building to all public national government entity audit committees;
- (b) provide policies and guidelines on audit committees;
- (c) monitor the effectiveness of audit committees; and
- (d) provide periodic updates of Audit committee activities through the website.

PART XIV – PUBLIC DEBT MANAGEMENT

Guiding Principles for national government borrowing.

183. National government borrowing shall be guided by the following principles—

- (a) need to ensure stability of domestic financial markets;
- (b) promotion of inter-generational equity in the sharing of burdens and benefits of public borrowing;
- (c) determination of thresholds of borrowing rights for both levels of government;
- (d) use of objective criteria for evaluating national government entities or county government eligibility for national government debt guarantee; and
- (e) prudence and equity in setting limits for debt stock levels for each county government.

Policy frameworks in public debt management.

184. The policy framework in the management of public debt shall comprise of the medium term debt management strategy.

Medium term debt management strategy.

185. (1) Any borrowing by the national government shall be informed by the medium term debt management strategy, which shall be reviewed annually, prepared and executed by the Public Debt Management Office in accordance with the delegated authority by the Cabinet Secretary.

(2) Medium term debt management strategy shall be formulated annually on a three year rolling basis.

(3) The Strategy shall be approved by the Cabinet.

(4) The medium term debt management strategy shall be prepared taking into account—

- (a) the borrowing needs of the Republic of Kenya;
- (b) prevailing macro-economic conditions;
- (c) prevailing conditions of the financial markets; and
- (d) any other relevant factors.

(5) The public debt management strategy shall entail minimising borrowing costs with a prudent degree of risks.

Annual national government borrowing programme.

186. (1) The medium term debt management strategy shall be implemented through the annual borrowing programme for each fiscal year.

(2) The annual borrowing programme shall include issuance of government securities and disbursement of external loans for the fiscal year and show indicative dates of such issuance and disbursements.

Borrowing powers of the government.

187. (1) The Cabinet Secretary shall derive powers to raise loans for the Government of Kenya from section 49 of the Act.

(2) The national government may from time to time borrow within and outside Kenya such sums of money in such amount and on such terms and conditions as to interest, repayment, disbursement or otherwise as the Cabinet Secretary may think fit, in any of the following manners—

- (a) by issuing external government securities; or
- (b) by issuing Treasury Bills or Treasury Bond or stock; or
- (c) by advances from Central Bank of Kenya under the Central Bank of Kenya Act (Cap. 491); or
- (d) by bank overdraft on Exchequer Account or any other public account; or by any other loan or credit evidenced by instruments in writing.

Use of moneys borrowed and credits obtained.

188. All sums borrowed under the Act shall be expended only on the activities included in the approved estimates of expenditure of the national government entities.

Formalisation of agreements for loans.

189. Negotiation with foreign governments and agencies for external loans shall culminate into and shall be formalised into one of the following recognised instruments—

- (a) loan agreements;
- (b) exchange of letters that constitute an agreement;
- (c) subscription agreements in regard to external government securities; and
- (d) national government guarantee.

[Subsidiary]

Credit purchases.

190. Where development partner have opted to give loans through credit purchase or commodity loan arrangements, for the purposes of budgeting and accounting the following procedures shall be followed—

- (a) the amount of expenditure and matching direct payment as agreed and as applicable, shall be included in the development estimates under separate items;
- (b) accounting officer shall apply through the National Treasury for utilisation of the credit purchase facility in the prescribed manner as set-out in the loan instrument;
- (c) after supplying goods or services, the development partner shall notify National Treasury of the amount disbursed against the loan;
- (d) the National Treasury shall record the amounts disbursed as a drawing against each loan facility;
- (e) the National Treasury shall forward invoices and debit advices to the accounting officer concerned to bring the expenditure involved into account; and
- (f) the accounting officer shall, on satisfying herself or himself of receipt of goods and services, record the transactions in the stores ledger card and the accounting officer shall notify the National Treasury on the receipt of goods and services.

Modes of payment (disbursement) loan funds.

191. The procedure to be followed in the disbursement of loan funds shall be defined in the respective agreement and shall generally assume one or more of the following methods—

- (a) credit purchase; or
- (b) direct disbursement to the Consolidated Fund or any other public fund established by an Act of Parliament for a specific purpose; or
- (c) reimbursement, where the government pays for goods and services supplied and later on claim reimbursement from the financier.

Borrowing purposes.

192. The national government may borrow in pursuant to the requirements of section 49 of the Act for the purpose of—

- (a) financing national government budget deficits;
- (b) borrowing for purposes of cash management;
- (c) honouring obligations under outstanding national government guarantees;
- (d) refinancing outstanding debt or repaying a loan prior to its date of repayment;
- (e) mitigation against adverse effects caused by an urgent and unforeseen event in cases where the contingency fund has been depleted;
- (f) mitigation against significant balance of payment imbalances; and
- (g) meeting any other development policy objectives that the Cabinet Secretary shall deem necessary, consistent with the law, and as Parliament may approve.

Objectives of public debt management.

193. The objectives of public debt management are to ensure that the government's financing needs and its payment obligations are met at the lowest possible cost over the medium to long term, with a prudent degree of risk, and to promote development of the

domestic debt market while ensuring the equitable sharing of benefits and burdens of public debt between the current and future generation.

PUBLIC DEBT MANAGEMENT OFFICE

Functions of public debt management office.

194. In addition to the provisions of section 63 of the Act, the functions of the Public Debt Management Office established under section 62 shall be to—

- (a) prepare and update an annual medium-term debt management strategy including debt sustainability analysis in accordance with regulations;
- (b) prepare and review an annual borrowing programme as appropriate including the auction calendar to facilitate auction of government debt securities;
- (c) participate in negotiation meetings with government creditors, and provide technical support to the Cabinet Secretary on public debt operations;
- (d) assess the risks in issuing any guarantees including contingent liabilities inherent in public private partnership projects, and prepare reports on the method used for assessment and the results thereof for the attention of the Cabinet Secretary;
- (e) facilitate the recovery of any payments including interest and other costs incurred by Government due to the honouring of outstanding guarantees;
- (f) prepare annual debt management report which shall include outstanding guarantees, outstanding lending and government on-lending by Government;
- (g) monitor and keep track of debt levels;
- (h) to keep timely, comprehensive and accurate records of outstanding Government debt, guarantees and lending in an appropriate database;
- (i) advise on all debt servicing obligations of Government;
- (j) prepare and publish debt statistical bulletins regularly;
- (k) prepare forecasts on Government debt servicing and disbursements as part of the yearly budget preparation;
- (l) compile, verify and report on all Government debt arrears and design a strategy for the settlement of those arrears;
- (m) monitor that the disbursements of loans raised by Government are in accordance with agreed disbursement schedules;
- (n) formulate External Resources Policy;
- (o) assess, mobilize, negotiate and allocate all external resources including the consolidation of the donor commitment register in the annual national budget;
- (p) examine and scrutinise proposals for financing projects of a national government entity from an accounting officer;
- (q) formulate and harmonize policies and coordinate matters relating to employment of Kenyan nationals and appointment of expatriate consultants and technical assistance as experts and consultants in projects supported by development partners;
- (r) ensure adherence to the accepted guidelines and procedures for procurement involving funds provided under foreign aid;

[Subsidiary]

- (s) coordinate, review and monitor the utilization of external resources including joint programming, joint work plans, joint visits, joint implementation, and monitoring and evaluation;
- (t) profile external resources and maintain the accounts thereof;
- (u) formulate an external resource, mobilization strategy to guide the national and county governments in external resource mobilization including monitoring;
- (v) liaise for external economic relations with international development agencies;
- (w) coordinate all international agreements involving financial economic and technical co-operation dealing predominantly with economic and financial issues;
- (x) programme and manage financing of fellowships, scholarships and foreign training offers from bilateral and multilateral sources;
- (y) ensure harmonization, alignment and coordination of external resources in line with international conventions of which Kenya is a member state thereof;
- (z) monitor disbursement and absorption of external resources including reporting of the same by both national and county governments;
- (aa) formulate guidelines and procedures for reporting and recording budget estimates and expenditure for external resource;
- (bb) provide guidance and capacity development to county governments in the assessment, mobilization, negotiation and allocation of all multilateral and bilateral external resources for implementation of development partners;
- (cc) support aid effectiveness initiatives and to use country systems in the management of external resources and where there is need, support in strengthening them rather than avoiding them;
- (dd) ensure linkages of the National Treasury with NGOs and coordination of NGOs through the formation of a National Consultative Forum; and
- (ee) perform such other functions as may be determined by the Cabinet Secretary.

Redemption, conversion and consolidation of loans.

195. The Cabinet Secretary may, on such terms and conditions as he or she may determine, and, when necessary, with the concurrence of the lender—

- (a) repay any loan prior to the redemption date of that loan; or
- (b) convert the loan into any other loan; or
- (c) consolidate two or more loans into an existing or new loan.

Setting debt limit.

196. (1) Pursuant to section 50(2) of the Act, the debt limit at any given time shall not exceed the set limits determined in accordance with fiscal responsibility principles under regulation 26(1)(c) of these Regulations.

(2) In addition to the debt limit under paragraph (1), the annual thresholds for the annual borrowing by the national and county governments and their entities as required by section 50(5) of the Act shall be set by Parliament.

(3) The debt limit under paragraph (1) of this regulation shall be specified annually in the budget policy statement and the medium term debt management strategy paper.

(4) The annual new government debt and guarantees shall be consistent with the debt limits set out under paragraph (1) of this regulation.

(5) For the purposes of monitoring compliance with the limits under paragraph (1), the amount of government debt and government guarantees which are not denominated in shillings shall be recalculated at the prevailing exchange rate of the Central Bank of Kenya.

[L.N. 155/2019, r. 2.]

Criteria for issuance of government securities.

197. (1) The issuance of government securities to raise debt capital shall be by way of auction or such other method as Cabinet Secretary may determine.

(2) Despite the provisions of paragraph (1) of this regulation, the auction of domestic government securities shall take into account the following factors—

- (a) pricing of the domestic government securities;
- (b) refinancing risk of the domestic governance securities;
- (c) the market stability when taking up domestic government securities; and
- (d) the borrowing programme which is consistent with the medium term debt strategy and budget policy statement.

(3) The Cabinet Secretary may establish an auction committee responsible for the issuance of government securities for the purpose of financing the budget deficit comprised of—

- (a) Head of Public Debt Management Office;
- (b) the Governor, Central Bank of Kenya or his or her nominee;
- (c) Head of the accounting policy within the National Treasury; and
- (d) Head of Economic Affairs.

(4) The Cabinet Secretary shall appoint a chairperson among the members mentioned under paragraph (3) in this regulation.

(5) The Public Debt Management Office shall provide the secretariat to the Committee.

(6) Where national government securities are to be issued other than by auction, their terms and conditions shall be subject to the prior approval of the Cabinet Secretary.

(7) The Committee may co-opt the relevant County Executive Committee Member or his or her representative on need basis.

Issuance of government securities outside Kenya.

198. (1) The issuance of government securities outside Kenya shall be in such mode as the Cabinet Secretary shall approve in accordance with the Act.

(2) Despite the provisions of paragraph (1) in this regulation, the issuance of external government securities shall take into account the following factors—

- (a) pricing of the foreign government securities;
- (b) refinancing risk of the foreign governance securities;
- (c) the impact on exchange rate stability when taking up foreign government securities; and
- (d) the borrowing programme which is consistent with the medium term debt strategy and budget policy statement.

[Subsidiary]

Reporting on public debt by counties and national government entities.

199. (1) National government entities and each County Treasury shall submit to the National Treasury a report on public debt in a format prescribed by the Accounting Standards Board within two months after the end of the financial year.

(2) The report to be submitted under paragraph (1), shall include at the minimum the following information—

- (a) review of previous year's financing of budget deficit;
- (b) composition of domestic debt;
- (c) composition of external debt;
- (d) on-lent loans and contingent liabilities;
- (e) debt strategy and debt sustainability;
- (f) outlook for the medium term; and
- (g) any commitment fees and penalties paid on any undisbursed amounts of a loan.

Annual debt reporting.

200. (1) Not later than three months after the end of each financial year, the Cabinet Secretary shall prepare and submit an annual report to Parliament on public debt in the format set by the Cabinet Secretary.

(2) The annual public debt report under paragraph (1) shall include the following information—

- (a) Review of previous year's financing of budget deficit;
- (b) composition of External debt;
- (c) publicly guaranteed debt;
- (d) on-lent loans and contingent liabilities;
- (e) debt strategy and debt sustainability;
- (f) outlook for the medium term; and
- (g) any commitment fees and penalties paid on any undisbursed amounts of a loan.

Government guaranteed debt.

201. (1) All financial obligations for which the National Treasury has issued guarantees on behalf of and for the account of the government in full compliance with the Act shall be government guaranteed debt.

(2) The Cabinet Secretary shall participate in the negotiations on the contracting of a guaranteed loan by advising the borrower on the best financial terms available, and shall sign on behalf of the national government agreements on the issuance of a government guarantees or guarantee letters.

(3) Any proposals for amendments to the loan agreement for which a guarantee is already issued shall be done with prior approval of the Cabinet Secretary.

(4) Borrowers under government guaranteed loans shall provide to the Cabinet Secretary, on a quarterly basis, information on the disbursements and repayments of funds under the loan.

(5) Where necessary, the Cabinet Secretary may request additional information on National Government guaranteed loans from the national government entities and county governments.

(6) The terms and conditions for national government entities applying for government guaranteed financing and the government guarantee issuance procedures shall be determined by the Cabinet Secretary with the approval of Parliament.

(7) Call under a national government entity guarantee or county governments guarantee shall be due only in the event—

- (a) a borrower has not effected a full or partial payment on a loan in accordance with the loan agreement terms and conditions; and
- (b) a creditor has notified the Cabinet Secretary after taking steps and actions provided for in the loan agreement for collection of the amounts due from the borrower within a period of one month from the date of default.

(8) The Cabinet Secretary shall require the borrower to explain the circumstances surrounding the default and the measures being taken to correct the situation within fifteen after notification by the creditor.

(9) Where the requirements under paragraph 7(b) have not been provided for in the government guarantee issuance agreement, the Cabinet Secretary shall determine together with the creditor the actions to be taken where a payment on a national government guarantee is due, as well as the time limits within which the national government should pay the overdue amount.

(10) The national government shall, from the date of the payment under a national government guarantee, enter into the creditor's rights under the loan agreement to the amount of then payment made.

(11) The Cabinet Secretary shall take necessary actions provided for under sections 61 and 94 of the Act.

[Subsidiary]

Eligibility and evaluation criteria for national government guarantees.

202. Pursuant to the provisions of section 58 of the Act, the capital project expenditures of—

- (a) county governments for which a guarantee is requested, shall meet the following requirements—
 - (i) the borrower shall demonstrate that the project could not be financed on reasonable terms and conditions without a government loan;
 - (ii) provide the projected cash flow clearly setting out projected disbursement schedule and repayment plan;
 - (iii) the borrower shall contribute a substantial portion of project funds from their own resources and in any case not less than fifteen (15) percent;
 - (iv) a national government entity or county government that defaults on a loan shall be put on an agreed financial recovery programme by the National Treasury;
 - (v) it is a feasible project that has been approved by the national government entity or county government entity as may be required by national or county legislation;
 - (vi) the application of the guarantee shall be submitted with a draft loan agreement; and
 - (vii) any other guidelines consistent with the Act as may be *gazetted* by the Cabinet Secretary;
- (b) national governments entities for which a guarantee is requested, shall meet the following requirements—
 - (i) the national government entity shall demonstrate that the project could not be financed on reasonable terms and conditions without a loan;
 - (ii) provide the projected cash flow clearly setting out a projected disbursement schedule and repayment plan;
 - (iii) the national government entity shall contribute at least fifteen (15) percent of the project cost from their own resources;
 - (iv) it is a feasible project that has been approved by the governing body as required under these Regulations;
 - (v) concessionality of the proposed loan is fully evaluated by the national government and is determined to be at the acceptable level of grant element as per the borrowing strategy;
 - (vi) satisfies all the fiscal responsibility principles set out in the Act and these Regulations;
 - (vii) the National Treasury has confirmed that the lender is of good credibility and standing with the Government of Kenya; and
 - (viii) any other guidelines as Cabinet Secretary to the National Treasury may prescribe in a government *gazette*.

Process for approving a guarantee for a national government entity.

203. Pursuant to the provisions of section 58(2)(a) of the Act, and in addition to provisions under regulation 202, the following procedures shall apply in relation to a national government entity—

- (a) before seeking a national government guarantee, the entity governing body of the national government entity shall approve the borrowing including its terms and conditions;

- (b) after approval by the governing body, the Chief Executive Officer of the entity shall submit the proposed loan agreement and a sessional paper to the Cabinet Secretary responsible for the national government entity for approval of the borrowing, including its broad terms and conditions;
- (c) upon approval under paragraph (b), the Chief Executive Officer shall submit the final, draft loan financing agreement and the approval of the governing body and the Cabinet Secretary responsible for the entity to the Cabinet Secretary requesting for the guarantee of the final loan financing agreement;
- (d) the Cabinet Secretary may reject a request for loan guarantee with reasons and communicate the same to the concerned chief executive officer;
- (e) upon approval of a loan guarantee request, the Cabinet Secretary shall seek the legal opinion of the Attorney General.
- (f) upon receiving the views of the Attorney-General and taking them into account, the Cabinet Secretary to the National Treasury shall submit a sessional paper to Parliament with recommendations seeking its approval.
- (g) the Cabinet Secretary shall communicate the decision of Parliament on the draft loan guarantee to the respective chief executive officer; and
- (h) upon approval by Parliament the Cabinet Secretary to the National Treasury shall issue a loan guarantee.

Approval of draft loan guarantee by Parliament.

204. Upon recommendation by the Cabinet Secretary to the National Treasury, Parliament may approve a draft loan guarantee document as provided under section 58(2)(f) of the Act, only if it is satisfied that—

- (a) the guarantee is in the public interest;
- (b) the borrowers financial position is strong enough to enable the borrower to repay the loan proposed to be guaranteed and to pay interest and other charges based on projected revenue streams;
- (c) concessionality of the proposed loan is fully evaluated by the national and county governments and is determined to be at the acceptable level of grant element as per the borrowing strategy;
- (d) the loan investments are geared towards stimulating economic growth in a county government; and
- (e) all legal issues relating to financial agreements tripartite signing, and subsidiary agreements are fully addressed.

Roles and responsibilities of accounting officers in debt management operations and loan administration.

205. For the purposes of debt management operations and loan administration, the accounting officers of a national government entity shall be responsible for the following—

- (a) preparing project proposals and submitting them for approval to the National Treasury;
- (b) where authorisation has been granted for the project to start, the Accounting Officer shall ensure public disclosure to intended beneficiaries within thirty days of the allocation and disbursement of the loan;

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- (c) after disbursement of loans, the loan recipients accounting officer shall report within fifteen days after the end of each quarter to the intended beneficiaries on the expenditures and performance achieved in relation to the loan;
- (d) ensuring that during the project identification and design, the intended beneficiaries are involved through the public participatory approach to planning through public forums to enhance leadership, ownership, social accountability and sustainability of the project;
- (e) preparing expected disbursements profiles;
- (f) submitting loan disbursement claims for approval by the National Treasury;
- (g) making comments on draft loan agreement from the National Treasury;
- (h) participating in all consultations and negotiations of all loan agreements for projects and programmes under their jurisdiction; and
- (i) implementing, monitoring and evaluating, in close collaboration with the national government entity responsible for National Planning, all projects and programmes within their jurisdiction.

SINKING FUND

Establishment of Sinking Fund.

206. (1) There is hereby established a national government fund to be known as the Sinking Fund to be administered by the Head of the Public Debt Management Office.

(2) The purposes of Sinking Fund shall be the payment of expenses of, or incidental to, redemption of an issue of Government securities and the redemption of an issue of Government securities.

(3) The Cabinet Secretary shall, upon approval of these Regulations, publish in the *Kenya Gazette* the guidelines for the management of the Fund.

PART XV – PUBLIC FUNDS

Criteria for the establishment of a public Fund.

207. (1) The establishment of a public Fund shall at the minimum meet the following requirements—

- (a) be initiated through a proposal by the Cabinet secretary responsible for the national government entity under which the functions of the Fund fall clearly setting out the justifications and submit it to the Cabinet Secretary;
- (b) the Cabinet Secretary shall certify in writing that the functions and the public services to be delivered through the Fund cannot be delivered through the structure of budget appropriations;
- (c) provide a clear justification as to why a fund structure is deemed appropriate for improved service delivery in light of the legislative and policy mandate of the national government entity;
- (d) the administration costs of the Fund shall be a maximum of three (3%) percent of the approved budgets of the Fund;
- (e) the Cabinet Secretary responsible for the national government entity functions shall confirm in writing that the establishment of the Fund and its continued existence will not depend on annual financing from the national exchequer;
- (f) a Fund that has a lifespan of less two years shall not be approved unless it is for unforeseen and urgent need;

- (g) the Cabinet Secretary shall grant approval in writing before establishment of Fund;
- (h) the Cabinet Secretary responsible for the entity shall demonstrate how the activities of the proposed Public Fund shall fit in the overall Medium Term Plan and Budget Policy Statement; and
- (i) the initial approval for establishment of a national public Fund shall be for a maximum period of ten (10) years, beyond which Cabinet and Parliament approvals shall be sought.

(2) Despite the provisions of paragraph (1) of this regulation, the Cabinet Secretary may from time to time issue further guidelines on the establishment of national public Funds.

Management and winding up of a national public Fund.

208. The Cabinet Secretary shall provide for the management, operation and winding up procedure in the guidelines for establishing each Fund which shall be in accordance with the Act and these Regulations.

Winding up of a national government public Fund.

209. (1) Where the lifespan of Fund lapses, the process of winding up shall commence within six (6) months from the date of the lapse.

(2) The final report after winding up the Fund shall be submitted to Parliament and the Auditor-General for audit.

(3) The Cabinet Secretary may dissolve a public Fund where the Cabinet Secretary responsible for a department operating a public Fund considers that a public Fund has successfully completed the specific objective for which it was created.

PART XVI – STATE CORPORATIONS

Definitions.

210. For the purposes of this Part—

"governing body" in relation to a public entity, means a commission, a board of directors, a board of trustees, board of governors, and council; and

"government owned enterprise" means an organisation which—

- (i) is a legal person under the ownership and control of the national government;
- (ii) has been assigned financial and operational powers to carry on a business activity; and
- (iii) as its main business, supplies goods or services in accordance with ordinary commercial principles; and
- (iv) is financed wholly or substantially from sources that do not require annual appropriation by National Assembly, or imposition of a tax, levy or other charge under legislation.

Declaration of national government entities and classification of state corporations.

211. (1) Pursuant to section 4 of the Act, the Cabinet Secretary may by notice in the *Gazette* declare and classify national government entities and entities in accordance with the Schedules as indicated in this Regulation.

(2) All State Organs including constitutional institutions and independent offices shall be categorised as Schedule 1 national government entities.

(3) National Government owned enterprises operating on the basis of commercial principles shall be listed as Schedule 2 national government entities.

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(4) Regulatory agencies shall be categorised as Schedule 3 national government entities.

(5) Executive agencies, public universities and public tertiary education institutions, national referral health institutions, boards and commissions fully or partially funded through the national government budget shall be categorised as Schedule 4 national government entities.

(6) National Public Funds established under the Constitution, national legislation or subsidiary national legislation shall be classified as Schedule 5 national government entities.

(7) The Cabinet Secretary shall have powers to amend the Schedules classified under this regulation in accordance with the provisions of the Act and this regulation.

Scope and application.

212. The provisions of the Act and these Regulations shall apply to all national government entities declared under regulation 211 of these Regulations.

Application for listing by governing bodies of undeclared state corporations.

213. (1) The Cabinet Secretary responsible for a national government entity that should have been declared or ought to be declared under the Act and these regulations as a national entity but has not been declared in either of the Schedules, shall notify the Cabinet Secretary, in writing of that the national government entity is not listed or ought to be listed in the Schedules within 30 days after the gazettment of these Regulations.

(2) The Cabinet Secretaries of the responsible national government entities under paragraph (1) shall submit the following information to the Cabinet Secretary in support of its application for listing—

- (a) name of the public entity;
- (b) its main function or business activities;
- (c) department responsible for the public entity;
- (d) legal instrument under which the entity was established;
- (e) dates of its establishment and financial year end;
- (f) names of members of the governing body controlling the public entity;
- (g) its registered address and telephone numbers;
- (h) name of the chief executive officer;
- (i) name of the chief financial officer;
- (j) name of the company secretary, if any;
- (k) authority responsible for appointing the chief executive officer and governing body;
- (l) subsidiaries, if any, under the ownership control of the entity;
- (m) latest audited financial statements;
- (n) amount of budgetary fiscal transfers received over the past three financial years; and
- (o) most recent strategic plan of the public entity.

Guiding principles for the establishment of state corporations.

214. The following principles shall apply when determining establishment and dissolution of a Public Corporation under section 86 and 182 of the Act—

- (a) there shall be a role for national government entity to fill a gap left by the market forces through—
 - (i) social inclusion, where the national government entity addresses social inequity by redistributing resources in ways that improve opportunity and support for individuals, families and communities, allowing them to participate in the economy and society consistent with the national government's social inclusion agenda; or
 - (ii) correction of market failure, where the national government entity's activity shall address market failures by improving social and economic welfare through improved resource allocation, where the benefits of national government intervention outweigh its cost;
- (b) activities promoted by the corporation shall have clear and consistent objectives and be effective in achieving their national objectives and represent value for money for the expenditure of taxpayer funds;
- (c) a government owned enterprise shall operate on commercial principles and with a defined commercial income stream that substantially supports the associated commercial activities;
- (d) where activities involving tax expenditures demonstrate that public expenditure is less effective in achieving the national government objective but can effectively be undertaken on a commercial basis;
- (e) there is no overlap or duplication of functions when establishing a state corporation within the national government.

Criteria for establishing state corporations.

215. (1) In exercising the powers under section 182 of the Act, the Cabinet Secretary and National Assembly shall be guided by regulation 214, this regulation and any other relevant regulation of these Regulations.

(2) A state corporation may be established only with the prior approval of the Cabinet, with reference to a legislation enacted to govern the establishment, management and dissolution of such government commercial enterprises.

(3) In order to establish a state corporation or a subsidiary of a state corporation—

- (a) the responsible Cabinet Secretary shall submit a written business case to the Cabinet Secretary, with detailed justification for establishing the state corporation or the subsidiary;

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- (b) the business case in paragraph subparagraph(a) shall be informed by a feasibility assessment of the proposed state corporation or the subsidiary for the purpose of ascertaining—
 - (i) the economic and financial viability of establishing the state corporation;
 - (ii) whether the proposed activity cannot be conducted through an existing corporation or the parent department;
 - (iii) whether or not there is need to establish a new corporation;
 - (iv) the functions and objective that its establishment is supposed to attain;
 - (v) how the activities of the proposed corporation will fit in the department's legislative mandate and medium term strategy, and aid the realization of the objectives of the programmes associated with that department;
 - (vi) how it shall impact the fiscal position of the government; and
 - (vii) the amount of government share;
- (c) the feasibility and viability assessment conducted under subparagraph (b) shall be submitted to the Cabinet for approval.

(4) Upon approval of the business case by the Cabinet, the necessary establishment processes shall be undertaken by the relevant department as required by a legislation on formation, management and dissolution of state corporations to allow it perform the functions stipulated in the instruments for incorporation.

(5) The national government entity responsible for investment portfolio management in the National Treasury shall be constantly updated on the progress of a state corporation.

(6) The department responsible for investment portfolio management in the National Treasury shall conduct regular review of state corporation to assess the relevance of the mandate and the justification for their continued existence and where necessary make recommendations to the Cabinet for the dissolution or merger of corporations.

Dissolution of State Corporations.

216. (1) A state corporation may be dissolved only with the prior approval of the Cabinet, with reference to legislation enacted to govern the establishment, management and dissolution of such state corporation.

(2) Subject to the provisions of a legislation enacted for the formation, management and dissolution of state corporations, a state corporation may be dissolved—

- (a) upon expiry of the lifespan of the state corporation as may be defined in the instrument of establishment;
- (b) where a state corporation has carried out the mandate for which it was created;
- (c) upon reorganization of the corporation and associated government functions, and
- (d) upon a merger of the corporation with another.

(3) The accounting officer related to the corporation in question shall follow-up implementation of the findings and eventual recommendations for dissolution to ensure compliance.

(4) The Cabinet Secretary may by notice in the *gazette* prescribe guidelines for dissolution and mergers of state corporations.

(5) Upon approval by Cabinet of the recommendations to dissolve or merge state corporations, the Cabinet Secretary shall cause the dissolution or merge the corporation with another.

(6) Upon dissolution of a state corporation, the funds corresponding to government equity in the corporation shall be deposited into the Consolidated Fund.

(7) Upon ceasing of an entity to be a public entity, the Cabinet Secretary shall vest all the assets and liabilities to the responsible national government entity.

(8) No national state corporation shall vest its assets in another entity without prior approval of the Cabinet.

(9) The provisions of this regulation shall be subject to the provisions of a legislation enacted for the formation, management and dissolution of state corporations, or the Act of Parliament establishing that state corporation.

Evaluation of state corporation's performance.

217. (1) The Cabinet Secretary responsible for public investments, in consultation with Cabinet Secretary shall annually agree on the performance targets with the governing body for a national government entity listed in Schedule 2 and 3.

(2) The annual performance contract shall document the mandated key performance measures and indicators to be attained by the national government entity as agreed between the governing body and the responsible Cabinet Secretary, who shall give the governing board policy direction.

(3) The Cabinet Secretary responsible for finance shall establish procedures for quarterly reporting to the Cabinet Secretary responsible for the controlling department in order to facilitate effective performance monitoring, evaluation and implementation of corrective actions.

(4) Without limiting the provisions of paragraph (3) of this regulation, the National Treasury shall design the procedures by which the Cabinet Secretary shall monitor the implementation of strategic plans of Schedules 2 and 3 national government entities and assess their performance and achievements.

(5) The Cabinet Secretary responsible for public investments shall issue guidelines on performance reward and sanctions of Schedules 2 and 3 national entities.

Annual budget.

218. (1) The Cabinet Secretary responsible for the state corporation shall approve the estimates of budget for the state corporation and shall not later than January every year, submit to the National Treasury for approval those estimates for the following financial year.

(2) The National Treasury shall provide guidelines and the format on which the budget shall be prepared.

(3) Budget estimates submitted under paragraph (1), shall be classified as follows—

- (a) compensation of employees;
- (b) use of goods and services;
- (c) transfers to other levels of government; and
- (d) capital.

Dividends policy and surplus funds.

219. (1) The National Treasury shall prepare and issue dividend policy guidelines on how national government entities referred to under regulation 211(3) and (4) and remit dividends to the National Treasury.

[Subsidiary]

(2) A regulatory authority established by an Act of Parliament and referred to under regulation 211(4) shall remit to the Collector ninety *per centum* of its surplus funds reported by the management in the financial statements by the 31st October of each year.

(2A) For the purpose of this regulation, "Collector" means the Commissioner-General appointed under section 11 of the Kenya Revenue Authority Act (Cap. 469).

(3) A regulatory authority to which this section applies shall be exempt from the income tax.

(4) The governing body of a public entity listed in Schedule 2 referred to under regulation 211(3), shall formulate an appropriate dividend policy in line with the policy guidelines referred under paragraph (1), and submit to the National Treasury and the respective County Treasury.

[L.N. 141/2018, r. 2, L.N. 90/2019, r. 2.]

Quarterly reporting by governing bodies.

220. (1) Pursuant to section 83(6) of the Act, the accounting officer of a national government entity listed in Schedules 2, 3 and 4 shall prepare and submit quarterly financial and non-financial statements within 15 days after the end of the each quarter to the Cabinet Secretary responsible for the national government entity with a copy to the National Treasury and the Auditor-General.

(2) The quarterly reports prepared under paragraph (1) shall be in the format *gazette* by the Cabinet Secretary and shall include information on—

- (a) revenue, including funding from grants,
- (b) expenditure;
- (c) borrowing, including guarantees issued by the national government and any outstanding loan arrears; and
- (d) amount of profit or loss of the public entity for the quarter.

Annual financial statements.

221. (1) The accounting officer for a national government entity listed in Schedule 2 and 3 shall prepare and submit annual financial and non-financial statements in the format *gazetted* by the Cabinet Secretary within three months to the Auditor General with copies to the responsible Cabinet Secretary and the National Treasury.

(2) The annual financial and non-financial statements referred to under paragraph (1), shall be prepared—

- (a) in compliance with the International Financial Reporting Standards and as prescribed by the Public Sector Accounting Standard Board from time to time; and
- (b) the annual financial statements must be approved by the governing body.

PART XVII – INTERGOVERNMENTAL FISCAL RELATIONS

Establishment, purpose and composition of the Intergovernmental Budget and Economic Council.

222. (1) The Inter-governmental Budget and Economic Council members shall exercise their mandate under the Act and these Regulations in the spirit of cooperative governance.

(2) Reviews, resolutions and recommendations of the Intergovernmental Budget and Economic Council shall be published on the website of the National Treasury as soon as possible after their preparation.

(3) The Intergovernmental Budget and Economic Council shall be kept informed about the following—

- (a) stoppage of funds to a county government and any national government intervention in county government due to serious or persistent material breaches of service delivery imperatives;
- (b) applications for national guarantees of county debts;
- (c) changes in the laws and regulations governing public finance management and sharing of revenue raised nationally;
- (d) Budget calendar and budget process;
- (e) the draft Budget Policy Statement prior to submission to the Cabinet;
- (f) the draft Annual Debt Management Strategy Paper, prior to submission to the Cabinet;
- (g) the draft Division of Revenue Bill and the draft County Allocation of Revenue Bill, prior to submission to the Cabinet;
- (h) audit outcomes on financial and non-financial performance information; and
- (i) changes to the categorization and listing of national government entities.

(4) The Cabinet Secretary may take into account any recommendation by the Council arising from any matter under paragraph 3 of this regulation, prior to submission to the Cabinet.

(5) All scheduled meetings of IBEC should be clearly indicated in the Budget Calendar issued by the National Treasury.

Recovery Plan and assumption of executive responsibilities of the county.

223. (1) The Cabinet Secretary may stop the transfer of funds to a county government immediately or in the alternative apply the provisions of section 96(3) of the Act.

(2) Where the Cabinet Secretary decides to use the alternative provided for under section 96(3)(b) of the Act, the Cabinet Secretary shall notify, in writing, the county government and Cabinet Secretary responsible for devolved government of the need to assume executive functions of a county that has failed to address material breaches in service delivery as per the directive in section 96 of the Act.

(3) The issuance of a notification under section 96 of the Act shall not amount to assumption of executive functions of the county by the national government.

(4) The notification issued under paragraph (1) shall—

- (a) specify the serious material breaches and persistent material breaches which a county government has committed;
- (b) invite the county government to make written representations with regard to its efforts to address the serious material breaches or persistent material breaches to mitigate stoppage of funds; and
- (c) give a reasonable time period for the county government to respond to the Cabinet Secretary's request.

(5) The Cabinet Secretary shall consider representations as made by the relevant county government and decide, with concurrence of the Joint Intergovernmental Technical Committee, whether or not to proceed with the assumption of county functions on the basis of an approved county recovery plan.

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(6) For purposes of section 94 of the Act, a State organ or public entity shall be in serious material breach if in any financial year, it operates a primary fiscal deficit that is inconsistent with the fiscal targets set under 107 of the Act.

(7) The decision by the Cabinet Secretary to assume executive functions of the county government in terms of section 99 of the Act shall be communicated, in writing, to the relevant county governor, and request for the cooperation of county government in the development of a recovery plan for approval by the Joint Committee.

(8) The decision to assume county executive functions communicated under paragraph (7) shall—

- (a) make reference to Article 225 of the Constitution and section 99 of the Act;
- (b) specify the steps in the directive that the county did not comply with;
- (c) announce that the national executive assumes responsibility for those county executive obligations, where the steps in the directives were not complied with;
- (d) specify the expected date, on which the assumption of responsibility takes effect;
- (e) specify the extent to which and the expected period for which the national government will assume responsibility; and
- (f) provide an outline of the programme for the implementation of the assumption of responsibility, specifying designation of persons, acting for the national government in the assumption of the responsibility.

(9) The Cabinet Secretary shall seek approval from the Joint Committee of the recovery plan and the release of the withheld intergovernmental fiscal transfers for the implementation of the plan.

(10) The recovery plan approved by the Joint Committee, which shall meet the minimum requirements in section 99(3) of the Act, shall form the basis for releasing funds withheld during the period of stoppage.

PART XVIII – MISCELLANEOUS

Gazettement of financial accounting and reporting formats.

224. The Cabinet Secretary shall *gazette* the financial, accounting and reporting formats for use by national government entities soon after these regulations become effective.

EXPLANATORY MEMORANDUM TO THE PUBLIC FINANCE MANAGEMENT (NATIONAL GOVERNMENT) REGULATIONS, 2015

1. The Purpose of Public Finance Management (National Government) Regulations, 2015.

The purpose of these Regulations is to:

- (i) to provide means of administering the powers vested in the Cabinet Secretary for the National Treasury under the Constitution, the Act and any other related legislation;
- (ii) to harmonize and standardize their application throughout government service in controlling and managing the finances;
- (iii) to set out a standardized financial management system for use in Government service which is capable of producing accurate and reliable

accounts free from errors, fraud and which will be useful in management decisions and statutory reporting;

- (iv) to provide for the conduct of fiscal relations between the national and county governments; and
- (v) to ensure accountability, transparency and the effective, economic and efficient collection and utilization of public resources.

2. **The Legislative Context**

The process of developing a comprehensive PFM Regulations started in 2012 after enactment of the Public Finance Management Act (Cap. 412A) which consolidated all Public Finance Management legislations catering for both the National and County Governments.

The development of the PFM Regulations, 2014 was guided by the following considerations;

- (i) ensuring financial autonomy of National and County Governments within a unitary system of government and guided by provisions in the constitution such as Article 6 and the Public Finance Management Act, 2012. As a result, functions of PFM institutions at the national and county level were mirrored;
- (ii) ensuring the PFM Regulations encapsulates best international practices; and
- (iii) the need to separate the PFM Regulations for national and county governments to capture the unique needs of each level of government.

These PFM Regulations, 2015 are therefore firmly anchored in Chapter 12 of the Constitution and gives effect to the provisions of the Public Finance Management Act (Cap. 412A).

3. **Policy Background**

Parliament enacted the Public Finance Management (PFM) Act (Cap. 412A) in August, 2012 and over the past two years Kenya has been rolling out devolution as envisaged in the Constitution. The Act on its own, however, is not sufficient since it does not provide guidelines on all matters relating to public finance management at the national and county level. In order to provide further clarity on various aspects of public finance management, it is therefore necessary to have regulations.

An efficient and effective PFM system is a necessary condition for achieving Vision 2030 and our development objectives. Investors, both foreign and local, require assurance that a country's PFM system can be relied upon to maintain fiscal discipline and in particular contain public debt both at the National and County level. Without a credible public financial management system, our ability to borrow or even attract donor funds will be curtailed. In addition, an effective PFM system is very critical in supporting the mobilization of resources to be equitably shared between the two levels of government.

In order to make the regulations user friendly and to capture the unique needs of the two levels of government, two volumes of Regulations have been prepared – one for the National Government and the other for the County Governments. The provisions of Parts I to XVI in the two sets of Regulations are largely mirrored but tailored to each level of government. Parts XVII onwards, however, include provisions that are specific to each level of government.

Further, there is need to ensure prudent use of public resources in line with Article 201 of the Constitution by providing ceilings in both the Public Finance

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Management Act, 2012 and PFM (County) Regulations, 2014 for expenditures of County Assemblies.

It is considered that the provisions of the proposed Public Finance Management (National and County Governments) Regulations will provide a sufficient level of economic, fiscal and financial detail and adequate time for the legislatures at the National and County Governments to perform their oversight role in an effective manner.

On the basis of the foregoing, it is considered prudent to anchor the fundamental concepts of a modern public financial management system and its application in Kenya in a comprehensive PFM law.

Some of the salient features of these regulations are:—

- The Regulations provide additional Fiscal responsibility principles such as—
 - compensation of national and county government employees shall not exceed 35% of either level of government equitable revenue share;
 - the approved expenditures of a county assembly shall not exceed seven per cent of the total revenues of the county government or twice the personnel emoluments of that county assembly, whichever is lower; and
 - national public debt shall not exceed 50% of GDP in terms of NPV among others;
- Provides for expenditures before approval of budget estimates by national and county assemblies under extreme circumstances.
- Provides any request for expenditures from the Contingencies Fund to have a certificate of the relevant Cabinet Secretary confirming compliance with PFM Act provisions.
- Provides all Government Bank Accounts for both the National and County Governments will be held at the Central Bank of Kenya except where the cabinet Secretary has expressly granted exemption and approved.
- Provides that the Cabinet Secretary shall provide further guidelines for loans and advances including benefits and allowances for public officers.
- Provides for lease financing transactions by accounting officers.
- Provides for equitable transfers before approval of County Allocation of Revenue Bill.
- Provides for various thresholds for approval of losses and write-offs including responsibility for Accounting Officers, Cabinet Secretary, Cabinet and Parliament.
- Provides for guiding principles for national and county government borrowing; borrowing purposes and objectives of public debt management, the criteria for issuance of government securities both domestic and external, sets the overall debt limit for the country at 50% of the net present value of GDP while the debt limit for county governments is set at 20% of the audited total annual revenue and approved by the county assembly.
- Provides for establishment of a Sinking Fund for debt redemption both levels of government
- Provides for criteria for establishment of public funds, management and winding up of a national public fund or a county government public fund.
- Provides the guiding principles for establishment of state corporations or county corporations, criteria for establishment of a state or county corporations as well

as dissolution of state corporations; evaluation of state or county corporation performance.

- Provides for the powers of the Cabinet Secretary to *gazette* financial, accounting and reporting formats.

4. **Public Consultations**

The PFM Regulations have taken into account the views of key stakeholders such as the Commission on Revenue Allocation, the Commission for the Implementation of the Constitution, Accounting Officers, Council of Governors, County Executive Committee Members of finance, civil society, the general public and international and local experts on public financial management.

It is important to appreciate that one of the key recommendation from different stakeholders was to separate the Regulations governing National and County levels of Governments.

In order to address this recommendation, the Regulations were separated to deal each level of Government, hence the reason why we have submitted two volumes of Public Finance Management Regulations; PFM (National Government) Regulations and PFM (County Government) Regulations. This will give flexibility on the application of the Regulations to each level of Government and ensure maximum impact of the Regulations on public finance accountability architecture.

5. **Guidance**

The National Treasury will sensitize stakeholders including Parliament, accounting officers of national and county governments and the general public, on the provisions of the public finance management (National & County Governments) Regulations, the accountability mechanism, the monitoring and evaluation mechanism and the need to ensure regular reporting to both the Parliament and relevant County Assemblies.

6. **Review of the Regulations**

The National Treasury shall monitor the application of the PFM Regulations. This will be done through quarterly reports sent by the relevant accounting officer of the national or county government. In addition, the National Treasury will also carry out regular monitoring and evaluation of the specific provisions of these Regulations through interaction with the implementers of these Regulations, studying various reports by Constitutional Commissions, Independent Offices, Civil Society and the general public.

It is important to note that the Regulations shall apply to the level of government as indicated in their headings from the commencement date of these Regulations. In this respect, a review thereof will be done by the National Treasury with the approval by Parliament in line with Section 205 of the Public Finance Management Act (Cap. 412A).

7. **National Treasury Contact Person**

The contact person at the National Treasury is the Cabinet Secretary, Mr. Henry Rotich or the Principal Secretary, Dr. Kamau Thugge, EBS.

Regulations under section 205 (1)THE PUBLIC FINANCE MANAGEMENT (EQUALIZATION
FUND ADMINISTRATION) REGULATIONS

ARRANGEMENT OF REGULATIONS

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**THE PUBLIC FINANCE MANAGEMENT (EQUALIZATION
FUND ADMINISTRATION) REGULATIONS**

[L.N. 54/2021]

Citation.

1. These Regulations may be cited as the Public Finance Management (Equalization Fund Administration) Regulations.

Interpretation.

2. In these Regulations, unless the context otherwise requires—

"Accounting Standards Board" has the meaning assigned to it under section 2 of the Act;

"administrator of the Fund" means the National Treasury as provided for under section 18(1) of the Act;

"Board" means the Equalization Fund Advisory Board established under regulation 4(1) of these Regulations;

"eligible county" means a county government identified as a beneficiary of the Fund by the Commission on Revenue in accordance with Article 216(4) of the Constitution;

"First Policy" means the First Policy determined by the Commission on Revenue Allocation under Article 216(4) of the Constitution in identifying marginalized areas for the purposes of Article 204(2) of the Constitution;

"Fund" means the Equalization Fund established under Article 204(1) of the Constitution;

"marginalized area" means an area identified under policy determined by the Commission on Revenue Allocation in accordance with Article 216 (4) of the Constitution;

"revenue" has the meaning assigned to it under section 2 of the Commission on Revenue Allocation Act (Cap. 428); and

"Second Policy" means the Second Policy determined by the Commission on Revenue Allocation under Article 216(4) of the Constitution in identifying marginalized areas for the purposes of Article 204(2) of the Constitution;

"unutilized balance" means any—

- (a) amounts not withdrawn from the Fund at the end of financial year;
- (b) amount withdrawn from the Fund for purposes of provision of basic services under an Appropriations Act and not expended at the end of financial year;
- (c) amount earmarked for the First Policy with fourteen counties ongoing projects; or
- (d) amount earmarked for the Second Policy with thirty four counties new projects to be identified.

Purpose of these Regulations.

3. The purpose of these Regulations is to—

- (a) establish an unincorporated Board to advise the Cabinet Secretary on the proper and effective performance of the Fund;
- (b) provide guidance on the administration and management of the Fund;
- (c) provide for the withdrawals from the Fund;
- (d) provide for completion of ongoing projects under the first policy;
- (e) provide for implementation of new projects under all subsequent policies; and

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- (f) provide for the procedures in relation to winding up of the Fund.

Establishment of the Board.

4. (1) There is established an advisory board to be known as the Equalization Fund Advisory Board which shall comprise of—

- (a) the Chairperson who shall be appointed by the Cabinet Secretary;
- (b) the Principal Secretary to the National Treasury or his representative designated in writing;
- (c) the Principal Secretary responsible for matters relating to devolution or his or her representative designated in writing;
- (d) one person from a pastoralist community nominated by the National Assembly;
- (e) one person nominated by the Senate;
- (f) one person nominated by the Council of Governors drawn from the areas defined as marginalised;
- (g) the Chief Executive Officer who shall be the secretary to the Board; and
- (h) three other persons nominated from organizations working in equalization fund beneficiary counties and special interest group, appointed by the Cabinet Secretary.

(2) All persons nominated under sub-regulation (1), paragraphs (d), (e), (f) and (h) shall be appointed by the Cabinet Secretary.

Qualification requirement of members.

5. A person is qualified for appointment under regulation 4(1) (a), (d), (e), (f), and (h) if that person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognized in Kenya;
- (c) has at least five years' professional experience in a relevant field; and
- (d) meets the requirements of Chapter Six of the Constitution.

Tenure of office.

6. Members of the Board appointed under regulation 4(1) shall, subject to the provisions of these Regulations, hold office for a term of six years, non renewable, on such terms and conditions as may be specified in the instrument of appointment.

Vacation of office.

7. A member of the Board, other than *ex-officio* member, may—

- (a) at any time resign from office by notice in writing to the appointing authority;

- (b) be removed from office by the appointing authority, if the member—
 - (i) has been absent from three consecutive meetings of the Board without permission from the chairperson;
 - (ii) is adjudged bankrupt or enters into a composition scheme or arrangement with his creditors;
 - (iii) is convicted of an offense involving dishonesty or fraud;
 - (iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months;
 - (v) is incapacitated by prolonged physical or mental illness; or
 - (vi) is otherwise unable or unfit to discharge his functions.

Functions of the Board.

8. The functions of the Board with regard to the Fund shall be to—

- (a) advise and make recommendations to the Cabinet Secretary on the distribution of resources for the provision of the basic services to the marginalized areas under Article 204 of the Constitution;
- (b) appraise and evaluate projects proposed under the workplans submitted by county technical committees to ensure compliance with the Constitution and the recommendations issued by the Commission on Revenue Allocation;
- (c) make recommendations on the priority areas requiring financing and implementation in accordance with the workplans considered under paragraph (b);
- (d) oversee, in consultation with the county governments, the implementation of the projects to ensure compliance with the Constitution;
- (e) monitor and evaluate the projects implemented by county governments using equalization funds to determine their impact in addressing the factors contributing to the marginalization of the areas identified in the counties;
- (f) put in place measures to ensure transparency and accountability in the implementation of equalization fund projects by county governments;
- (g) establish a framework for collaboration between the national government and county governments in the implementation of projects in line with the Constitution;
- (h) review the consolidated quarterly reports prepared by the Secretary on the implementation of the projects and make recommendations to the Cabinet Secretary on performance improvement;
- (i) review and propose the annual estimates of expenditure of the Fund for approval by the Cabinet Secretary; and
- (j) undertake project public participation in line with Article 201 of the Constitution.

Establishment of committees.

9. The Board may establish such committees as it may consider necessary for the better performance of its functions and the exercise of its powers under these Regulations.

Expenses of the Board.

10. (1) There shall be paid out of the Fund, expenses of the Board and such other expenses incurred pursuant to the object and purpose for which the Fund is established.

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(2) The expenditure incurred on the Fund shall be on the basis of and limited to annual work programmes and budget estimates prepared by the Secretary and approved by the Board at the beginning of the financial year to which they relate.

(3) Board expenses shall not be more than three percent of annual approved equalization fund allocation.

Meetings of the Board.

11. (1) The Board shall meet not less than four times in every financial year and not more than four months shall elapse between the dates of the next meeting.

(2) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days written notice of every meeting of the Board shall be given to every member of the Board.

(3) The quorum for the conduct of the business of the Board shall be five members, of whom the majority of shall be from amongst the non *ex officio* members.

(4) The Chairperson shall preside at every meeting of the Board at which he or she is present but in his or her absence, the members present shall elect one of their number who shall, with respect to that meeting and the business transacted, have all the powers of the Chairperson.

(5) Unless a unanimous decision is reached a decision on any matter before the Board shall be reached by voting.

(6) Subject to sub-regulation (3), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

(7) Subject to the provisions of this regulation, the Board may determine its own procedure and the procedure for any committee of the Board and for the attendance of any other persons as its meetings and may make standing orders in respect thereof.

Minutes.

12. The Board Secretary shall cause minutes of all proceedings of meetings of the Board to be entered in books for that purpose.

Disclosure of interest.

13. (1) If a member is directly or indirectly interested in any contract, proposed contract or other matter before the Board and is present at a meeting of the Board at which the contract, proposed contract or other matter is the subject of consideration, he or she shall, at the meeting and as soon as practicable after the commencement thereof, disclose the fact and shall not take part in the consideration or discussion with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter:

Provided that if the majority of the members present are of the opinion that the experience or expertise of the member is vital to the deliberations of the meeting, the Board may permit the member to participate in the deliberations subject to such restrictions as it may impose.

(2) A disclosure of interest made under sub-regulation (1) shall be recorded in the minutes of the meeting at which it is made.

Establishment of county technical committee.

14. Each County Commissioner of an eligible county shall establish and convene an all-inclusive committee to be known as county technical committee comprising of—

- (a) a chairperson who shall be the County Commissioner;
- (b) a County Executive Committee Member for Finance;

- (c) Constituency Development Fund managers;
- (d) a representative of County Assembly;
- (e) representatives of implementing sectors with prioritized projects; and
- (f) the chairperson of the Constituency Development Fund (CDF).

Functions of the county technical committee.

15. The County Technical Committee shall be responsible for approving all projects to be financed from the Fund.

Establishment of sub-county technical committee.

16. Each County Commissioner of an eligible county shall establish a committee at the sub-county level to be known as sub-county technical committee comprising of—

- (a) a chairperson who shall be the sub-county Commissioner;
- (b) a maximum of four technical officers from ministries relevant to funding priorities;
- (c) the chairpersons of Project Identification and Implementation Committees within the sub-county; and
- (d) the secretary of the Constituency Development Fund (CDF).

Functions of the sub-county technical committee.

17. The functions of the sub-county technical committee shall be to—

- (a) receive project funding proposals from respective Project Identification and Implementation committees;
- (b) evaluate and prioritize all development proposals from the Project Identification and Implementation Committees;
- (c) assess the feasibility and cost all project proposals received from the Project Identification and Implementation Committees;
- (d) submit project proposals and funding requests received from the Project Identification and Implementation Committees to the county government;
- (e) monitor all projects being undertaken and ensure they meet the objectives they are originally meant to achieve;
- (f) prepare quarterly reports on funds received and implementation status of all projects financed by the Fund to the county technical committee with a copy to the County Executive Committee Member responsible for matters relating to finance; and
- (g) prepare and submit annual reports on implementation of all projects financed by the Fund to the county technical committee with a copy to the County Executive Committee Member for Finance.

Establishment of Project Identification and Implementation Committee.

18. Each County Commissioner of an eligible county shall establish a committee at the ward level to be known as Project Identification and Implementation Committee comprising of—

- (a) a chairperson who shall be the Assistant Sub-County Commissioner;
- (b) the village administrators of areas defined by the Commission on Revenue Allocation as marginalized;

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- (c) a representative of the women, youth, minorities and persons with disabilities from marginalized areas;
- (d) a representative of the Constituency Development Fund committee member at the sub-county level; and
- (e) a representative of religious group or local Non- Governmental Organisation (NGO) with office at ward level.

Functions of Project Identification and Implementation Committee.

19. The functions of the Project Identification and Implementation Committee shall be to—

- (a) undertake public participation, in beneficiary areas;
- (b) identify and prioritize project in beneficiary areas in line with guidelines issued by the administrator of the Fund;
- (c) prepare and submit project funding proposals to sub-county technical committee; and
- (d) provide oversight on project implementation.

Functions of the County Executive Committee Member for finance.

20. The functions of the County Executive Committee Member responsible for matters relating to finance with respect to the Fund in each eligible county shall be to—

- (a) consolidate all projects approved by the county technical committee and submit to the Secretary of the Board for funding with copy to the Commission on Revenue allocation;
- (b) prepare financial statements for the Fund for each financial year in a form prescribed by the Accounting Standards Board in accordance with the Act and submit to the Secretary of the Board;
- (c) prepare quarterly financial statements for the fund in a form prescribed by the Accounting Standards Board and submit to the Secretary of the Board;
- (d) prepare quarterly reports on funds received and implementation status of all projects financed by the Fund with a copy to the Secretary of the Board, Commission on Revenue Allocation and Controller of Budget; and
- (e) prepare annual report on implementation of all projects financed by the Fund with a copy to the Secretary, Commission on Revenue Allocation, Controller of Budget and Parliament.

Chief Executive Officer.

21. (1) There shall be the Chief Executive Officer to the Board appointed by the Cabinet Secretary.

(2) The Chief Executive officer appointed under subparagraph (1) shall be the head of the Secretariat established under regulation 22.

Establishment and functions of the Secretariat.

22. There shall be a Secretariat constituted by the Chief Executive Officer and whose functions shall be to—

- (a) provide technical and administrative services to the Board;
- (b) implement the decisions, strategies and work plan of the Board;

- (c) make recommendations to the Board on the formulation and implementation of programmes for the achievement of the functions of the Board;
- (d) review and consolidate the work-plans received from counties for consideration by the Board;
- (e) identify any challenges in the implementation of projects and make recommendations to the Board on the remedial measures required to be undertaken;
- (f) maintain a data base setting out information on—
 - (i) projects, operations and programmes undertaken with respect to each county which has been identified by the Commission on Revenue Allocation as being marginalized;
 - (ii) monies appropriated from the Fund with respect to each project or programme; and
 - (iii) status of each project or programme undertake;
- (g) prepare and ensure timely submission of reports to the Board and the Cabinet Secretary regarding the implementation of projects and programmes under the Fund;
- (h) make arrangements for periodical monitoring, evaluation and reporting of the criteria, standards and programmes in relation to the objects and functions of the Board; and
- (i) perform such other functions as may be assigned to it by the Board.

Approval of workplan.

23. The County Executive Committee Member responsible for matters relating to finance shall submit work plans through county technical committee to the Board for approval.

Utilisation of funds and preparation of workplans.

24. (1) The funds shall be utilized as conditional grants to the affected counties in accordance with the Division of Revenue Act and the County Allocation Revenue Act for the respective financial year.

(2) The County Executive Committee Member responsible for matters relating to finance in each of the counties identified by the Commission on Revenue Allocation shall prepare a workplan setting out—

- (a) a schedule of projects and programmes proposed to be undertaken by the county government in the areas identified by Commission on Revenue Allocation;
- (b) a technical assessment of the viability of the schedule of projects and programmes;
- (c) public participation undertaken during the process of identification of programmes and projects;
- (d) an assessment of the manner in which the programmes or projects would be expected to address the shortcomings identified by the Commission on Revenue Allocation in the provision of the identified basic needs;
- (e) an assessment of how the programmes and projects identified impact on the County Integrated Development Plan; and
- (f) the approximate cost of the works to be undertaken in relation to a project or programme identified in the workplan.

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(3) In identifying programmes and projects for inclusion in the workplan, the County Executive Committee Member responsible for matters relating to finance shall—

- (a) take into account—
 - (i) the criteria recommended by Commission on Revenue Allocation;
 - (ii) the costing of the project and the time required for the implementation of the project on a priority basis;
 - (iii) recommendations by the Commission on Revenue Allocation;
 - (iv) recommendations, standards and guidelines issued by the Board;
 - (v) the interventions required to be undertaken on a priority basis in order to address the needs identified by the Commission on Revenue Allocation for the provision of identified basic services; and
 - (vi) the recommendations of the respective Ministry or State Department at the counties; and
- (b) collaborate with the Board and the relevant Ministry or State Department.

(4) The County Executive Committee Member responsible for matters relating to finance shall ensure that a work plan prepared under sub-regulation (1) of this regulation is aligned to the annual development plan of the county prepared under the Act.

(5) The Board, relevant Ministry or State Department shall make its recommendations to the County Executive Committee Member for matters relating to finance on the proposed workplan within fourteen days of the receipt of a request under sub-regulation (3) (b) of this regulation.

Criteria for identification of projects.

25. In determining and identifying projects or programmes for the provision of basic services and financing under the Fund, the County Executive Committee Member responsible for matters relating to finance shall take into account the input of the Board and the committees established under these Regulations.

Submission of workplan to the Board.

26. (1) The County Executive Committee Member responsible for matters relating to finance shall, upon approval of a workplan, submit the workplan to the Board.

(2) Upon receipt of the workplan, the Board shall—

- (a) appraise the workplan to ensure compliance with these Regulations and that it adequately addresses the needs identified by the Commission on Revenue Allocation;
- (b) identify the programmes or projects that require to be implemented on a priority basis, and make its recommendations to the Cabinet Secretary.

Quarterly reports on projects and disbursements.

27. The Board shall, on a quarterly basis, submit a report to the Cabinet Secretary with a copy to the Commission on Revenue Allocation and Controller of Budget, detailing—

- (a) a summary of the project and programmes approved for financing in the preceding year indicating the funding status of such projects, if any;
- (b) a summary of the status of disbursements of funds to the various projects and implementation progress;

- (c) a summary of the status of disbursements from the Fund to the respective county governments or any agency involved in implementation of any projects financed from the Fund; and
- (d) any restriction imposed on a county government or any agency involved in the implementation of the projects or programmes of the national government.

Report by the County Executive Committee Member for finance.

28. (1) The County Executive Committee Member responsible for matters relating to finance—

- (a) shall prepare and submit to the Board quarterly reports on the implementation of the projects or programs under the workplan in the format prescribed by the Board; and with a copy to the Commission on Revenue allocation;
- (b) shall ensure that any projects undertaken under the workplan are carried out in accordance with the Public Procurement and Asset Disposal Act (Cap. 412C), and any other law.

(2) A report prepared under sub-regulation (1) shall be submitted to the Secretary of the Board and shall include—

- (a) information relating to the procurement of services and works in relation to the projects and programmes under the workplan;
- (b) a schedule of the works required to be undertaken and status of the implementation of projects and programmes;
- (c) the timelines for completion of specific phases of projects and programmes;
- (d) the manner in which the funds received from the Fund have been utilized in relation to any project or programme;
- (e) the monies disbursed and any balance of unspent funds; and such other information as the Board may require.

(3) The Secretary to the Board shall consolidate the reports submitted for consideration by the Board.

Submission of workplan to the Board.

29. (1) The County Executive Committee Member responsible for matters relating to finance shall, upon approval of a workplan, submit the workplan to the Board.

(2) Upon receipt of the workplan, the Board—

- (a) shall appraise the workplan to ensure compliance with these Regulations and that it adequately addresses the needs identified by the Commission on Revenue Allocation;
- (b) shall identify the programmes or projects that require to be implemented on a priority basis, and make its recommendations to the Cabinet Secretary.

Withdrawals from the Fund.

30. (1) The administrator of the Fund shall open a designated Equalisation Fund account at Central Bank of Kenya.

(2) Where a withdrawal from the Fund is authorized under an Act of Parliament that approves the appropriation of money, the Secretary of the Board through the National Treasury shall make a requisition for the withdrawal and submit it to the Controller of Budget for authorization.

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

(4) All withdrawals made from the Fund under sub-regulation (1) shall be deposited into the respective spending counties account.

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

Winding up of the Fund.

31. (1) At least eighteen months before the expiry of the term specified under Article 204(6) of the Constitution or in legislation enacted by Parliament pursuant to Article 204(7) of the Constitution—

- (a) the Board shall prepare a status report on all existing pending projects and their funding requirements in line with the submitted work plans; and
- (b) the Cabinet Secretary shall—
 - (i) make the necessary requisition for the transfer of monies to the county governments for the completion of the projects; and
 - (ii) ensure that monies required for the completion of the projects has been transferred to the respective county governments.

(2) At least twelve months before the expiry of the period specified under Article 204(6) of the Constitution or in legislation enacted by Parliament pursuant to Article 204(7) of the Constitution the county executive committee members in charge of finance in the respective county governments shall submit to the Board, with copy to the Commission on Revenue allocation—

- (a) a schedule of the programmes and projects implemented pursuant to Article 204 of the Constitution and the expected completion date;
- (b) an assessment report of the impact of the programmes and projects that have been implemented pursuant to Article 204 of the Constitution;
- (c) a financial report on the projects and programmes; and
- (d) a terminal monitoring and evaluation report.

(3) The Board shall prepare the final winding up report of the Fund not later than three months from the period specified under Article 204(6) of the Constitution or in legislation enacted by Parliament pursuant to Article 204(7) of the Constitution for approval by the Cabinet Secretary.

(4) The Cabinet Secretary shall, submit the final report to the National Assembly and the Senate, with copy to the Commission on Revenue Allocation and Controller of Budget, within fourteen days of the receipt of the initial report under subregulation (3).
