REPUBLIC OF KENYA

Proposed Layman's Draft

Public Financial Management Bill

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20th May 2011

MINISTRY OF FINANCE
THE TREASURY

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PUBLIC FINANCIAL MANAGEMENT BILL 2011

A Bill setting out to promote transparency and accountability in the management of public finances at the National Government and County Government

PART I — PRELIMINARY

Short Title and commencement

1. (1) This Act may be cited as the Public Finance Management Act 2011.

(2) This Act shall be deemed to have come into force on the * day of * 2011.

(3) On commencement this Act shall supersede all laws and regulations that are inconsistent with this Act apart from the Constitution and except as specifically stated in this Act.

Application

2. (1) This Act applies to all public officers, government entities at the national and county level including Parliament, the Judiciary, County Assemblies and any other sub National Governments when created, unless expressly exempted in this Act.

(2) Any expenditure of public money, or dealing in Government assets, or liabilities incurred by and for the Government, irrespective of the source of funding, shall be subject to the accounting and audit requirements prescribed in this Act.

(3) The Defence and Intelligence Budgetary Bodies shall comply with this Act subject to any exemptions and alternative requirements specified in regulations pursuant to this Act and such Regulations shall not deviate from a minimum requirement to show the amount of the appropriation for each Defence and Intelligence Budgetary Body in the Appropriation Act and the corresponding amount shall be reported in the audited accounts of the Government.

Interpretation

3. In this Act unless the context otherwise requires-

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accounting standards means authoritative statements of how particular types of transactions and other events should be reflected in the accounts as approved by the National Treasury;

accounting officer means a person designated to be an accounting officer within the meaning of the constitution or any person designated by the Cabinet Secretary responsible for Finance, who is charged with the duty of accounting for any service in respect of which money has been appropriated by Parliament or any person to whom issues are made from the Consolidated or County Revenue Fund;

appropriation means an authorization made by law in an Appropriation Act permitting payment out of Government funds under specified conditions or for specified purposes;

arrears means amounts due but not received or paid;

borrowing means —

(a) entering into an agreement to obtain an advance in form of cash, goods or services repayable over a particular time in the future;

(b) entering into hire purchase agreements or agreements that are of the same or a substantially similar nature;

(c) entering into finance lease arrangements or arrangements that are of the same or a substantially similar nature; or

(d) accepting debt on assignment from other persons; but does not include the purchase of goods or services on credit, or the obtaining of an advance, through the use of a credit card or by a supplier supplying on credit for the purchase of goods or services, for a period of 90 days or less from the date the credit card is used or the credit is supplied.

budgetary bodies as a class means all Ministries, Commissions, Independent Offices, County Governments and other sub-National Governments when created, and any other body owned by Government, but shall not include Government Agencies; a Budgetary Body may be any one of these entities;

budgetary revenue and expenditure means the revenue and expenditure through annual appropriations and revenue Acts;

cabinet secretary in this Act means-

(1) a Cabinet Secretary appointed by the President under Article 152 of the Constitution

(2) Notwithstanding subsection (1), until after the first elections under the Constitution, references in this Act to the expression “Cabinet Secretary” shall be construed to mean Minister.

Cabinet Secretary responsible for Finance in this Act means-

(1) the Cabinet Secretary responsible for matters relating to Finance appointed by the President under Article 152 of the Constitution.

(2)Notwithstanding subsection (1), until after the first elections under the Constitution, references in this Act to the expression “Cabinet Secretary responsible for Finance” shall be construed to mean the Minister for Finance.

capital means an asset that is defined, recognized, and measured as capital in accordance with generally accepted accounting practice;

capital expenditure means any expenditure that leads to renewal or elongation of the life of an asset and includes that expenditure that leads to creation of new assets;

chief executive means the person who has responsibility for managing the affairs of a Budgetary Body or a Government Agency unless otherwise specified in this Act and includes Principal Secretaries;

collector of revenue is a person or office appointed by a receiver of revenue to collect public money;

commitment means entering into a contract or other binding arrangement which creates future expenses and liabilities;

contingent liabilities mean implicit government liabilities that may arise out of contractual and non-contractual obligations;

county treasury means the county treasury established pursuant to section 24 of this Act;

development expenditure means capital expenditure as defined in this section;

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County Government means a County Government and the entities under its control;

derivative transaction means—

(a) a transaction that is a rate swap transaction, swap option, basis swap, forward rate transaction, interest rate option, foreign exchange transaction, cap transaction, floor transaction, collar transaction, currency swap transaction, cross-currency rate swap transaction, currency option, commodity swap, commodity option, equity or equity index swap, equity or equity index option, bond option, credit protection transaction, credit swap, credit default swap, credit default option, total return swap, credit spread transaction, forward purchase or sale of a security, or commodity or other financial instrument or interest (including an agreement or option that relates to any of these transactions); or

(b) a transaction that is similar to any transaction referred to in paragraph (a) that—

  (i) is currently, or in the future becomes, recurrently entered into in the financial markets; and

  (ii) is a forward, swap, future, option, or other derivative on 1 or more rates, currencies, commodities, equity securities or other equity instruments, debt securities or other debt instruments, economic indices or measures of economic risk or value, environmental or climatic variable, or other benchmarks against which payments or deliveries are to be made.

development partners for the purposes of this Act means a supplier of external resources by way of loans, grants, materials, technical assistance or other forms of support to the Government through a formal agreement that includes development requirements;

direct agreement means an agreement between individual project parties each of which is a contracting party with the public private partnership concessioning company and the senior lender to the concessioning company;

expenses mean expenses in accordance with generally accepted accounting practice;

government means the Government of the Republic of Kenya and includes all State Officers, public officers, government entities, and levels of government including national, county and other sub-National Governments when created ;

Government Agency is a government controlled entity established by legislation or executive powers to be responsible for the oversight and administration of specific functions assigned to it by the National or County Government.

government entity means all entities owned by all levels of the Government including all Budgetary Bodies and Government Agencies;

instructions means rules, manuals, directives, circulars, decrees, guidelines or notifications;

Kenya Revenue Authority has the meaning assigned to it in the Kenya Revenue Act;

liability means a liability measured in accordance with generally accepted accounting practice as adopted by accounting practice;

medium term means a minimum of 3 years and may extend to 5 years;

National Government means-

(a) all State Officers except County Government assemblies and executive committees of County Governments; and

(b) all public officers and all government entities, except County Government public officers, County Government entities and public officers of any other public entity established under any other sub-national level of government ;

public money means all money that comes into possession of or is distributed by a public body and money raised by a private body where it is doing so under statutory authority;

public office has the meaning assigned to it in the Constitution;

public officer has the meaning assigned to it in the Constitution;

public private partnership means an arrangement between a public entity and a private party under which-

(a) the private party undertakes to perform a public function or provide a service on behalf of the public entity;

(b) the private party receives a benefit for performing the function, either by way of-

(i) compensation from a public fund;

(ii) charges of fees collected by the private party from users or customers of a service provided to them; or

(iii) combination of such compensation and such charges or fees.

(c) the private party is generally liable for risks arising from the performance depending on the terms of the agreement;

public resources include public money, stores, property, assets, loans and investments;

public service has the meaning assigned to it in the Constitution;

reallocation means movement of funds from appropriations or between economic classifications specified in an appropriation;

receiver of revenue is the person appointed by Cabinet Secretary responsible for Finance to collect and account for such items of revenue as the Cabinet Secretary responsible for Finance may specify;

recurrent expenditure means that expenditure which is for consumption and which does not lead to the renewal or creation of new assets;

revenue bills means Bills that impose or abolish national taxes, levies, duty or surcharges or which abolish or reduce or grant exemption for any national taxes, duties or surcharges;

revenue means all proceeds received by the National Government from income tax, value-added tax, customs duties, other duties on import and export goods and excise tax;

revenue share means that equitable share of revenue shared nationally that is allocated to the County Government and approved in the County Allocation of Revenue Act;

secondary trading means any activity leading to a change in the ownership of a government security before its redemption date;

short term loans means any loan received but fully repaid within the financial year;

state office has the meaning defined in the Constitution;

strategic objectives means the high level changes intended to be achieved;

state corporation has the meaning assigned to it in the State Corporations Act;

supplementary appropriation Act means an Act, the purpose of which is to alter or add to appropriations already granted by an Appropriation Act;

vote means a collection of appropriations in the Budget Estimates.

Rules of construction

4. (1) In this Act, unless the context otherwise requires, the singular shall include the plural and the masculine shall include the feminine.

(2) For the purposes of this Act the terms defined in this Act shall prevail over any definitions in other Acts of the Republic of Kenya.

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PART II — RESPONSIBILITIES AND POWERS IN RELATION TO PUBLIC FINANCES

Parliament

5. The Parliament by fulfilling its roles in the Constitution shall hold the Government accountable for managing public resources in a transparent, accountable, efficient and effective manner, in accordance with the principles of public finance, the fiscal responsibility principles, and all other requirements of this Act and other Acts.

6 Parliament shall determine the division of revenue raised by National Government among the National and County levels of government and amongst the County Governments through the annual Division of Revenue Act and the annual County Allocation of Revenue Act as provided for in the Constitution.

7. (1) The National Assembly shall have the following broad responsibilities in relation to public finance-

(a) exercising oversight over national revenue and authorizing taxes and other revenues necessary to finance the delivery of the services;

(b) determining the allocation of resources for National Government through the Appropriation Bill;

(c) determining the allocation of national revenue for County Governments for national services provided by County Governments through the Appropriation Bill, in addition to funding allocated to County Governments through the County Allocation of Revenue Bill;

(d) providing oversight of government entities subject to roles allocated in law to County Assemblies;

(e) ensure public participation in the budget process as provided in this Act; and

(f) other responsibilities assigned by law.

(2) The National Assembly shall have the following specific responsibilities-

(a) review the Budget Policy Statement and make necessary recommendations;

(b) review and approve the Budget Estimates for the National Government which shall include Budget Estimates submitted by the Cabinet Secretary responsible for Finance, the Parliamentary Service Commission and the Chief Registrar for the Judiciary;

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(c) review other budget documents required by law or provided by the Cabinet Secretary responsible for Finance;

(d) satisfy itself that the Budget Estimates and Appropriation Bill are consistent with the Budget Policy Statement and the Division of Revenue Act; and

(e) consider and pass the Appropriation Bill for the National Government.

(3) The National Assembly shall-

(a) review the annual audited accounts of the Government as a whole;

(b) review other reports on performance including reports of the Auditor General and Controller of the Budget; and

(c) consider the recommendations of its committee in reviewing the reports referred to in this section.

8. (1) There is established a budget committee, a committee of the National Assembly;

(2) The committee in subsection (1) shall-

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

(b) provide general direction and impetus in the realization of the objectives of this Act;

(c) study all economic and budgetary questions falling within the competence of the National Assembly and transmit its recommendations thereon to the National Assembly;

(d) study or consider any specific questions or matter referred to it by the National Assembly and transmit its recommendations thereon to the National Assembly;

(e) ensure adherence by the Cabinet Secretary responsible for Finance and public entities to the broad principles of prudent financial management;

(f) examine the various compliance reports provided in Part VII of this Act and report to the National Assembly what improvements of form or substance, if any, should be made to those reports so as to achieve optimum value for the money foregone, received or spent on the target objectives of public entities;

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

9. (1) The Senate shall have the following responsibilities in relation to public finance-

(a) determine the basis for allocating resources among the counties the share of national revenue that is annually allocated to the county level of government;

(b) participate in law making affecting the finances of County Governments subject to the role of the National Assembly with regard to money bills as defined in the Constitution;

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(c) provide oversight of national revenue allocated to County Governments which shall include reviewing the performance of County Governments and their entities through audited annual accounts and other information;

(d) every five years, pass a resolution to determine the basis for allocating among the counties, the share of national revenue that is annually allocated to the County level of government;

(e) participate in law making as espoused in Article 204(8) affecting legislation suspending the lapse of the Equalization Fund as provided in Article 203 of the Constitution; and

(f) other responsibilities assigned by law.

(2) Despite section 9(1)(a), the first and second determinations of the basis of the division of revenue among the counties shall be made at three year intervals, rather than every five years.

Parliamentary Budget Office

10. (1) There is established an office to be known as the Parliamentary Budget Office which shall be an office in the Parliamentary Service Commission.

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

(3) The Parliamentary Budget Office shall serve as the secretariat to the Budget Committee of the National Assembly.

(4) The functions of the Parliamentary Budget Office shall include to -

(a) provide budget related information to the relevant committee, the departmental committees and other financial select committees of the Parliament;

(b) provide service to the committees referred to in paragraph (a) within their budgetary jurisdiction;

(c) prepare reports on budgetary projections and economic forecasts and propose, where necessary, alternative scenarios for various macro economic variables in respect of any financial year;

(d) prepare analytical studies of specific subjects such as financial risks posed by Government sponsored enterprises and financial policies;

(e) study budget proposals and trends and where appropriate, suggest changes in the content or format for such proposals or trends;

(f) establish and foster relationships with the National Treasury and with other national and international organizations, with interest in budgetary and economic matters, as it deems fit for the efficient and effective discharge of its mandate;

(g) undertake, independently or in collaboration with any appropriate person or institution, any other study or activity likely to assist in carrying out its various functions in this section; and

(h) ensure that all research studies, evaluations, findings, recommendations and other relevant literature are presented in a readily intelligible and user friendly form.

(5) The Parliamentary Budget Office shall, after consultation with the Cabinet Secretary responsible for Finance, provide to Parliament a certificate for each Bill referred to it, attesting to the impacts of the Bill on the fiscal responsibility principles and the fiscal framework including the fiscal objectives in the Budget Policy Statement.

11. The Parliamentary Budget Office shall ensure that all reports, studies, evaluations, findings, recommendations and other outputs are presented in an intelligible and user-friendly form and that all outputs are published in a timely way on the internet unless publication is not in the public interest.

12. The Parliamentary Budget Office shall have the powers necessary to carry out its roles and responsibilities including the power to require information to be provided by any Budgetary Body, Government Agency, or public officer in a timely and user-friendly format, provided that such information is necessary for the Parliamentary Budget Office to fulfil its roles and responsibilities.

The President and Cabinet

13. The President shall address Parliament on the state of the economy and outline the policy that the government will focus on in the year which forms the basis for the annual estimates.

14. The Cabinet shall observe its collective responsibility for making decisions about public finances and related activities of the Government in the best interests of the people of the Republic of Kenya in accordance with the Act.

Cabinet Secretaries

15. Within the overall responsibility of the Cabinet, each Cabinet Secretary shall be responsible for-

(a) making policy decisions and recommending decisions to the Cabinet which result in the best possible policies in order to achieve the Government's desired strategic objectives;

(b) overseeing the management of government entities in accordance with the annual Budget Policy Statement, the Budget and the Appropriation Act;

(c) ensuring the interest of the National Government as owner of the resources of a Budgetary Body or a Government Agency for which the Cabinet Secretary is responsible is protected and such interest shall include the maintenance and development of capability in the physical, intellectual, human and other resources;

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(d) monitoring all Budgetary Bodies and Government Agencies for which the Cabinet Secretary is responsible including monitoring-

(i) the delivery of the programs;

(ii) the maintenance and development of capability; and

(iii) the financial performance;

(e) appearing before the relevant committee of the Parliament to explain and justify the appropriation requests contained in the Budget Estimates and Appropriation Bill;

(f) appearing before the relevant committee of the Parliament to explain the performance for Budgetary Bodies and Government Agencies within the Cabinet Secretary's portfolio; and

(g) other responsibilities assigned by law.

16. A Cabinet Secretary who provides resources to a County Government through appropriations from his portfolio shall ensure there are accountability arrangements consistent with standards set by National Treasury for such arrangements, for the funding and delivery of services by any or all of the following-

(a) reviewing and providing an opinion on the parts of the draft budget and draft annual plan of the County Government that directly relate to the services to be provided to ensure that the County Government plans to deliver the services in a transparent, accountable, efficient and effective manner;

(b) including performance requirements in documents elaborating the appropriation containing the funding for the County Government;

(c) entering into an agreement for service provision by the County Government; and

(d) reviewing the performance of the County Government in delivering the services.

17. Cabinet Secretaries shall have the powers necessary to fulfill their responsibilities set out in this Act in conformance with the law.

Cabinet Secretary responsible for Finance

18. The Cabinet Secretary responsible for Finance shall-

(a) provide advice to the National Assembly on money bills as provided for under Art. 114 of the Constitution;

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(b) give consent to the advances from the Contingencies Fund as provided in Article 208 of the Constitution;

(c) submit to either House of Parliament information concerning any particular loan or guarantee as provided for in the Constitution and this Act;

(d) make recommendations for the equitable basis for determining revenue as provided for under Art. 217 of the Constitution;

(e) at least two months before the end of the financial year and as provided under this Act, submit to the National Assembly the Division of Revenue Bills and County Allocation of Revenue Bills as provided for in this Act and Art. 218 of the Constitution

(f) at least two months before the end of the financial year and as provided under this Act, submit to the National Assembly estimates of the revenue and expenditure of the National Government for the next financial year; and

(g) stop the transfer of funds to a State Organ or any other public entity for serious material breaches or persistent breaches of the provisions of this Act.

19. The Cabinet Secretary responsible for Finance shall have the powers necessary to fulfil his responsibilities under this Act including to-

(a) manage the fiscal performance and position of the Government as a whole and facilitating adherence to the fiscal responsibility requirements;

(b) provide policy direction to the Ministry responsible for Finance and the National and County Treasuries on matters relating to public finance management;

(c) authorize borrowing and issuance of securities and guarantees;

(d) assign the designation of an Accounting Officer in every public entity at the national and county level of government unless provided otherwise under the Constitution ;

(e) require the provision of such information as is necessary from Budgetary Bodies and Government Agencies for the exercise of the Cabinet Secretary responsible for Finance's powers and the discharge of the responsibilities under this Act; and

(f) acquire, purchase, take, hold and enjoy movable and immovable property of every description, and may convey, assign, surrender and yield up, mortgage, charge, demise, reassign, transfer or otherwise dispose of, or deal with, any movable and immovable property vested in the corporation upon such terms as to the corporation seems fit; and in respect of or in connexion with the matters aforesaid or any of them.

20. The Cabinet Secretary responsible for Finance may take any lawful action that he deems necessary in the public interest to address any situation arising in respect of a financial institution or group of institutions, financial security, financial market or related matter, except as provided for in the law.

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The National Treasury

21. (1) there is hereby established the National Treasury with the principal responsibility of oversight, supervision, control and direction of all matters related to public financial management in the National and County Government save for those functions assigned to any other office by the Constitution.

(2) The specific responsibilities of the National Treasury are-

(a) management of public revenues and public debt;

(b) expenditure management and control;

(c) promote economic, fiscal, and financial policies that facilitate social economic development;

(d) promote and enforce transparency and effective public financial management; and

(e) Provide economic and financial advisory services to public entities.

22. The functions of the National Treasury are to-

(a) prescribe accounting standards, policies and bases that are in line with Generally Accepted Accounting Principles;

(b) develop the content, structure and formats of the reporting frameworks, accounting and financial guidelines in the various levels of Government;

(c) enforce proper management, control and accounting of public funds, in order to promote efficient utilization of budgetary resources;

(d) maintain proper books of accounts and reporting in respect of the Consolidated Fund, Equalization Fund and Contingencies fund;

(e) prescribe appropriate banking arrangements and cash management to all levels of Government

(f) coordinate the preparation of annual appropriation accounts and other statutory financial reports

(g) consolidate the annual appropriation accounts and other financial statements

(h) formulate and implement economic and fiscal policies in coordination with other relevant institutions;

(i) mobilize domestic and external resources for financing government budgetary requirements;

(j) public debt management;

(k) formulate and coordinate the preparation of annual estimates of revenue and expenditure;

(l) coordinate the implementation of the National Budget;

(m) formulate public procurement policies;

(n) coordinate the management of public enterprises and investments;

(o) the custodian of Government Assets;

(p) develop the rule and procedure for the establishment and management of all public funds;

(q) coordinate intergovernmental financial and fiscal relations;

(r) develop monitor and evaluate risk management and governance frameworks;

(s) establish the internal audit and audit committees, and formulate regulations and guidelines; and

(t) take any action necessary for the better carrying out of the purposes of this Act.

23. For the purposes of carrying out the duties of the National Treasury, an officer of the Treasury, authorized for the purpose of this section, has the following powers -

(a) to investigate any system of public financial management and internal controls in any state organ or public entity;

(b) to intervene by taking appropriate steps to a serious or persistent material breach of the Constitution, this Act, public financial regulations, instructions and other guidelines in any state organ or public entity;

(c) access all offices and have access to all books, records, returns, reports and other documents of various levels of Governments including electronic documents;

(d) to access any government property falling under various levels of Government;

(e) to require any state or public officer to provide explanations, information and assistance; and

(f) to authorize the opening operating and closing of Government bank accounts in levels of Government.

County Treasuries

24 (1) There shall be a County Treasury for each county, whose specific responsibilities shall include-

(a) issuance of County treasury instructions in line with the requirements of this Act.

(b) preparation of the County budget;

(c) enforcement of proper management, control and accounting of public funds in order to promote efficient utilization of budgetary resources;

(d) maintenance of proper books of account and reporting in respect of County Revenue Funds and other Funds;

(e) consolidation of County annual appropriation accounts and other statutory reports in a format prescribed by the National Treasury;

(f) formulation and implementation of economic and fiscal policies in coordination with the National Treasury;

(g) mobilizing County resources for financing County Government financial resources;

(h) county public debt management;

(i) coordination of the implementation of the County Budget;

(j) custodian of County assets;

(k) formulation and coordination of the preparation of County estimates of revenue and expenditure;

(l) enforcement of internal audit regulations and guidelines in line with the requirements of this Act;

(m) assist the county departments and county public entities in building their capacity for efficient, effective and transparent financial management;

(n) investigate any system of financial management and internal control applied by a County department or county public entity;

(o) intervene by taking appropriate steps, which may include the withholding of funds, to address a serious or persistent material breach of this Act by a County department or county public entity; and

(p) anything further that is necessary to fulfill its responsibilities consistent with this Act

2) A County Treasury shall possess the necessary powers to perform the following functions-

(a) issue County Treasury instructions not inconsistent with the provisions of this Act;

(b) enforce this Act and any prescribed national and county norms and standards, including any prescribed standards of generally recognized accounting practices and uniform classification systems, in County departments;

(c) comply with annual Division of Revenue Act, and monitor and assess the implementation of the Act in County public entities;

(d) monitor and assess the implementation in county public entities of national and county norms and standards;

(e) assist the County departments and County public entities in building their capacity for efficient, effective and transparent financial management;

(f) investigate any system of financial management and internal control applied by a county department or county public entity;

(g) intervene by taking appropriate steps, which may include the withholding of funds, to address a serious or persistent material breach of this Act by a county department or a county public entity;

(h) promptly provide any information required by the National Treasury in terms of this Act;

(i) any other functions as designated by the National Treasury; and

(j) anything further that is necessary to fulfil its responsibilities effectively.

Attorney General

25. As the Government's principal legal advisor, the Attorney General shall issue a certificate under his hand confirming that the amount to be withdrawn from the Consolidated Fund to fulfil a guarantee is within the law, and this certificate will be sufficient grounds for the Controller of Budget to authorize the withdrawal of funds for this purpose as provided in this Act.

Controller of the Budget

26. (1) The Controller of the Budget shall-

(a) oversee the implementation of budgets of the National and County Governments by authorizing withdrawals from the Equalization fund, Consolidated Fund and Revenue Funds for each County Government as provided under Articles 204, 206 and 207 of the Constitution;

(b) unless satisfied that the withdrawal is authorized by law, not approve any withdrawal from the Consolidated Fund, Equalization Fund and County Revenue Fund;

(c) Every three months, submit to each House of Parliament a report on the implementation of the budgets of the National and County Governments; and

(d) The report in subsection (c) shall include:

(i) non-financial performance reports;

(ii) reports on withdrawals of funds from the Consolidated Fund, Equalization Fund and County Revenue Funds;

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(iii) report on funds withheld by the Cabinet Secretary responsible for Finance

(2) A withdrawal under the authority of a county legislation shall not be authorized if the total of the proposed withdrawals and previously approved withdrawals exceeds the amounts appropriated for the financial year.

(3) A withdrawal under the authority of the Constitution or an Act of Parliament other than the appropriations by legislation of the county shall not be authorized if the total of the proposed withdrawals exceeds the total amounts authorized under the Constitution or this Act.

Auditor General

27(1) within 6 months after the end of each financial year, The Auditor-General shall submit to Parliament or the relevant County Assembly, audited reports of-

(a) the accounts of the National and County Governments;

(b) the accounts of all funds and authorities of the National and County Governments;

(c) the accounts of all courts;

(d) the accounts of every Commission and Independent office established under the Constitution;

(e) the accounts of the National Assembly, the Senate and the County Assemblies;

(f) the accounts of Political Parties funded from public funds;

(g) the Public debt; and

(h) the accounts of any other entity that legislation requires the Auditor-General to audit or that is funded from public funds.

(2) The Auditor-General shall satisfy himself that all the moneys that have been appropriated by Parliament and all public money that has been used by a government entity under a statutory authority or other lawful authority has been disbursed and applied to the purposes intended and that the expenditure conforms to the authority for such expenditure.

(3) Without limiting the scope of subsection (2) the Auditor General shall satisfy himself that-

(a) all reasonable precautions have been taken to safeguard the collection of revenue and the receipt, custody, issue and proper use of property; and

(b) the applicable law has been complied with in relation to the collection of revenue and the receipt, custody, issue and proper use of property.

(4) The Auditor General may also conduct investigative and special audits, environmental audits, as well as examinations of the economy, efficiency and effectiveness (performance audits) with which the government entities utilize their resources.

28 For the purposes of carrying out the duties under the Constitution, this Act and other written law, the Auditor General, or an officer authorized for the purpose of this section, has the following powers -

(a) to conduct investigations on his own initiative, or on a complaint made by a member of the public;

(b) conciliation, mediation and negotiation;

(c) to issue summons to a witness to for the purposes of his investigation.

(d) to perform any functions and exercise any powers prescribed by legislation, in addition to the functions and powers conferred by the Constitution.

(e) unrestricted access to all books, records, returns, reports, electronic and other documents for entities under Article 229 of the Constitution and Part II of this Act for the purpose of carrying out the functions of the Auditor General including audits, examinations and reviews;

(f) unrestricted access to any property or premises used or held by an entity covered by Article 229(4) of the Constitution and Part II of this Act if such access is necessary in the opinion of the Auditor General to carry out his functions.

(g) may require any public officer of the entity that is subject to this Act to provide explanations, information and assistance in person and in writing.

(h) may locate any of his staff, for a time period to be determined by the Auditor General, at the premises of any entity that is the subject of an audit or examination or review and that entity shall provide access to staff and adequate office space, furniture and telephone access at the expenses of the entity.

(i) may, without payment of a fee-

(i) require a search to be made of any records in a public office; and

(ii) require copies to be made of, or extracts to be taken from, any records in a public office.

29. The Auditor General shall be independent and not subject to direction or control by any person or authority in carrying out his functions under the constitution or any written law.

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Commission on Revenue Allocation

30 The Commission of Revenue shall have the following responsibilities-

(a) make recommendations to the National and County Governments concerning the basis for the equitable sharing of revenue;

(b) make recommendations for consideration by Parliament prior to any Bill appropriating money out of the Equalization Fund is passed in Parliament;

(c) determine, publish and regularly review a policy in which it sets out the criteria by which to identify marginalized areas for purposes of appropriating money out of the Equalization fund;

(d) make recommendations to the Senate, National Assembly, national executive, County Assembly and county executive on other matters concerning the financing of, and financial management by, county governments under the Constitution and under this Act;

(e) submit recommendations to the Senate, National Assembly, National Executive, County Assembly, and County Executive on the proposals made for equitable distribution of revenue between the national and county governments and amongst the County Governments taking into account the general criteria set out in Article 203 of the Constitution;

(f) upon request from the Senate, make recommendations on the basis for allocating among the counties the share of national revenue that is annually allocated to the county levels of government;

(g) make recommendations on all legislation enacted to operationalize the provisions related to devolved government as contained in Articles 262(14), 262(15), 262(16) of the Constitution;

(h) perform such other functions as are provided for by the Constitution or any other written law.

Parliamentary Service Commission and the Chief Registrar of the Judiciary

31.(1) The Chief Registrar of the Judiciary and the Parliamentary Service Commission shall be responsible for preparing and submitting to the National Assembly the Budget Estimates including expenditures by appropriation categories, as well as other budget documents that may be required by law

(2) Copies of the documents submitted to the National Assembly in subsection (1) shall also be provided to the Treasury;

32. The Chief Registrar of the Judiciary and the Parliamentary Service Commission shall have the powers necessary to fulfill their responsibilities under this Act

Accounting Officers

33. The Cabinet Secretary responsible for Finance shall designate persons to be known as Accounting Officers, to be responsible for accounting for such services, as the National Treasury may specify in respect of which money is appropriated by Parliament or County Assembly.

34.(1) An Accounting Officer shall be responsible to the National Assembly or County Assembly for ensuring that resources of his public entity are used in a way that is-

(a) Lawful and authorized; and
(b) Effective, efficient, economic and transparent.

(2) In carrying out his responsibilities under subsection (1) an accounting officer shall:-

(a) ensure that all expenditure made is lawful, authorized, efficient and economical;

(b) ensure proper financial and accounting records are kept;

(c) ensure that any financial and accounting records kept in electronic format are protected and adequately backed up;

(d) ensure that adequate arrangements are made for the management of assets and liabilities;

(e) ensure that all contracts are within the law and complied with;

(f) ensure that all applicable procedures are followed in the acquisition or disposal of assets or goods and that adequate arrangements are made for their custody, safe guarding and maintenance;

(g) bring any concerns he has that a proposed decision or policy originating from his public entity may result in resources being used in a way that is unlawful, uneconomic or not transparent to the attention of his Cabinet Secretary and if his concerns are not adequately addressed, bring them to the attention of the Cabinet Secretary responsible for Finance, the National Treasury, the Controller of Budget and the Auditor General.

(h) submit his public entity's estimates of expenditure to the Cabinet Secretary responsible for Finance.

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(i) prepare, sign and submit annual accounts and other financial statements for audit by the Auditor General with a copy to the National Treasury or County Treasury; and

(j) perform such other duties as may be directed by the Cabinet Secretary responsible for Finance and the National Treasury.

(3) The Accounting Officers shall prepare, sign and submit a report to the National Treasury or County Treasury for audit of action taken to implement the recommendations made by the National Assembly or County Assembly on the accounts for the previous year not later than three months after the relevant Committee's report is adopted by Parliament.

Discipline, Reporting of Government Officers

35(1) If an Accounting Officer becomes aware that a state or public officer of his state organ or public entity has done something improper, within the meaning of subsection (2), in relation to the resources of the state organ or public entity of the accounting officer, the accounting officer shall either:-

(a) take the appropriate steps to discipline the state or public officer;

(b) forward the case of the public officer to the relevant disciplinary authority

(2) For purposes of subsection (1), a state officer or public officer does something improper if the state or public officer:-

(a) fails to comply with the law or National Treasury instructions;

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

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

(3) A person to whom a report is made under subsection (1) (b) shall take appropriate steps to discipline the state or public officer.

36(1) If the Cabinet Secretary responsible for Finance becomes aware that an Accounting Officer has done something improper, within the meaning of subsection(2), the Cabinet Secretary shall:-

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

(b) report the accounting officer to the person who has the authority to discipline the accounting officer.

(2) For the purposes of subsection (1), an accounting officer does something improper if the accounting officer:-

(a) fails to comply with the law or a direction issued by the National Treasury.

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

(c) makes or permits an expenditure that is unlawful or unauthorized

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(3) The person to whom a report is made under subsection (1) (b) shall take appropriate steps to discipline the accounting officer.

Receivers of Revenue

37. The Cabinet Secretary responsible for Finance and the County Governor shall appoint persons, to be known as receivers of revenue at the national and county level respectively, to be responsible for receiving and accounting for such government revenue as the Cabinet Secretary responsible for Finance or the Governor may specify.

38. (1) a receiver of revenue is responsible to the County Governor to ensure that the revenue specified in respect of which the receiver of revenue is appointed is collected, received and accounted for.

(2) In carrying out his responsibilities under subsection (1), a receiver of revenue shall prepare, sign and submit accounts for each financial year under this Act or any other national or county legislation to the Auditor General within three months after the end of the financial year.

Receipt of Revenue by State Public Officers

39(1) A public officer who receives government revenue but who is not a person authorized to collect it within the meaning of subsection (2) shall give the revenue to such an authorized person, the receiver or revenue, National Treasury or the County Treasury within seven days after receiving the revenue.

(2) The following are public officers who are authorized to collect revenue for the purposes of subsection (1):-

(a) receiver of revenue appointed in respect of the revenue;

(b) a person authorized by the receiver of revenue to collect the revenue;

(c) a person authorized by a person described in paragraph (b) to assist in the collection of the revenue by the person described in paragraph (b) ; and

(d) the Kenya Revenue Authority in respect of the revenue it is authorized to collect under the Kenya Revenue Authority Act.

(3) The authorized person to whom government revenue is given by a public officer under subsection (1) shall give the public officer a receipt for the revenue.

Obligations of Public Officers

40. A public officer shall:-

(a) comply with the provisions of this Act, the regulations/and any directives with respect of public finance management issued by the National Treasury.

(b) Ensure that the resources within he area of responsibility are used in a way that is:-

(i) lawful and authorized; and

(ii) effective, efficient, economical and transparent;

(c) ensure that, within his area of responsibility, adequate arrangements are made for the custody, safeguarding and maintenance of property; and

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

County Assemblies

41. A County Assembly shall have the following responsibilities for public finances-

(a) authorizing or varying local charges, taxes or other revenues that are specifically authorized by law as are necessary to finance the delivery of the services that the County Assembly is responsible for under law;

(b) annulling or waiving local charges or taxes within the limits set out in Part IX of this Act;

(c) ensuring public resources are used in accordance with Fiscal Strategy, Appropriation Acts and other lawful authority;

(d) ensuring that the County Executive Committee deals with public resources in a transparent, accountable, efficient and effective manner;

(e) reviewing and approving the Medium Term Fiscal Strategy, Budget Estimates and other budget documents;

(f) reviewing the annual audited accounts and performance reports including reports of the Auditor General and Controller of the Budget; and

(g) Within three months after receiving an audit report debate and consider the report and take the appropriate action

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PART III- FISCAL RESPONSIBILITY

Principles of Public Finance

42. The Government shall observe the following principles of public finance in dealing with public resources-

(a) providing service to the people of Kenya and considering their well being and benefit;

(b) ensuring openness and accountability including public participation in financial matters;

(c) fairly sharing the burden of taxation;

(d) equitably sharing revenue raised nationally among national and County Governments;

(e) promoting equitable development including making special provision for marginalised groups and areas;

(f) using public money in a prudent and responsible way including responsible financial management;

(g) providing transparent and clear reporting of the intended and actual uses of public funds and other resource; and

(h) using practices that enhance the management of public resources including annual budgets that –

(i) are comprehensive and include the financial impacts of all significant policy decisions; and

(ii) include all revenues and expenditures expressed on a gross basis;

Fiscal Responsibility Principles

43(1) the following fiscal responsibility principles shall guide the Government in the management of public finances:

(a) maintaining prudent levels of public debt so as to maintain fiscal sustainability and to equitably share the debt burden between generations;

(b) ensuring on average over the medium term total operating expenses shall not exceed total operating revenues;

(c) ensuring over the medium term the National Government and each County Government shall borrow only for capital investment and shall not borrow to fund recurrent spending;

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(d) ensuring the expenditure on wages and benefits for public officers is not excessive in relation to the size of the economy;

(e) prudently managing fiscal risks; and

(f) following any period of tax reform ensure predictability in the level of tax rates and bases for future years.

(2) In complying with the fiscal responsibility principles in section 43(1) (a) each County Government shall ensure that the level of debt does not exceed a percentage of the annual revenue of the County Government to be set from time to time by the Cabinet Secretary responsible for Finance and such revenue shall be measured by the total revenues in the audited accounts for the most recently available financial year.

(3) For the purposes of this section "borrow" does not include short term loans to finance cash requirements taken in the normal course of managing the Government's cash position.

(4) Further fiscal responsibility provisions to put the fiscal principles into operation may be set out in Regulation.

Macroeconomic and Fiscal Policy Development

44. The National Treasury shall be responsible for the development and management of macroeconomic and overall fiscal policy.

National Government Budget Policy Statement

45. (1) The National Treasury shall prepare a Budget Policy Statement for approval by Cabinet which shall include -

(a) macroeconomic forecasts;

(b) fiscal framework;

(c) mid-term expenditure framework; and

(d) statement of responsibility.

(2) The National Treasury shall provide an opportunity for the public, County Governments, Commission on Revenue Allocation and interest groups to comment on the Budget Policy Statement prior to submitting it to Parliament by 28 February.

(3) Parliament shall consider and make recommendations on the Budget Policy Statement by the 15th March of every year and ensure that all recommendations made do not contravene the fiscal responsibility requirements of this Act.

(4) The National Treasury shall be responsible for the implementation of Parliamentary resolutions on the Budget Policy Statement and shall take into account these resolutions when finalizing the budget.

(5) The National Treasury shall publish and publicize the Budget Policy Statement within 7 days after it has been submitted to the National Assembly.

National Government Economic and Fiscal Update

46. (1) The National Treasury shall produce an Economic and Fiscal Update for half of the financial year being the period ending 31 December of each year which shall include-

(a) updated macroeconomic and fiscal forecasts with sufficient information to show changes from the forecasts in the Budget Policy Statement;

(b) budget execution compared to the appropriations and other lawful spending authorities for the first six months of the financial year;

(c) information on how any changes in the forecasts or how actual fiscal performance for the half year may affect compliance with the fiscal responsibility principles and the fiscal objectives in the Budget Policy Statement;

(d) information on reasons for any deviations from the fiscal responsibility principles and fiscal objectives with plans to address any such deviations, and the expected time to achieve this; and

(e) information on how to address any deviations in subsection (d) from the projections.

(2) On the year of any election and within 180 days after a general election, the National Treasury shall prepare and submit a special economic and fiscal update report to Parliament known as a post election report and shall provide details of

(a) all election related expenditure including but not limited to

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

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

(iii) any other allocations as may be determined by the rules.

(b) any planned or anticipated material deviations from objectives and targets laid out in the Budget Policy Statement of intent for the year and the next;

(3)The Treasury shall publish and publicize the Economic and Fiscal Update and or the post-election report as soon as is practicable

National Government Deviations from Fiscal Principles and Objectives

47. (1) Upon approval by Cabinet, the National Government may deviate from the fiscal responsibility principles on a temporary basis when such deviation is due to a major natural disaster or other significant unforeseen events, provided that where the deviation involves increased expenditure, such expenditure must be-

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(a) unable to be delayed until future budget years without harming the public interest; and

(b) unable to be funded under the reallocation provisions or other flexibilities for managing expenditure available to the Government.

(2) The National Government may deviate from the fiscal policy objectives when there has been a change of National Government, provided that the National Government complies with the fiscal responsibility principles and principles of public finance in this Act.

48. (1) Notwithstanding section 47 (1) if there are deviations from the fiscal responsibility principles and the fiscal objectives set out in the Budget Policy Statement, the National Government through the Treasury, shall provide a report to the National Assembly stating the reasons for any deviations from the fiscal responsibility principles and fiscal objectives, the plans to address the deviations, and the expected time to achieve this.

(2) Treasury shall provide a report under section 47 (1) to the National Assembly within one month following the decision adopted by the Cabinet or in the next Economic and Fiscal Update, whichever is earlier, and the Treasury shall publicize the report no later than the same day it is submitted to the National Assembly.

County Government Fiscal Strategy Paper

49. (1) Each County Government shall align their County Fiscal Strategy Paper to the national objectives as outlined in the National Budget Policy Statement.

(2) Each Executive Committee of a County Government shall prepare a County Fiscal Strategy Paper which shall contain the information on the analysis of implication of macroeconomic forecasts for the county, fiscal framework, medium term expenditure framework and statement of responsibility.

(3) Each Executive Committee of a County Government shall provide an opportunity for the Commission on Revenue Allocation, the public and interest groups to comment on the County Fiscal Strategy Paper prior to submitting it to the County Assembly by the 8th March of every year

(4) The County Assembly shall consider and adopt the strategy by 21st March of every year.

(5) The County Executive Committee shall publish and publicize the County Fiscal Strategy Paper submitted to the County Assembly within 14 days from the adoption of the strategy under subsection (4)

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County Government Economic and Fiscal Update

50. (1) The Executive Committee of each County shall produce a half year report on progress against the fiscal responsibility principles and the fiscal objectives in the County Fiscal Strategy Paper for the period ending by 31 December which shall include-

(a) updated forecasts with sufficient information to show changes from the forecasts in the County Fiscal Strategy Paper;

(b) budget execution compared to the appropriations and other lawful spending authorities for the first six months of the financial year;

(c) information on how any changes in the forecasts or how actual fiscal performance for the half year may affect compliance with the fiscal responsibility principles and the fiscal objectives in the County Government Fiscal Strategy Paper; and

(d) information on reasons for any deviations from the fiscal responsibility principles and fiscal objectives with plans to address any such deviations, and the expected time to achieve this.

(2) On the year of any election and within 180 days after a general election, the County Treasury shall prepare a special economic and fiscal update report known as a post election report and shall provide details of -

(a) of all election related expenditure including but not limited to -

(i) direct election expenses such as allocations the Independent Electoral and Boundaries Commission for costs of the election and election materials:

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

(iii) any other allocations as may be determined by the rules.

(b) if any, of all planned or anticipated material deviations from the objectives and targets laid out in the County Fiscal Strategy Paper for the year and the next.

(3)The County Executive Committee shall publish and publicize the Economic and Fiscal Updates as soon as is practicable

County Government Deviations from Fiscal Principles and Objectives

51. (1) Upon the approval of the County Executive Committee, a County Government may deviate from the fiscal responsibility principles on a temporary basis when such deviation has been contributed to by a major natural disaster or other significant unforeseen event, provided that where the deviation involves increased expenditure, such expenditure must be-

(a) unable to be delayed until future budget years without harming the public interest; and

(b) unable to be funded under the reallocation provisions or other flexibilities for managing expenditure available to the Government.

(2) A County Government may deviate from the fiscal objectives when there has been a change of County Government, provided that the County Government complies with the fiscal responsibility principles and principles of public finance in this Act.

52. (1) Notwithstanding section 51 (1) if there are deviations from the fiscal responsibility principles and the fiscal objectives set out in the County Fiscal Strategy Paper, the County Executive Committee shall provide a report to the County Assembly and to Parliament stating the reasons for any deviations from the fiscal responsibility principles and fiscal objectives, the plans to address the deviations, and the expected time to achieve this.

(2) The County Executive Committee shall provide a report under section 51 (1) to the County Assembly within one month following the decision adopted by the County Executive Committee or in the half year report whichever is earlier, and the County Executive Committee shall publish the report no later than the same day it is submitted to the County Assembly.

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PART IV- INTERGOVERNMENTAL FISCAL RELATIONS

Funding County Governments

53. (1) The funding of County Government shall be based on the following sources –

(a) own revenue;

(b) share of national revenue ;

(c) equalization fund;

(d) loans; and

(e) external grants.

(2) County Governments may be given additional allocations from the National Government's share of the revenue, either conditionally or unconditionally.

Own Revenue

54. (1) Own revenue, shall refer to revenue from taxes and charges for services imposed in accordance with Article 209 of the Constitution.

(2) In consultation with the National Treasury and Commission on Revenue Allocation, County Governments may modify the bases and rates in accordance with their individual circumstances.

(3) County Governments may consult in any manner they deem appropriate, and agree on uniform tax rates and/or bases.

Revenue Sharing

55. (1) For every financial year, a minimum of 15% of revenue raised nationally based on the most recent audited accounts of revenue received and as approved by the National Assembly shall be allocated to County Governments in accordance with Article 203 (2) and (3) of the Constitution.

(2) Once every five years the Senate shall determine the formula by which to determine the basis for sharing the revenue among counties the share of revenue allocated to counties under subsection (1).

(3) Despite section 55(2), the first and second determinations of the basis of the division of revenue among the counties shall be made at three year intervals, rather than every five years as provided for in the Sixth Schedule Article 262(17) of the Constitution.

Unconditional Grants

56. (1) Unconditional grants shall be such amounts allocated to the County Government by the National Government without conditions on how the money is spent.

(2) Unconditional grants may be applied to-

(a) fund the abolition of a number of county taxes;

(b) to offset fiscal disadvantages arising from lower taxation capacities or higher unit cost of the services provided; or

(c) other general and basic purposes to enable different counties to provide a minimum quality standard of service delivery.

Conditional Grants

57. (1) Conditional grants shall be such amounts of money allocated to the County Government by the National Government with conditions on how the money is spent.

(2) Conditional grants may be used to address externalities or spillovers across the borders of county jurisdictions where the actions of one County affect the well being of another.

(3) Conditional grants may be used by the National Government to provide funding to any county as a service provider to deliver a specific outcome on behalf of the National Government.

Equalization Fund

58. (1) Equalization fund shall be applied as a source of funding for a County Government as established under Article 204 of the Constitution.

(2) The National Government may use the Equalization Fund as a conditional grant only to provide basic services based on the need to remedy economic disparities within and among counties.

Loans and External Grant

59. Loans and grants shall be applied as a source of funding for a County Government as established under section 162 and 176 of this Act, and external grants shall be as negotiated with the development part

60. (1) County Governments may be financed from a combination of the approaches concurrently.

(2) The extent to which each of these methods shall be used will be dependent on the County Government Fiscal Strategy.

Assessing Revenue Raising Capacity by Counties

61. The Commission on Revenue Allocation shall have the powers to-

(a) review the revenue raising capacity of County Governments with consideration of financial penalties for counties which fail to adequately support or deliberately suppress that capacity;

(b) determine processes to develop a fully responsible financial role for County Government free from policies that arbitrarily limit the revenue raising capacity from their normal sources;

(c) examine the capacity of different types of cities and municipalities to raise revenue;

(d) examine the impacts on individuals, organizations and businesses of the various taxes, user charges and other revenue sources available to County Government;

(e) examine factors contributing to capacity and variability in capacity over time user charges and other revenue sources available to County Governments; and

(f) examine the regulatory limits imposed by National Government on revenue raising by County Governments.

Revenue-Sharing and Allocation of Revenue in terms of Article 202 of Constitution

62. The process of sharing of revenue raised by the National Government between the national and County Governments, and among the County Governments, shall be in accordance with the Constitution and this Act.

Recommendations by the Commission on Revenue Allocation on the Equitable Share of Revenue

63. (1) At least ten months before the beginning of the financial year, or at a later date agreed between the Cabinet Secretary responsible for Finance and the Commission on Revenue Allocation, the Commission shall submit to the National Treasury, recommendations for the following financial year regarding—

(a) an equitable division of revenue raised nationally, among the national and county levels of government; and

(b) the determination of each county's equitable share in the county share of that revenue.

(2) If the Cabinet Secretary responsible for Finance and the Commission agree on a later date for the submission of the Commission's recommendations in terms of subsection (1), that date may not be later than 60 days before the introduction of the Division of Revenue Bill in the Parliament for the relevant financial year.

(3) When making its recommendations the Commission must take into account the criteria listed in Article 203(1)(a)-(k) of the Constitution.

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Submission on CRA Recommendations on the Equalization fund

64. (1) By 31st January, The Cabinet Secretary shall have consulted the County Government through the Budget and Economic Forum.

(2) By 31st January of each financial year, the National Treasury shall seek the recommendations from the Commission on Revenue Allocation on the allocations of funds from the Equalization Fund.

(3) By 28th February of every financial year, the Commission on Revenue Allocation shall submit its recommendations on the allocation of funds under subsection (2) to the National Treasury with copies to Parliament.

(4) The National Treasury and Parliament shall take into account the recommendations made under subsection (2) when developing the Budget Policy Statement and before passing any Bill appropriating money out of the Equalization Fund respectively.

Division of Revenue Bill and County Allocation of Revenue Bills

65. (1) Each year when the Budget Policy Statement is introduced, the Cabinet Secretary responsible for Finance must submit to the National Assembly a Division of Revenue Bill and County Allocation of Revenue Bill for the financial year to which that Budget relates.

(2) The Division of Revenue Bill shall specify the share of each level of government of the revenue raised nationally for the relevant financial year.

(3) The County Allocation of Revenue Bill shall specify—

(a) each county's share of that revenue under subsection (2); and

(b) any other allocations to the counties, from the National Government's share of that revenue, and any conditions on which those allocations are or must be made.

(4) Before the submission of the division of Revenue Bill and County Allocation of Revenue Bill, the Cabinet Secretary responsible for Finance shall consult -

(a) the Budget and Economic Council by the 15th January of each financial year;

(b) the Judiciary and Parliamentary Service Commission, either in the Budget and Economic Forum or in another way; and

(c) the Commission of Revenue Allocation.

(5) When the Division of Revenue Bill or County Allocation of Revenue Bill is submitted, it must be accompanied by a memorandum explaining—

(a) how the Bill takes account of each of the matters listed in Article 203(1)(a) to (k) of the Constitution;

(b) the extent to which account was taken of any recommendations made by the Commission on Revenue Allocation submitted to the Cabinet Secretary in terms of Article 203 or as a result of consultations with the Commission on Revenue Allocation in terms of subsection (3) of this section; and

(c) any assumptions and formulae used in arriving at the respective shares mentioned in subsection (2)(a) and (b).

Government Budget and Economic Council

Establishment

66 (1) There is hereby established a Budget and Economic Council consisting of the following persons—

(a) the Cabinet Secretary responsible for Finance who shall be the Chair to the Council ;

(b) the secretary for finance for each County;

(c) The Principal Secretary to the Treasury;

(d) Chief Registrar of the Judicial Service Commission; and

(e) Accounting Officer of the Parliamentary Service Commission.

(2) the National Treasury shall provide secretariat.

Functions

67. The Budget and Economic Council shall consult on-

(a) any fiscal, budgetary or financial matters affecting the government;

(b) any proposed legislation or policy which has a financial implication on government;

(c) any matter concerning the financial management, or the monitoring of the finances, of government; or

Meetings

68 (1) The Cabinet Secretary responsible for Finance convenes the meetings of the Budget and Economic Forum and shall-

(a) ensure the Council meets at least once in each financial year;

(b) determine the agenda for the meeting of the Council;

(c) provide administrative and other support to the Council; and

(2) The meetings by the Budget and Economic Council shall be attended by any other person invited by the Council.

County Government Budget and Economic Forum

Establishment

69 (1) There shall be established a County Government Budget and Economic Forum in each County consisting of —

(a) the County Governor who shall be the chairperson of the Budget and Economic Forum;

(b) the Senator from that County;

(c) the Chairperson of the County Audit Committee;

(d) the County Financial Secretary for Finance;

(e) five representatives nominated by civil society organizations;

(f) one representative nominated by each County public entity; and

(g) one representative nominated by Community Based Organisations.

(2) The County Treasury shall provide secretariat.

Functions

70. The County Government Budget and Economic Forum is a consultative body on public financial management in which the Senator, County Government and County public entities shall consult on —

(a) any fiscal, budgetary or financial matters affecting the county government;

(b) any matter concerning the financial management, or the monitoring of the finances, of government; or

(c) any other matter which has been brought to the attention of the County Governor by any member of the County Government Budget and Economic Forum

Meetings

71 (1) The Governor convenes the meetings of the County Government Budget and Economic Forum and shall-

(a) ensure the Forum meets at least once in each financial year; and

(b) determine the agenda for the meeting of the Forum.

(2) The meetings by the Budget and Economic Forum shall be attended by any other person invited by the Budget and Economic Forum.

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PART V- NATIONAL BUDGET

Financial Year

72. Financial year means a period of 12 months commencing on the 1st day of July and ending with the 30th day of June.

National Budget Process

73 (1) The National budget process will consist of the following stages-

(a) planning which establishes the national priorities in the medium term;
(b) macro budget setting and the estimation of overall resources and expenditures;
(c) division of revenue between the national and county government and among county government;
(d) financial programming;
(e) submission to Parliament and approval of estimates;
(f) budget execution; and
(g) accounting and evaluation.

(2) Every year and in any case not later than 30th September the Cabinet Secretary responsible for Finance shall issue a Treasury Circular to guide all spending units at the National Government on the budget process, and the circular shall include-

(a) the calendar for the year indicating key dates by when certain budget exercises must be completed;
(b) procedures to be followed in the review and projections exercise;
(c) key policy areas and issues that will have to be taken into consideration when preparing the budget;
(d) formats of submission; and
(e) any other important guideline.

(3) All spending units at the national level must ensure that the guidelines and the key dates indicated in the calendar are followed and as will be required will submit the necessary documentation at every stage.

74. The Cabinet Secretary responsible for Finance through the Treasury shall-

(a) manage the National Government budget process;

(b) issue instructions to National Government entities to facilitate the process which shall take account of any special requirements in the Constitution; and

(c) present the Budget Estimates, other documents supporting the Budget, and the Bills to the Cabinet in sufficient time to permit compliance with the dates in section 75.

75. The Cabinet Secretary responsible for Finance shall submit the following to the Parliament not later than the following dates of every financial year-

(a) Budget Policy Statement, Division of Revenue Bill and County Allocation of Revenue Bill by the 28th February; and

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(b) The Budget Estimates, supporting documents, the Appropriation Bill, and other bills required to implement the budget by the 30th April.

76(1)(a) The Parliamentary Services Commission shall submit the budget estimates including proposed appropriations to the National Assembly no later than the 30th April; and

(b) The Chief Registrar of the Judiciary shall submit the Budget Estimates including proposed appropriations for the Judiciary to the National Assembly no later than 30 April.

(2) The Chief Registrar of the Judiciary and the Parliamentary Services Commission shall submit copies of the Budget Estimates under section 73(1)(c) to the Treasury at the same date of submitting the estimates to the National Assembly.

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

77. Upon approval of the budget estimates of the National and County Governments, the Treasury shall consolidate, publish and publicize the same as soon as is practicable, but in any case no later than 21 days after approval of the budget estimates by Parliament and County Assemblies.

78. (1) The National Treasury shall ensure that the process to develop the budget documents, the Appropriation Bill, the Division of Revenue Bill, the County Allocation of Revenue Bill, and other bills required to implement the budget, is conducted in a way and within a timeframe that permits the Commission on Revenue Allocation, National Government, County Governments and others to fulfil their constitutional requirements.

(2) The Parliamentary Services Commission shall ensure that the draft Budget Estimates and proposed expenditures by appropriation categories for the Parliamentary Services Commission are provided in the form and by the dates required for the budget process determined by the Cabinet Secretary responsible for Finance.

(3) The Chief Registrar of the Judiciary shall ensure that the draft Budget Estimates and proposed expenditures by appropriation categories for the Judiciary are provided in the form and by the dates required for the budget process.

79. The Cabinet Secretary responsible for Finance shall determine the method and extent of participation of the public in the budget process.

National Budget Documents

80. (1) The Cabinet Secretary responsible for Finance shall provide documents to Parliament which will include the following information -

(a) Budget Summary that shall include-

i. Summary of significant budget policies including revenue, expenditure, debt and deficit financing and any changes since the Budget Policy Statement; and

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ii. Explanation of how the annual budget relates to the fiscal responsibility principles, and to the fiscal objectives in the Budget Policy Statement.

(b) Budget Estimates that shall include-

i. all Budgetary Bodies to receiving funds appropriated from the Budget of the National Government;

ii. estimates of expenditure from and revenue allocation to the Equalization Fund for the medium term with explanation of reasons;

iii. projected revenues for the medium term by classification;

iv. all expenditure estimates presented by Vote in a form to be prescribed by the National Treasury showing the recurrent and development expenditure;

v. revenue allocation for the County Governments including conditional grants or unconditional grants and other funding for County Government from the National Budget; and

vi. estimated deficit and proposals for financing the deficit in the medium term.

(c) information on all estimates of interest and debt servicing charges and repayments on loans;

(d) information on all expenses or liabilities to be incurred and any payments to be made other than by an Appropriation Act and the legislative authority for each such expense, liability, or payment; and

(e) Treasury Memorandum specifying the measures taken by the Government to implement the recommendations made by the National Assembly in the previous year;

(2)(a) The Cabinet Secretary responsible for Finance shall determine the format and the contents of the presentation of information in all Budget Estimates.

(b) The Cabinet Secretary responsible for Finance shall ensure that the format for the information in the Budget Estimates and the form of the expenditure appropriations in the Appropriation Bill complies with the following criteria-

(i) precise and informative

(ii) flexible to facilitate budget execution;

(iii) clearly identifies the Accounting Officer and Budgetary Body responsible for administering the appropriations.

National Budget Approval

81. The National Assembly shall approve the National Government's Budget Estimates and the Appropriation Bill with or without amendments by the 30th June of each year provided that -

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

(b) any proposed reductions in expenditures will be used to reduce the level of debt; and

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(c) any amendments do not contravene the fiscal responsibility requirements of this Act and are in conformity with the Budget Policy Statement, Division of Revenue Act and County Allocation of Revenue Act; and

(d) in considering and reviewing the estimates submitted by the National Government, the Judiciary and the Parliamentary Service Commission, the opinion of the National Treasury has been taken into consideration.

Deferred Approval of Division of Revenue Bill and County Allocation of Revenue Bill

82.(1) If the Division of Revenue Bill or County Allocation of Revenue Bill has not been passed prior to the submission of the National Assembly of the Budget Estimates and supporting documents for the annual budget, the National Assembly shall consider the Bills together with the Budget Estimates, supporting documents for the annual budget and the annual Appropriation Bill.

(2) If the Division of Revenue Bill and County Allocation of Revenue Bill has not been passed by 15^{th} March, the Treasury may base the budget process work on the proposed Bill.

(3) If the County Allocation of Revenue Bill has not been assented to or is not likely to be assented to by the beginning of the financial year, the National Assembly may authorize the allocation of money to County Government Revenue Funds subject to section 82(2) and such allocations shall be based on the allocation a County Government had for the financial year preceding the budget year.

(4) Money allocated under section 82 (1) and withdrawn by a County Government shall-

(a) be for the purposes of meeting expenditure necessary to carry on the services of the County Government during that year until such time as the County Allocation of Revenue Act is assented to; and

(b) not exceed in total one-half of the amount allocated to the Country Government for the year preceding the budget year.

Deferred Approval of the Annual Budget

83. (1) If the Appropriation Act for a financial year has not been assented to, or is not likely to be assented to, by the beginning of that financial year, the National Assembly may authorize the withdrawal of money from the Consolidated Fund subject to subsection (2).

(2) Money withdrawn under section 82(1) shall-

(a) be for the purposes of meeting expenditure necessary to carry on the services of the Government during that year until such time as the Appropriation Act is assented to; and
(b) not exceed in total one-half of the amount included in the annual estimates of expenditure for that year that have been tabled in the National Assembly.

(3) All expenditures made under this section shall be included under separate votes for the several services in respect of which they were withdrawn in the Appropriation Act for National Government.

Reallocations Between Programmes or Sub-votes

84. An Accounting Officer for a budgetary body shall not reallocate funds between programs or between sub votes unless-

(a) there are provisions in the budget of another program in the same financial year which are unlikely to be utilized;

(b) a request to the National Treasury to make the reallocation including the reasons for the reallocation is made in the form prescribed by the Treasury and the request is approved by the Treasury; and

(c) the total sum of all reallocations within a program or sub-vote shall not exceed 10% of the total expenditure approved for that programme or sub vote for that financial year.

Contingencies Fund

85. (1) The Cabinet Secretary responsible for Finance shall have the power to make advances from the Contingencies Fund if he is satisfied there is an urgent and unforeseen need for expenditure for which there is no other authority.

(2) The Cabinet Secretary responsible for Finance shall designate a public officer to administer the Contingencies Fund.

(3) For purposes of this section, an urgent and unforeseen need for expenditure must -

(a) be a significant need that cannot be delayed until future budget years without harming the public interest; and

(b) be unable to be funded under the reallocation provisions or other flexibilities for managing expenditure available to the National Executive or a Budgetary Body.

(4) The Cabinet Secretary responsible for Finance shall-

(a) from time to time give directions regarding the capital of the Fund, including the permanent capital, that he deems necessary for fulfilling any of the purposes specified in this section ; and

(b) ensure that no expenditure is treated as a permanent charge on the Contingencies Fund.

(5) Acting on a direction from the Cabinet Secretary responsible for Finance under subsection (4) the Treasury may issue out of the Consolidated Fund such sums as may from time to time be required for the purpose of temporarily increasing the Contingencies Fund within the limit prescribed by the direction.

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(6) All sums issued out of the Contingencies Fund under this section shall be repaid to the Consolidated Fund at such times and in such manner as the Treasury may direct.

(7) (a) An appropriation for the purpose of offsetting the financing of an expenditure through the Contingencies Fund shall be made through the vote through which the activity was undertaken for the financial year; and

(b) there shall be no carry forward of money appropriated to the Contingencies Fund to a future financial year.

(8) The Controller of Budget shall not authorize any withdrawal from the Consolidated Fund for the purpose of the Contingencies Fund unless he has received from the Cabinet Secretary responsible for Finance a statement setting out the circumstances outlined in subsection the subsections 3(a) and 3(b) above, together with the application and approval documents.

(9) The Controller of Budget shall include information on all withdrawals from the Consolidated Fund for the purpose the Contingency Fund in the four monthly reports he is required to make to each House of Parliament.

(10) The National Treasury shall include information on all withdrawals from the Contingencies Fund in the financial reports including information on the date of withdrawal, amount, and the budgetary body receiving the funds, the purpose, and an explanation of how the intended expenditure complies with the requirements for the use of the Contingencies Fund.

(11) The National Treasury shall ensure that all withdrawals from the Contingencies Fund, transfers from the Consolidated Fund to finance the Contingencies Fund, and changes to the appropriations for Budgetary Bodies receiving support under the Contingencies Fund are included in the supplementary estimates no later than two months after the withdrawal from the Contingencies Fund or if National Assembly is not sitting then no more than two weeks after it next sits.

(12) Within three months after the end of each financial year the public officer administering the Fund shall prepare, sign and transmit to the Auditor-General an account of the Fund in respect of the preceding financial year, in such form as the Treasury may from time to time direct.

Supplementary Appropriations for National Government

86. (1) The Cabinet Secretary responsible for Finance may approve expenditure that has not been appropriated subject to the following conditions -

(a) the amount appropriated under the Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act; or

(b) money has been withdrawn from the Contingencies Fund.

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(2)(a) The approval of Parliament for any spending under clause 1 shall be sought within the 2 months after the first withdrawal to the finance the above expenditures;

(b) If Parliament is not sitting during the time contemplated in subsection (a), or is not sitting but adjourns before the approval has been sought, the approval shall be sought within two weeks after it next sits; and

(c) when the national assembly has approved spending under subsection (1), an appropriation bill shall be introduced for the appropriation of the money spent.

(3) For purposes of subsection 1(a), a need shall mean a significant need if that need-

(a) cannot be delayed for consideration until the next financial year without harming the public interest; and

(b) cannot be accommodated under the reallocation provisions or other flexibilities for managing expenditure available to the National Executive or Budgetary Body.

87. In any financial year, the National Government may not spend under this section more than ten percent of the sum appropriated by parliament for the financial year for any one vote unless in special circumstances Parliament has approved a higher percentage.

88. Each supplementary budget supporting a supplementary appropriation bill shall detail the effect of the expenditure changes on performance against the fiscal responsibility principles and the fiscal objectives in the Budget Policy Statement.

Expiry of appropriations

89. For any fund allocated which has not been spent or committed during the financial year which has been appropriated for shall lapse at the end of the financial year.

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PART VI- COUNTY GOVERNMENT BUDGETS

Financial Year

90. Financial year means a period of 12 months commencing on the 1st day of July and ending with the 30th day of June;

County Budget Process

91. (1) The County Government budget process shall consist of the following stages-

- (a) planning which establishes the national priorities in the medium term
- (b) macro budget setting and the estimation of overall resources and expenditures;
- (c) division of available resources among levels of government;
- (d) financial programming;
- (e) submission to Parliament and approval of estimates;
- (f) budget execution; and
- (g) accounting and evaluation.

(2) Every year and in any case not later than 15th October the County Treasury shall issue circular to guide all spending units at the County Government level on the budget process, and the circular shall include-

- (a) the calendar for the year indicating key dates by when certain budget exercises must be completed;
- (b) procedures to be followed in the review and projections exercise;
- (c) key policy areas and issues that will have to be taken into consideration when preparing the budget;
- (d) formats of submission; and
- (e) any other important guideline.

92. (1) Each County Treasury shall-

(a) manage the County Government budget process;

(b) issue instructions to County Government entities to facilitate the process which shall take account of any special requirements in the Constitution; and

(c) present the Budget Estimates, other documents supporting the Budget, and the Bills to the County Executive Committee in sufficient time to permit compliance with the dates in section 93.

93. (1) Each Governor shall submit the following to the County Assembly not later than the following dates of every financial year-

(a) County Fiscal Strategy and the County Allocation of Revenue Bill by the 28th February;

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(b) The Budget Estimates, supporting documents, the Appropriation Bill, and other bills required to implement the budget by the 30th April;

94. Upon approval of the budget estimates of the County Government, each County Treasury shall consolidate, publish and publicize the same as soon as is practicable, but in any case no later than 21 days after approval of the budget estimates by the County Assembly.

95. Each County Treasury shall ensure that the budget process is conducted in a way and within a timeframe that permits the Commission on Revenue Allocation, County Executive Committee and others to fulfil their constitutional requirements.

96. Each County Treasury shall determine the method and extent and method of participation of the public in the budget process.

County Budget Documents

97. (1) Each County Governor shall provide budget documents to the County Assembly that consist of-

(a) Budget Summary that shall include-

i. Summary of significant budget policies including revenue, expenditure, debt and deficit financing and any changes since the County Fiscal Strategy Paper

ii. Explanation of how the annual budget relates to the fiscal responsibility principles, and to the fiscal objectives in the County Fiscal Strategy Paper;

(b) Budget Estimates that shall include-

i. Budgetary Bodies receiving funds appropriated from the Budget of the County Government;

ii. estimates of expenditure from and revenue allocation from the Equalization Fund for the medium term with explanation of reasons;

iii. projected own revenues for the medium term by classification;

iv. all expenditure estimates presented by Vote in a form to be prescribed by the National Treasury showing the recurrent and development expenditure;

v. revenue allocation for the County Governments including conditional grants or unconditional grants and other funding for County Government from the National Budget; and

vi. estimated deficit and proposals for financing the deficit in the medium term; and

(c) information on all estimates of interest and debt servicing charges and repayments on loans;

(d) information on all expenses or liabilities to be incurred and any payments to be made other than by an Appropriation Act and the legislative authority for each such expense, liability, or payment;

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(e) County Treasury Memorandum specifying the measures taken by the County Government to implement the recommendations made by the County Assembly in the previous year; and

(f) such other documents as the Governor may determine.

(g) Each County Treasury shall ensure that the format for the information in the Budget Estimates and the form of the expenditure appropriations in the Appropriation Bill complies with the following criteria -

(i) precise and informative;

(ii) flexible to facilitate budget execution; and

(iii) clearly identifies the Accounting Officer and Budgetary Body responsible for administering the appropriations.

County Budget Approval

98. The County Assembly shall approve the County Governments Budget Estimates and the Appropriation bill with or without amendments not later than 30th June of each year provided that -

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

(b) any proposed reductions in expenditures will be used to reduce the level of debt; and

(c) any amendments do not contravene the fiscal responsibility requirements of this Act and are in conformity with the County Fiscal Strategy and the County Allocation of Revenue Bill.

Reallocations

Reallocations Between Sub-items within a Principal Item

99. (1) An Accounting Officer for a budgetary body may without any other authority other than this section utilize a saving in a sub-item appropriated within a principal item towards the defraying of excess expenditure under another sub- item within the same principal item, unless the County Treasury directs otherwise.

(2) This section does not authorize the utilization of a saving in-

(a) An amount appropriated for transfer to another entity or individual; or

(b) An amount appropriated for capital expenditure in order to defray current expenditure.

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Reallocations Between Programs or Sub-votes

100. (1) An Accounting Officer for a budgetary body shall not reallocate funds between programs or between sub votes unless-

(a) there are provisions in the budget of another program in the same financial year which are unlikely to be utilized;

(b) a request to the County Treasury to make the reallocation including the reasons for the reallocation is made in the form prescribed by the National Treasury and the request is approved by the County Treasury; and

(c) the total sum of all reallocations within a program or sub-vote shall not exceed 10% of the total expenditure approved for that programme or sub vote for that financial year.

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PART VII NATIONAL GOVERNMENT REPORTING

Annual Reporting by the National Treasury

101. (1) On behalf of the National Government the Principal Secretary of the Treasury shall consolidate, produce and sign annual accounts and other financial statements which shall include:-

(a) a statement of receipts into and issues from the exchequer account;

(b) Summaries of the following-

(i) The appropriation accounts prepared by accounting officers under section 105;

(ii) The statements prepared by accounting officers under section 105 of the outstanding amounts in respect of loans issued by the government; and

(iii)The statements of receipts and disbursements prepared by the receivers of revenue.

(c) a statement of payments made out of issues from the exchequer account that are authorized under the constitution or an Act of Parliament other than an Appropriation Act;

(d) A statement on the total amount of indebtedness or public debt outstanding at the end of the financial year; and

(e) such other statements as the National Assembly may require.

102. The summaries of accounts and other financial statements shall include financial statements of all Budgetary bodies in the National Government and will be submitted in a format prescribed by the Treasury.

103 (1) The Principal Secretary of the Treasury shall submit the summaries of accounts and other annual financial statements of Budgetary bodies in the National Government to the Auditor General not later than four (4) months after the end of the financial year to which they relate.

(2) The National Assembly may extend by resolution, the time limits provided for in subsection (1).

104. The Auditor General will audit and submit to Parliament reports on the summary of accounts and other annual financial statements within six (6) months after the end of each financial year.

105. Within three months after receiving an audit report, Parliament or the County Assembly shall debate and consider the report and take appropriate action.

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106. The Auditor General shall publish and publicize the audit reports within 14 days after the audit report is laid before the National Assembly or County Assembly.

Annual Reporting by Accounting Officers

107(1) In addition to the reporting requirements for Commissions and Independent Offices specified in Article 254 of the Constitution, all Accounting Officers responsible for budgetary bodies within Government shall produce and sign the annual financial statements and accounts in respect of the votes and monies for which they are responsible, and this shall include-

(a) Appropriation Accounts showing the services, for which the moneys expended were voted, the sums actually expended on each service and the status of each vote compared with appropriations. Each account shall contain a statement explaining any variation between the expenditure and the sums voted, and any other information in such form as the National Treasury may direct.

(b) A statement of debt outstanding at the end of the year;

(c) A statement of debts guaranteed by the National Government as at the end of the year;

(d) A statement of assets and liabilities as at 30th June of each year, in respect of the recurrent vote, the development vote and funds and deposits; and

(e) A statement of accounting policies.

(2) The accounts under subsection (1) must be submitted to the Auditor General with a copy to the Treasury within three months after the end of the financial year.

(3) The Auditor General shall publish and publicize the audit reports within 14 days after the audit report is laid before the National Assembly.

(4) The National Assembly may extend by resolution, time limits provided for in subsection (1).

(5) Each Budgetary Body shall provide the information in section 105(1) to the National Treasury in the manner and within the timeframe determined in instructions issued by the National Treasury or in regulations under this Act.

(6) Every three months, Accounting Officers shall cause to be prepared, sign and submit annual non-financial performance reports to the Controller of Budget with copies to the National Treasury.

(7) The Accounting Officer of the office of the Auditor General shall cause to be prepared, signed and submit annual financial statements in section 105(1) to a professional qualified accountant appointed by the National Assembly for audit and reporting to the National Assembly.

108. (1) Each receiver of revenue shall cause to be produced and sign accounts in respect of the revenue of which the receiver of revenue is appointed and submit the accounts to the Auditor General for audit.

(2) The accounts in subsection (1) shall include-

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

(b) a statement of arrears of revenue.

(3) The accounts must be submitted within three months after the end of the financial year.

(4) The National Assembly may extend by resolution, the time limit provided for in subsection (3).

Reporting on Other Public Funds

109. (1) Each person administering a public fund established under the constitution, an Act of Parliament or any other legal authority shall cause to be prepared, sign and submit accounts and other financial statements in respect of the fund for audit by the Auditor General with a copy to the National Treasury.

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

(3) The accounts must be submitted within three months after the end of a financial year.

(4) The National Assembly may extend by resolution, the time limit provided for in subsection (3).

Periodic Reports for National Government

110 (1) All Accounting Officers in Government shall prepare and submit to the National Treasury quarterly reports containing financial and non-financial information in a format as shall be prescribed by the National Treasury from time to time.

(2) The reports in subsection (1) shall be submitted to the national Treasury no later than 15 days after the end of each quarter.

(3) the National Treasury shall consolidate and submit to the National Assembly and publish these reports within 45 days after the end of every quarter.

111. The National Treasury shall prepare reports as and when the National Assembly may require .

Debt Reporting

112(1) The Treasury shall maintain memorandum accounts of the loans availed by the Government and shall arrange timely repayment.

(2) The Treasury shall ensure that the memorandum includes information on the principal, terms of repayment, amounts drawn, interest and service charges accrued, principal and interest paid, and the balance outstanding and shall make the memorandum available in a timely way to Cabinet and Parliament if requested.

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(3) With respect to loans obtained from outside Kenya or denominated in foreign currency, as soon as practicable after a loan agreement has been signed, the Cabinet Secretary responsible for Finance shall submit a quarterly report to Parliament a report on the transaction specifying the parties, the circumstances giving rise to the borrowing, the amount and the currency in which it is expressed, the terms and conditions as to interest and repayment or payment and the aggregate of the principal sums borrowed under this Act up to the date of the report, and any further information which the Cabinet Secretary responsible for Finance considers appropriate.

(4) The report in subsection (3) shall be submitted to Parliament no later than 15 days after the end of each quarter

(5) Within seven days after either House of Parliament requests by resolution, the National Treasury shall present to the relevant committee, information concerning any particular loan or guarantee, including all information necessary to show-

(a) the extent of total indebtedness by way of principal and accumulated interest;

(b) the use made or to be made of the proceeds of the loan;

(c) the provision made for servicing or repayment of the loan; and

(d) the progress made in the repayment of the loan.

(6) The Treasury shall in addition to the information and reporting on loans required in other parts of this Act, annually submit a medium-term debt strategy to the Cabinet and Parliament summarizing the position with loans and other liabilities including:

(a) sources of borrowing

(b) principle risks to the debt portfolio

(c) the assumptions underlying the debt strategy

(d) assessment of the most recent debt sustainability analysis

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PART VIII- COUNTY GOVERNMENT REPORTING

Annual Reporting Requirements by the County Treasury

113. (1) The County Treasury shall produce and sign annual accounts and other financial statements which shall include:-

(a) a statement of all receipts into and issues from the county revenue fund bank account;

(b) annual appropriation accounts for the county;

a statement of outstanding loans issued by the County Government;

(c) a statement of receipts and disbursements of revenue;

(d) a statement of payments made as a charge from the County Revenue Fund account that is authorized under the Constitution, an Act of Parliament of by County Legislation;

(e) A statement of-

(i) The county bank accounts in operation at the end of the financial year and the purpose for which each account was opened; and

(ii) the balance of each county bank account at the end of the financial year.

(f) A statement of total indebtedness of the County Government; and

(g) such other statement as the National Treasury or the County Assembly may require of outstanding loans issued by the County Government.

(2) The accounts under subsection (1) must be submitted to the Auditor General with copies to the National Treasury and Controller of Budget within three months after the end of the financial year.

114. The summaries of accounts and other financial statements shall include financial statements of all Budgetary bodies in the County Government and will be submitted in a format prescribed by the National Treasury.

115. The County Treasury shall submit the summaries of accounts and other annual financial statements of Budgetary bodies in the County Government to the Auditor General not later than four (4) months after the end of the financial year to which they relate.

116. The Auditor General will audit and submit to the county assemblies the reports of the annual county accounts and other financial statements within six (6) months after the end of each financial year.

117. The County Assemblies in consultation with Parliament may extend by resolution, the time limits provided in section 114.

118. The Auditor General shall publish and publicize the audit report within 14 days after the audit report is laid before the County Assembly.

Annual Reporting by Accounting Officers at the County Government

119(1) The Accounting Officers responsible for public entities within the County Government shall produce and sign the annual financial statements and accounts in respect of the votes and monies for which they are responsible and these shall include-

(a) appropriation accounts showing the services, for which the moneys expended were voted, the sums actually expended on each service and the status of each vote compared with appropriations. Each account shall contain a statement explaining any variation between the expenditure and the sums voted, and any other information in such form as the National Treasury may direct;

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

(c) a statement of debts guaranteed by the National Government as at the end of the year;

(d) a statement of assets and liabilities as at 30th June of each year, in respect of the recurrent vote, the development vote and funds and deposits; and

(e) a statement of accounting policies.

(2) The accounts under subsection (1) must be submitted to the Auditor General with copies to the National and County Treasuries within three months after the end of the financial year.

(3) The County Assembly in consultation with Parliament may extend by a resolution, the time limit provided for in subsection (2).

(4) Each Budgetary Body shall provide the information in section 117(1) to the National and County Treasuries in the manner and within the timeframe determined in instructions issued by the National Treasury or in regulations under this Act.

(5) Every three months, Accounting Officers shall cause to be prepared, sign and submit non-financial performance reports to the Controller of Budget with copies to the County Treasuries.

(6) The Auditor General will audit and submit to County Assemblies a report on the summary of accounts and other annual financial statements within six (6) months after the end of each financial year.

(7) The Auditor General shall publish and publicize the audit report within 14 days after the audit report is laid before the County Assembly.

120. (1) Each receiver of revenue shall cause to be produced and sign accounts in respect of the revenue of which the receiver of revenue is appointed and submit the accounts to the Auditor General.

(2) The accounts in subsection (1) shall include-

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

(b) a statement of arrears of revenue.

(3) The accounts must be submitted within three months after the end of the financial year.

(4) The County Assembly in consultation with Parliament may extend by a resolution, the time limit provided for in subsection (3).

Reporting on other County Government Public Funds

121. (1) Each person administering a public fund established under the constitution, an Act of Parliament or any other legal authority shall cause to be prepared, sign and submit accounts and other financial statements in respect of the fund to the Auditor General with a copy to the County Treasury.

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

(3) The accounts must be submitted within 3 months after the end of a financial year.

(4) The County Assembly in consultation with Parliament may extend by a resolution, the time limit provided for in subsection (3).

Periodic Reports for County Government

122(1) All Accounting Officers in the County Government shall prepare and submit to the County Treasury quarterly reports containing financial and non-financial information in a format as shall be prescribed by the National Treasury from time to time by regulations.

(2) The reports in subsection (1) shall be submitted to the County Treasury no later than 15 days after the end of each quarter.

(3) The County Treasury shall consolidate, submit to the County Assembly and publish these reports within 45 days after the end of every financial year.

123. The County Treasury shall prepare reports as and when the County Assembly may require.

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PART IX- TREASURY MANAGEMENT

Prohibitions

124. No public officer or public entity shall expend public money other than in accordance with an appropriation under the Appropriation Act, or an authority provided by an Act passed by Parliament, a County Assembly, or other lawful authority.

125. No public officer or public entity shall raise revenues other than in accordance with the Constitution, an Act of Parliament, County Legislation, or other lawful authority

126. No public officer or public entity shall make commitments that have financial implications for the National Government budget or a County Government budget that are not authorized by the Constitution, an Act of Parliament or County Legislation, or other lawful authority

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

(a) authorized by this Act;

(b) in the case of a Government Agency is also authorized by other legislation not in conflict with this Act; and

(c) in the case of loans or guarantees, is within the limits approved in accordance with this Act.

128 No public officer shall direct another public officer to commit an act that is in contravention of this Act, any other Act of Parliament or County legislation.

Consolidated Fund

129. (1) The National Treasury shall administer the Consolidated Fund as established in Article 206 of the Constitution.

(2) All money shall be paid to the Consolidated Fund that is raised or received by or on behalf of the National Government except money that-

(a) is excluded from the Consolidated Fund by this Act or an Act of Parliament and is payable into another public fund established for a specific purpose; or

(b) may under an Act of Parliament be retained by the government or government entity that received it for the purposes of defraying the expenses of the government or government entity.

(3) The Consolidated Fund will hold an account called the exchequer bank account into which all revenues and the proceeds of all loans raised are paid and credited and from which issues for the public services shall be made in a timely way.

(4) The exchequer bank account will be maintained only at the Central Bank of Kenya and shall be administered by the Treasury.

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

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

130. The Treasury may make a requisition for the approval of the Controller of Budget to a proposed withdrawal from the Consolidated Fund authorized under:-

(a) An Appropriation Act;

(b) The Constitution; and

(c) Other Acts of Parliament appropriating amounts for a financial year.

131.(1) The Treasury shall make requisitions for the approval of the Controller of Budget to proposed withdrawals from the Consolidated Fund for the following investments:-

(a) an investment with a bank redeemable at call or upon notice not exceeding twelve months; or

(b) an investment authorized under the Trustee Act for the investment of trust funds.

(2) A withdrawal for an investment described in subsection (1) (b) shall be authorized only if the Cabinet Secretary responsible for Finance has authorized the investment.

(3) The proceeds of an investment described in this section shall be paid to the credit of the exchequer account.

132. Save as for otherwise provided under this Act, an approval for withdrawal from the Consolidated Fund by the Controller of Budget, together with written instructions from the National Treasury to issue the approved withdrawal, shall be sufficient authority for the Central Bank of Kenya to issue amounts from the exchequer accounts in accordance with the approval and instructions.

County Revenue Funds

133. (1) There is hereby established a County Revenue Fund for each County Government, into which shall be paid all money raised or received by or on behalf of each County Government except money that is reasonably excluded from the County Revenue Funds by an Act of Parliament, and shall be managed by the County Treasury.

(2) All money shall be paid to the County Revenue Fund that is raised or received by or on behalf of the County Government except money that-

(a) is excluded from the County Revenue Fund by the Constitution, this Act or an Act of Parliament and is payable into another public fund established for a specific purpose; or

(b) may by this Act of Parliament or County legislation be retained by the County Government or County Government entity that received it for the purposes of defraying the expenses of the County Government or County Government entity.

(3) The County Revenue Fund will hold an account into which all revenues and the proceeds of all loans raised are paid and credited and from which issues for the public services shall be made in a timely way.

(4) At no time, shall the bank account holding a County Revenue Fund be overdrawn.

(5) The bank in which the County Revenue Fund Bank Account is held shall provide the County Treasury with a statement showing payments into and issues from the bank account at such intervals and in such form as the County Treasury may direct.

134. The County Treasury shall make requisitions for the approval of the Controller of Budget to a proposed withdrawal from the County Revenue Fund as authorized under-

(a) an appropriation by legislation of the county; or

(b) as a charge against the County Revenue Fund that is provided for by an Act of Parliament or County legislation.

Establishment of Other Public Funds

135. (1) The Cabinet Secretary responsible for Finance shall establish all public funds at the National and County level, save for those already established under the Constitution or any other Act of Parliament.

(2) Money in a fund established under this section may be expended for the purposes for which the fund was established.

(3)Unless the Cabinet Secretary for Finance directs otherwise: -

(a) earnings or accruals of a fund established under this section shall be retained in the fund; and

(b) subsection (2) does not apply to an appropriation for a fund established under this section.

(4) The Cabinet Secretary responsible for Finance may, by order, wind up a fund established under this section and upon the winding up of such a fund any amounts remaining in the fund shall be paid into the Exchequer accounts.

(5) A person administering a fund established under this section shall prepare, sign and submit accounts for each financial year to the Auditor General within three months of the end of each financial year.

Authority to Raise Revenues

136. Subject to the restrictions in Article 209 of the Constitution the National Government may impose-

(a) income tax;

(b) value-added tax;

(c) customs duties and other duties on import and export goods;

(d) excise tax; and

(e) other taxes authorized by an Act of Parliament except taxes assigned by the Constitution to County Governments.

137. (1) Subject to the restrictions in Article 209 (5) of the Constitution a County Government may impose-

(a) property rates;

(b) entertainment taxes; and

(c) any other tax that a County Government is authorized to impose by an Act of Parliament.

(2) All taxes and other revenue raising measures imposed by the County Government under the Constitution and this section shall be imposed in consultation with the National Treasury and the Commission on Revenue Allocation for purposes of ensuring that the taxes and revenue raising measures are not exercised in a way that prejudices national economic policies and county economic activities across the county as provided under Article 209(5) of the Constitution.

Authority to Levy Fees and Charges

138. The National and County Governments may impose fees and charges for services subject to the provisions in the Constitution.

139. (1) The Treasury may require a Budgetary Body to explain any fee or charge including how it complies with the requirements of Article 209(5) of the Constitution; and

(2) The Treasury may require a Budgetary Body to annul or adjust any fee or charge that does not comply with the requirements of Article 209(5) of the Constitution

Authority to Spend

140. (1) An Accounting Officer of a budgetary body that has a permanent charge on the Consolidated Fund under the Constitution or an Act of Parliament shall have authority to expend funds under a direct charge in accordance with the purposes specified in law.

(2) An Accounting Officer of a budgetary body that has a direct charge on the Consolidated Fund under the Constitution or an Act of Parliament shall comply with the public finance requirements of all Parts of this Act except provisions relating to the requirement to have an appropriation as an authority to spend.

Waivers, Losses and write offs

141. (1) The Cabinet Secretary responsible for Finance may waive a national tax or a fee or charge imposed by a National Government budgetary body or Government Agency provided that:-

(a) Treasury shall maintain a public record of each waiver together with the reason for the waiver; and

(b) Each waiver and the reason for it shall be reported to the Auditor General within fourteen (14) days of granting the waiver.

(2) The Cabinet Secretary for Finance shall report on each waiver made in a quarterly report to Parliament and the annual financial statements.

142. (1) Accounting officers may write off any loss not exceeding an amount and in circumstances to be specified in regulations.

(2)The Accounting Officer shall request for write offs for amounts exceeding the authority provided in subsection (1) to the Cabinet Secretary responsible for Finance.

(3) Upon being satisfied of the merit of a request by the responsible Accounting Officer, The Cabinet Secretary responsible for Finance may authorize a write off or charge to account for amounts as prescribed by regulations.

(4) Upon being satisfied of the merit of a request by the responsible Accounting Officer, The Cabinet Secretary responsible for Finance shall seek prior approval of the Cabinet for a write off or a charge to an account for any amount exceeding an amount prescribed by regulations.

(5) The Accounting Officer shall:-

(a) Maintain adequate registers to record any losses or write off or a charge to an account, occurring in any financial year; and

(b) The losses must eventually be noted in the annual financial statements for the year.

(6) Provided if losses arise out of misuse, theft, or loss of stores, it shall be governed by regulations made under an Act of Parliament pursuant to Article 227 of the Constitution of Kenya

Banking Arrangements

143. The National Government shall maintain its accounts with the Central Bank of Kenya.

144. The National Treasury shall authorize the opening, operating and closing of bank accounts for government entities at the national and county level unless expressly exempted under this Act as to be prescribed by regulation.

145. No accounting officer shall allow a bank account to be overdrawn.

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146. The National Treasury and County Governments shall keep complete and current records of all bank accounts under the authority of the constitution, this Act or any other written law.

147. The National Treasury shall access any information regarding the bank accounts of any public entity at the county level, and such access shall be provided by the bank to the Treasury in a timely way.

Warrants and Releases of Cash

148. (1) An Accounting Officer may authorize payment of a cash advance to a government officer to be used for payments made by the government officer in the course of his duties.

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

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

(a) The documents used to apply for or authorize the cash advance.

(b) directions issued by the Treasury;

(c) Regulations; or

(d) Written notice form the Accounting Officer.

(4) If a government officer fails to account for the use of a cash advance or fails to surrender it when required the following apply:-

(a) The amount of the cash advance not accounted for or not surrendered shall become a debt owed by the public officer.

(b) The debt shall be subject to interest at the rate prescribed by regulation; and

(c) The debt and interest may be recovered from any salary or other amounts owed to the public officer.

149. (1). Any appropriated amounts that have been withdrawn from the exchequer account but have not been expended at the end of the financial year shall be paid into the exchequer account.

(2) The application of this section is subject to any specific provision in the Constitution or an Act relating to an appropriation.

150. (1) Upon the decision of the Cabinet Secretary for Finance, the Treasury may withhold a release of funds to any State organs or any other Public entity if it has failed to -

(a) Submit complete financial reports as required by the constitution, this Act or any other Act, regulations and or instructions from the National Treasury; and

(b) Attend or satisfy prior audit issues raised by the relevant authorities.

(2) Subject to subsection (1), the Cabinet Secretary responsible for Finance must be satisfied that the breach of requirements or responsibilities is a serious material breach or a persistent material breach.

(3) A decision to withhold the release of funds to a County Government shall be in accordance with Article 225 of the constitution.

Cash and Liquidity Management

151. Subject to the requirements of Part VIII of this Act, the National Treasury shall prescribe the framework within which a Budgetary Body, Cabinet Secretary, Accounting Officer, or other public officer who receives public money and pays money shall conduct their cash management at the National and County Levels.

152. All budgetary bodies shall submit annual cash plans to the relevant Treasury in the format and manner prescribed by the National Treasury.

153. (1) The National Treasury may, without any further authority other than this section, invest for such periods and on such terms and conditions within the scope set by regulation, any money held in a National Government bank account that contains idle Government funds and such investment shall be-

(a) on deposit with any reputable bank as approved by the Cabinet Secretary responsible for Finance for this purpose;

(b) in public securities; or

(c) in such other securities as the Cabinet Secretary responsible for Finance may from time to time approve within the scope set by Regulation and the National Treasury may from time to time sell, or convert into money any such securities.

(2) The National Treasury may—

(a) invest the money for any period and on any terms and conditions that it thinks fit within the scope of Regulation; and

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

154. All interest received from investments under section 138 and all money received from the redemption, maturity of the investment, and the sale or conversion of securities shall be paid into the National Government Bank Account.

155. The Treasury may incur costs, charges, or expenses in connection with negotiating, placing, managing, servicing, or converting any investment entered into in accordance with section 138 without further authority and such costs, charges or expenses may be paid from the National Government Bank Account.

156. A bank which has opened either Government Bank account for a Budgetary Body, Government Agency or other public entity in this section must promptly disclose information regarding the account when so requested by the National Treasury, the Controller of the Budget or the Auditor General, or, in the case of a county department or county public entity, by the National Treasury, the Controller of the Budget, the Auditor- General or the relevant County Treasury.

157. (1) The County Treasury may, without any further authority other than this section, invest for such periods and on such terms and conditions within the scope set by

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regulation, any money held in a County Government bank account that contains idle County Government funds and such investment shall be-

(a) on deposit with any reputable bank as approved by the County Governor for this purpose;

(b) in public securities; or

(c) in such other securities as the County Governor may from time to time approve within the scope set by regulation and the County Government may from time to time sell, or convert into money any such securities.

(2) The County Government may—

(a) invest the money for any period and on any terms and conditions that it thinks fit within the scope of regulation; and

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

Treatment of Externally Financed Activities

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

(2) Accounting Officers shall ensure that donor assistance in goods and services shall be recorded in government accounts prior to utilization.

159. The Accounting Officers shall ensure that no donor projects are implemented by Budgetary Bodies unless such projects are part of annual appropriation or authorized by the Cabinet Secretary responsible for Finance.

160. The Treasury shall ensure that activities financed by assistance from development partners that have agreements with the Government for such assistance shall be accounted for using the administrative, accounting and auditing procedures of the Government and this shall include ensuring that the financial accounting rules and procedures of the Government shall be strictly followed in the accounting of receipts of development partner assistance under agreements with the Government and expenditure of such funds.

161. The Cabinet Secretary responsible for Finance may grant an exemption from the requirements of sections 156-158 if such exemption is required in the public interest, provided that the Cabinet Secretary responsible for Finance shall provide such exemption by way of an explicit written instruction.

Borrowing

162. The objective of borrowing is to ensure that Government's financing needs and its

payment obligations are met at the lowest possible cost over the medium to long term, consistent with a prudent degree of risk while ensuring that the overall level of debt is sustainable.

163. Except as provided for by the Constitution and this Act, it shall not be lawful for the Government or a Government entity to raise a loan from any person, entity or government or to lend money to any person, entity or government.

164. Loans may be raised by the Government for the purposes set out in regulations.

165. The Cabinet Secretary responsible for Finance, on behalf of the Government, may under agreement or written instruments, raise a loan from any person, entity, or Government outside Kenya on such terms and conditions provided that the terms and conditions-

(a) meet the criteria set out in regulation; and

(b) comply with the fiscal responsibility principles in this Act, fiscal policies and fiscal objectives in the Budget Policy Statement, and in line with the medium-term debt management strategy.

166. (1) The Cabinet Secretary responsible for Finance or any other person authorized by him in writing, may execute such agreement of written instruments referred to under section 163.

(2) Subject to subsection (1), nothing contained in this Act shall vitiate any agreement or other instrument.

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

(2) The Cabinet Secretary responsible for Finance may establish such sinking fund or funds as deemed necessary or desirable for the redemption of loans raised under or in a manner provided by this Act.

(3)For the purposes of this Part of the Act, "the public debt" means all financial obligations attendant to loans raised or guaranteed and securities issued or guaranteed by the National Government.

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

169. The Treasury may appoint advisers, agents and underwriters in accordance with public procurement law or any other legislation for the purposes of raising loans.

170. (1)Any expenses incurred in connection with any of the following matters, shall be charged on the Consolidated Fund or any other public fund designated by the Cabinet Secretary responsible for Finance for purposes specified in regulations.

(2) In this section, expenses include duties, taxes, premiums, bonuses, fees, interests, and commissions.

(3) Subsection (1) does not apply to expenses incurred in connection with money borrowed by the Government under—

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(a) hire purchase agreements or agreements that are of the same or a substantially similar nature; and

(b) finance lease arrangements or arrangements that are of the same or a substantially similar nature.

171. Subject to the approval of the county assembly, a County Government may borrow only-

(a) from the National Government; or

(b) if the National Government guarantees the loan and such loan is in accordance with written approval from the Cabinet Secretary responsible for Finance for the loan and the Cabinet Secretary responsible for Finance shall ensure there is compliance with criteria for County Government borrowing set out in regulations prior to giving such approval.

172. A Budgetary Body may borrow only-

(a) from the National Government; or

(b) if the Cabinet Secretary responsible for Finance has approved in writing a temporary bank overdraft, subject to such conditions as the Cabinet Secretary responsible for Finance may impose, provided that such borrowing meets the criteria set under regulation.

173. Every Government Agency shall obtain the approval of the Cabinet Secretary responsible for Finance for its intended programme of borrowing, refinancing and repayment of loans and issuance of guarantees for the medium term and for the forthcoming financial year, prior to the beginning of that financial year.

174. The Government Agency shall obtain the approval of the Cabinet Secretary responsible for Finance for any changes to the programme of borrowing, refinancing and repayment during the financial year.

175. The approval of the Cabinet Secretary responsible for Finance to any programme of borrowing, refinancing and repayment and guarantees by a Government Agency does not imply in any way the existence of a government guarantee for such borrowing.

176. The Government is not liable to contribute towards the payment of any debt or liability towards a Government Agency.

177. Provided that all the requirements of this Act are met then the following public officers shall have the power to execute loan documents:

(a) Cabinet Secretary responsible for Finance for National Government loans;

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(b) Governor for County Government loans or loans to its entities; and
(c) The Chief Executive of a Government Agency.

178 Except as provided for by the Constitution and this Act, the Governor or Chief Executive of a County Government Agency may authorize any other person in writing to execute loan documents.

Securities

179. Except as expressly authorized by this Act, the Government shall not issue securities whether for money borrowed or any other purpose except as expressed authorized by this Act.

180. The Cabinet Secretary responsible for Finance, on behalf of the Government, may issue securities for money borrowed by the Government in accordance with criteria set out in regulations.

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

(2) Such securities may be issued in one or more series, and may be made pursuant to loan agreements between the Government and one or more specified banks, financial institutions, or security dealers and such agreements may be amended from time to time.

182. (1) Any security issued under this Act must be taken or given in the name of the Government.

183. (1) A security that must be executed by the Government for the purposes of this Act must be executed for and on behalf of the Government by—

(a) the Cabinet Secretary responsible for Finance;

(b) a person acting in accordance with a delegation; or

(c) borrowing agents appointed for the purpose under this Act.

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

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

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(2) At the request of the holder of a government security, the Cabinet Secretary responsible for Finance may—

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

(b) revoke the direction and give other directions.

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

186. Subject to the provisions of other written laws, secondary trading of government securities shall be carried out in such manner as may be prescribed.

187. Subject to the provisions of this Act, all principal payable under a government security shall be paid-

(i) without further authority than this section; and

(ii) from a Government Bank Account.

Limits on the Government entering into Derivative Transactions

188. Except as expressly authorized by any Act, the Government must not enter into a derivative transaction either directly or through an intermediary.

189. (1) The Cabinet Secretary responsible for Finance, on behalf of the Government, may enter into a derivative transaction if it appears to the Cabinet Secretary responsible for Finance to be necessary or expedient in the public interest to do so.

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

190. (1)Any money that is required to be paid by the Government under a derivative transaction—

(a) must be paid without further authority than this section; and

(b) must be paid from a Government Bank Account.

(2) Any expenses incurred in connection with any of the following matters may be incurred without further appropriation, and must be paid without further authority, than this section:

(a) negotiating a derivative transaction; or

(b) managing the derivative transaction; or

(c) servicing the derivative transaction; or

(d) making payments under the derivative transaction.

Limits on Lending by the Government

191. (1) The Government including a Budgetary Body, and a Government Agency must not lend money to a person or entity or government, except—

(a) as expressly authorized by any Act; and

(b) if lending the money is necessary for the Government to—

(i) meet a legal obligation; or

(ii) properly perform a function; and

(iii) written approval for the lending is given by Cabinet for a loan under subsection (1)(a) or the National Assembly has approved the loan by resolution for a loan.

(2) Lending by the government shall be upon such terms and conditions as set out in regulations

192. The Cabinet Secretary responsible for Finance may, in relation to any money lent by the Government under section 199, may-

(a) accept all money payable under the loan in any currency that the Cabinet Secretary responsible for Finance thinks fit; and

(b) agree at any time to the variation of any security issued in respect of the loan.

193. Any lending under section 199 must be made from an development appropriation, or other authority, approved by Parliament for the purpose.

194. (1)A security taken in respect of a loan under section 199 must be taken in the name of the Government.

(2) The Cabinet Secretary responsible for Finance may, on behalf of the Government, do any of the following things in respect of, or in connection with, the security that could be done by the Government:

(a) exercise any powers, functions, and rights ,including any power of disposal; and

(b) undertake and perform any liabilities.

Administration Requirements for Debt, Liabilities, Financial Assets

195. If the Cabinet Secretary responsible for Finance exercises his powers of delegation under this Act to establish any administrative unit to actively manage the Government's portfolio of debt, other liabilities and financial assets then he must-

(a) Establish an administrative unit within the Treasury which shall be subject to the requirements of this Act;

(b) Ensure that such an administrative unit has the resources and skills to manage the debt, other liabilities and financial assets according to best-practice international standards for asset and liability management; and

(c) Set goals for such an administrative unit that requires it to hedge risks rather than take speculative positions on behalf of the Government and such risks shall include but not be limited to risks involved with interest rate volatility, exchange rate volatility, counter-parties and credit.

196. An administrative unit set up for the management of debt, other liabilities and financial assets may transact in options, swaps and derivative financial instruments, provided that the Cabinet Secretary responsible for Finance and the Principal Secretary of the Treasury are satisfied that the unit has the skills, resources and operating systems necessary to conduct such transactions in accordance with best international practices benchmarked to the debt management offices of other governments that are internationally respected for their practices.

197 The Treasury may appoint agents to provide technical advice or manage administrative functions for the management of debt, other liabilities and financial assets, provided that control and accountability for these functions remains with the Treasury.

Guarantees

197. (1) The Cabinet Secretary responsible for Finance on behalf of the Government may give a guarantee, indemnity, or security, upon such terms and conditions as the Cabinet Secretary responsible for Finance thinks fit within the scope set by Regulation, in respect of the performance of any obligation by any person, Budgetary Body, Government Agency or any other sub national level of government if created, provided that the following requirements are met-

(a) the guarantee is a formal guarantee and not a letter of comfort or other communication purporting to commit the government to obligations in the nature of a guarantee;
(b) the guarantee meets the criteria for guarantees specified in Regulation and is in compliance with the fiscal responsibility principles in this Act and the fiscal objectives and policies in the Budget Policy Statement;
(c) the guarantee is within the financial limit set, if any, by the National Assembly for guarantees; and
(d) the National Assembly has passed a resolution formally approving the giving of the guarantee after examining whether such guarantee is in the public interest and after considering if the financial position of the entity supports the giving of the guarantee.

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

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

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198. The Cabinet Secretary responsible for Finance shall, as soon as practicable as and no later than two weeks after the giving of the guarantee, indemnity, or security, publish and present to the National Assembly a statement-

(a) that such a guarantee, indemnity, or security has been given; and

(b) containing details relating to that guarantee, indemnity, or security, including the entity involved, the timeframe, the nature of any guarantee or indemnity, a risk assessment, and other information required by regulation.

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

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

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

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

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

200. Any guarantee given under this Act shall be given in writing in the name of the Government and shall be signed on behalf of the Government by the Cabinet Secretary responsible for Finance or by a person authorized thereunto in writing by him.

201. Before giving any guarantee under section 206 of this Act, the Cabinet Secretary responsible for Finance shall prepare and submit before the National Assembly a sessional paper specifying the covenants performance of which is to be guaranteed and, where the covenant is for the repayment of a loan, the amount of the loan, the terms and conditions as to interest and repayment in respect of the loan, the Government's total contingent liability under guarantees given under this Act and any further information which the Cabinet Secretary responsible for Finance considers relevant.

202.In addition to the reporting required in this Act, the Cabinet Secretary responsible for Finance shall publish a report within two months after the end of the financial year describing the guarantees given during that financial year.

Public Procurement and Disposal

203. The Government shall have power to acquire, hold and dispose of, by sale or otherwise, property of any kind or enter into Public Private Partnership arrangements as governed by an Act of Parliament enacted pursuant to Article 227 of the Constitution including-

(a) Without prejudice to subsection (1) above, public procurement of goods and services and the disposal of the unserviceable, obsolete or surplus goods, works and assets shall be done in a manner that is efficient, fair, competitive, accountable, and transparent and in a way that inspires public confidence in the procurement procedures;

(b) All property owned by the Government shall be held in the name of the Cabinet Secretary responsible for Finance ;

(c) All contracts made, whether in or outside Kenya, for and on behalf of the Government shall, if reduced to writing, be made in the name of the Government and may be lawfully signed by the Accounting Officer responsible for the Budgetary Body, provided that any other public officer may sign a contract if duly authorized in writing by the Accounting Officer for the Budgetary Body either specifically in any particular case, or generally for all contracts below a certain value in a Ministry, County, Constitutional Office or Public Entity;

(d) In making an authorization under subsection (c), it shall be sufficient for the Accounting Officer responsible for the Budgetary Body to name the office held by such public officer and the Accounting Officer responsible for the Budgetary Body shall cause such authorization to be published in the Gazette; and

(e) All contracts made outside Kenya for and on behalf of the Government by a person either generally or specifically authorized by the Accounting Officer responsible for the Budgetary Body hall, so far as they come within the jurisdiction of Kenya, be deemed to be government contract.

Public Private Partnership Arrangements

204. (1) Without prejudice to the functions of a government entity under any other enactment, a government may, either itself or in conjunction with any other person or government entity

(a) enter into a public private partnership with a partner for the performance of functions of the government specified in the arrangement in relation to—

(i) a management contract whereby a public entity awards a private party the responsibility to manage and perform a specific service, within well-defined specifications for a specified period of time not exceeding ten years, and the public entity retains ownership and control of all facilities and capital assets and properties;

(ii) a lease whereby the private party pays the procurement entity rent or royalties and manages, operates and maintains the facility or utilizes leased land for the purpose of exploration, production and development of minerals and receives fees, charges or benefits from consumers for the provision of the service or sale of products for specified time not exceeding thirty years;

(iv) a Build-Own-Operate Scheme whereby a private party designs, finances, constructs, owns, operates and maintains the infrastructure facility and provides services for an agreed time period;

(v) build-own-operate and-transfer scheme whereby through a contractual arrangement, a private party undertakes the construction including financing of a given infrastructure facility, and the operation maintenance thereof and transfers the facility to the public entity at the end of the fixed term which shall not exceed thirty years;

(vi) build-lease- and transfer whereby through a contractual arrangement, a private party is authorized to finance and construct an infrastructure or development facility and upon its completion turns it over to the public entity concerned on a lease arrangement for a fixed period after which ownership of the facility is automatically transferred to the public entity unit concerned;

(vii) build-transfer-and-operate whereby through a contractual arrangement, the public sector contracts out the building of an infrastructure facility to a private party such that the contractor builds the facility on a turn-key basis, assuming cost overrun, delay and specified performance risks. Once the facility is commissioned satisfactorily, title is transferred to the public entity and the private party operates the facility on behalf of the public entity under an agreement;

(viii) develop-operate-and-transfer whereby through a contractual arrangement favorable conditions external to a new infrastructure project which is to be built by a private party the right to develop adjoining property, and thus, enjoy some of the benefits the investment creates such as higher property or rent values. The infrastructure facility shall be transferred to the public entity within a period not exceeding 30 years while the developed property remains the property of the private party in perpetuity;

(ix) rehabilitate-operate-and-transfer whereby through a contractual arrangement an existing facility is turned over to a private party to refurbish, operate and maintain for a franchise period, at the expiry of which the legal title to the facility is transferred to the public entity;

(x) rehabilitate-own-and-operate whereby through a contractual arrangement an existing facility is transferred to the private party to refurbish and operate with no time limitation imposed on ownership. As long as the operation is not in violation of its franchise, it can continue to operate the facility in perpetuity; and

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(xi) any other scheme as may be prescribed by the Cabinet.

(b) subject to subsection (4) below, arrange or provide for a payment to a partner;

(c) enter, where appropriate, into a direct agreement with a person who has arranged or provided funding for the partner for the carrying out of the public private partnership arrangement; and

(d) take a transfer of an interest of the partner or a nominee of the partner, in an asset or part of an asset, by transfer, assignment, conveyance, grant or surrender of lease or license or otherwise.

(2) A government entity may, with the consent of the Cabinet—

(a) either itself or in conjunction with any other person including another government entity cause a company to be formed and registered, or

(b) become a shareholder in an existing company, for the purposes of a public private partnership arrangement or of entering into such an arrangement.

(3) A public private partnership arrangement may include terms and conditions in relation to the performance by the partner concerned of the partner's obligations under the arrangement as agreed between the State authority and the private partner

(4) (a) Where a payment is arranged or provided for pursuant to section 3 the Cabinet Secretary for Finance may, at any time until entry into the public private partnership arrangement by the government entity, give directions to the appropriate Cabinet Secretary responsible for Finance or entity in relation to the aggregate value of exchequer moneys committed to such arrangements, as he or she considers necessary.

(b) The appropriate Cabinet Secretary or entity shall, in performing his or her functions, have regard to any directions given by the Cabinet Secretary responsible for Finance under this section.

(5) Functions conferred on a government entity by this section are in addition to and not in substitution for any other functions of the entity.

205. (1) Where it is necessary to support private sector investments and reduce premiums factored for political risks, the Cabinet Secretary responsible for Finance may issue binding letters of comfort to private sector investors and their lenders to acknowledge the investment by the private sector and undertake to provide reasonable assistance to the investors to safeguard their interest and guarantee against risk arising from Government actions.

(2) Notwithstanding the provisions of subsection (1), no public entity shall give any guarantee, letter of comfort of undertaking with respect to any contract except with approval of the Cabinet.

206. (1) The books of account and records of the public private partnership shall be audited in accordance with the provisions of this Act and the Public Audit Act.

(2) The accounts and other financial statements shall be submitted to the Auditor General within three months after the end of the financial year.

Asset Management

207. The Accounting Officer of a Budgetary Body shall be responsible for the management of the assets of the Budgetary Body and shall manage the assets to ensure that the Government achieves value for money when acquiring, using and disposing of Government assets.

208. (1) The Accounting Officer of a Budgetary Body shall have the power to dispose of assets at the competitive price and lowest possible cost and that the proceeds from all asset disposals are banked into a Government Bank Account.

(2) The Accounting Officer of a Budgetary Body shall have adequate systems and processes in place to plan, procure, utilize, account, maintain, store and dispose of assets that are unserviceable, obsolete or surplus, including an asset register that is current, accurate and available for inspection at any time by the National Treasury or the Auditor General.

209. A Budgetary Body shall not loan or transfer assets to any person or organization or permit any person or organization to use assets for purposes other than carrying out functions of the Budgetary Body, except as allowed under an Act of Parliament enacted pursuant to Article 227 of the Constitution.

210. The National Treasury may issues instructions on asset management and shall monitor the management of assets by Budgetary Bodies.

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PART X SPECIAL PROVISIONS

Monitoring by Treasury

211. Treasury shall monitor the financial and related non financial performance of Budgetary Bodies and Government Agencies including by-

a) analyzing reports specified in this Act;
b) undertaking reviews of financial performance and related non financial performance;
c) reporting to the Cabinet Secretary responsible for Finance and Cabinet on performance issues;
d) requiring improvements in the performance of a Budgetary Body or Government Agency while taking account of the roles and responsibilities of Cabinet Secretaries, Boards, County Assemblies, Chief Executives and the scope of the Treasury's roles and responsibilities;
e) suggesting improvements in performance of a Budgetary Body or Government Agency in cases where the Treasury does not have the power to require improvements; and
f) assisting a Budgetary Body or Government Agency within the boundaries of respective roles and responsibilities to improve its performance if the Principal Secretary of Treasury considers this a good use of resources.

Government Agencies

Establishing and Terminating Government Agencies

212. No Government Agency shall be established or terminated without taking into account the recommendations of the Treasury on the financial implications of the establishment or termination of such agency.

Strategic Plans for Government Entities

213. (1) Each national or County Government entities shall develop its strategic plan to align their service delivery to achievement of Government's fiscal policy objectives.

(2) The Strategic Plan along with any further guidelines from Treasury on the national budget process will form a basis for development of the government entities Budget proposals.

Reallocations from and to Government Agencies

214. (1) No Ministry may authorize reallocations to and from a Government Agency without the consent of the National or County Treasury.

(2) The National or County Treasury may reallocate appropriations to and from a Government Agency as long as the uses and purposes to which transfers are made are authorized by regulations.

(3) Such transfers must be at the request and with the consent of the agency whose appropriations are involved.

(4) The National or County may also reduce allotments to prevent a deficit if revenues fall short of forecast levels.

Oversight

215. The parent line Ministry shall work in collaboration with their agencies throughout the year in a manner that ensures that the agencies effectively deliver on their mandate.

Delegation

216. (1) Unless provided otherwise in the Constitution or another Act, an officer who has been assigned responsibility under this Act may delegate their powers to a subordinate officer through general or special instructions.

(2) Notwithstanding the delegation in subsection (1), the officer shall be responsible for the actions taken by the subordinate officer as a result of such delegation.

Printouts from Electronic Records-Special Provisions

217. For purposes of this Act, if a public officer in performance of his duties keeps records in an electronic format, a print out of the entry in electronic format shall be admissible and sufficient to show the entry of such record.

Control of the Finances of Government Agencies

Request for Budget Submissions

218. (1) Not later than the 30th September of every year, the relevant Treasury shall issue Budget instructions to all National and County Government Agencies.

(2) The instructions shall prescribe the manner, form and timing in which requests shall be submitted and subsequently reported on.

(3) Each Government Agency shall on the basis of the instructions in subsection (1) and (2) prepare and submit their respective budget requests to the parent ministry or department upon approval by the relevant board of management.

(4) The budget estimates in subsection (3) shall include the Current Services Budget, representing the cost of maintaining agency services at current levels.

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(4) The budget submission shall also contain new services requests, covering proposed increases, capital project requests, covering one-time expenditures for the construction and maintenance of the Government Agency's facilities.

(5) In addition, the budget submission may include internal reallocations and budget reductions for the ongoing financial year.

Review of Government Agency Budgets

219. (1) the parent ministry/department shall review the submitted budget requests and formulate recommendations.

(2) Budget review in section 233 (1) shall include a detailed analysis of agency programs, operational performance, changes in operation areas and cost trends, and other factors related to the efficient, effective use of public resources.

(3) The parent ministry/department shall discuss the analyses and recommendations, including any variances, with the board of directors.

(4) The requests shall be adjusted as approved by the parent ministry/department, and then presented to the relevant Treasury.

National Treasury and County Treasury Recommendations

220. The relevant Treasury shall evaluate the budget proposal and make a single, comprehensive budget recommendation to the board of the agency, with a copy of the recommendations to the parent ministry/department.

The Funding Forecast

221. The relevant Treasury shall provide funding forecasts for Government Agencies and this shall be communicated to the agencies when budget ceilings for the parent ministries have been firmed, and this shall not be later than the 31st January of every year.

222. The funding forecast shall not be an authority to spend or make any financial commitment.

Submission of Annual budget

223 (1) The agency, in consultation with the parent ministry/department shall use both the relevant Treasury funding forecast and recommendations to prepare the itemized annual budget for approval by its Board.

(2) Not later than the end of February in every year, each Government Agency shall submit its annual budget estimates to the relevant Treasury for consideration and submission to the National or County Assemblies for approval as part of the annual Appropriations Bill.

(3) No annual estimates shall be implemented until they have been approved by the National or County Assembly.

Disposal of Government Agency Assets

224(1) the assets of a Government Agency may be disposed off-

(a) if they are current assets in the normal course of business carried on by that state corporation;

(b) if there are assets being traded in the normal course of business as per the registered objectives of the Government Agency;

(c) where the disposal and the utilization of the proceeds have been taken into account and annual estimates prepared and approved in accordance with this section; and

(d) by way of sale or otherwise with the approval of the National or County Treasury.

Reporting by Government Agencies

225. The Board of Directors and the Chief Executive of a Government Agency shall ensure that the Government Agency follows generally accepted accounting practice.

226. (1) A State Enterprise shall prepare an annual report including accounts in accordance with the provisions of the Companies Act , State Corporations Act or any other Act.

(2) The annual report of a Government Agency shall contain such additional information as is necessary to enable an informed assessment of the activities of the Government Agency.

(3) The accounts and financial statements of Government Agencies shall be submitted to the Auditor General within 3 months of the end of the financial year

(4) The Auditor General shall audit and report on the accounts and financial statements of a National and County Government Agency within 6 months of the end of the financial year.

(5) Within three months the after receipt of the audit report in subsection (4), the National Assembly and County Assemblies shall consider the report and take the appropriate action.

(5) National or County Government Agencies shall publish and publicize their annual financial reports within 14 days after the reports are laid before the National or County Assembly.

Annual Reporting by Government Agencies

227. (1) Each financial year the Treasury shall consolidate, publish and publicize a summary report on investment in Government Agencies.

(2) The report in subsection (1) may include the following–

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(a) the date of incorporation and object of the agency;
(b) the amount government shareholding, directly or indirectly, in the agency;
(c) any changes in shareholding in the year of report;
(d) amount of funds, if any injected into the agency;
(e) any guarantees issued by the government during the year under review;
(f) cumulative un-discharged guarantees;
(g) cost-benefit analysis of continued investment in the Government Agency;
(h) annual financial performance;
(i) net profits and dividends declared; and
(j) profitability and profitability ratio analysis.

(3) The report in subsection (2) shall be submitted to the Controller of Budget within three months after the end of the financial year.

Periodic Reporting by Government Agencies

228. All Government Agencies shall provide periodic reports to their respective parent State Department and their parent State Department shall consolidate these reports submitting them to the Treasury in the manner and form to be prescribed be Treasury from time to time.

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PART XI ENFORCEMENT

Financial misconduct and other Criminal Offences

229. (1) Public officers with responsibility for government resources, commit an offence of financial misconduct if without lawful authority under this Act or under other lawful authority, willfully or negligently-

(a) borrow money on behalf of the Government, or repay or convert existing loans;

(b) issue public securities, or vary their terms and conditions;

(c) open a bank account in the name of the Government;

(d) lend money on behalf of the government;

(e) issue guarantees or indemnities on behalf of the Government;

(f) issue securities for loans made to the Government;

(g) dispose of Government property;

(h) refuse or neglect to pay any public money into a Government Bank Account;

(i) incur unauthorized expenditures or make unauthorized commitments;

(j) fail to deliver to the State a gift or donation made on a public or official occasion;

(k) refuse or fail to produce any information in possession or under their control in relation to the financial management, financial performance, or banking activities of a Budgetary Body or in relation to the management or control of any Government asset or liability when required to do so;

(l) fail to keep proper records, conceal or wrongfully destroy information that is required to be recorded;

(m) resist or obstruct any person acting in the discharge of that person's functions or duties or in the exercise of that person's powers under this Act;

(n) make any statement or declaration, or give any information or certificate, required by or pursuant to this Act, regulations or Treasury instructions, knowing it to be false or misleading; and

(o) does any act for the purpose of procuring for that person or for any other person or organization-

  (i) the improper payment of any public money; or

  (ii) the improper use of any public financial resource.

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230. No Accounting Officer shall seek or accept a personal loan or benefit in circumstances that compromise the integrity of the public officer;

231. Every Accounting Officer who wilfully or negligently fails to perform the duties or improperly exercises the powers provided under this Act commits an offence of financial misconduct.

232. A charge of financial misconduct under this Act against any person must be investigated, heard and disposed of in terms of the statutory or other conditions of appointment or employment applicable to that person and any regulations under this Act.

Other Criminal Offences

233. Each public officer with responsibility for government resources, commits a criminal offence if without lawful authority under this Act or under other lawful authority they willfully or negligently-

(a) take unlawful possession of public funds or assets;

(b) misappropriate public funds or assets;

(c) provide inaccurate financial information or conceal information on public finances to obtain a financial benefit for himself or another person; or

(d) engage in corrupt acts including soliciting or receiving inducements.

234. Any person who commits an offence against sections 243-246 is liable on conviction to a term of imprisonment not exceeding 5 years, or to a fine not exceeding Kshs 3,000,000.

235. The Principal Secretary to the Treasury shall be responsible for ensuring that any offence under this Act brought to his attention shall be reported to the relevant authority and failure to do so shall be a basis for invoking disciplinary action.

Responsibility for losses

236. Every public officer or other person with responsibility for government resources shall be held personally responsible for any loss sustained by the Government due to:-

(a) Acts of fraud or negligence on his part; or

(b) Acts of fraud or negligence on the part of any other officer, if it is found that he contributed to the loss by his own action, negligence or omission.

237. The Government may claim the damages arising from fraud or negligence from a public officer or other person with responsibility for government resources who is responsible for a loss described in section 229 to 235.

Institutional Sanctions

238. (1) The Cabinet Secretary responsible for Finance may apply sanctions to a Budgetary Body or Government Agency which has-

(a) approved the contracting of debt beyond the debt limits set pursuant to this Act;

(b) defaulted on a loan;

(c) provided inaccurate information to public officers on financial matters;

(d) issued guarantees without the appropriate authorization;

(e) issued guarantees for amounts in excess of the limits set pursuant to this Act;

(f) created liabilities in excess of its ability to finance these; or

(g) failed to adequately address issues raised by the Auditor General when such issues are not contested.

(2) The Cabinet Secretary responsible for Finance may apply the following sanctions to a Budgetary Body or Government Agency to which this section applies-

(a) impose additional reporting requirements to those required by law;

(b) suspend the ability to use reallocation powers;

(c) withhold funds, subject to the limitations in the Constitution

(d) suspend all authorizations to borrow;

(e) treat any debt defaults as a charge on future revenues; and

(f) temporarily place Treasury staff or Treasury appointees in the budgetary body to undertake financial management functions.

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

Publication of offences and sanctions

239. The Treasury shall publish and publicize in a timely way -

(a) the name, position, offence and sentence for each person convicted of an offence under this Act; and

(b) the name of the Budgetary Body or Government Agency giving rise to the imposition of an institutional sanction, and the institutional sanction applied for each Budgetary Body or Government Agency to which an institutional sanction is applied under this Act.

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SCHEDULE 1 –CONSEQUENTIAL AMENDMENTS

SCHEDULE 2- REGULATIONS

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