

(Legislative Supplement No. 17)

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THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

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## THE PUBLIC FINANCE MANAGEMENT ACT

(No. 18 of 2012)

IN EXERCISE of the powers conferred by section 205 of the Public Finance Management Act, 2012, the Cabinet Secretary for finance makes the following Regulations:—

## THE PUBLIC FINANCE MANAGEMENT (NATIONAL GOVERNMENT) REGULATIONS, 2015

1. These Regulations may be cited as the Public Finance Management (National Government) Regulations, 2015.

Citation.

2. In these Regulations, unless the context otherwise requires—

Interpretation.

“Act” means the Public Finance Management Act, 2012;

No. 18 of 2012.

“Accountant-General” means the officer of the National Treasury designated as the Accountant-General;

“Accounting Standards Board” has the meaning assigned to it under section 2 of the Act;

“Accounting Unit” means organizational division in a government entity responsible for accounting and financial services;

“Appropriation-in-Aid” means any revenue which a national government entity receives and is approved by Parliament for application by that entity to finance its activities;

“Appropriation Act” has the meaning as assigned to it under section 2 of the Act;

“budget ceilings” means the maximum amount that the government allocates in a given year to target sector or expenditure category;

“Budget Circular” means a written instruction issued by the Cabinet Secretary providing broad guidelines on the budget process of the national government;

“benefit deduction” means a deduction on a payroll system against an official’s salary for a debt arising from employment benefits;

“basic salary” means an officer’s salary excluding allowances;

“Cabinet Secretary” has the meaning assigned to it under section 2 of the Act;

“Cash flow” means is a financial statement that shows planned inflow and outflow of resources over a period covering the financial year in line with the activity level;

“collector of revenue” has the meaning assigned to it under section 2 of the Act;

“collective agreement deduction” means a deduction on a government payroll system against an official’s salary arising from a collective agreement between the government and a union and is registered in accordance with applicable law;

“Consolidated Fund Services” means a service the expense of which is charged directly against and payable from the Consolidated Fund under or by virtue of the Constitution or any Act of Parliament other than an Appropriations Act;

“Contingencies Fund” has the meaning assigned to it under section 2 of the Act;

“corporate governance” means the process and structure used to direct and manage business affairs of the national government entities towards enhancing prosperity and good governance with the ultimate objective of realizing national long-term value while taking into account the interest of all stakeholders;

“County Allocation of Revenue Bill” means the Bill annually introduced into Parliament and enacted under Article 218(b) of the Constitution;

“County Emergencies Fund” has the same meaning assigned to it under section 2 of the Act;

“County Government entity” has the same meaning assigned to it under section 2 of the Act;

“County Public Debt” has the same meaning as assigned to it under section 2 of the Act;

“debt” means an amount of money owed and already payable by an official to any person and for the purposes of these Regulations, includes insurance premiums deducted in terms of policies with long and short-term insurers;

“deduction code” means a code issued by the Accountant-General to enable a person to deduct money from an individual paid via the government payroll system;

“discretionary deduction” means a deduction on the government payroll system against an official’s salary, other than benefit, collective agreement, state or statutory deductions;

“disposal” in relation to a capital asset, includes—

- (a) the demolition, dismantling or destruction of the capital asset; or
- (b) any other process applied to a capital asset which results in loss of ownership of the capital asset otherwise than by way of transfer of ownership;

“Division of Revenue Bill” means the draft Bill annually introduced into Parliament and enacted under Article 218(a) of the Constitution;

“donation” has the meaning assigned to it under section 47 of the Act;

“economy” means minimising the cost of resources used or required to achieve priority objectives;

“effectiveness” means the extent to which a programme intervention has attained, or is expected to attain, its objectives efficiently in a sustainable manner;

“efficiency” means a measure of how economically resources or inputs including fund, expertise and time are converted to results;

“estimates of expenditure” means —

- (a) annual estimates of expenditure based on programmes and sub-programmes prepared on a three-fiscal year rolling basis, specifying the resources to be allocated and the outcomes to be achieved and outputs to be delivered, the estimates for the first year of every such period of three fiscal years requiring appropriation by the National Assembly; or
- (b) supplementary estimates of expenditure appropriated by the National Assembly;

“fair market value”, in relation to a capital asset, means the value at which a knowledgeable willing buyer would buy and a knowledgeable willing seller would sell the capital asset in an arm's length transaction;

“financial statements” has the same meaning as assigned to it under section 2 of the Act ;

“financial year” means the period of twelve months ending on the 30<sup>th</sup> June in each year;

“governing body” means a body of person managing a public entity and includes a commission, a board of trustees, a board of directors and a management board;

“grant” has the meaning assigned to it under sections 47 of the Act;

“grant recipient” has the meaning assigned to it under sections 47 of the Act;

“intended beneficiaries” has the meaning assigned to it under section 47 of the Act;

“internal control” means a set of systems to ensure that financial and other records are accurate, reliable, complete and ensure adherence to the management policies of the Ministry, department or other agency of Government, for the orderly and efficient conduct of the Ministry, department or agency, and the proper recording and safeguarding of its assets and resources;

“irregular expenditure” means expenditure, other than unauthorized expenditure defined under this section, incurred in contravention of or that is not in accordance with a requirement of any relevant legislation, including —

- (a) the Act;
- (b) these Regulations;

- (c) the Public Procurement and Disposal Act, 2005, or any Regulations made in accordance with that Act; or
- (d) any county legislation providing for procurement procedures in that county government; or
- (e) any other Act of Parliament.

No. 3 of 2005.

“medium term” has the same meaning as assigned to it in the Act.

“national government entity” has the meaning assigned to it under section 2 of the Act;

“Principal Secretary” has the meaning assigned to it under section 2 of the Act;

“State corporation” has the meaning assigned to it under section 2 of the Act;

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

“public money” has the meaning assigned to it under section 2 of the Act;

“public officer” has the meaning assigned to it under Article 260 of the Constitution;

“programme” means a group of independent, but closely-related, activities designed to achieve a common outcome;

“receiver of revenue” has the meaning assigned to it under section 2 of the Act;

“regulatory agency” means a national government entity established by an Act of Parliament to ensure compliance with the provisions of the act that established it;

“revenue” has the meaning assigned to it under section 2 of the Commission on Revenue Allocation Act, 2012;

No. 16 of 2011.

“revised estimates” refers to the supplementary budget estimates and approved budget reallocations prepared and submitted under section 43 of the Act;

“spending unit” refers to a government component for which appropriation is allocated within the budget and which is authorized to spend;

“sinking fund” means an account or pot of money or securities set aside to pay for a bond, repurchase or early redemption of Treasury Bonds;

“statutory appropriation” means the authority to spend money allocated to the executive in accordance with the purposes specified in the constitution or an Act of Parliament;

“statutory deduction” means a deduction on government payroll system against a public officer’s salary, which is required or permitted by a law, court order or arbitration award;

“subscription statement” is a statement showing the investor’s holdings as registered on the Central Depository Securities (CDS) Register at the Central Bank of Kenya;

“supplementary budget estimates” means additional request of funds by the national government to Parliament;

“third party” has the meaning assigned to it under section 47 of the Act;

“unutilized balances” means any amounts withdrawn from the Consolidated Fund and appropriation in aid collections for purposes of provision of basic services under an Appropriations Act and not expended at the end of the financial year;

“unauthorized expenditure” means—

- (a) overspending of a vote or programme within a vote;
- (b) expenditure not in accordance with the purpose of a vote or, in the case of a programme, not in accordance with the purpose of the programme;

“value for money” means the economic, efficient and effective utilisation of resources;

“vote” has the meaning assigned to it under section 2 of the Act;

“vote-on-account” means a special provision by which the national government obtains the authority of the National Assembly for a sum sufficient to incur expenditure on various items for a part of the year, pending the consideration and approval of budget estimates for that year; and

“wasteful expenditure” has the meaning assigned to it under section 2 of the Act.

3. (1) These Regulations shall apply to—

- (a) State departments;
- (b) National government entities under Regulation 211 (2), (4) and (5) of these Regulations;
- (c) Public Funds under regulation 211(6) of these Regulations;
- (d) any other person performing any act or doing such thing that is provided for under this Act.

Application of the Regulations.

4. The object and purpose of these Regulations shall be—

- (a) to provide means of administering the powers vested in the Cabinet Secretary for the National Treasury under the Constitution, the Act and any other related legislation;
- (b) to harmonize and standardize their application throughout government service in controlling and managing the finances;
- (c) to set out a standardized financial management system for use in Government service which is capable of producing accurate and reliable accounts free from errors, fraud and which will be useful in management decisions and statutory reporting;

Object and purpose of the Regulations.

- (d) to provide for the conduct of fiscal relations between the national and county governments;
- (e) to ensure accountability, transparency and the effective, economic and efficient collection and utilization of public resources.

5. All Accounting Officers shall ensure that all public officers under their control have access to copies of these Regulations and the public officers shall ensure they are fully conversant with the contents of these Regulations.

Officers to be conversant with Regulations.

6. (1) Subject to national security considerations, the public shall be provided with full access to financial information in a timely manner for purposes of seeking public input, by —

Openness and accountability.

- (a) establishing a focal point to facilitate access to financial information or;
- (b) making information available in the media or;
- (c) presenting information in national languages, summarised and user-friendly forms; or
- (d) making financial information available on websites that allow for information to be downloaded.

(2) The National Treasury shall arrange for effective public participation during the development of their annual budget estimates including the publication of citizens' budgets which shall explain and summarize the budget proposals.

(3) The dates for the sectoral forums and the venues shall be publicly announced one week in advance, and an annual calendar of events released at the start of the financial year.

7. (1) For purposes of public participation in planning and budgeting process there shall be participatory structures and processes that shall encompass a broad range of strategies, including—

Cabinet Secretary to publish process and procedures for public participation.

- (a) open forums, written submissions, online platform and media;
- (b) specifications of venues of public participation; and
- (c) indicative dates of public participation.

(2) The Cabinet Secretary shall notify the general public through a notice in the gazette or at least two newspapers of wide circulation on the venue or manner of submitting written submissions

(3) The documents submitted to Parliament and any other published documents shall be published and publicised within 7 days of presentation.

(4) The Cabinet Secretary shall give a responsibility statement confirming the extent to which general public was consulted particularly on the Budget Policy Statement and Sector Working Groups.

8. (1) The Kenya shillings shall be the unit of account for drawing up and implementing the national budgets, presenting and reporting accounts.

Monetary unit, accounting and reporting currency.

(2) Despite the provisions of paragraph (1) of this regulation, certain operations may be carried out in international currencies subject to conditions laid down in these Regulations or other financial instruments.

9. (1) National Treasury shall publish financial manuals and forms which may be used by national government entities to support implementation of these Regulations.

Financial management forms and manuals.

(2) The financial manuals and forms issued in accordance with these Regulations shall facilitate adoption of international standards and emerging best practices.

(3) The publications under paragraph (1) of this regulation shall be made with the approval of the Cabinet Secretary.

(4) The financial manuals shall contain relevant procedures for the budget preparation, budget execution, keeping of books of accounts, formats of financial statements and Government standard chart of accounts issued by the National Treasury.

10. The responsibilities of internal and external auditors exercised in accordance with the Constitution, the Act and other legislation shall not diminish the Accounting Officers' responsibility to maintain financial discipline as required by the Act and these Regulations.

Accounting responsibility not diminished by audit.

11. The accountability of a public officer vacating an office shall not be completed until the financial and accounting records kept by him or her have been properly handed over in writing to an officer taking over his or her duties and attested by their supervisor, but this does not preclude the public officer from handing over any other documents required under any other law or government policy.

Responsibility for handover by financial officers.

12. (1) Any public officer signing any document or record pertaining to a financial transaction shall ensure that the signature is given in such a manner so as to preclude subsequent alteration or addition to the information contained in such document or record.

Application of secure signatures.

(2) The signature of any public officer shall not be binding on an Accounting Officer or a public officer performing a financial function unless a specimen of the signature is duly communicated in advance to the relevant public officer or any other person performing a financial function.

(3) If a public officer no longer occupies a public office, the Accounting Officer shall nullify that officer's specimen signature and communicate the same to all relevant public officers or any other person performing a financial function, within a reasonable time.

13. (1) A public officer shall not sign a blank or incomplete cheque, record or other document, pertaining to a financial transaction.

Signing blank or blind accountability documents.

(2) It shall be the duty of any public officer signing any document or record pertaining to a financial transaction to read and satisfy himself or herself that it is proper to give his or her signature and his or her signature shall be evidence of acceptance of responsibility for the document, whether the public officer read it or not.

(3) The signing of a document contrary to paragraph (1) and (2) shall constitute an offence under the Act.

14. A public officer, except the President or the Auditor-General, shall not use green ink or green pencil in recording or transacting any official financial transaction.

Restricted use of green Ink.

15. A public officer other than the Cabinet Secretary, the Principal Secretary, the Internal Auditor-General or Head of Internal Audit, shall not use brown ink or brown pencil in recording or transacting any official financial transaction.

Restricted use of brown ink.

16. (1) Financial records and documents shall be written in indelible ink.

Use of indelible ink.

(2) An entry in a financial record or document shall not be obliterated, erased or altered by being written over.

(3) Payment in connection with any document bearing an alteration, obliteration or erasure shall be refused by the relevant public officer or any other person unless countersigned, but this shall not apply to a cheque or official receipt.

(4) A person who contravenes the provisions of this regulation commits an offence under the Act.

## PART II—CORPORATE MANAGEMENT

17. (1) Every national government entity to which the Act and these Regulations apply shall include in their annual financial report as provided for under section 81 of the Act, a statement by each entity's Accounting Officer on compliance of the entity with these Regulations under this part.

Corporate governance.

(2) Where the entity is not fully compliant with these Regulations, the Accounting Officer of that entity shall identify the reasons for non-compliance and indicate the steps being taken to become compliant.

(3) The statements made in the report under this regulation shall be submitted to the Cabinet Secretary.

18. (1) There is established in every national government entity a committee to be known as the Public Finance Management Standing Committee (hereinafter referred to as the "Standing Committee) to provide strategic guidance to the entity on public finance management matters.

Establishment of Public Finance Management Standing Committees.

(2) Each Standing Committee shall comprise of the following—

(a) the Accounting Officer as chairperson of the Standing Committee;



- (b) an officer designated by the Accounting Officer as secretary of the Standing Committee and who shall be either the head of the finance or accounts units or head of both finance and accounts units of the entity; and
- (c) heads of departments or administrative units dealing with public finance management matters.

(3) The Standing Committee shall meet as often as is necessary but at least once every quarter so as to coordinate management of public finance for entities and shall be accountable to the Cabinet Secretary responsible for the entity or in case of Parliament, Judiciary, Independent Offices and Commissions, to the head of that entity.

(4) The Standing Committee may establish sub-committees for the better carrying out of its roles and responsibilities under this regulation.

19. (1) The Standing Committee shall generally be responsible for—

Role and responsibilities of the standing committee.

- (a) ensuring that there is prioritization on resources allocated to a national government entity for the smooth implementation of the entities mission, strategy, goals, risk policy plans and objectives;
- (b) regularly reviewing, monitoring budget implementation and advice on the entities accounts, major capital expenditures and reviewing performance and strategies at least on a quarterly basis;
- (c) identifying risks and implementation of appropriate measures to manage such risks or anticipated changes impacting on the entity;
- (d) reviewing on a regular basis the adequacy and integrity of the entity's internal control, acquisition and divestitures and management information systems including compliance with applicable laws, regulations, rules and guidelines;
- (e) establishing and implementing a system that provides necessary information to the stakeholders including stakeholder communication policy for the entity in line with Article 35 of the Constitution;
- (f) monitoring the effectiveness of the corporate governance practices under which the entity operates and propose revisions as may be required, from time to time;
- (g) monitoring timely resolution of audit issues; and
- (h) any other matter referred to it from time to time by the responsible Cabinet Secretary or in the case of Parliament, Judiciary, independent office and commissions, the head of that entity.

(2) The Standing Committee shall submit a quarterly report of its work including any recommendations to the responsible Cabinet

Secretary or in case of Parliament, Judiciary, Independent Offices and Commissions, to the head of that entity.

20. The Accountant-General Department shall be responsible for—

Duties and responsibilities of the office of the Accountant-General.

- (a) advising the national government on accounting and reporting matters;
- (b) overseeing the implementation of the approved government accounting standards;
- (c) designing and development of governments' accounting systems both manual and computerized;
- (d) providing advice to national government on the best and appropriate financial reporting formats;
- (e) providing link between local and international accounting standards bodies on matters relating to public sector financial reporting;
- (f) developing guidelines for accounting staffing levels and training to ensure technical competence and knowledge of financial accounting and reporting, advising on accounting and financial matters;
- (g) overseeing the implementation of the approved government accounting standards, policies, bases and concepts;
- (h) advising governments on cash and treasury management;
- (i) administering the Consolidated, Equalization and Contingencies Funds;
- (j) advising the Public Accounts Committee of Parliament on accounting matters.
- (k) administering the Scheme of Service for Accountants; and
- (l) policy development and research.

21. (1) Once the Annual Appropriation Bill or Supplementary Bill has been assented to, the Cabinet Secretary shall obtain presidential warrants authorizing issues from the Consolidated Fund in accordance with the respective Appropriation Acts.

Presidential warrants.

(2) The Presidential Warrants in paragraph (1) of this regulation shall be transmitted to the Controller of Budget by the Cabinet Secretary to authorize withdrawals in accordance with Article 228 of the Constitution.

22. On receipt of the Presidential warrant, the Cabinet Secretary shall issue a National Treasury warrant granting authority to Accounting Officers to incur expenditure for the year in respect of their votes.

National Treasury warrant.

23. (1) Accounting Officers shall, in accordance with Article 226(2) of the Constitution and section 68(1) of the Act, be accountable to the National Assembly—

Responsibilities of Accounting Officers.

- 
- (a) for management of their departments public finances, including whether sufficient resources have been allocated to a particular program;
  - (b) for ensuring the most effective means of achieving desired program outcomes are used;
  - (c) for maintaining effective systems of internal control and the measures taken to ensure that they are effective; and
  - (d) for measures taken to prepare the financial reports that reflect a true and fair financial position of the entity.
- (2) In addition to the responsibilities of Accounting Officers provided for in the Act, an Accounting Officer designated under the Constitution, the Act or any other Act, shall —
- (a) comply with any tax, levy, duty, pension, commitments and audit commitments as may be provided for by legislation;
  - (b) where he or she reasonably believes that an unauthorized, or irregular expenditure has occurred, immediately report, in writing, particulars of the expenditure to the relevant authority with a copy to the National Treasury; or
  - (c) before transferring any funds to an entity within or outside government, ensure that there is a written assurance from the entity that it shall implement effective, efficient and transparent financial management and internal control systems, or, if such written assurance is not or cannot be given, render the transfer of the funds subject to conditions and remedial measures requiring the entity to establish and implement effective, efficient and transparent financial management and internal control systems;
  - (d) enforce compliance with any prescribed conditions if the respective government entity gives financial assistance to any other entity or person in accordance with the law;
  - (e) take into account all relevant financial considerations, including issues of propriety, regularity and value for money, where policy proposals affecting the Accounting Officer's responsibilities are considered, and where necessary, bring those considerations to the attention of the relevant authority;
  - (f) promptly consult and seek the prior views of the National Treasury on economic viability and financial implications on any new entity which a state department, or state organ intends to establish or in the establishment of which it took the initiative;
  - (g) not commit national government entities to any liability for which money has not been appropriated provided that expenditure for projects or programs implemented beyond one financial year is provided for in the subsequent financial years; and

- (h) comply, and ensure compliance by national government entities with the provisions of the Act and these Regulations.

24. (1) The Accounting Officer of a national government entity may delegate to a public officer, in writing, any of the Accounting Officer powers or functions under the Act or these Regulations.

Delegation by the Accounting Officer.

(2) In exercising powers and functions under a delegation, the public officer shall comply with any lawful directions of the Accounting Officer.

(3) The delegation in this regulation may include the authority to incur expenditure in accordance with any limits prescribed by the Accounting Officer.

(4) Delegation of power does not take away the responsibility of the accountability from the Accounting Officer.

25. (1) An accounting officer may authorize a public officer under their national government entity to be an Authority to Incur Expenditure Holder (AIE).

Designation of public officers as AIE Holder.

(2) An Accounting Officer who finds it necessary to authorize a public officer in another Ministry or county government to incur official expenditure on his or her behalf, shall do so by issuing an Authority to Incur Expenditure addressed to the Accounting Officer of the national government or county government entity.

(3) The designation of AIE Holder shall be in writing in the form prescribed by the National Treasury.

(4) An Accounting Officer shall maintain a register of all AIE Holders designated under the Act.

(5) Where an Accounting Officer delegates this authority, the accounting officer shall remain responsible for any expenditure incurred as a result of that delegation.

### PART III—FISCAL STRATEGY AND MACRO-ECONOMIC FRAMEWORK

26. (1) In addition to the fiscal responsibility principles set out in section 15 of the Act, the following fiscal responsibility principles shall apply in the management of public finances—

Fiscal responsibility principles.

- (a) national government's expenditure on the compensation of employees (including benefits and allowances) shall not exceed 35 percent of the national government's equitable share of the revenue raised nationally plus other revenues generated by the national government pursuant to Article 209 (4) of the Constitution;
- (b) for the avoidance of doubt, the revenue referred to in paragraph (a) shall not include revenues that accrue from extractive natural resources, including oil and coal;
- (c) the national public debt shall not exceed 50 percent of Gross Domestic Product (GDP) in net present value terms;

- (d) the annual fiscal primary balance shall be consistent with the debt target in paragraph (b).
- (e) for avoidance of doubt, the requirement under section 15 (2) (a) of the Act shall exclude the loan redemption receipts for on-lent loans but shall include loan interest receipts and penalties on loans; and
- (f) pursuant to section 15(5) of the Act, the national government expenditure on development shall be at least thirty percent in line with the requirement under Section 15(2)(a) of the Act,
- (g) if the national government does not achieve the requirement of regulation 15(1)(f) above at the end of that financial year, the Cabinet Secretary shall submit a responsibility statement to Parliament explaining the reasons for the deviation and provide a plan on how to comply with the provisions of section 15 (2)(a) of the Act in the subsequent years.

(2) The Cabinet Secretary shall, in line with prudent management of risks envisioned in section 15(2)(e) of the Act, in the budget policy statement, include a statement of fiscal risks outlining the potential policy decisions and key areas of uncertainty that may have a material effect on the fiscal outlook and the statement and shall further include—

- (a) fiscal risks arising from macroeconomic shocks, including matters touching on real GDP growth, inflation, commodity prices, and interest and exchange rates and adverse impacts from regional and international economy;
- (b) potential policy decisions affecting revenue, tax payer behavioural responses and court decisions that are likely to affect revenue bases and overall tax collections and revenue and government income, which may include tax concessions (or tax expenditures), increase in tax rates, tax minimisation and avoidance by tax payers and rates;
- (c) potential policy decisions that could increase or decrease expenses depending on decisions taken, and which constitute risks to the fiscal forecasts only to the extent that they cannot be managed within existing baselines or budget allowances;
- (d) potential capital decisions that are risk to the fiscal forecasts only to the extent that they cannot be managed within existing national government balance sheet.
- (e) matters dependent on external factors such as the outcome of negotiations or international obligations; and
- (f) a list of contingent liability, including debt guarantees, pension liability and pending bills.

(3) Despite the provisions of paragraph (2) of this regulation, the Cabinet Secretary may exempt from disclosure items of risk if in his or her opinion the disclosure—

- (a) may prejudice substantial economic interests of Kenya, security or defines of Kenya, International relations of the government and on-going litigation and negotiation; or
- (b) may compromise the government in a material way in negotiation, litigation or commercial activity; or
- (c) may result in a material loss of value to the government.

(4)The Cabinet Secretary may disclose the specific fiscal risks if—

- (a) their impact in his or her view is significant enough;
- (b) a decision has not yet been taken but it is reasonably possible (but not probable) that the matter shall be approved or the situation is likely to occur;
- (c) it is reasonably probable that the matter will be approved or the situation will occur, but the matter cannot be quantified or assigned to particular years with reasonable certainty;
- (d) any other matters the National Treasury considers, using their best professional judgement that the matters may have a material effect on the fiscal and economic outlook but are not certain enough to include in the fiscal forecasts.

27. (1) For the avoidance of doubt, the Budget Policy Statement submitted under section 25(2) of the Act, shall contain an assessment of the current state of domestic economy by—

Budget Policy  
Statement.

- (a) providing an assessment of the impacts of regional and international economy on the medium macroeconomic framework and its outlook;
- (b) indicating allocation of available resources between the national and county levels of government and among county governments;
- (c) providing a macroeconomic framework underlying the budgetary and fiscal policy over the medium term;
- (d) providing a medium-term fiscal framework defining a top-down aggregate resource envelope;
- (e) providing a statement of fiscal responsibility principles, as specified in the Act and these Regulations and indicating whether the fiscal strategy adheres to these principles; and
- (f) providing a summary of programmes that are of national interest for the forthcoming year.

(2) In addition to the provisions under section 25(4) of the Act, the Budget Policy Statement shall contain a fiscal risk statement, including, any commitments and contingent liabilities not included in the fiscal forecasts, and all other circumstances which may have a material effect on the fiscal and economic forecasts and which have not already been incorporated into the fiscal forecasts, as well as information on the losses and outstanding payments of the State Corporations.

(3) Before tabling a report containing recommendations on the Budget Policy Statement for adoption by Parliament in accordance with section 25(7) of the Act, the relevant committee of Parliament shall seek the views of the Cabinet Secretary on its recommendations.

(4) Once the Budget Policy Statement is adopted by Parliament, it shall serve as the basis of expenditure ceilings specified in the fiscal framework.

(5) The ceiling for the development expenditure and personnel spending of the national government budget shall be approved by Parliament and be binding for the next two budget years.

(6) The National Treasury shall include a statement explaining any deviation to the provisions of paragraph (4).

28. (1) The macroeconomic framework shall contain information on the macroeconomic situation and forecasts for—

Macroeconomic framework.

- (a) the current budget year and three further years and actual outturns for the previous budget years including—
  - (i) gross domestic product and its components;
  - (ii) consumer prices and gross domestic product deflator;
  - (iii) current account position of the balance of payments;
  - (iv) savings and investment balance;
  - (v) assumptions underpinning the forecasts; and
- (b) the medium term macroeconomic forecasts affecting fiscal policy.

29. (1) The fiscal framework in the Budget Policy Statement shall contain—

Contents of a fiscal framework.

- (a) updated forecasts expressed in Kenya shillings and as a percentage of gross domestic product for the current budget year and three further years and actual results for the previous budget years for the consolidated general government budgets for—
  - (i) level of budgetary revenues by classification of the main categories of revenues;
  - (ii) level of budgetary expenditures by economic and functional classifications;
  - (iii) capital expenditures;
  - (iv) the overall balance and primary balance position;
  - (v) level of public debt and publically guaranteed debt;
  - (vi) key assumptions on which the above numbers are based;
  - (vii) sensitivity analysis taking account of possible changes in macroeconomic and other conditions; and

- (viii) any other information the Cabinet Secretary determines is material to fiscal strategy;
  - (b) an explanation of the fiscal policies in relation to fiscal responsibility principles, and any temporary measures to be implemented to ensure compliance, if necessary.
  - (c) an analysis and explanation of—
    - (i) revenue policy, including planned changes to taxes and policies affecting other revenues;
    - (ii) deficit and debt policy, including an analysis of debt sustainability; and
    - (iii) expenditure policy, including expenditure priorities, aggregate expenditure intentions, including for the consolidated budget, county consolidated budgets; and expenditure ceilings and other targets or limits implied by or required by the fiscal responsibility principles;
  - (d) an analysis of the consistency of the updated fiscal strategies with the previous fiscal strategies, providing an explanation of any significant changes.
- (2) The Cabinet Secretary shall gazette effective dates and give general guidelines and formats for preparing a consolidated general government accounts for statistical purposes.

30. (1) The fiscal framework in regulation 29 , may be revised as a result of—

Revisions to the fiscal framework.

- (a) a significant and unexpected change in macroeconomic indicators and assumptions ; or
- (b) policy changes arising from change of government.

#### PART IV—BUDGET PREPARATION

31. (1) The Accounting Officer shall ensure that the draft estimates relating to her or his department are prepared in conformity with the Constitution, the Act and these Regulations.

Responsibility for preparing annual estimates of expenditure.

(2) The Accounting Officer is responsible, in particular for ensuring that—

- (a) all services which can be reasonably foreseen are included in the estimates and that they are within the capacity of her or his national government entity during the financial year;
- (b) the estimates have been prepared are complete and accurate as possible;
- (c) the estimates have been framed with regard to economy and efficiency;
- (d) the requisite authority has been obtained, where necessary, before provision is made in the estimates; and
- (e) the estimates are submitted to the National Treasury in the manner and format to be issued by the Cabinet Secretary.



32. (1) The budget preparation process for the following financial year (N+1) shall start not later than the 30<sup>th</sup> August of the current financial year (N) with the issuance of the annual budget circular by the Cabinet Secretary and in compliance with formats and recommendations contained in these circulars or guidelines, instructions and the financial manual.

Budget preparation process

(2) The budget sector working groups shall, on the basis of budget sector ceilings contained in the Budget Review and Outlook Paper (BROP), submit by January of each year (N) the sector reports to the National Treasury which shall include printed estimates for the current year (N) and for the forthcoming financial year (N+1) and two outer years on a rolling basis (N+2), (N+3).

(3) The estimates for the sector referred to in paragraph (1) shall be consistent with regulation 29.

(4) Budget proposals shall be submitted in the prescribed formats that support program-based budgeting and classification of expenditure in economic classes.

(5) All budget proposals shall be supported by the national government entity' strategic plan.

(6) The preparation and submission of estimates shall be done exclusively through prescribed automated integrated financial management systems.

(7) On receipt of sector reports from sector chairs, the Cabinet Secretary shall convene public sector forums to receive inputs from the public.

(8) The proposed sector ceilings for the next three financial years contained in the Budget Review and Outlook Paper (BROP) may be firmed up or readjusted in the Budget Policy Statement submitted in February of financial year (N) and adopted by Parliament by February 28 of same financial year (N).

(9) The approved Budget Policy statement shall be published on the National Treasury website.

(10) Following the approval of the Budget Policy Statement, the national government entities, or agencies shall finalize their estimates for years (N+1), (N+2) and (N+3) by March 31 of Financial year (N) and submit to the Cabinet Secretary.

(11) Budget estimates shall be reviewed and consolidated and the draft budget estimates submitted to Cabinet by April 15<sup>th</sup> of the financial year (N).

(12) Budget estimates of the national government entities, or agencies shall be reviewed and consolidated and the annual budget estimates submitted to Parliament, by April 30 of financial year (N).

33. Unless provided otherwise in the Act, these Regulations or any other guidelines developed in furtherance of the Act or these Regulations, the following guidelines shall be observed at all times during budget formulation and approval—

Budget guidelines.

- (a) all revenue and expenditure shall be entered into the national government budget estimates ;
- (b) expenditure entered in national government budget estimates shall be authorised for one financial year only;
- (c) budget shall be balanced;
- (d) the Kenyan shillings shall be the unit of account for drawing up and implementation of the national government budgets, as well as the presentation of those accounts;
- (e) total budget revenue shall cover total budget expenditure and therefore —
  - (i) except as provided by legislation, there shall be no use of specific revenue to finance specific expenditure; and
  - (ii) appropriation shall be for a specific purpose or a specific programme or item of expenditure; and
- (f) budget estimates shall take into account expenditure priorities which contributes to the realization of the required output and desired policy outcome.

34. The budget ceiling contained in the Budget Policy Statement shall take into account —

Determination of budget ceilings.

- (a) the aggregate resource envelope following the forecast of major revenue and expenditure categories (the latter according to both economic and administrative classification);
- (b) the non-discretionary expenditure (debt service, wages and other related items);
- (c) the overall expenditure taking into consideration the fiscal rules;
- (d) breakdown of the overall expenditure into recurrent and development expenditure by sector ceilings; and
- (e) expenditure priorities as set out in national government policies.

35. (1) Each Accounting Officer may cause any proposed budget estimates to be examined and reported on by the internal audit unit of that national government entity.

Budget estimates audit

(2) The Accounting Officer referred to in paragraph (1) shall take into account any recommendations made in respect thereto before submitting estimates to the National Treasury.

(3) A person who fails under this regulation to provide information, or submits information which that person knows to be misleading or incorrect shall have committed an offence under the Act.

36. (1) On receipt of estimates from Accounting Officers the Cabinet Secretary shall cause to be conducted Budget discussions to

Budget review process.

review estimates of the entities concerned in order to ensure that these plans and estimates are in accordance with the macro-economic policy and fiscal framework.

(2) Where the budget review in paragraph (1) necessitates changes, the Cabinet Secretary, may require an Accounting Officer to make adjustments to the estimates.

37. Appropriation Bills shall provide for —

- (a) the Votes and programs of the financial year;
- (b) financial provision in respect of certain activities of the national governments during that financial year; and
- (c) enabling the withdrawal out of the Consolidated Fund, or any other national public fund.

Provisions in  
Appropriation Bills.

38. (1) Where the Appropriations Act is not assented to or is not likely to be assented before the first working day of the financial year, the Speaker to the National Assembly, with approval of National Assembly, shall communicate to the Cabinet Secretary grant of authority to withdraw from the Consolidated Fund of monies of an amount not exceeding one-half of the amount included in the estimates in accordance with section 39(7) of the Act.

Vote on account.

(2) Accounting officers shall make necessary entries in their books in respect of the amount of the vote on account approved.

(3) Moneys withdrawn under paragraph (1) shall be for the purpose of meeting expenditure on the government's programmes and activities in respect of the financial year—

- (a) up to fifty (50%) percent of the estimated of budget for the financial year submitted to the National Assembly; or.
- (b) until such a time the Appropriation Act is assented to.

(4) Funds withdrawn from the Consolidated Fund under this regulation may be utilized only for services for which funds have been provided for in the budget estimates submitted to National Assembly.

(5) The funds provided for in paragraph (2) shall be regarded as forming part of the funds appropriated in the relevant annual budget estimates for that financial year.

39. Where Parliament approves any changes in the annual estimates of budget under section 39 of the Act, any increase or reduction in expenditure of a Vote, shall not exceed one (1%) percent of the Vote's ceilings'.

Approval of the  
Annual Budget  
Estimates by the  
National Assembly

40. (1) Each Accounting Officer shall, within the guidelines of the supplementary budget circular and in conformity with budget guidelines issued by the Cabinet Secretary, prepare revised budget estimates in the format to be issued by the Cabinet Secretary.

Supplementary  
budgets estimates

(2) Prior to incurring any expenditure under paragraph (1), Accounting Officers shall seek the approval of the National Treasury, and if approval is granted by the Cabinet Secretary, it shall be

communicated to the Accounting Officers through a notification which shall be copied to the Auditor-General and the Controller of Budget.

(3) The purpose for which approval is sought for a supplementary budget shall be —

- (a) unforeseen and unavoidable, in circumstances where no budget provision was made; or
  - (b) unavoidable, in circumstances where there is an existing budgetary provision which however is inadequate.
- (4) For purposes of paragraph (3), the following shall not be considered unforeseen and unavoidable expenditure—
- (a) expenditure that, although known when finalising the estimates of the original budget, could not be accommodated within allocations; and
  - (b) tariff adjustments and price increases.

(5) Accounting Officers may seek supplementary budget if the expenditure cannot be met by budget reallocation under section 43 of the Act.

(6) The request for supplementary budget in paragraph (5) shall be presented in a format that facilitates comparison with the original budget and shall contain all the information necessary to enable a decision on the application to be reached and shall include—

- (a) the Vote, program, sub-programme and broad expenditure category which it is desired to supplement, the original sum voted thereon and any supplements which may have since been added;
- (b) the actual expenditure and the outstanding liabilities or commitments against the item on the date when the request is made;
- (c) the amount of the supplement required, the reasons why the supplement is necessary and why it has not been possible to keep within the voted provision;
- (d) the basis for the calculation underpinning the supplementary;
- (e) the proposed source of financing of the additional expenditure;
- (f) an analysis of the fiscal impact of the additional expenditure, or of the implications, if any, for the planned outputs and outcomes of the affected programmes;
- (g) any implied deviation from the Medium Term Expenditure Framework (MTEF) and the financial objectives; and
- (h) the latest fiscal projections.

(7) The national government entity requesting additional funds through a supplementary budget process shall submit a memorandum to the National Treasury on a date determined by National Treasury.

(8) For the avoidance of doubt, budget allocations for new policy options and service delivery initiatives shall only be considered when introduced in the annual estimates in accordance with the procedure laid down in the Act and these regulations.

(9) In approving any estimates under sections 43 and 44 of the Act, the National Assembly approval shall not exceed ten (10) percent of the approved budget estimates of a program or Sub-Vote unless it is for unforeseen and unavoidable need as defined in section 21 of the Act.

41. (1) The national government budget estimates and each county government's budget estimates shall be prepared, accounted for and reported in accordance with the Government of Kenya budget classification and chart of accounts issued by the National Treasury.

Budget classification and the standard chart of accounts.

(2) As much as practicable, these classifications shall be designed to support financial and economic reporting requirements in the Act and generally accepted international standards.

#### PART V – BUDGET EXECUTION

42. (1) Overall control of national government budget execution shall be exercised through strict application of the following general rules, which shall apply to all transactions with the specific exception of debt service payments –

General rules relating to budget Execution.

- (a) debt service payments shall be a first charge on the Consolidated Fund and the Accounting Officer shall ensure this is done to the extent possible that the government does not default on debt obligations;
- (b) debt payments shall be made whether or not they meet the general rules provided that the Cabinet Secretary reporting of any excess over appropriations, with full explanations of the circumstances, to Parliament in the next quarterly reporting cycle; and
- (c) other than temporary treasury liquidity management operations, no payment shall be made from the Consolidated Fund as a direct charge, except under an item identified in the annual budget estimates.

43. An Accounting Officer shall –

Accounting Officers to exercise budgetary control measures.

- (a) sign financial statements thereby making himself or herself responsible for their correctness;
- (b) ensure that public funds entrusted to their care are properly safeguarded and are applied for purposes for only which they were intended and appropriated by the National Assembly;
- (c) ensure all appropriation-in-aid due to national government entity are collected and properly accounted for in accordance with the relevant laws, rules and regulations;

- (d) manage control and ensure that policies are carried out efficiently and wastage of public funds is eliminated; and
- (e) ensure each national government entity has an audit committee in place.

44. (1) Accounting Officers shall provide the National Treasury with an annual cash flow plan as a requisition for funds needed for that financial year.

Accounting Officers to request cash on the basis of an approved quarterly cash disbursement schedule.

(2) National government entities shall execute their approved budgets based on the annual appropriation legislation, and the approved annual cash flow plan with the exception of unforeseen and unavoidable spending dealt with through the Contingencies Fund, or supplementary estimates.

(3) The annual cash flow plans prepared by Accounting Officers shall be broken down into a three months rolling basis and shall be adjusted to reflect any implementation realities in consultation with the National Treasury.

(4) As far as possible, quarterly cash flow projections prepared by the Accounting Officers shall be supported by a procurement plan approved in accordance with the Public Procurement and Disposal Act.

No. 3 of 2005.

45. (1) The National Treasury shall consolidate all expenditure requirements and projections as forwarded by Accounting Officers, compare with the projected revenues including net domestic borrowing, and thereafter in consultation with Accounting Officers, agree an indicative annual cash flow forecast limit for that financial year.

Consolidation and approval of cash limit to be communicated to accounting officers.

(2) The National Treasury shall issue a National Treasury circular communicating the cash flow projections agreed with the Accounting Officers.

(3) In the event of unanticipated cash flow fluctuations, the National Treasury shall inform the Accounting Officers through a circular requesting them to review and submit revised cash flow projections in line with the guideline set out in the circular.

46. (1) The basis for requisition of funds for grant of credit on the account of the accounting officer for authorization of a withdrawal by the Controller of Budget from the national exchequer account shall be based on the approved cash flow plans communicated to that accounting officer to the National Treasury.

Release of funds to meet expenditure.

(2) Release of Funds from the Consolidated Fund to national government entities shall be in accordance with the authority granted by the Controller of Budget together with the written instructions of the National Treasury.

(3) The National Treasury shall make requisition from the Controller of Budget as necessary for the exchequer withdrawal of funds which shall be placed to the credit of an accounting officers' entity account.

(4) Pursuant to the grant of credit in paragraph (3), the National Treasury shall issue an exchequer notification informing the accounting officer of the amounts authorized.

(5) The National Treasury may require accounting officers to review their cash flow plans in line with changes in revenue realization, shortfalls in borrowing and unforeseen expenditures.

(6) The National Treasury shall publish and publicize the quarterly liquidity position reports reflecting the impact of revenue collection efforts, spending and public debt operations on the cash position of government.

47. (1) The Accounting Officer shall inform his or her responsible Cabinet Secretary immediately of any circumstances that are likely to affect materially the budgetary results either through revenue and expenditure or other receipts and payments of the national government entity.

Budget Variation.

(2) The Accounting Officer shall inform his or her responsible Cabinet Secretary of actions taken to mitigate any budget variations.

(3) The responsible Cabinet Secretary shall take the necessary steps to bring to the notice of the Cabinet Secretary, any warnings of significant or material budget variations.

48. (1) For purposes of section 43(3) of the Act, Accounting Officers, may authorize reallocation of funds within programmes or sub-votes provided that—

Budget reallocation.

- (a) this does not affect the total voted provision;
- (b) the provisions in the budget of the programme or sub-vote from within which the funds are to be transferred are unlikely to be utilized;
- (c) reallocation is in accordance with donor conditions in the case of reallocation impacting on donor-funded expenditure;
- (d) the reallocation does not affect the voted provisions from wage to non-wage expenditure or from capital to recurrent expenditure; and
- (e) allocations earmarked by the National Treasury for a specific purpose may not be used for other purposes, except with Treasury's approval.

(2) Accounting Officers shall keep a register of all budgetary reallocations and use it to prepare a report of all reallocations to the National Treasury not later than the 10<sup>th</sup> day of each month and the report shall state measures taken by the Accounting Officer to mitigate against future reallocations.

(3) The report referred to in paragraph (2) shall state the impact that the reallocations may have had on program objectives, planned program outputs and outcomes.

(4) The National Treasury shall consolidate all reallocations and include them in the next revised budget.

(5) The reallocations under this regulation shall be approved by the respective Accounting Officer of the entity.

49. The reallocations by the National Treasury in terms of section 43(2) of the Act shall be included in the next revised budget for submission to and approval by the National Assembly.

Reallocation  
between  
programmes and  
sub-votes.

50. (1) For an accounting officer to access the contingencies fund in accordance with section 21 of the Act, that accounting officer shall first identify resources within his or her vote through identification of savings for re-allocation before applying for financing from the Contingencies Fund.

Advances from the  
Contingencies Fund

(2) If an accounting officer is satisfied that there are no savings within his or her vote and the need meets the criteria set under section 21 of the Act and paragraph (1), the accounting officer shall—

- (a) give reasons why he or she believes the need meets the criteria under section 21 of the Act;
- (b) issue a certificate, countersigned by the Cabinet Secretary of that entity, confirming that the need meets the criteria under section 21 of the Act and paragraph (1); and
- (c) submit the request to the Cabinet Secretary for consideration.

(3) The Cabinet Secretary shall consider the request and assess if the need meets the criteria set under section 21 of the Act and may approve it or reject it.

51. (1) All commitments for supply of goods or services shall be done not later than May 31<sup>st</sup> each year except with the express approval of the accounting officer in writing.

Commitment for  
goods or services.

(2) Expenditure commitments for goods and services shall be controlled against spending and procurement plans approved by the responsible Accounting Officer, based on allocations and allotments from approved budgets.

(3) The Accounting Officer of that government entity shall make an expenditure commitment only against the procurement plan approved for that entity in accordance with the Public Procurement and Disposal Act, 2005 and the Regulations made thereunder.

No.3 of 2005.

(4) At minimum, a procurement plan shall include proper descriptions of the procuring items, unit cost, the estimated contract value, and the procurement method relating to the annual portion of a multi-year contract and delivery schedule.

(5) Any changes to approved procurement plan during the year shall be approved by the responsible Accounting Officer in consultation with the Cabinet Secretary of the entity.

(6) Any public officer who contravenes the provisions of this regulation commits an offence.



52. (1) Any public officer who holds any post involving, in any degree, the management of public funds, and in particular every officer to whom is delegated the power to expend or receive such funds shall in the Government's interest and in his own interest, be aware of the following essentials of vote control procedures—

Vote Control  
Procedure.

- (a) no public officer can spend or commit funds until he or she has been properly authorized by means of an Authority to Incur Expenditure (AIE) to do so;
- (b) AIE holders shall be made to understand that the limit to which they may spend is that prescribed by the authority and not their expectations, however justified these may seem;
- (c) the AIE issued to a public officer shall in the minimum contain—
  - (i) the AIE number and to whom it is issued;
  - (ii) the authorized total expenditure;
  - (iii) a description of the expenditure item; and
  - (iv) the account code to which the expenditure is to be debited;
- (d) when the AIE is issued by the Ministry or State Department or Agency, the allocation shall be entered as a commitment in the Ministry's or State Department's or Agency's master vote book so as to ascertain at all times the availability of uncommitted funds;
- (e) accounting officers whose votes cover field programmes and projects shall issue AIE's to their field officers not later the 15th day of each quarter;
- (f) public officers issued with AIE's shall also be informed in writing that the actual expenditures should not exceed the limits authorized in the AIE's;
- (h) all AIE's to field public officers shall show the following details at the minimum and copies submitted to the Internal Audit Department of the National Treasury and the Auditor-General—
  - (i) the gross total amount of funds per vote allocated and applied against the AIE issued; and
  - (ii) the total amount of AIA to be collected;
- (j) each accounting officer shall cause records to be kept in such a form as will clarify at any time, in respect of each of his or her votes—
  - (i) the total amount of expenditure sanctioned for service of the year;
  - (ii) the amount of the expenditure charged; and

(iii) any further known liabilities in respect of the year;

(k) the AIE holders shall note the following in terms of control of expenditure—

(i) there shall be no divided responsibility and only the officer to whom the AIE has been issued is permitted to commit or incur expenditure against it; and

(ii) an AIE holder shall not wait for suppliers to submit invoices in order to clear his or her commitment, but he or she shall regularly have his or her outstanding commitments checked and enquiries made from the suppliers, particularly in the last three months of the financial year.

53. (1) A local purchase order or local service order shall be valid for a period of thirty days from the date of issue.

Receipt of goods and services beyond the stipulated period.

(2) Any public officer who receives goods or services beyond the stipulated period specified in paragraph (1) commits an offence under the Act.

(3) Any public officer involved in the processing of a payment with regard to goods or services delivered after due date shall inform the accounting officer of this anomaly before proceeding to process the payment.

(4) The public officer in charge who fails to ensure that the local service order or local purchase order is cancelled after thirty days commits an offence under the Act.

54. (1) Except as provided for in the Act and these Regulations, an Accounting Officer of an entity may not authorize payment to be made out of funds earmarked for specific activities for purposes other than those activities.

Unauthorised spending.

(2) A public officer who makes a payment contrary to paragraph (1) commits an offence under the Act.

55. (1) An Accounting Officer of a national government entity shall not later than the 10th day of each month submit a monthly financial and non-financial budgetary report in the format to be issued by the Cabinet Secretary relating to the activities of his or her national government entity for the preceding month to the National Treasury with copies to the Controller of Budget and the Auditor-General.

Monthly reporting obligations by Accounting Officers.

(2) The contents of the report under paragraph (1) shall include—

(a) actual revenues including appropriations in aid;

(b) actual expenditures classified in economic classification as follows—

(i) compensation to employees;

(ii) use of goods and services;

- (iii) transfer to other levels of government;
- (iv) capital expenditure;
- (c) pending payments with an age of over ninety days;
- (d) a projection of expected expenditure and revenue collection for the remainder of the financial year;
- (e) when necessary, an explanation of any material variances; and
- (f) a summary of the steps that are to be taken to ensure that the projected expenditure and revenue remain within budget.

56. (1) A national government entity may enter into a contract which will impose financial obligations on the national government entity beyond a financial year.

Contracts with multi-year financial implications.

(2) Contracts imposing financial obligations in excess of one year may only be concluded by the accounting officer only if—

- (a) the accounting officer discloses all finalized and signed contracts by the beginning of a financial year;
- (b) they are budgeted for first before new projects are budgeted by the accounting officer of the national government entity; and
- (c) the accounting officers secure the resources required in line with the financing requirements set out in the contracts.

57. (1) The national government may make policy changes in a financial year leading to—

Reorganization of government functions.

- (a) creation of an additional Ministry or State Department and national government entities;
- (b) transferring certain functions or services of an existing Ministry, State Department and agencies to —
  - (i) another existing Ministry, State Department; or Agency
  - (ii) a new Ministry or State Department or Agency;
- (c) abolition of an existing Ministry or State Department or Agency and transferring its functions or services to one or more Ministry or State Department or Agency.

(2) Before embarking on accounting entries and other adjustments, it shall be necessary to agree on the actual status of the vote in respect of the following aspects of the affected functions and services based on the ledger balances of a trial balance to be drawn on a date to be communicated by the National Treasury—

- (a) the gross budgetary provision;
- (b) the approved A.I.A, if any, and whether in cash or credit purchase;
- (c) the approved development partner assistance and entity own revenue whether in cash or credit purchase, if any;

- (d) the net budgetary provision;
- (e) the gross expenditure incurred;
- (f) the amount of entity own revenue and development partner assistance applied in cash or in credit purchases; and
- (g) the sharing of amounts held in the below-the-line group of accounts.

(3) When a Ministry or State Department or Agency is abolished, its vote shall cease to function and consequently it shall be necessary to extract a trial balance as at the date of abolition and to ascertain the state of financial affairs of that vote which shall include—

- (a) the budgetary provision;
- (b) expenditure incurred; and
- (c) cash balance

(4) The statement shall be accompanied by analysis of the below the line group of account on the basis of which it should then be agreed on the amount of the related budget provision, expenditure incurred and the below the line balances to be shared out, if necessary.

(5) The Supplementary Appropriation Act shall provide the details of the affected votes and the National Treasury shall inform the affected Accounting Officers of the effective date when they shall effect accounting entries in their books and other necessary inter-vote adjustments.

(6) The book-keeping entries of a new vote shall be affected as outlined in the National Treasury Guidelines issued.

#### PART VI—MANAGEMENT OF REVENUE AND OTHER RECEIPTS.

58. (1) Government receipts may be classified into domestic receipts and external receipts.

Classification of Government Revenues.

- (2) Domestic receipts under paragraph (1) shall comprise of—
  - (a) domestic loans receipts;
  - (b) tax revenues; and
  - (c) non tax revenues including exchequer, non tax receipts and Appropriation in Aid.
- (3) External receipts under paragraph (1) shall comprise of —
  - (a) external Loans including exchequer loan receipts and direct payments or credit purchase; and
  - (b) external grants including exchequer grant receipts and direct payments.

59. (1) The estimates of revenues shall be in the format issued by the National Treasury and shall include—

Format of estimates of revenue.

- (a) the description of the source of revenue in terms of head code;
- (b) estimated revenues;

- (c) the receiver of revenue;
- (d) for each revenue head, there shall be shown revenue items; and
- (e) the amounts and the nature of receipts.

(2) The estimates of revenue shall include the actual revenue for the two previous financial years (N-2), (N-1), the current financial year revenue estimates (N), and the projected revenue estimates for the next two outer years (N+1) and (N+2).

60. (1) The following shall be the basic principles in deciding whether sums shall be applied as Appropriation-In-Aid—

Basic principles in deciding whether sums shall be applied as AIA.

- (a) receipts arising directly out of expenditure on a service, the primary purpose of which is not collection of revenue such as user fees, user charges, or sale of stores and may be Appropriated-In-Aid of the vote from which expenditure on the service is met;
- (b) Appropriations-In-Aid shall be applied against a vote;
- (c) where miscellaneous receipts are individually and collectively small, and circumstances of receipt unimportant in themselves, such receipts may be credited to Appropriations-in-Aid; and
- (d) sums due as Appropriations-in-Aid in the previous year should be credited to the Appropriations in Aid head of the year in which they are actually received.

(2) Despite the provision under paragraph (1), the Cabinet Secretary may designate any type of Appropriations-in-Aid as revenue in furtherance of certain government policies.

61. The following shall be the main forms of receipts which occur in development estimates—

Main forms of receipts in development estimates.

- (a) Appropriations-in-Aid inform of receipts collected by any authorized national government agency or derived from the sale of goods and services directly derived from projects contained in the appropriate expenditure head;
- (b) direct payments or Credit Purchases charged to the appropriate head representing expenditure on the cost of goods or services supplied and credited to the national government entity, but such transactions may be carried out only after National Treasury's advice;
- (c) loan and grant receipts through the national exchequer account; and
- (d) Tax and non-tax revenue through the national exchequer account.

62. (1) A receiver of revenue designated by the Cabinet Secretary under section 75 of the Act shall be responsible for the collection of,

Receiver of revenue.

and accounting for, such items of revenue as the Cabinet Secretary may specify.

(2) A letter for the designation of receiver of revenue under paragraph (1) shall indicate his or her responsibility and the manner in which he or she may delegate the duties of collection of revenue to officers under him or her or of another national government entity.

(3) Notwithstanding the provisions of paragraph (2), the receiver of revenue for loans and grants funds shall be the Principal Secretary to the National Treasury, and the Cabinet Secretary shall specify such items of revenue in the designation letter.

63. (1) In accordance with section 76 of the Act, the receiver of revenue shall authorize a public officer or any of the national government entities to be a collector of revenue for national government for the collection of, and accounting for, such items of revenue as the receiver of revenue may specify.

Collector of revenue.

(2) Except with the specific authority of the collector of revenue, in no case may a public officer whose duty involves the posting of assessment registers, rent rolls and similar documents be authorised to collect public moneys or to post collections into a cash book.

64. (1) An accounting officer and a receiver of revenue are personally responsible for ensuring that—

Responsibility for revenue management.

(a) adequate safeguards exist and are applied for the prompt collection and proper accounting for, all national government revenue and other public moneys relating to their Ministries, departments or agencies;

(b) adequate measures, including legal action where appropriate, are taken to obtain payment;

(c) official receipts are issued for all moneys paid to Government of Kenya.

(2) An accounting officer or receiver of revenue who experiences difficulty in collecting revenues due to the national government shall report the circumstances to the Cabinet Secretary without delay.

(3) Except with the authority of the Cabinet Secretary, no receiver of revenue or collector of revenue, may convert public moneys received in local currency into foreign currency and vice versa.

(4) All public moneys collected by a receiver of revenue or collector of revenue or collected and retained by a national government entity, shall be paid into the designated bank accounts of the national government and shall not be used by any public officer in any manner between the time of their receipts and payment into the bank except as provided by law.

(5) An Accounting Officer or receiver of revenue or collector of revenue shall take disciplinary measures in line with the relevant legislation against a public officer who contravenes the provisions of paragraph (4).

(6) An accounting officer or receiver of revenue or collector of revenue shall ensure adequate books of accounts are kept relating to revenue collection and management.

(7) A public officer who makes payment from monies collected under this regulation commits an offence under the Act.

65. (1) The Accounting Officer or receiver of revenue or collector of revenue shall prepare a quarterly report not later than the 15<sup>th</sup> day after the end of the quarter.

In-year reporting of revenue collection.

(2) The quarterly report in paragraph (1) shall include —

- (a) a statement of receipts and disbursements in such form as the Public Sector Accounting Standards Board may determine;
- (b) a statement of arrears of revenue which shall be classified by financial year; and
- (c) reasons for material differences between approved estimates and the actual revenue collected.

(3) The accounting officer or receiver of revenue or collector of revenue shall include in the report under paragraph (1), the following details in respect of each waiver or variation—

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

(4) The quarterly report under paragraph (1) shall be submitted to the National Treasury with a copy to the Auditor-General.

66. (1) The Accounting Officer of a national government entity may, when finalising their budgets, review all fees, charges or the rates, scales or tariffs of fees and charges that are not fixed by any law, and that relate to revenue accruing to the Consolidated Fund.

Fees for services rendered by the national government.

(2) An Accounting Officer shall obtain approval from the National Treasury for the proposed tariff structure.

(3) Information on the tariff structure shall be disclosed in the annual report, including information on exemptions, discounts, free services and any other aspect of material influence on the revenue yield.

67. (1) When a national government entity renders agency services to another national government entity or a county government, all revenue receipts collected shall be accounted for fully by the agent to the receiver of revenue or collector of revenue or accounting officer.

Agency services and revenue management.

(2) Any exception to paragraph (1) on the expenses arising from the revenue administration costs shall be expressly agreed between the national government entity and the respective receiver of revenue or collector of revenue or accounting officer based a service level agreement signed between them.

(3) When a national government entity renders agency services to a county government all revenue receipts including agency receipts collected shall be accounted for fully by the agent to the receiver of revenue or collector of revenue or accounting officer and the expenses arising from the revenue administration costs shall be agreed between the national government entity and the respective county government based a service level agreement signed between them.

(4) When a county government entity renders agency services to a national government entity, all revenue receipts including agency receipts collected shall be accounted for fully by the agent to the receiver of revenue or collector of revenue or accounting officer and the expenses arising from the revenue administration costs shall be agreed between the county government and the respective receiver of revenue or collector of revenue or accounting based a service level agreement signed between them.

(5) Claims for agency services rendered on behalf of another government entity, level of government, shall be based on actual revenue collected and accounted for and shall be supported by original vouchers and shall be reflected in their books of accounts of transacting institutions.

68. (1) Refunds of revenue may become necessary because of collections or over-collections made in error or because, although properly collected in accordance with an Act or regulation, provision exists under the Act or regulation for the revenue to be reclaimed under certain circumstances in the form of a rebate or drawback.

Refund of Revenue.

(2) Refunds of revenue and drawbacks under paragraph (1) shall be in accordance with the relevant legislation.

(3) Any refunds under paragraph (1) shall be provided for under an expenditure item appropriated by Parliament in an Appropriation Act.

(4) Where the collection, over-collection or drawback is made in the same financial year as that in which the revenue was originally collected it may be authorised by the officer prescribed in the relevant legislation to be charged as a debit item in the appropriate revenue head.

(5) The receiver or collector of revenue shall together with the refunds in paragraph (1) include assumptions underpinning the refund estimates.

(6) The estimates of refunds submitted under paragraph (5) by the receiver or collector of revenue shall include assumptions underpinning the refund estimates.

69. The annual, quarterly and monthly statements by a receiver of revenue submitted to the National Treasury under section 76(3) of

Format of annual and quarterly statements submitted



the Act shall be in the format to be gazetted by the Cabinet Secretary and shall at the minimum include—

by receivers of revenue.

- (a) the actual revenue received by the receiver and transmitted to the national exchequer account;
- (b) the actual revenue received by the receiver and not transmitted to the national exchequer account;
- (c) the revenue arrears due but not collected; and
- (d) a responsibility statement by the receiver of revenue on the revenue statement.

#### PART VII—MANAGEMENT OF GRANTS AND DONATIONS

70. (1) For purposes of this Part—

Definition of terms.

- (a) “grant agreement” means an instrument that gives the power to an agency to furnish money, property or materials to a grantee and the grantee has freedom to pursue the grants stated purpose, but the agency does not specify the matter of performance of the work and is not substantially involved in it;
- (b) “financing agreements” are a document detailing commitments for provision of goods, services and activities to be performed by an organisation for the awarding agency and contain specific objectives, direction, specifications, costs or methods of performance; and
- (c) “donor or development partner or external financier” is used in this Part interchangeably to refer to the providers of external resources.

71. (1) Upon approval by the Cabinet Secretary, an Accounting Officer may receive any grants, donation, sponsorship made in favour of the government entity irrespective of whether such sponsorship or grants or donation is in cash or in kind provided that the Accounting Officer confirms with the relevant national government entity that donations given in kind are—

Grants, Donations and sponsorships.

- (a) not harmful to health and the environment; and
  - (b) in good and serviceable condition.
- (2) All cash grants, donations or sponsorships shall be deposited in the Consolidated Fund provided that—
- (a) such grants, donation and sponsorship are from a credible source from a person in good standing with the Government of Kenya;
  - (b) such grants, donation and sponsorship are intended to address government development policies.
- (3) Where the purpose of the grant, donation, or sponsorship is not apparent, the Cabinet Secretary shall have the discretion to instruct the Accounting Officers on its application.

(4) A national government entity is not allowed to give another national government entity cash donations to augment the budgetary resources of designated departments.

(5) Grant, donations or sponsorships received during the year shall be disclosed in the annual and quarterly financial statements.

72. (1) Projects implemented through grants, donations and sponsorships shall be aligned to the national development policies.

Grants  
administration.

(2) In identification and designing of projects funded by development partners, the areas covered and amounts allocated shall be determined by objective criteria and as far as possible on need-based formula which may include geographical area, population and poverty index.

(3) The Accounting officer shall disclose the details under paragraph (2).

(4) All grants and donations shall be appropriated by national assembly before commencement of disbursements.

(5) Issues to do with tax exemptions, issuance of work permits, counter-part personnel, counter-part funding, office space, demand driven technical assistance, community contribution either in cash or in kind shall be clearly spelt out in the grant agreements, and the government and community contribution shall be properly assessed and quantified in all grant supported projects.

(6) National government shall ensure grants are factored in the budgets and counterpart funds appropriated accordingly.

73. (1) Where authorisation has been granted for the project to start, the Accounting Officer shall ensure public disclosure to the intended beneficiaries within thirty days of the allocation and disbursement of the grants.

Disclosure of  
authorisation and  
disbursement.

(2) After disbursement of grants, the accounting officer shall report within fifteen days after the end of each quarter to the intended beneficiaries on the expenditures and performance achieved in relation to the grant.

(3) During the project identification and design, the intended beneficiaries shall be involved through public participatory approach for planning.

(4) The views of the indented beneficiaries shall be received during public forums provided for under paragraph (3) and their views shall be considered appropriately or during budgeting process of the next budget cycle.

(5) Where non-compliance by an accounting officer with grant conditions is established through an audit or fiduciary review process, the Cabinet Secretary may suspend the disbursements and institute measures to recover any amounts misappropriated by the public officer.

*Accounting and reporting on donations and grants*

74. (1) All monies received by way of grants and donations shall constitute public monies and shall be paid into the Consolidated Fund.

Monies received by  
way of grants and  
donations to be paid  
into a designated  
account.

(2) The Cabinet Secretary shall make provisions in the budget estimates for grants and donations receivable in kind such as commodity aid for purposes of raising cash locally.

(3) Where the quantum of the grant or donation referred to in paragraph (2) is not known, a provision shall be included in the estimates and when the quantum becomes known a supplementary estimate shall be raised for the amount involved.

(4) Where grants and donations are receivable in kind, the value of such donations shall be determined and included in the estimate and reflected as expenditure in the financial year.

(5) Monies received for specified projects which have been paid into the Consolidated Fund shall be released when required to the appropriate project bank account.

(6) An accounting officer of a national government entity shall—

- (a) cause to be kept and maintained proper books of accounts and records in respect of all projects and donations;
- (b) ensure that whenever projects are completed, the project assets including buildings, plant, vehicles, furniture, fittings and equipment are properly recorded and handed over to the accounting officer in accordance with the financing agreement;
- (c) where no time frame is provided for the project, ensure that the assets are handed over within three months from the date of the closure of the project; and
- (d) in the absence of any instructions to the contrary, ensure that any unexpended balance standing in the credit of the project account is paid into the Consolidated Fund.

75. It shall be the responsibility of the National Treasury to ensure that—

Project selection criteria.

- (a) any project approved for financing through grants and donations has been approved by the accounting officer; and
- (b) the project feasibility study report has been inspected and approved by the relevant national government entity.

76. (1) For the purpose of disbursement of project funds, there shall be opened and maintained a project account for every project at Central Bank of Kenya unless it is exempted by the Cabinet Secretary, in writing, into which all funds shall be kept and such an account shall be known by the name of the project for which it is opened and each project shall maintain only one bank account.

Project bank accounts.

(2) All foreign currency designated bank accounts shall be kept at the Central Bank of Kenya for national government entities unless exempted in writing by the Cabinet Secretary under paragraph (1).

(3) Every payment or instruction for payment out of the project account shall be strictly on the basis of the approved estimates of budget and financing agreement.

77. The Accounting Officer of a project shall compile and maintain a record showing all receipts, disbursements and actual expenditure on a monthly basis in respect of every project and sub-project and shall—

- (a) make monthly interim financial returns;
- (b) make quarterly financial management returns;
- (c) submit a summary of the records for each quarter and year to the division responsible for external resources in the National Treasury not later than fifteen (15) days after the end of every quarter

Records of receipts and disbursements.

78. (1) Non-Governmental Organisations (NGO's) that implement development programs funded by public funds, including donor funding shall be accountable through regular financial reporting and submission of audited annual financial statements to the relevant accounting officer in a format prescribed by the Public Sector Accounting Standards Board.

Responsibilities of NGOs where the project is implemented by NGO.

(2) NGO's referred to under paragraph (1) shall be registered by the responsible national licensing authority and in accordance with the relevant law under which that authority is established.

79. (1) Documents to be attached to the financial reports and annual audited accounts in regulation 78 shall include a certificate of registration confirming that the NGO—

Documents to be attached by NGOs where the project is implemented by NGO.

- (a) is a body corporate and separate from its members, with perpetual succession;
- (b) can engage in public interest activities and public fund-raising throughout Kenya; and
- (c) is eligible for such fiscal or other benefits and privileges, as may be applicable to NGOs from time to time.

(2) In addition to requirements under paragraph (1), the NGO shall also submit—

- (a) its annual performance report outlining the activities undertaken by the NGO in the year;
- (b) an annual return reflecting details of its trustees, directors, office bearers and auditors;
- (c) its sources of funding;
- (d) in the event of any amendment to its Constitution or governance instrument during the financial year, a certified copy of such amendment; and
- (e) any such other information the NGO considers necessary.

#### PART VIII—TREASURY AND CASH MANAGEMENT

##### *Consolidated Fund*

80. (1) The National Treasury shall administer the Consolidated Fund in accordance with the constitutional provisions in Articles 206 and 209 (1),(2) and (4) in controlling revenue receipts to ensure that—

Composition of the Consolidated Fund.

- (a) all revenue receipts by the national government are paid into the national exchequer account, except revenue receipts reasonably excluded by the Constitution, the Act, or another Act of Parliament; and
- (b) withdrawals from the Consolidated Fund shall be done—
  - (i) in accordance with an appropriation by an Act of Parliament;
  - (ii) in accordance with Articles 222 or 223 of the Constitution;
  - (iii) as a direct charge against the Consolidated Fund as authorised by the Constitution or an Act of Parliament.

(2) The administrator of the Consolidated Fund shall keep proper books of accounts of the Consolidated Fund in accordance with standards and formats prescribed by the Public Sector Accounting Standards Board.

81. (1) Receivers of Revenue shall promptly deposit into National Exchequer Account all receipts due to the Consolidated Fund.

Process of receipts into Consolidated Fund.

(2) The Receivers of Revenue shall promptly pay the revenue received into the Consolidated Fund as soon as possible and in any case not later than five (5) days after receipt thereof.

(3) The National Treasury shall issue a receipt to a Receiver of Revenue to acknowledge the receipt of revenue thereof.

#### *Cash and Banking Arrangements*

82. (1) Subject to the provisions of section 28 of the Act, the following criteria shall be considered by the National Treasury before granting approval to a national government entity to open and operate a national government bank account—

Criteria for approval of opening and operating national government entities bank accounts.

- (a) all national government bank accounts shall be opened at the Central Bank of Kenya, except—
  - (i) where the Central Bank of Kenya has no branch;
  - (ii) it is expressly provided for under a financing agreement and with approval of the Cabinet Secretary;
  - (iii) where Central Bank of Kenya has confirmed in writing it is unable to offer banking facilities;
  - (iv) where the National Treasury has granted authority to an accounting officer or receiver of revenue or collector of revenue to open and operate a bank account in a commercial bank for purposes of revenue collection, and that commercial bank shall have a wide branch network and is government linked;
- (b) any national government entity which draws over seventy five (75) percent of its resources from the National Exchequer Account shall apply for opening and operating

bank accounts at the Central Bank of Kenya, unless exempted under paragraph (1);

(2) Where a national government entity is unable to comply with the provisions under paragraph (1), it may apply for grant of Cabinet Secretary approval to open and operate a bank account in a commercial bank under special circumstances.

(3) All national government entities operating bank accounts outside the provisions of paragraph (1) of this regulation, shall comply with the provisions under paragraph (1) within six (6) months from upon publication of these Regulations.

(4) Except with the prior authority of the National Treasury, no accounting officer may open a bank account for the deposit, custody or withdrawal of public moneys or other moneys for which he or she is responsible in his or her official capacity or for the transaction of official banking business.

(5) The authority of National Treasury shall be conveyed in writing to the responsible Accounting Officer with a copy to the Controller of Budget and the Auditor-General.

(6) National Treasury may prescribe the banking rules and the maximum balance which may be held in any official Treasury Single Account sub-account or other bank accounts, and if at any time this balance seems likely to be exceeded the officer operating the accounts shall consult National Treasury on the action to be taken.

(7) No official government bank account shall be overdrawn, nor shall any advance or loan be obtained from a bank account for official purposes beyond the limit, authorized by the National Treasury in line with section 28(4) of the Act.

(8) The authority in paragraph (7) shall be conveyed in writing to the responsible Accounting Officer and copied to the Auditor-General.

(9) Personal cheques shall not be deposited in an official bank account.

83. (1) The National Treasury shall be responsible for establishing sound cash management systems, procedures and processes, to ensure efficient and effective banking and cash management practices.

Guiding principles  
for cash  
management.

(2) For purposes of this regulation, sound cash management includes—

- (a) assessing the cash inflows and outflows expected at any one time;
- (b) ensuring payments, including transfers to other levels of government and national-government entities are made when due for efficient, effective and economical programme delivery and the government's normal terms for account;
- (c) avoiding accumulation of idle balances;

- (d) using short term borrowing only when it is necessary;
- (e) avoiding prepayments for goods or services unless required by the contractual arrangements with the supplier;
- (f) accepting discounts to effect early payment only when the payment has been included in the monthly cash flow estimates provided to the National Treasury;
- (g) pursuing debtors with appropriate sensitivity and rigour to ensure that amounts receivable by the government are collected and banked promptly;
- (h) recognising the time value of money and managing inventories to the minimum level necessary for efficient and effective programme delivery, and selling surplus or under-utilised assets.

(3) National government overdraft at the Central Bank of Kenya shall be retired by the end of the financial year.

84. Not later than the 31<sup>st</sup> January of each year, each Accounting Officer shall surrender to the National Exchequer Account unexpended voted money or excess Appropriations-in-Aid, as confirmed by Auditor-General in the audit report.

Surrender Of End-Year Surplus Cash Balances.

85. (1) All signatories in respect of cheques, or electronic payments and fund transfers shall be designated by the Accounting Officer and any changes in signatories shall be authorized by him.

Cheques and electronic payments.

(2) There shall be two authorized signatories to sign a cheque drawn or electronic payment or fund transfer on a national government bank account.

(3) The names and designation of those officers in paragraph (1) and their specimen signatures shall be advised to the bank where the account is held by the accounting officer, with copies of the advice sent to the National Treasury, and any change in signatories shall be advised in writing.

(4) The signatories under this regulation shall—

- (a) initial the counterfoil or enter with their personal passwords;
- (b) be equally responsible for the regularity of the payment; and
- (c) thoroughly scrutinize the documents supporting the payment.

(5) Spoilt cheques shall be marked prominently with the stamp “Cancelled”, and fixed securely to the cheque-list used for controlling the cheques issued each day.

86. (1) The Cabinet Secretary may establish a Cash Management Advisory Committee.

Cash Management Advisory Committee.

(2) The Cash Management Advisory Committee established under paragraph (1) shall be comprised of —

- (a) the Principal Secretary of the National Treasury who shall be the chair person or an officer designated by him or her;

- (b) the department responsible for matters relating to accounting policy within the National Treasury, which shall also provide the secretariat;
- (c) the department responsible for matters relating to economic affairs in the National Treasury;
- (d) the office of the public debt management in the National Treasury; and
- (e) the department responsible for matters relating to budget matters in the National Treasury;

(2) The responsibilities of the Cash Management Advisory Committee shall be determined by the Cabinet Secretary during its establishment.

87. (1) The office of the Accountant-General shall maintain a register of all Treasury Single Account sub-accounts and other bank accounts opened by national government entities, including public funds and donor funded projects.

Registers and records of government bank accounts.

(2) The office of the Accountant-General shall reconcile periodically with the government bank accounts list, maintained by the Central Bank of Kenya.

(3) The Accounting Officer of a national government entity shall, by the 30th September of each year, provide the National Treasury with an up-dated list of bank accounts held by the national government entity.

(4) The list referred to under paragraph (3) shall include the following information—

- (a) name of the bank where the account is held;
- (b) name of the bank account;
- (c) type of bank account;
- (d) signatories of the bank account;
- (e) date on which the bank account was opened;
- (f) the bank account number;
- (g) purpose for the bank account, if different from the main operational bank account of the government entity;
- (h) the bank account balances as at the 30th June each year; and
- (i) the reference number and date of the National Treasury, letter granting approval for opening and operating the bank account.

88. (1) The National Treasury, shall when granting authority to Accounting Officers to open and operate bank accounts, require them to include as a pre-condition to that bank, that the Cabinet Secretary may request bank statements for that account without any reference to the authorized bank signatories of that bank account.

Authority to have access to government bank accounts.



(2) The Cabinet Secretary may suspend the operations of any government bank account or impose certain conditions, if he or she reasonably believes the purpose of that account no longer exists, or that fraud or fraudulent transactions are being undertaken in that specific account and shall institute investigations immediately.

(3) The Cabinet Secretary may, where in his or her opinion finds it necessary, share the report of the investigation carried out in paragraph (2) with the Auditor-General and the Controller of Budget.

89. The Accounting Officers shall ensure that adequate arrangements are made to protect both cash and staff for cash in transit and such measures shall include the following—

Security for cash in transit.

- (a) safe or strong rooms and restricted access to the cash handling locations;
- (b) police or armed security escorts;
- (c) the security bags locked to the vehicle; and
- (d) suitable transport and variation of movement, times, and routes.

90. (1) Accounting Officers shall ensure bank accounts reconciliations are completed for each bank account held by that Accounting Officer, every month and submit a bank reconciliation statement not later than the 10<sup>th</sup> of the subsequent month to the National Treasury with a copy to the Auditor-General.

Reconciliation of bank accounts.

(2) Similar reconciliations shall be carried out when responsibility for any bank account or cheque book is handed over from one officer to another and on the occasion of any surprise inspection or survey.

(3) Accounting Officers shall ensure any discrepancies noted during bank reconciliation exercise, are investigated immediately and appropriate action taken including updating the relevant cash books.

(4) The National Treasury shall analyse and review the bank reconciliation statements submitted under paragraph (3) of this regulation and take the necessary action.

#### *Managing Imprest Transactions*

91. (1) For the purposes of this regulation and Regulations 92, 93, and 94, an imprest means a form of cash advance or a float which the Accounting Officer may authorize to be issued to officers who in the course of duty are required to make payments which cannot conveniently be made through the cash office of a government entity or bank account.

Definition of imprest.

(2) The officer authorized to hold and operate an imprest shall make formal application for the imprest through an imprest warrant.

(3) Funds disbursed for imprest shall not be kept or held in an official bank account, but in a separate or personal bank account operated by the imprest holder or in the form of cash under safe.

92. The Accounting Officer or AIE holder shall approve the establishment of an imprest facility including the maximum amount for the specific purpose of that facility.

Determination of imprest levels.

93. (1) There shall be three types of imprests, namely—

Classes of imprests.

- (a) Temporary or Safari imprest;
- (b) Standing Imprest; and
- (c) Special imprest.

(2) An imprest shall be issued for a specific purpose, and any payments made from it, shall be only for the purposes specified in the imprest warrant.

(3) Temporary imprests shall be issued mainly in respect of official journeys and are intended to provide officers with funds with which they can meet travelling, accommodation and incidental expenses.

(4) Before issuing temporary imprests under paragraph (2), the Accounting Officer shall ensure that—

- (a) the main objective of the journey cannot be achieved by other cheaper means;
- (b) the applicant has no outstanding imprests;
- (c) the applicant has been recorded in the imprest register including the amount applied for;
- (d) adequate funds are available against the relevant items of expenditure to meet the proposed expenditure.

(5) A holder of a temporary imprest shall account or surrender the imprest within 7 working days after returning to duty station.

(6) In the event of the imprest holder failing to account for or surrender the imprest on the due date, the Accounting Officer shall take immediate action to recover the full amount from the salary of the defaulting officer with an interest at the prevailing Central Bank Rate.

(7) If the Accounting Officer does not recover the temporary imprest from the defaulting officer as provided for in this regulation the Accounting Officer commits an offence as provided for under the Act.

(8) In order to effectively and efficiently manage and control the issue of temporary imprests, an accounting officer or AIE holder shall ensure that no second imprest is issued to any officer before the first imprest is surrendered or recovered in full from his or her salary.

(9) If the accounting officer or AIE Holder fails to comply with the provisions of paragraph (8), he or she commits an offence as provided for under the Act.

(10) If an imprest is to be recovered from any public officer by instalments, the Accounting Officer shall personally authorize such recovery and such moneys shall no longer be an imprest but an unauthorized advance from Government Funds, and in addition to the

interest charged under paragraph (6), the Accounting Officer shall take appropriate disciplinary action against the officer concerned for the abuse of the imprest.

(11) Standing Imprest shall be intended to be in operation for a time and requires bringing the cash level of the advance continuously up to the agreed fixed level by systematic re-imburement of expenses.

(12) Standing imprest shall involve personal responsibility as it shall be issued to an officer in his or her own name, and not to the holder of an office.

(13) When an imprest holder leaves the service, or is transferred, he or she shall surrender the total standing imprest which includes cash plus payment vouchers which together amount to the fixed level of the imprest, and a new imprest issued to his or her successor.

(14) The holder of a standing imprest shall keep a memorandum cash book to record all receipts and payments and the balance on hand shall agree with the cash balance recorded in the cash book, and in the absence of any receipts, the actual cash balances plus the expenses paid shall equal at all times the fixed level of the imprest for which the imprest holder is personally responsible.

(15) When the imprest holder needs to have his or her funds replenished, he or she shall send an abstract and analysis of his memorandum cash book, plus originals of the supporting payment vouchers to accounts division.

(16) If the accounts division in paragraph (15) is satisfied that the expenditure has actually been incurred, that it has been incurred for the intended purposes, and there is no irregularity in the payment vouchers, it shall arrange for the analysed expenditure to be posted to the various heads and items, and arrange for the cash to be transferred to the imprest holder so as to "top-up" his or her fund.

(17) In addition to paragraph (16) the head of accounts division shall also ensure that frequent spot checks are made of the standing imprest itself by a responsible officer as follows—

- (a) count the cash on hand;
- (b) confirm that the actual cash on hand corresponds with the balance on hand as recorded in the cash book;
- (c) confirm that all movements (expenses and receipts) since the last check have been properly recorded and are properly documented;
- (d) ensure that the documents justify the difference between the fixed imprest level and the actual cash balance; and
- (e) report on any anomalies found to the head of the accounts section.

(18) Any Special Imprest utilized for any expenditure on services of a confidential nature, the purpose and the particulars of which cannot be made public, shall be supported by a certificate that the

money has been paid, and a declaration by the Cabinet Secretary responsible for the national government entity and the relevant Accounting Officer that they have satisfied themselves that the money has been properly expended, and has not been used to supplement the emoluments of any officer.

94. An officer holding an imprest shall ensure that—

- (a) the imprest issued to him or her shall be used for the intended purpose only;
- (b) the imprest moneys and any payment vouchers awaiting replenishment are adequately safeguarded at all times;
- (c) proper cash sale receipts are received for all payments out of the imprest;
- (d) the full amount of the imprest can be accounted for at all times in cash, stamps, money at bank and completed payment vouchers; and
- (e) goods purchased through imprest are taken on charge and certificate issued.

Duties of Imprest holders.

#### *Treasury Single Account*

95. (1) The National Treasury hereby establishes a Treasury Single Account (TSA) pursuant to section 28(2) of the Act, which shall become operational within six (6) months upon commencement of these Regulations and shall be kept at the Central Bank of Kenya.

Establishment of a Treasury Single Account.

(2) The Cabinet Secretary shall from time to time issue Treasury Single Account guidelines to accounting officers for the operations of the Treasury Single Account.

96. (1) The National Treasury shall ensure operating cash balances in the Treasury Single Account sub-accounts are kept to a minimum through consolidation into a Treasury Single Account.

Operation of a Treasury Single Account.

(2) The Treasury Single Account shall reflect at the minimum the following features—

- (a) unified banking arrangements to enable the National Treasury to have proper oversight of national government cash inflows and outflows on these bank accounts;
- (b) that no national government entity shall operate bank accounts outside the Treasury Single Account unless expressly authorized by the Cabinet Secretary;
- (c) notwithstanding the requirement under sub-paragraph (b), the Cabinet Secretary may authorize exemption from the requirements of sub-paragraph (b); and
- (d) the comprehensive consolidation of government controlled public monies encompassing all government cash resources, including National Exchequer Account, special funds, trust funds and other public funds unless expressly exempted by the Cabinet Secretary.

(3) National government deposits or exchequer releases to national government entities by the National Treasury shall be deposited in the Treasury Single Account sub-accounts and shall form part of cash balances of these accounts.

(4) Unless exempted by an Act of Parliament or by judicial order, all deposit bank accounts of the national government's entities shall be sub-accounts of the Treasury Single Account for the national governments.

## PART IX—ACCOUNTING AND REPORTING

### *Form and Basic Structure of Government Accounts*

97. (1) The accounts of the national government entities shall record transactions which take place during a financial year running from the 1st July to the 30th June.

Accounting period.

(2) Government accounts may be kept open for adjustments or a financial year may be kept open for a month in the following financial year for completion of the following end of year accounting processes—

- (a) in respect of the transactions of the 30<sup>th</sup> June each year to capture expenditure for field services;
- (b) for carrying out certain inter-departmental agency adjustments; and
- (c) for closing the accounts of special funds and Suspense accounts.

(3) Adjustments may also be made after the close of the year by journal entries for the correction of accounts due to miss-postings or misclassifications impacting on fair presentation of financial statements that may be noticed after 30th June each year.

(4) An actual cash transaction taking place after the 30<sup>th</sup> June, shall not, however, be treated as pertaining to the previous financial year even though the accounts for that year may be open for the purposes mentioned under paragraphs (2) and (3).

(5) The National Treasury shall issue guidelines on the closure of the financial year not later than the 15<sup>th</sup> May of each year.

98. (1) The date of payment of any amount shall determine the date of the recording of the transaction in the accounts.

Charging of expenditure to year of accounts.

(2) Advance payment shall not be paid to suppliers of services and goods unless provided for in the contractual terms and conditions contained in a valid contract signed between the procuring entity and the supplier.

99. (1) As a general rule, the classification of financial transactions in national government entity's accounts shall be based on the standard chart of accounts approved by the National Treasury.

Account codes and standard chart of accounts.

(2) The approved estimates of expenditure shall form the basis of the accounts for the financial year.

(3) Every entry in the accounts shall be supported by a voucher or other approved document gazetted by the Cabinet Secretary containing the full details, clear narrations and particulars of the item or items to which it relates.

100. Accounting Officers shall keep in all offices concerned with receiving cash or making payments a cash book showing the receipts and payments and shall maintain such other books and registers as may be necessary for the proper maintenance and production of the accounts of the Vote for which he or she is responsible.

Books of accounts to be kept by Accounting Officers.

101. (1) The structure of the reporting formats shall be based on the requirements of the Act.

Recording and reporting basis.

(2) The Cabinet Secretary may from time to time amend the reporting formats in accordance with the prescribed standards set by the Public Sector Accounting Standards Board.

(3) The National Treasury shall issue financial instructions and guidelines on application of accounting policies, bases, standards and classification to be applied in financial reporting in line with the standards set by the Public Sector Accounting Standards Board.

(4) An Accounting Officer shall prepare the financial statements in a form that complies with the relevant accounting standards prescribed by the Public Sector Accounting Standards Board, not later than three months after the end of the financial year and submit them to the Auditor General with a copy to the County Treasury, the Controller of Budget and the National Treasury.

(5) Any expenditure on services of a confidential nature, the purpose and the particulars of which cannot be made public, shall be supported in the accounts by a certificate that the money has been paid, and a declaration by the Cabinet Secretary responsible for the national government entity and the relevant Accounting Officer that they have satisfied themselves that the money has been properly expended, and has not been used to supplement the emoluments of any officer.

(6) For the purposes of this Regulation, an accounting officer shall only classify expenditure as confidential expenditure, if the expenditure—

- (a) is likely to prejudice the security, defence or international relations of the Government of the Republic of Kenya;
- (b) is likely to involve the disclosure of confidential deliberations or decisions of the Cabinet or of a committee of the Cabinet;
- (c) is likely to divulge any confidential information communicated in confidence by the national government to a county government or a by a county government to the national government and which would prejudice national security or relations between the two levels of government;
- (d) would unfairly prejudice the commercial interests of anybody or person; and

- (e) is likely, for any other reason, to form the basis for a claim by a foreign state or persons on the national government or county government in a judicial proceeding.

(7) The Accounting Officer shall be required under a closed door session, and is permitted, to disclose to a special or joint committee of Parliament and the President information or any other document on the nature of confidential expenditure under this Regulation.

102. (1) Financial records may be maintained in manual or electronic form.

Financial records and automation of financial operations.

(2) An Accounting Officer shall take all reasonable precautions to guard against damage, destruction of or falsification of any financial record required to be kept by the provisions of the Act and these Regulations.

(3) An Accounting Officer shall satisfy himself or herself that where an alteration of a financial record requires the authorization, approval and, or deletion of any transaction or data whether electronic or manual by any means other than in writing, that there is sufficient audit trail which shall identify the person who approved the transaction.

103. (1) Journal entries prepared for all adjustments shall be authorised by the accounting officer or an officer designated by him or her before posting them in a financial record.

Accounting adjustments journal.

(2) In all cases journal vouchers shall be supported by sufficient explanations, authorisations and documentation to facilitate accounting adjustments to be understood.

104. (1) All receipts and payments vouchers of public moneys shall be properly supported by pre-numbered receipt and payment vouchers and shall be supported by the appropriate authority and documentation.

Vouchers.

(2) All receipt and payment vouchers shall be or made out in indelible ink and shall contain adequate narration of the particulars of the services, goods or works procured and being paid for.

(3) All amounts appearing in a voucher shall be written in words as well as in figures.

105. (1) An Accounting Officer or any other officer delegated in writing by him or her may authorize payment vouchers on his or her behalf for expenditure chargeable to his or her vote, provided such expenditure is in respect of and within the provision of the services in a National Treasury warrant, in accordance with law, regulations, tariff, contract or agreement that may be applicable, and does not require special authority in terms of any law, regulation or National Treasury instruction.

Powers to delegate voucher approval.

(2) Accounting Officers may prescribe the financial limits and other conditions within which this authority in paragraph (1) may be exercised.

106. Unless otherwise exempted by an Act of Parliament, any deposit which has remained unclaimed for 5 years may, with the approval of the Cabinet Secretary, be paid into Consolidated Fund and thereafter the Accountant-General may refund the deposit to any person entitled thereto, if he or she is satisfied that the claim is authentic.

Deposit accounts.

107. (1) All the transactions relating to clearance and suspense accounts shall be supported by authentic and verifiable source documents, clearly indicating the approved allocation.

Clearance and suspense accounts.

(2) Where it is necessary and to account for revenue and expenditure transactions in a clearing or suspense account, the Accounting Officer shall ensure that—

- (a) amounts included in clearing or suspense accounts are cleared and correctly allocated to the relevant cost centres on a monthly basis;
- (b) monthly reconciliation's are performed to confirm the balance of each account; and
- (c) reports on uncleared items are prepared on a monthly basis and submitted to the National Treasury.

(3) The National Treasury shall prescribe in the financial manual procedures to be used for management of balances in suspense or clearing accounts.

108. Wherever practicable all payments of public monies made to persons outside Kenya shall be made by direct payment or payment advice through the Central Bank of Kenya to such persons' banks account or use of banker's draft or through the national payment system.

Payments to beneficiaries residing outside Kenya.

109. (1) For efficient and effective utilisation of electronic systems in processing financial data, the National Treasury shall develop and regularly issue standard operating procedures and instructions on the automated integrated financial management system operations, use and maintenance.

Use of electronic systems for financial operations.

(2) The Principal Secretary shall designate a person or persons in writing to administer the automated integrated financial management system.

(3) The system administrator shall ensure compliance of assigned responsibilities and when necessary take appropriate measures.

110. (1) The Accounting Officer for a national government entity shall institute appropriate access controls needed to minimise breaches of information confidentiality, data integrity and loss of business continuity.

Restricted access to systems.

(2) Access controls to be instituted shall include—

- (a) uniform application forms for registration of new users, deregistration of users and modification of user roles;



- (b) processes of safeguarding completed application forms;
  - (c) segregation of duties;
  - (d) use of multi-factor authentication including standardization of user primary identity linked to national identification numbers, payroll numbers and assigned responsibilities; and
  - (e) utilization of appropriate password length for login.
- (3) Users of the system under this regulation shall—
- (a) not use or attempt to use the automated public financial management system without the authorisation of the system administrator;
  - (b) take all reasonable steps to maintain the integrity of passwords and other security mechanisms;
  - (c) where a password becomes insecure or potentially insecure, as soon as is practicable, implement a new secure password;
  - (d) not do anything that damages, restricts, jeopardises, impairs or undermines the performance, usability, reliability, confidentiality or accessibility of any digital information system, programme, or other stored information data;
  - (e) not alter, delete or in any other way interfere with, any information, data or files;
  - (f) be responsible for any unlawful entry on the automated public financial management system using such persons password;
  - (g) undertake any tasks assigned; and
  - (h) take all measures to ensure that on the last day of each month, the financial period of the month is closed.
- (4) Failure to adhere to the closing of financial periods or to adhere to operational protocols in paragraph (3) shall be an offence under the Act.

111. (1) The Public Sector Accounting Standards Board shall be accountable to the Cabinet Secretary for matters relating to finance for the effective, efficient and economical fulfilment of its purpose and objectives.

Procedures for the  
Public Sector  
Accounting  
Standards Board.

(2) The Public Sector Accounting Standards Board shall prepare and submit to the Cabinet Secretary a report indicating—

- (a) their annual work plan demonstrating its priorities and agenda on how it intends to meet its objectives and responsibilities for following financial year; and
- (b) their annual activities demonstrating the extent to which its plans and mandate were achieved.

(3) The Cabinet Secretary may from time to time request a report from the Public Sector Accounting Standards Board on its mandate and such report shall be submitted within two weeks from the date of the request.

## PART X—EXPENDITURE MANAGEMENT AND CONTROL

112. (1) Where the Constitution or an Act of Parliament provides for some specific categories of expenditure to be a direct charge on the Consolidated Fund, such expenditures shall be included in the recurrent budget estimates of the national government as part of the Consolidated Fund Services.

Consolidated Fund Services.

(2) the Consolidated Fund Services shall be provided for in the recurrent estimates, but shall not be subject to Parliamentary debate nor to the expenditure limited by estimates nor vote on account;

(3) Consolidated Fund Services shall be administered by the National Treasury.

(4) The National Treasury may arrange for another Accounting Officer to make payment in the first place on its behalf against subsequent reimbursement from the appropriate Vote of the Consolidated Fund Services.

113. (1) If an Accounting Officer finds, after Appropriation Accounts are completed, that he or she has spent more than the total vote, that Accounting Officer shall seek Parliamentary approval of the National Assembly through the Cabinet Secretary for that Excess Vote.

Excess Vote.

114. (1) An Accounting Officer who is instructed by his or her Cabinet Secretary to make payment which for any reasons the accounting officer has concerns, the Accounting Officer shall raise those concerns in writing to the Cabinet Secretary.

Payments to which an Accounting Officer objects.

(2) In the event that the Cabinet Secretary approves in writing for the processing of the payment despite the concerns raised by the Accounting Officer under paragraph (1), the Accounting Officer shall obey the instructions without further responsibility.

(3) Upon payment, the accounting officer may proceed as provided for under section 68(3) of the Act, and may send a copy of the report to the Auditor-General.

115. (1) All purchases of goods, works and services from suppliers, including capital investments, shall comply with the provisions prescribed in the Public Procurement and Disposals Act, 2005, and the Regulations made thereunder and shall have the prior approval of the Accounting Officer.

Goods, works and services to be procured according to an approved procurement plan. No.3of 2005.

(2) Every year a procurement plan shall be prepared by Accounting Officers to form the basis for procurement activities undertaken by government entities in the fiscal year.

(3) The procurement plan in paragraph (2) shall, where necessary, include estimated costs of procurement, insurance, clearing, forwarding, warehousing and demurrage charges for goods imported and have to undergo clearing and forwarding through ports of entry into the country.

116. (1) Amounts charged to Voted Funds, which are recovered in the financial year in which payment was made, shall, on or before the closing of books of that financial year, be allocated to the budget item that was originally debited.

Recovery, disallowance and adjustment of payments.

(2) Such amounts which are recovered after the closing of books of a financial year shall be paid to the Consolidated Fund, provided that such amounts have not been allocated to a clearing or suspense account during the financial year in which payment was made.

117. (1) Where an A.I.E holder observes that it will not be possible to utilize all the funds allocated for a particular project in a given financial year, the AIE holder shall inform the accounting officer not later than February.

Re- Vote of Budget.

(2) The Accounting Officer will then surrender the resources to the National Treasury and the National Treasury shall ensure that the funds are re-voted for the project in the following financial year in order to continue the implementation of the project.

118. (1) Accountable documents whether manual or electronic shall be under strict control at all times and they shall include—

Accountable documents.

- (a) indent forms (for supplies from government printer or government stores);
- (b) local purchase order;
- (c) local service order;
- (d) authority to incur expenditure;
- (e) cheques;
- (f) receipt books; and
- (g) imprest warrants;

(2) The Accounting officer shall keep his or her stock of accountable documents whether manual under lock and key, issuing them in accordance with the daily needs of the service, and keeping an accurate up-to-date record of their use by means of continuity control sheets.

(3) Where the accountable documents are in electronic form, the accounting officer shall ensure appropriate mechanism are put in place for safeguarding and tracking them.

119. (1) Accounting Officers shall, subject to the provisions of the relevant national legislation, retain certain documents , of whatever kind and such documents shall be preserved in the following circumstances—

Preservation of accountable documents, books and records.

- (a) where they may be of value to the national archives; or
- (b) if they are the subject of unfinished audit enquiries; or
- (c) if they are likely to be needed for pension purposes.

(2) After the expiry of the retention periods under paragraph (3) of this regulation, the information may, if required, be secured in an alternative form that ensures the integrity and reliability of the data and ensures that the information can be reproduced, where necessary.

(3) Subject to the overriding consideration under paragraph (1), certain class of documents and records are to be preserved for a stipulated minimum period of time as detailed in the Table below —

<i>S/No</i>	<i>Type of document</i>	<i>Preservation period</i>
1.	Principal ledger	10 years
2.	Cash books	10 years
3.	Journals	3 years
4.	Payment vouchers	5 years
5.	Paid cheques or electronic payments	3 years
6.	Completed indent warrants	12 months after the end of the financial year to which they relate.
7.	Completed order forms	12 months after the end of the financial year to which they relate.
8.	Duplicate receipts	12 months after the end of the financial year to which they relate.
9.	Duplicate payment vouchers	12 months after the end of the financial year to which they relate.
10.	Receipt books: (a) Fully used (b) Obsolete, partly used	6 months after date of completion but must be inspected by the Auditor General and the disposal noted in the main counterfoils receipts, book registers.

*Expenditure in relation to Human Resources*

120. (1) Personnel management activities relating to the authorization of appointments, the authorization of payments and the recording of those payments may not be performed by the same officer.

(2) The budgetary allocation for personnel costs shall be determined on the basis of a detailed costing of a human capital plan of a national government entity as approved by the state department responsible for public service management matters, the Public Service Commission and National Treasury.

(3) The Accounting Officer of a government entity shall ensure that the personnel cost of all appointees, as well as promotion and salary increases, can be met within the budgetary allocation voted for the national government entity.

(4) The responsible national government state department responsible for public service management matter, the public service commission, shall only approve establishment of new public service positions after getting confirmation of availability of budgetary provisions from the National Treasury.

(5) For purposes of ensuring sustainable wage bill, where the Cabinet Secretary intends to approve any changes under this regulation, he or she may consult the Salaries and Remuneration Commission.

(6) No change relating to the above matters shall be introduced into the expenditure estimates of the respective national government entity without the requisite authority.

Expenditure in relation to human resources.

121. (1) Personnel costs shall be classified based on the Government Finance Statistics Manual and the standard chart of accounts used in capturing government expenditure.

Payroll certification by accounting officer.

(2) Each employee shall be linked to a program in the budget of a national government entity's Vote.

(3) At least once every month, the accounting officer shall certify the correctness of the payroll.

122. (1) The National Treasury shall set requirements for issuing payroll deduction codes for all discretionary and non-discretionary deductions.

Deduction codes to be assigned to all payroll deductions.

(2) The Accounting Officer shall specify the purpose for which the code is applied for.

(3) The National Treasury may levy a fee on the discretionary deductions which shall be paid by the receiving institution.

123. (1) Remunerative benefits and other allowances for members and the staff of the secretariat of special committees and commissions of enquiry shall be determined by the national government entity responsible for matters relating to public service management in consultation with the Public Service Commission and the Cabinet Secretary taking into account the recommendations by the Salaries and Remuneration Commission.

Remuneration of members of committees and commissions of inquiry.

(2) The remuneration of all members of a commission or committee shall be disclosed as foot notes to the financial statements of the national government entity by the accounting officer.

124. Where the chairperson request a non-official member of a commission or committee to render services in his or her private time, other than the normal preparations for meetings, the person may be paid an allowance as determined by the relevant Accounting Officer.

Services rendered by members during private time.

125. No offer of compensation in settlement of any claim against the Government or *ex gratia* payment may be made without a prior authority of the National Treasury, except where powers are available to the Accounting Officer.

Compensation and *ex-gratia* payment.

#### *Benefits and Allowances of Public Officers*

126. (1) The accounting officer may only authorize salary advances for public officers under him or her to be paid if there exists a budgetary provision in his or her Vote.

Authority for loans and advances

(2) No staff loan or advance which is properly chargeable to a head of expenditure shall be debited to a salary advance expenditure item.

127. (1) The Cabinet Secretary may by way of a gazette establish a mechanism for public officers to access loans including car loans, mortgage housing loans, motor cycle and bicycle loans.

Benefits and allowances for Public Officers..

(2) Despite the provisions of paragraph (1), the Cabinet Secretary may issue guidelines on benefits and allowances for public officers by way of a notice in Kenya Gazette.

*Lease Financing*

128. (1) For the purpose of this regulation, a lease is regarded as a contract that gives the lessee (the renter) the right to the use of property, plant or equipment for a fixed period of time with a fixed schedule of payments to the lessor (the owner).

Lease financing transactions by accounting officers of state and county departments.

(2) The accounting officer of a state or county department may, for the purpose of conducting the government entity's business, enter into operating lease transactions.

(3) The accounting officer of a state or county department may under no circumstances enter into finance leases (non-operating lease) without the approval of the relevant National Treasury.

(4) For the purpose of paragraph (3), a lease is considered to be a finance lease if—

- (a) the lease transfers ownership of the asset to the government entity by the end of the lease period;
- (b) the government entity has the option to purchase the asset at a price which is expected to be sufficiently lower than the fair value at the date the option becomes exercisable, so that at the inception of the lease it is reasonably certain that the option will be exercised;
- (c) the lease term is for the economic life of the asset even if the title is not transferred;
- (d) at the inception of the lease, the present value of the minimum lease payments amount to at least 90 % of the fair value of the leased asset;
- (e) the leased asset is of a specialised nature such that only the government entity can use the asset without major modifications being made;
- (f) the lessor's losses associated with cancellation of the lease by the lessee is borne by the lessee; and
- (g) the leased asset cannot be easily replaced by another asset.

(5) The National Treasury shall monitor all finance lease transactions and report.

*Management of Intergovernmental Transfers*

129. For purposes of Regulations 130, 131, 132, 133, 134 and 135—

Definitions of terms.

- (a) "national Accounting Officer" refers to an Accounting Officer of a national government entity; and
- (b) "county Accounting Officer" refers to an Accounting Officer of a county government entity.

130. (1) A national government accounting officer transferring a conditional or unconditional allocation to a county government in accordance with an Act of Parliament shall be responsible for—

Duties of National Government Accounting Officers in managing intergovernmental transfers to counties.

- 
- (a) ensuring that transfers to a county government—
- (i) are made in accordance with the frameworks governing the conditional and unconditional transfers to county governments;
  - (ii) are deposited only into the County Revenue Fund of a County Government; and
  - (iii) are made in accordance with the relevant Act of Parliament unless the allocations are withheld or stopped in terms of Article 225 of the Constitution;
- (b) ensuring that the transfer of funds is done only after information required in terms of the laws and frameworks governing intergovernmental transfers has been secured and all relevant information has been provided to the National Treasury.
- (2) Upon approval of the County Allocation of Revenue Bill by Parliament, the Cabinet Secretary shall communicate the frameworks under paragraph (1)(b), to county governments within fifteen days after the approval.
- (3) A national government accounting officer who transfers any conditional allocation to a county government shall, in addition to any other requirement in terms of the Act or any other applicable law or framework governing the allocation, monitor and evaluate the financial and non-financial performance of programmes, fully or partially funded by the allocation and submit to the National Treasury—
- (a) a quarterly report within 30 days after the end of each quarter;
  - (b) an annual report within three months after the end of the financial year;
  - (c) the attendant conditions of any conditional grant to a county accounting officers.
- (4) The reports referred to in paragraph (3) shall include information that—
- (a) indicate the total amount of funds transferred to each county government;
  - (b) indicate the amount of funds withheld or stopped from any county government, the reason for withholding or stopping and the action taken by the national government Accounting Officer and the county government Accounting Officer to deal with the matters that necessitated the withholding or the stoppage of the transfer;
  - (c) indicate any reductions or additions of conditional or unconditional allocations to county governments authorized by the National Treasury;
  - (d) indicate the funds, if any, spent by the national government Accounting Officer on the administration of the transfer to the counties; and

- (e) that may be required under the relevant law or framework governing the transfer by the National Treasury.

131. (1) A county government Accounting Officer—

Duties of County government Accounting Officers in managing intergovernmental transfers.

- (a) shall be responsible for ensuring compliance with requirements of the relevant law and frameworks governing the management of conditional and unconditional transfers from the national government;
- (b) shall ensure all transfers from the national government are included separately in the County Government's Appropriation Bill.
- (c) shall monitor and evaluate the financial and non-financial performance of programmes funded by a conditional and unconditional transfer from the national government and prepare and submit to the relevant national accounting officer —
- (i) a quarterly report within 15 days after the end of each quarter in a format prescribed by the Public Sector Accounting Standards Board;
- (ii) an annual report within two months after the end of each financial year in a format prescribed by the Public Sector Accounting Standards Board;
- (d) the reports submitted in paragraph (1)(c) under this regulation shall specify—
- (i) actual transfers received by the county government from the national government;
- (ii) actual expenditure incurred in respect of the transfer;
- (iii) any reallocations authorised by the relevant national accounting officer;
- (iv) to what extent the county government complied with the provisions of the Act, these Regulations and met the conditions provided for in the relevant framework of such a transfer;
- (v) the steps taken to deal with non-compliance with any of the provisions of the Act and these Regulations or the conditions provided for in the relevant frameworks of such a transfer;
- (vi) the extent to which the objectives and outputs of the transfer were achieved;
- (vii) any other information as may be specified in the relevant framework for that transfer and any other information accounting officer may determine.



132. The National Treasury may provide additional guidelines on how national government Accounting Officers and County government Accounting Officers reports on conditional transfers on a quarterly and annual basis, to facilitate the audit of transfers to county governments.

Formats of annual reports on intergovernmental transfers.

133. (1) Despite the provisions of any other law, where it is determined that the transfer of funds to a county government was done in error or fraudulently such a transfer shall be regarded as not legally due to that county government.

Transfer made in error or fraudulently.

(2) An erroneous transfer contemplated in paragraph (1), may be recovered immediately or set-off against future transfers to that county government, which would otherwise become due to the county government.

134. (1) If the County Allocation of Revenue Bill submitted to Parliament for a financial year has not been approved by Parliament or is not likely to be approved by Parliament, by the beginning of the financial year, the Controller of Budget may authorize withdrawals of up to fifty (50%) percent from the Consolidated Fund based on the last County Allocation of Revenue Act approved by Parliament for the purposes of meeting expenditure of the county governments for the financial year.

Equitable transfer before approval of County Allocation of Revenue Bill.

(2) The authority under paragraph (1) shall cease upon enactment of the County Allocation of Revenue Act for the financial year.

(3) The transfer to county governments made under paragraph (1) under this regulation shall form part of their equitable transfer for the financial year.

135. (1) Any state organ involved in an intergovernmental dispute regarding any provision of this Act or any division of revenue matter or allocation shall, before approaching a court to resolve such dispute, make every effort to settle the dispute with the other state organ concerned, including exhausting all alternative mechanisms provided for resolving disputes in relevant legislation.

Liability for costs incurred in violation of principles of cooperate governance and intergovernmental relations.

(2) If a court is satisfied that a state organ, in an attempt to resolve a dispute has not exhausted all the mechanisms for alternative dispute resolutions as contemplated in section 35 of the Intergovernmental Relations Act, 2012, and refers the dispute back for the reason that the state organ has not complied with subsection (1), the expenditure incurred by that state organ in approaching the court shall be regarded as wasteful expenditure.

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(3) The costs in respect of such wasteful expenditure referred to in paragraph (2) shall, in accordance with a prescribed procedure, be recovered without delay from the person who caused the state organ not to comply with the requirements of paragraph (1).

#### PART XI—MONITORING AND REPORTING

136. (1) The Cabinet Secretary responsible for matters relating to planning shall prescribe a framework for monitoring and reporting on non-financial performance for use by accounting officers in evaluation of programmes and projects by measuring—

Responsibility for monitoring, evaluation and reporting.

- (a) financial indicators which shall capture expenditures on the implementation of programmes and projects;
- (b) outputs indicators which shall measure what is directly supplied through the implementation of the programmes and projects; and
- (c) outcome or results indicators of the programme or projects which capture the expected effects on intended beneficiaries of the programme or project.

(2) The Cabinet Secretary responsible for matters relating to planning, shall also set up a system that shall facilitate efficient and effective data collection, storage and exchange to monitor and report on non-financial performance of the national government entity's individual programmes and projects.

(3) An Accounting Officer shall put in place efficient and effective systems to monitor and report on non-financial performance for his or her national government entity's individual programmes and projects based on the prescribed format under paragraphs (1) and (2) and submit a report to the Cabinet Secretary responsible for planning with a copy to the Auditor-General.

(4) The Cabinet Secretary responsible for planning shall consolidate all the reports received under paragraph (2), and submit a report to the Cabinet Secretary and publish and publicize it within seven (7) days after submitting it to the Cabinet Secretary.

137. (1) An Accounting Officer shall provide footnotes to the annual financial statements prepared and submitted to the Auditor-General pursuant to section 81 of the Act.

Footnotes to appropriation accounts.

(2) The footnotes to the financial statements referred to under paragraph (1) of this regulation, shall at the minimum include—

- (a) the details of Appropriation-in-Aid;
- (b) excess Appropriation-in-Aid, if any;
- (c) reasons for material differences between approved estimates and actual expenditure, or actual collection of Appropriation-in-Aid;
- (d) losses and write-offs;
- (e) nugatory and similar payments, compensation and *ex-gratia* payments;
- (f) arrears of Appropriation-in-Aid and Appropriation-in-Aid abandoned; and
- (g) advances appropriately analysed, including imprests.

(3) Where, in respect of any footnotes referred to, in this regulation, there is nil return that particular footnote shall be omitted entirely.

138. An accounting officer of a national government entity shall disclose in the annual financial and non-financial report a list of special funds or state corporations controlled by national government entity.

special public funds and state corporations additional reporting responsibilities.

## PART XII—ASSET MANAGEMENT

139. (1) The Accounting Officer of a national government entity shall take full responsibility and ensure that proper control systems exist for assets and that —

- (a) preventative mechanisms are in place to eliminate theft, security threats, losses, wastage and misuse;
- (b) movement and conditions of assets can be tracked; and
- (c) stock levels are at an optimum and economical level.

(2) The Accounting Officer shall ensure that processes and procedures both electronic and manual are in place for the effective, efficient, economical and transparent use of the government entity's assets.

(3) The National Treasury shall provide guidelines on assets management.

140. (1) Accounting Officer shall be responsible for the proper custody, care and use of government inventories under their control, including imported goods in vessels awaiting discharge and in customs warehouses awaiting clearance.

(2) Despite paragraph (1) under this regulation, an Accounting Officer shall be responsible for the general management of government inventories held within that national government entity.

(3) Accountability shall only be discharged when government inventories have been —

- (a) consumed in the course of public business and records are available to show that the government inventories have been consumed;
- (b) worn out in the normal course of public business and removed from the stores records and has been approved by accounting officer or they have been disposed of in accordance with the Public Procurement and Disposals Act, 2005; or
- (c) lost, stolen, destroyed, damaged or rendered unserviceable other than by fair wear and tear, and if removed from the store's record and has been approved in line with section 69 of the Act.

(4) If accounting officer is satisfied that the retention of any government inventories is no longer in the public interest, the accounting officer may authorize disposal in accordance with the Public Procurement and Disposals Act, 2005, and the Regulations made thereunder.

(5) Removal from the store's record under paragraph (3) shall be reported to National Treasury by the accounting officer.

(6) Where an Accounting Officer has reason to believe that any person —

- (a) has received government inventory and has not duly handed it over;

Responsibility of an accounting officer of a national government entity on assets.

Responsibility for national government entity inventory.

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- (b) has received government inventory for which the person is accountable but has not duly accounted for it; or
- (c) has in hand government inventory which has not duly been applied to the purpose for which they were collected,

the Accounting Officer shall serve a notice on the public officer requesting that within a time specified in the notice, the person shall pay for, account for, or apply the inventory and submit to the Accounting Officer satisfactory evidence that this has been done.

(7) The Accounting Officer of a government entity shall in consultation with a technical department review, at least annually when finalising the budget, all fees, charges, rates, tariffs or scales of fees or other charges relating to the letting of state property to ensure sound financial planning and management.

141. (1) When assets or liabilities of a government entity are transferred to another government entity or other institution in terms of legislation or following a reorganization of government functions, the Accounting Officer for the transferring government entity shall be required to—

- (a) identify an inventory of such assets and liabilities; and
- (b) provide the Accounting Officer for the receiving government entity or other institution with necessary records, including human resource records of staff to be transferred.

(2) Both the Accounting Officer for the transferring national government entity and the Accounting Officer for the receiving national government entity or other institution shall sign the inventory when the transfer takes place.

(3) The Accounting Officer for the transferring national government entity shall file a copy of the signed inventory with the National Treasury and the Auditor-General within two weeks of the transfer.

142. Where any money, property or right accrues to the national government by operation of law, the National Treasury, may exercise all powers, authority and prerogatives, and fulfill any obligation on behalf of national governments.

143. (1) The Accounting Officer shall be responsible for maintaining a register of assets under his or her control or possession as prescribed by the relevant laws.

(2) The register of land and buildings shall record each parcel of land and each building and the terms on which it is held, with reference to the conveyance, address, area, dates of acquisition, disposal or major change in use, capital expenditure, lease hold terms, maintenance contracts and other pertinent management details.

(3) All items of furniture and equipment issued for a government's quarters or offices, large tools for government works, plant, equipment, vehicles or launches (large motor boats) shall be recorded in a register.

Accounting Officers' responsibilities upon transfer of assets and liabilities.

Assets accruing to the Government by Operation of Law.

Register of assets.

(4) All acquisitions or assignment of immovable property shall be notified to the National Treasury.

(5) All acquisitions or assignment of land with or without buildings shall be notified to the National Treasury.

144. (1) Official vehicles purchased for use by Cabinet Secretaries, Speakers of the National Assembly and the Senate, the Chief Justice, the Attorney-General, Secretary to the Cabinet and the Head of Public Service, shall not exceed 2600 cc for saloon cars and 3000 cc for 4 x 4 utility vehicles.

Purchase and capacity of official vehicles for certain government officers.

(2) Official vehicles purchased for use by Principal Secretaries, Accounting Officers, Judges of the Supreme Court and Court of Appeal, Director of Public Prosecution, Clerk of the National Assembly and the Senate, Heads of Constitutional Commissions and Independent Offices, commissioners of constitutional commissions, Inspector-General of Police shall not exceed 2400 cc for saloon cars and 3000 cc for 4 x 4 utility vehicles.

(3) Official vehicles purchased for use by other officers on Job Group R and above and High Court Judges and Chief Executive of state corporations shall not exceed 2000 cc for saloon cars and 2900 cc for 4 x 4 utility vehicles.

(4) This section shall not apply in case of vehicles for official use by the President and the Deputy President.

(5) The Cabinet Secretary may by way of notice in the gazette specify category of offices and the category of vehicles to be used by those public officers.

(6) Any person who contravenes the provisions of this regulation commits an offence.

#### *Losses and Write offs*

145. For purposes of this Sub-Part, the term losses includes—

Definition.

- (a) actual loss or destruction of, or damage (other than fair wear and tear) to, or failure to account for the disposal of public money, stamps, securities or property, movable or immovable (including any money or other property not belonging to the national government which is held or used by an officer in his official capacity either alone or jointly with any other person); or
- (b) non-collection of any moneys due or belonging to national government, or for collection of which the national government is responsible; or
- (c) payments made or liabilities incurred without or in excess of any statutory, administrative or any other authority, including nugatory and similar payments and payments arising from incorrect certificates, and irregular or excess issues of stores, rations, etc.; or
- (d) unauthorized use of national government stores, vehicles buildings, equipment or any other property, or of service (e.g. repair workshops) provided for official purposes; or

- (e) compensation and similar payments (including third party claims in respect of vehicle accidents) legal and court costs and any other additional expenditure or liability which was avoidable and need not have been incurred.

146. (1) When a loss as defined in this regulation is discovered, the Accounting Officer shall investigate the circumstances of the loss—

Accounting officers responsibility for a national government entity.

- (a) to ascertain the extent and amount of the loss; or
- (b) to determine whether control or operational arrangements need to be improved in order to prevent the occurrence of similar losses in the national government entity; or
- (c) to determine whether any offence or other fault of a public officer has been revealed by the loss.

147. Where investigations reveals that an offence has been committed, it shall be dealt with in accordance with the relevant laws pertaining to criminal offences, as appropriate, and the relevant disciplinary measures but the investigation of a loss shall not constitute a disciplinary enquiry.

Revelation of offence.

148. (1) A loss may be revealed by defalcation or loss due to any cause, and thereafter investigation proceedings shall be commenced immediately and a report made to the Accounting Officer and where necessary to the police;

Procedure for handling losses.

(2) The report referred to under paragraph (1), shall give details on the amount involved and any other information available including a brief account of actions to prevent further loss, and effect recovery.

(3) On receipt of the report, the accounting officer shall give instructions regarding accounting entries, if any, to be made and any other action which appears to him or her to be necessary.

(4) Where a liability has been established for a third party, payment shall be made, provided that there is no reason to suspect that the third party had any responsibility for the loss and the payment shall not await the results of the investigations of the loss.

(5) If the loss falls within the accounting officers powers under section 69 (1) of the Act, he or she shall authorize the write off of the loss up to an amount not exceeding hundred thousand (KSh. 100,000) shillings in any one incidence and submit a report to the National Treasury and the Auditor-General.

(6) If the loss falls within the Cabinet Secretary's powers under section 69 (2) of the Act, the accounting officer shall seek the approval of the Cabinet Secretary to authorize him or her to write off the loss of an amount exceeding the one hundred thousand (KSh. 100,000) shillings but not exceeding one percent of the national governments' entity's approved estimates excluding the Consolidated Fund Services in any one incidence.

(7) The approval of the Cabinet Secretary shall be communicated to the accounting officer in writing with a copy to the Auditor-General.

(8) Any loss exceeding the threshold for the Cabinet Secretary shall fall within the Cabinet powers under section 69 (3) of the Act, the Accounting Officer shall—

- (a) seek the approval of the Cabinet through the Cabinet Secretary to authorize him or her to write off the loss exceeding one percent of the national government entity's approved budget in any one incidence;
- (b) the approval of the Cabinet shall be communicated to the Accounting Officer through the Cabinet Secretary in writing with a copy to the Auditor General;
- (c) the approval of the Cabinet shall be communicated to the Accounting Officer through the Cabinet Secretary in writing with a copy to the Auditor General;

(9) The accounting officer shall also make a disclosure in the financial statements of that national government entity.

149. (1) For the purposes of this regulation, cash deficiency is a loss arising from a deficiency of cash or other negotiable instruments, whether it arises from a simple cash shortage or from the use of fictitious entries or vouchers to conceal the existence of a deficiency.

Categories of losses.

(2) Revenue losses may arise from—

- (a) uncollectable revenue when debts due to national government cannot be collected by reason that the debtor cannot be traced or is insolvent; and
- (b) failure to assess or collect in circumstances which preclude subsequent assessment or collection, and include any loss of interest caused by delay in making payments into the appropriate public funds or from the making of irregular advances.

(3) Expenditure losses may arise from—

- (a) irrecoverable overpayments, when an excess payment has been made by error and recovery cannot be effected because the recipient cannot be traced or is otherwise incapable of making repayment;
- (b) nugatory payments, which arise in circumstances such as, the incurrance of a penalty in which a national government entity has been legally obliged to make payment, but for which no corresponding receipt of goods or services has been derived;
- (c) fraudulent payments which arise from transactions which involve a breach of the Criminal Code, by the use of falsified documents or certificates to steal money or other property belonging to a Government and it is not recoverable.

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(4) Inventory and equipment losses may arise from—

- (a) deficiencies, including fraudulent issues of stores from stock and issues of stores without proper evidence of use;
  - (b) damage or deterioration of goods in stock; or
  - (c) loss by accident in so far as they relate to equipment and inventories in use.
- (5) Financial losses may arise from—
- (a) irrecoverable advances and loans when moneys due to a national government entity cannot be recovered by reason of a debtors default and include default on National Government Guarantees;
  - (b) irregular advances and loans when money cannot be recovered because a national government entity cannot establish a claim against any person or institution, as in the case of expenditure wrongly charged to advances, or advances and loans made without agreement for recovery;
  - (c) reduction of financial asset where the value of any financial asset has to be reduced by reason of failure or capital restructuring of an enterprise; or
  - (d) losses on sale of securities where the losses are aggregated with gains over the financial year, and any net loss is written off at the end of the year.
- (6) Miscellaneous losses may arise from—
- (a) loss of fixed fee receipts; or
  - (b) the loss of safe keys of any government safe or the compromise of any combination lock; or
  - (c) the cost of altering locks and providing new keys or combinations; or
  - (d) the value of any missing items from the safe, or
  - (e) irrecoverable claims dealt with as laid down in these Regulations.

150. (1) The accounting officer of a national government entity shall cause an investigation to be conducted into every reported case of loss, and where the accounting officer of that entity is implicated in the loss, the Cabinet Secretary shall be the appropriate authority to cause investigation to be conducted.

Investigation of every case of loss.

(2) In the case where the investigation report implicates the accounting officer, Cabinet Secretary shall revoke the designation and also report the matter to the relevant authority.

151. If the report of the investigating authority indicates that systems currently in operation, including those for the training of staff are defective, the accounting officer of the national government entity shall consult with the National Treasury to consider measures for rectification.

Defective systems.

152. (1) Recovery of the value of a loss, whether by recovery proceedings under these Regulations, shall constitute a settlement of a civil claim against the officer arising from the loss.

Financial liability of officers.



(2) Recovery of a loss shall not be a substitute for criminal prosecution or disciplinary proceedings.

153. The Accounting officer shall maintain a register of all losses incurred by his or her national government entity and attach a list of all losses incurred during that year to the financial statements submitted to the Auditor-General for audit with a copy to the National Treasury.

Annual statement of losses.

154. Where any doubt arises on the correct classification of a loss or the accounting procedure required the directions of the National Treasury shall be sought.

Clarifications on classification of losses.

155. Where goods are received damaged or incomplete and such goods are subject to a claim on suppliers, insurers or carriers, they shall not constitute a loss until the claims prove irrecoverable.

Claims on damaged or incomplete goods.

156. (1) The fact that losses arise from un-collectable revenue, irrecoverable overpayments, or irrecoverable claims at the time of disposal does not preclude the prior investigation of circumstances of the losses.

Investigation of losses

(2) Applications for write off shall be accompanied by an investigation report indicating whether remedial accounting or other action is necessary.

157. (1) An Accounting Officer may only write off losses if he or she is satisfied that —

Writing off of losses.

- (a) all reasonable steps have been taken to recover the losses and the loss is irrecoverable; or
- (b) he or she is convinced that —
  - (i) recovery of the loss would be uneconomical;
  - (ii) it would be to the advantage of the state to effect a settlement of its claim or to waive the claim.

(2) An Accounting Officer shall ensure that all losses written off are done in accordance with this Act, these regulations or any other relevant legislation.

158. Interest may be charged on recoverable losses at the Central Bank Rate.

Interest payable on recoverable losses.

159. The authorization of disposal of a case of loss does not prejudice the right of the Auditor-General to carry out further investigation.

Right of the Auditor- General

### PART XIII—INTERNAL AUDIT AND AUDIT COMMITTEES

160. (1) Internal auditors shall—

Mandate of internal auditors.

- (a) review and evaluate budgetary performance, financial management, transparency and accountability mechanisms and processes in national government entities, including Parliament and Judiciary;
- (b) have a duty to give reasonable assurance through the audit committee on the state of risk management, control and governance within the organization; and

- (c) review the effectiveness of the financial and non-financial performance management systems of the entities.

161. Internal auditors shall comply with the International Professional Practices Framework as issued by the Institute of Internal Auditors from time to time and shall conduct audits in accordance with policies and guidelines issued by the Public Sector Accounting Standards Board to ensure uniformity and consistency across national government.

Compliance with professional standards and code of ethics.

162. (1) The Head of Internal Audit unit under a national government entity shall enjoy operational independence through the reporting structure by reporting administratively to the Accounting Officer and functionally to the Audit Committee.

Independence of the internal auditor.

(2) An Accounting Officer shall ensure that the organizational structure of the internal audit unit facilitates —

- (a) the entity to accomplish its internal audit responsibilities;
- (b) the internal auditor with sufficient authority to promote independence and to ensure broad audit coverage, adequate consideration of internal audit reports;
- (c) appropriate action to be taken on internal audit recommendations; and
- (d) the internal auditor to be independent of the programs, operations and activities he or she audits to ensure the impartiality and credibility of the internal audit work undertaken.

(3) The internal auditor shall have unrestricted, direct and prompt access to all records, officials or personnel holding any contractual status and to all the premises and properties of the entity.

(4) The internal auditor shall respect the confidential nature of information and shall use such information with discretion and only in so far as it is relevant to reach an internal audit opinion.

(5) All internal audit activities shall remain free of influence by any element in the organization, including matters of audit selection, scope, procedures, frequency, timing, or report content to permit maintenance of an independent and objective mental attitude necessary in rendering reports.

(6) Internal auditors shall have no direct operational responsibility or authority over any of the activities they review, and accordingly, they shall not develop nor install systems or procedures, prepare records, or engage in any other activity which would normally be audited.

*The Internal Auditor-General Department of the National Treasury*

163. (1) The office of the Internal Auditor-General shall be an office in the National Treasury.

Independence of Internal Auditor-General.

164. (1) The Internal Auditor-General, in leading the internal audit function within the National Treasury, is responsible for policy

Functions of Internal Auditor-General

formulation and strategic direction of internal audit function within the national government entities including—

Department.

- (a) advising the Cabinet Secretary and the Principal Secretary on emerging issues in internal auditing;
- (b) developing and implementing the use of innovative approaches in performing independent assessment of systems, controls and efficiencies guided by professional standards;
- (c) supporting the entities efforts to achieve their objectives;
- (d) promoting national government-wide risk management and provide the management with consulting services to improve the overall national government operations;
- (e) providing capacity building for both levels of governments including developing curriculum, training materials and undertake training for audit committees; and
- (f) reporting annually to the National Treasury on the internal audit function performance.

165. (1) The Accounting Officer shall ensure that the national government entity develops—

The role of Accounting Officer in risk management.

- (a) risk management strategies, which include fraud prevention mechanism; and
- (b) a system of risk management and internal control that builds robust business operations.

166. (1) Each year the internal audit unit of a national government entity shall assess its own effectiveness through an internal performance appraisal and shall carry out annual review of the performance of the internal audit activity commenting on its effectiveness in the annual report to National Treasury.

Performance appraisal.

(2) Each year the Audit Committee shall carry out annual review of the independence, performance and competency of the internal audit unit and comment on their effectiveness in the annual report.

(3) At least once every three years but not more than five years, internal audit unit shall undergo a professional assessment of its effectiveness undertaken by a professionally recognized body or institution.

167. When indications of fraud, material breaches and wasteful expenditure have been identified in a State Organ, or any other national government entity in sections 92 of the Act, the head of the internal audit unit shall immediately notify the Cabinet Secretary.

Reporting material breaches and persistent material breaches.

168. An internal auditor shall not perform audit assignments for providing assurance relating to activities and structures on which he or she has provided consulting services or in which he had been employed over in the last twenty four months.

Prohibition from conducting assurance services.

169. Heads of internal audit units and the internal auditors shall bear legal and disciplinary liability for failure to discharge their responsibilities under the Act and these Regulations:

Disciplinary liability on internal auditors.

Provided that assurance procedures alone even when performed with due professional care shall not be a guarantee that all significant risk shall be identified.

*Internal Audit Planning, Performance and Reporting*

170. (1) Internal audit planning shall be carried out on the basis of risk assessment and shall be set out in a three-year strategic plan, on the basis of which an annual internal audit unit plan shall be developed.

Risk based audit assessment strategic plan.

(2) The annual work plan developed in paragraph (1) of this regulation shall be—

- (a) submitted to the audit committee by the 15<sup>th</sup> February each financial year; and
- (b) approved by the audit committee and shared with the Accounting Officer of that entity, in sufficient time for inclusion in the budget of that entity.

171. (1) The findings and recommendations arising from each internal audit assignment shall be promptly reported to the accounting officers.

Communicating results.

(2) The final report, including the actions taken by the accounting officer shall be reported to the audit committee in the format determined by the Cabinet Secretary.

(3) When updating the management of the progress of an audit assignment, the internal auditor shall—

- (a) give an oral preliminary report which shall be confirmed in writing within seven (7) days;
- (b) discuss the findings, conclusions and recommendations with the auditee;
- (c) issue a signed written report after each internal audit assignment that is objective, clear, concise, constructive and timely;
- (d) give reports which clearly present the purpose, scope and results of the audit; and
- (e) give reports with recommendations for potential improvement, suggestions of corrective actions and acknowledgement of satisfactory performance.

*Implementation of audit recommendations*

172. (1) The accounting officer of the concerned entity shall be responsible for the implementation of the recommendations made in the audit reports and shall develop response and action plan which he or she shall submit to the Chairperson of the audit committee within fourteen days.

Enforcement of internal audit recommendations.

(2) The response and action plan submitted to chairperson of the audit in paragraph (1) of this regulation shall be submitted to the Audit Committee for follow up to ensure their implementation.

173. (1) Each head of internal audit shall prepare a quarterly internal audit report which shall cover areas provided for in guidelines and shall be in the format issued by the Cabinet Secretary.

Preparation and submission of quarterly and annual audit reports.

(2) The quarterly report in paragraph (1) of this regulation shall be submitted within 14 days of the end of the quarter to the accounting officer of the concerned entity, the Audit Committee and the National Treasury.

(3) At the end of each financial year, the Internal Auditor-General shall prepare for the national government clear and comprehensible annual report that consolidates the quarterly audit assurance reports prepared by all internal audit units in national government entities, in accordance with formats prescribed by the Accounting Standards Board.

#### *Audit Committees*

174. (1) Subject to paragraph (2) of this regulation, each national government entity shall establish an audit committee.

Establishment of audit committees.

(2) The National Treasury, where deemed necessary, may approve the sharing of one audit committee by two or more entities.

(3) In the case of a shared audit committees referred to in paragraph (2), the appointing authorities of the concerned entities shall jointly appoint the chairperson and members of the joint audit committee in consultation with the National Treasury.

(4) There shall be a minimum of three members, excluding a person who shall be appointed to represent the National Treasury in each audit committee and a maximum of five.

(5) The chairperson of an audit committee shall be independent of the national government entities, be knowledgeable of the organization, have the requisite business and leadership skills and shall not be a political office holder.

(6) In addition to paragraph (5), majority of members appointed to the audit committee shall not be past or present employees of the entity, and shall not have served as an employee or agent of a business organisation which has carried out any business with the concerned entity in the last two years.

(7) All members of an audit committee shall—

- (a) have a good understanding of government operation, financial reporting or auditing; and
- (b) have a good understanding of the objects, principles and functions of the entity to which they are to be appointed.

(8) Each Accounting Officer of an entity shall ensure that the audit committee is adequately funded and supported.

(9) The chairperson of an audit committee shall not serve concurrently as a member of any other audit committee of the concerned national government entity, but its members can serve in up to a maximum of three audit committees at the same time.

(10) The Public Sector Accounting Standards Board shall prescribe guidelines for appointment of audit committees to be approved and gazetted by the Cabinet Secretary.

175. The main function of the audit committee shall be to—

Duties of the audit committees.

- (a) support the Accounting Officers with regard to their responsibilities for issues of risk, control and governance and associated assurance but the responsibility over the management of risk, control and governance processes remains with the management of the concerned entity; and
- (b) follow up on the implementation of the recommendations of internal and external auditors.

176. (1) The Accounting Officer of a national or county government entity shall not be a member of the audit committee, but shall attend a meeting of the audit committee by the invitation of the chairperson of the committee.

Composition of audit committees.

(2) Audit Committee members shall be persons of integrity and meet the requirements of Chapter Six of the Constitution.

177. (1) Members of audit committees shall be appointed, for a term of three years and shall be eligible for re-appointment for a further term of three years.

Terms of appointment.

(2) Despite the provision of paragraph (1), after expiry of every term at least one third of the committee shall retire and not be eligible for re-appointment.

(3) The roles and responsibilities of the audit committee shall be laid out in the guidelines issued by the Public Sector Accounting Standards Board.

178. (1) A person shall cease to be a member of an audit committee if —

Vacancy of office.

- (a) that person is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months; or
- (b) that person is absent from two consecutive regular meetings of the committee without leave of absence; or
- (c) that person resigns, in writing, from the audit committee; or
- (d) that persons' term of office expires; or
- (e) that person ceases to be a member by virtue of withdrawal of his or her nomination to the audit committee by the nominating institution; or
- (f) that person becomes an employee or officer of the concerned entity; or
- (g) that person is discovered to have a conflict of interest as described in at the time of his appointment and failed to disclose it; or
- (g) the audit committee is disbanded.

(2) The National Treasury shall be informed of any contemplated termination of the services of a person serving on an audit committee for its concurrence.

*Functions and responsibilities of the audit committee*

179. (1) The audit committee shall meet at least once in every three months.

Meetings of the audit committee.

(2) Each member of the audit committee shall have one vote.

(3) The audit committee shall make decisions by resolution.

(4) In the event of a tie vote, the chair shall be entitled to cast a second vote.

(5) A majority of the members of the audit committee that includes at least fifty (50%) percent plus one member shall constitute a quorum for the meetings of the committee.

(6) The chair of the audit committee shall—

(a) ensure that minutes are taken at each meeting and provided to the members of the committee before the next meeting;

(b) have access to management, the head of internal audit and external auditors; and

(c) send or cause to be sent —

(i) all notices of audit committee meetings at least fourteen days before the meeting; and

(ii) all minutes of audit committee meetings.

(7) If at any meeting of the audit committee the chair is not present, the members shall elect a chair for purposes of conducting that meeting.

180. Any code of conduct of public officers shall also apply to members of the audit committee in relations to their functions, powers and duties as members of the committee.

Code of conduct.

181. (1) Members of the audit committee shall be paid an allowance on account of attendance of audit committee meetings as determined by National Treasury in consultation with other relevant entities.

Remuneration and compensation.

(2) A national government entity shall reimburse members of its audit committee for expenses incurred while attending to audit committee duties.

182. The accounting officer shall—

Capacity building for Audit Committees.

(a) provide capacity building to all public national government entity audit committees;

(b) provide policies and guidelines on audit committees;

(c) monitor the effectiveness of audit committees; and

(d) provide periodic updates of Audit committee activities through the website.

## PART XIV—PUBLIC DEBT MANAGEMENT

183. (1) National government borrowing shall be guided by the following principles—

Guiding Principles for national government borrowing

- (a) need to ensure stability of domestic financial markets;
- (b) promotion of inter-generational equity in the sharing of burdens and benefits of public borrowing;
- (c) determination of thresholds of borrowing rights for both levels of government;
- (d) use of objective criteria for evaluating national government entities or county government eligibility for national government debt guarantee; and
- (e) prudence and equity in setting limits for debt stock levels for each county government.

184. The policy framework in the management of public debt shall comprise of the medium term debt management strategy.

Policy frameworks in public debt management.

185. (1) Any borrowing by the national government shall be informed by the medium term debt management strategy, which shall be reviewed annually, prepared and executed by the Public Debt Management Office in accordance with the delegated authority by the Cabinet Secretary.

Medium term debt management strategy.

(2) Medium term debt management strategy shall be formulated annually on a three year rolling basis.

(3) The Strategy shall be approved by the Cabinet.

(4) The medium term debt management strategy shall be prepared taking into account —

- (a) the borrowing needs of the Republic of Kenya;
- (b) prevailing macro-economic conditions;
- (c) prevailing conditions of the financial markets; and
- (d) any other relevant factors.

(5) The public debt management strategy shall entail minimising borrowing costs with a prudent degree of risks.

186. (1) The medium term debt management strategy shall be implemented through the annual borrowing programme for each fiscal year.

Annual national government borrowing programme.

(2) The annual borrowing programme shall include issuance of government securities and disbursement of external loans for the fiscal year and show indicative dates of such issuance and disbursements.

187. (1) The Cabinet Secretary shall derive powers to raise loans for the Government of Kenya from section 49 of the Act.

Borrowing powers of the government.

(2) The national government may from time to time borrow within and outside Kenya such sums of money in such amount and on such terms and conditions as to interest, repayment, disbursement or



otherwise as the Cabinet Secretary may think fit, in any of the following manners—

- (a) by issuing external government securities; or
- (b) by issuing Treasury Bills or Treasury Bond or stock; or
- (c) by advances from Central Bank of Kenya under the Central Bank of Kenya Act; or
- (d) by bank overdraft on Exchequer Account or any other public account; or

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by any other loan or credit evidenced by instruments in writing.

188. All sums borrowed under the Act shall be expended only on the activities included in the approved estimates of expenditure of the national government entities.

Use of moneys borrowed and credits obtained.

189. Negotiation with foreign governments and agencies for external loans shall culminate into and shall be formalised into one of the following recognised instruments—

Formalisation of agreements for loans.

- (a) loan agreements;
- (b) exchange of letters that constitute an agreement;
- (c) subscription agreements in regard to external government securities; and
- (d) national government guarantee.

190. Where development partner have opted to give loans through credit purchase or commodity loan arrangements, for the purposes of budgeting and accounting the following procedures shall be followed—

Credit purchases.

- (a) the amount of expenditure and matching direct payment as agreed and as applicable, shall be included in the development estimates under separate items;
- (b) accounting officer shall apply through the National Treasury for utilisation of the credit purchase facility in the prescribed manner as set-out in the loan instrument;
- (c) after supplying goods or services, the development partner shall notify National Treasury of the amount disbursed against the loan;
- (d) the National Treasury shall record the amounts disbursed as a drawing against each loan facility;
- (e) the National Treasury shall forward invoices and debit advices to the accounting officer concerned to bring the expenditure involved into account; and
- (f) the accounting officer shall, on satisfying herself or himself of receipt of goods and services, record the transactions in the stores ledger card and the accounting officer shall notify the National Treasury on the receipt of goods and services.

191. The procedure to be followed in the disbursement of loan funds shall be defined in the respective agreement and shall generally assume one or more of the following methods—

Modes of payment (disbursement) loan funds.

- (a) credit purchase; or
- (b) direct disbursement to the Consolidated Fund or any other public fund established by an Act of Parliament for a specific purpose; or
- (c) reimbursement, where the government pays for goods and services supplied and later on claim reimbursement from the financier.

192. The national government may borrow in pursuant to the requirements of section 49 of the Act for the purpose of—

Borrowing purposes.

- (a) financing national government budget deficits;
- (b) borrowing for purposes of cash management;
- (c) honouring obligations under outstanding national government guarantees;
- (d) refinancing outstanding debt or repaying a loan prior to its date of repayment;
- (e) mitigation against adverse effects caused by an urgent and unforeseen event in cases where the contingency fund has been depleted;
- (f) mitigation against significant balance of payment imbalances; and
- (g) meeting any other development policy objectives that the Cabinet Secretary shall deem necessary, consistent with the law, and as Parliament may approve.

193. The objectives of public debt management are to ensure that the government's financing needs and its payment obligations are met at the lowest possible cost over the medium to long term, with a prudent degree of risk, and to promote development of the domestic debt market while ensuring the equitable sharing of benefits and burdens of public debt between the current and future generation.

Objectives of public debt management.

#### *Public Debt Management Office*

194. (1) In addition to the provisions of section 63 of the Act, the functions of the Public Debt Management Office established under section 62 shall be to—

Functions of public debt management office.

- (a) prepare and update an annual medium-term debt management strategy including debt sustainability analysis in accordance with regulations;
- (b) prepare and review an annual borrowing programme as appropriate including the auction calendar to facilitate auction of government debt securities;
- (c) participate in negotiation meetings with government creditors, and provide technical support to the Cabinet Secretary on public debt operations;
- (d) assess the risks in issuing any guarantees including contingent liabilities inherent in public private partnership

- projects, and prepare reports on the method used for assessment and the results thereof for the attention of the Cabinet Secretary;
- (e) facilitate the recovery of any payments including interest and other costs incurred by Government due to the honouring of outstanding guarantees;
  - (f) prepare annual debt management report which shall include outstanding guarantees, outstanding lending and government on-lending by Government;
  - (g) monitor and keep track of debt levels;
  - (h) to keep timely, comprehensive and accurate records of outstanding Government debt, guarantees and lending in an appropriate database;
  - (i) advise on all debt servicing obligations of Government;
  - (j) prepare and publish debt statistical bulletins regularly;
  - (k) prepare forecasts on Government debt servicing and disbursements as part of the yearly budget preparation;
  - (l) compile, verify and report on all Government debt arrears and design a strategy for the settlement of those arrears;
  - (m) monitor that the disbursements of loans raised by Government are in accordance with agreed disbursement schedules;
  - (n) formulate External Resources Policy;
  - (o) assess, mobilize, negotiate and allocate all external resources including the consolidation of the donor commitment register in the annual national budget;
  - (p) examine and scrutinise proposals for financing projects of a national government entity from an accounting officer;
  - (q) formulate and harmonize policies and coordinate matters relating to employment of Kenyan nationals and appointment of expatriate consultants and technical assistance as experts and consultants in projects supported by development partners;
  - (r) ensure adherence to the accepted guidelines and procedures for procurement involving funds provided under foreign aid;
  - (s) coordinate, review and monitor the utilization of external resources including joint programming, joint work plans, joint visits, joint implementation, and monitoring and evaluation;
  - (t) profile external resources and maintain the accounts thereof;
  - (u) formulate an external resource mobilization strategy to guide the national and county governments in external resource mobilization including monitoring;

- (v) liaise for external economic relations with international development agencies;
- (w) coordinate all international agreements involving financial economic and technical co-operation dealing predominantly with economic and financial issues;
- (x) programme and manage financing of fellowships, scholarships and foreign training offers from bilateral and multilateral sources;
- (y) ensure harmonization, alignment and coordination of external resources in line with international conventions of which Kenya is a member state thereof;
- (z) monitor disbursement and absorption of external resources including reporting of the same by both national and county governments;
- (aa) formulate guidelines and procedures for reporting and recording budget estimates and expenditure for external resource;
- (bb) provide guidance and capacity development to county governments in the assessment, mobilization, negotiation and allocation of all multilateral and bilateral external resources for implementation of development partners;
- (cc) support aid effectiveness initiatives and to use country systems in the management of external resources and where there is need, support in strengthening them rather than avoiding them;
- (dd) ensure linkages of the National Treasury with NGOs and coordination of NGOs through the formation of a National Consultative Forum; and
- (ee) perform such other functions as may be determined by the Cabinet Secretary.

195. (1) The Cabinet Secretary may, on such terms and conditions as he or she may determine, and, when necessary, with the concurrence of the lender—

- (a) repay any loan prior to the redemption date of that loan; or
- (b) convert the loan into any other loan; or
- (c) consolidate two or more loans into an existing or new loan.

Redemption, conversion, and consolidation of loans.

196. (1) Pursuant to section 50(2) of the Act, the debt limit at any given time shall not exceed the net present value of the total public debt that is determined in accordance with fiscal responsibility principles under regulation 26 (1)(c) of the these Regulations.

Setting debt limit

(2) In addition to the debt limit under paragraph (1), the annual thresholds for the annual borrowing by the national and county governments and their entities as required by section 50(5) of the Act shall be set by Parliament.

(3) The debt limit under paragraph (1) of this regulation shall be specified annually in the budget policy statement and the medium term debt management strategy paper.

(4) The annual new government debt and guarantees shall be consistent with the debt limits set out under paragraph (1) of this regulation.

(5) For the purposes of monitoring compliance with the limits under paragraph (1), the amount of government debt and government guarantees which are not denominated in shillings shall be recalculated at the prevailing exchange rate of the Central Bank of Kenya.

197. (1) The issuance of government securities to raise debt capital shall be by way of auction or such other method as Cabinet Secretary may determine.

Criteria for issuance of government securities.

(2) Despite the provisions of paragraph (1) of this regulation, the auction of domestic government securities shall take into account the following factors—

- (a) pricing of the domestic government securities;
- (b) refinancing risk of the domestic governance securities;
- (c) the market stability when taking up domestic government securities; and
- (d) the borrowing programme which is consistent with the medium term debt strategy and budget policy statement.

(3) The Cabinet Secretary may establish an auction committee responsible for the issuance of government securities for the purpose of financing the budget deficit comprised of—

- (a) Head of Public Debt Management Office;
- (b) the Governor, Central Bank of Kenya or his or her nominee;
- (c) Head of the accounting policy within the National Treasury; and
- (d) Head of Economic Affairs.

(4) The Cabinet Secretary shall appoint a chairperson among the members mentioned under paragraph (3) in this regulation.

(5) The Public Debt Management Office shall provide the secretariat to the Committee.

(6) Where national government securities are to be issued other than by auction, their terms and conditions shall be subject to the prior approval of the Cabinet Secretary.

(7) The Committee may co-opt the relevant County Executive Committee Member or his or her representative on need basis.

198. (1) The issuance of government securities outside Kenya shall be in such mode as the Cabinet Secretary shall approve in accordance with the Act.

Issuance of government securities outside Kenya.

(2) Despite the provisions of paragraph (1) in this regulation, the issuance of external government securities shall take into account the following factors—

- (a) pricing of the foreign government securities;
- (b) refinancing risk of the foreign governance securities;
- (c) the impact on exchange rate stability when taking up foreign government securities; and
- (d) the borrowing programme which is consistent with the medium term debt strategy and budget policy statement.

199. (1) National government entities and each County Treasury shall submit to the National Treasury a report on public debt in a format prescribed by the Accounting Standards Board within two months after the end of the financial year.

Reporting on public debt by counties and national government entities.

(2) The report to be submitted under paragraph (1), shall include at the minimum the following information—

- (a) review of previous year's financing of budget deficit;
- (b) composition of domestic debt;
- (c) composition of external debt;
- (d) on-lent loans and contingent liabilities;
- (e) debt strategy and debt sustainability;
- (f) outlook for the medium term; and
- (g) any commitment fees and penalties paid on any undisbursed amounts of a loan.

200. (1) Not later than three months after the end of each financial year, the Cabinet Secretary shall prepare and submit an annual report to Parliament on public debt in the format set by the Cabinet Secretary.

Annual debt reporting.

(2) The annual public debt report under paragraph (1) shall include the following information—

- (a) Review of previous year's financing of budget deficit;
- (b) composition of External debt;
- (c) publicly guaranteed debt;
- (d) on-lent loans and contingent liabilities;
- (e) debt strategy and debt sustainability;
- (f) outlook for the medium term; and
- (g) any commitment fees and penalties paid on any undisbursed amounts of a loan.

201. (1) All financial obligations for which the National Treasury has issued guarantees on behalf of and for the account of the government in full compliance with the Act shall be government guaranteed debt.

Government guaranteed debt.

(2) The Cabinet Secretary shall participate in the negotiations on the contracting of a guaranteed loan by advising the borrower on the best financial terms available, and shall sign on behalf of the national government agreements on the issuance of a government guarantees or guarantee letters.

(3) Any proposals for amendments to the loan agreement for which a guarantee is already issued shall be done with prior approval of the Cabinet Secretary.

(4) Borrowers under government guaranteed loans shall provide to the Cabinet Secretary, on a quarterly basis, information on the disbursements and repayments of funds under the loan.

(5) Where necessary, the Cabinet Secretary may request additional information on National Government guaranteed loans from the national government entities and county governments.

(6) The terms and conditions for national government entities applying for government guaranteed financing and the government guarantee issuance procedures shall be determined by the Cabinet Secretary with the approval of Parliament.

(7) Call under a national government entity guarantee or county governments guarantee shall be due only in the event—

- (a) a borrower has not effected a full or partial payment on a loan in accordance with the loan agreement terms and conditions; and
- (b) a creditor has notified the Cabinet Secretary after taking steps and actions provided for in the loan agreement for collection of the amounts due from the borrower within a period of one month from the date of default.

(8) The Cabinet Secretary shall require the borrower to explain the circumstances surrounding the default and the measures being taken to correct the situation within fifteen after notification by the creditor.

(9) Where the requirements under paragraph 7(b) have not been provided for in the government guarantee issuance agreement, the Cabinet Secretary shall determine together with the creditor the actions to be taken where a payment on a national government guarantee is due, as well as the time limits within which the national government should pay the overdue amount.

(10) The national government shall, from the date of the payment under a national government guarantee, enter into the creditor's rights under the loan agreement to the amount of then payment made.

(11) The Cabinet Secretary shall take necessary actions provided for under sections 61 and 94 of the Act.

202. Pursuant to the provisions of section 58 of the Act, the capital project expenditures of—

- (a) county governments for which a guarantee is requested, shall meet the following requirements—
  - (i) the borrower shall demonstrate that the project could not be financed on reasonable terms and conditions without a government loan;

Eligibility and evaluation criteria for national government guarantees.

- (ii) provide the projected cash flow clearly setting out projected disbursement schedule and repayment plan;
  - (iii) the borrower shall contribute a substantial portion of project funds from their own resources and in any case not less than fifteen (15) percent;
  - (iv) a national government entity or county government that defaults on a loan shall be put on an agreed financial recovery programme by the National Treasury;
  - (v) it is a feasible project that has been approved by the national government entity or county government entity as may be required by national or county legislation;
  - (vi) the application of the guarantee shall be submitted with a draft loan agreement; and
  - (vii) any other guidelines consistent with the Act as may be gazetted by the Cabinet Secretary;
- (b) national governments entities for which a guarantee is requested, shall meet the following requirements—
- (i) the national government entity shall demonstrate that the project could not be financed on reasonable terms and conditions without a loan;
  - (ii) provide the projected cash flow clearly setting out a projected disbursement schedule and repayment plan;
  - (iii) the national government entity shall contribute at least fifteen (15) percent of the project cost from their own resources;
  - (iv) it is a feasible project that has been approved by the governing body as required under these Regulations;
  - (v) concessionality of the proposed loan is fully evaluated by the national government and is determined to be at the acceptable level of grant element as per the borrowing strategy;
  - (vi) satisfies all the fiscal responsibility principles set out in the Act and these Regulations;
  - (vii) the National Treasury has confirmed that the lender is of good credibility and standing with the Government of Kenya; and
  - (viii) any other guidelines as Cabinet Secretary to the National Treasury may prescribe in a government gazette.

203. Pursuant to the provisions of section 58(2)(a) of the Act, and in addition to provisions under regulation 202, the following procedures shall apply in relation to a national government entity—

- (a) before seeking a national government guarantee, the governing body of the national government entity shall approve the borrowing including its terms and conditions;

Process for approving a guarantee for a national government entity.



- (b) after approval by the governing body, the Chief Executive Officer of the entity shall submit the proposed loan agreement and a sessional paper to the Cabinet Secretary responsible for the national government entity for approval of the borrowing, including its broad terms and conditions;
- (c) upon approval under paragraph (b), the Chief Executive Officer shall submit the final draft loan financing agreement and the approval of the governing body and the Cabinet Secretary responsible for the entity to the Cabinet Secretary requesting for the guarantee of the final loan financing agreement;
- (d) the Cabinet Secretary may reject a request for loan guarantee with reasons and communicate the same to the concerned chief executive officer;
- (e) upon approval of a loan guarantee request, the Cabinet Secretary shall seek the legal opinion of the Attorney General.
- (f) upon receiving the views of the Attorney-General and taking them into account, the Cabinet Secretary to the National Treasury shall submit a sessional paper to Parliament with recommendations seeking its approval.
- (g) the Cabinet Secretary shall communicate the decision of Parliament on the draft loan guarantee to the respective chief executive officer; and
- (h) upon approval by Parliament the Cabinet Secretary to the National Treasury shall issue a loan guarantee.

204. (1) Upon recommendation by the Cabinet Secretary to the National Treasury, Parliament may approve a draft loan guarantee document as provided under section 58(2)(f) of the Act, only if it is satisfied that—

- (a) the guarantee is in the public interest;
- (b) the borrowers financial position is strong enough to enable the borrower to repay the loan proposed to be guaranteed and to pay interest and other charges based on projected revenue streams;
- (c) concessionality of the proposed loan is fully evaluated by the national and county governments and is determined to be at the acceptable level of grant element as per the borrowing strategy;
- (d) the loan investments are geared towards stimulating economic growth in a county government; and
- (e) all legal issues relating to financial agreements, tripartite signing, and subsidiary agreements are fully addressed.

205. For the purposes of debt management operations and loan administration, the accounting officers of a national government entity shall be responsible for the following—

Approval of draft loan guarantee by Parliament

Roles and responsibilities of accounting officers in debt management operations and loan administration.

- (a) preparing project proposals and submitting them for approval to the National Treasury;
- (b) where authorisation has been granted for the project to start, the Accounting Officer shall ensure public disclosure to intended beneficiaries within thirty days of the allocation and disbursement of the loan;
- (c) after disbursement of loans, the loan recipients accounting officer shall report within fifteen days after the end of each quarter to the intended beneficiaries on the expenditures and performance achieved in relation to the loan;
- (d) ensuring that during the project identification and design, the intended beneficiaries are involved through the public participatory approach to planning through public forums to enhance leadership, ownership, social accountability and sustainability of the project;
- (e) preparing expected disbursements profiles;
- (f) submitting loan disbursement claims for approval by the National Treasury;
- (g) making comments on draft loan agreement from the National Treasury;
- (h) participating in all consultations and negotiations of all loan agreements for projects and programmes under their jurisdiction; and
- (i) implementing, monitoring and evaluating, in close collaboration with the national government entity responsible for National Planning, all projects and programmes within their jurisdiction.

#### *Sinking Fund*

206. (1) There is hereby established a national government fund to be known as the Sinking Fund to be administered by the Head of the Public Debt Management Office.

Establishment of Sinking Fund.

(2) The purposes of Sinking Fund shall be the payment of expenses of, or incidental to, redemption of an issue of Government securities and the redemption of an issue of Government securities.

(3) The Cabinet Secretary shall, upon approval of these Regulations, publish in the Kenya Gazette the guidelines for the management of the Fund.

#### PART XV—PUBLIC FUNDS

207. (1) The establishment of a public Fund shall at the minimum meet the following requirements—

Criteria for the establishment of a public Fund.

- (a) be initiated through a proposal by the Cabinet secretary responsible for the national government entity under which the functions of the Fund fall clearly setting out the justifications and submit it to the Cabinet Secretary;

- (b) the Cabinet Secretary shall certify in writing that the functions and the public services to be delivered through the Fund cannot be delivered through the structure of budget appropriations;
- (c) provide a clear justification as to why a fund structure is deemed appropriate for improved service delivery in light of the legislative and policy mandate of the national government entity;
- (d) the administration costs of the Fund shall be a maximum of three (3%) percent of the approved budgets of the Fund;
- (e) the Cabinet Secretary responsible for the national government entity functions shall confirm in writing that the establishment of the Fund and its continued existence will not depend on annual financing from the national exchequer;
- (f) a Fund that has a lifespan of less two years shall not be approved unless it is for unforeseen and urgent need;
- (g) the Cabinet Secretary shall grant approval in writing before establishment of Fund;
- (h) the Cabinet Secretary responsible for the entity shall demonstrate how the activities of the proposed Public Fund shall fit in the overall Medium Term Plan and Budget Policy Statement; and
- (i) the initial approval for establishment of a national public Fund shall be for a maximum period of ten (10) years, beyond which Cabinet and Parliament approvals shall be sought.

(2) Despite the provisions of paragraph (1) of this regulation, the Cabinet Secretary may from time to time issue further guidelines on the establishment of national public Funds.

208. The Cabinet Secretary shall provide for the management, operation and winding up procedure in the guidelines for establishing each Fund which shall be in accordance with the Act and these Regulations.

Management and winding up of a national public Fund.

209. (1) Where the lifespan of Fund lapses, the process of winding up shall commence within six (6) months from the date of the lapse.

Winding up of national government public Fund.

(2) The final report after winding up the Fund shall be submitted to Parliament and the Auditor-General for audit.

(3) The Cabinet Secretary may dissolve a public Fund where the Cabinet Secretary responsible for a department operating a public Fund considers that a public Fund has successfully completed the specific objective for which it was created.

#### PART XVI — STATE CORPORATIONS

210. (1) For the purposes of this Part—

Definitions.

- (a) “governing body” in relation to a public entity, means a commission, a board of directors, a board of trustees, board of governors, and council; and
- (b) “government owned enterprise” means an organisation which—
  - (i) is a legal person under the ownership and control of the national government;
  - (ii) has been assigned financial and operational powers to carry on a business activity; and
  - (iii) as its main business, supplies goods or services in accordance with ordinary commercial principles; and
- (iv) is financed wholly or substantially from sources that do not require annual appropriation by National Assembly, or imposition of a tax, levy or other charge under legislation.

211. (1) Pursuant to section 4 of the Act, the Cabinet Secretary may by notice in the Gazette declare and classify national government entities in accordance with the Schedules as indicated in this Regulation.

Declaration of national government entities and classification of state corporations.

(2) All State Organs including constitutional institutions and independent offices shall be categorised as Schedule 1 national government entities.

(3) National Government owned enterprises operating on the basis of commercial principles shall be listed as Schedule 2 national government entities.

(4) Regulatory agencies shall be categorised as Schedule 3 national government entities.

(5) Executive agencies, public universities and public tertiary education institutions, national referral health institutions, boards and commissions fully or partially funded through the national government budget shall be categorised as Schedule 4 national government entities.

(6) National Public Funds established under the Constitution, national legislation or subsidiary national legislation shall be classified as Schedule 5 national government entities.

(7) The Cabinet Secretary shall have powers to amend the Schedules classified under this regulation in accordance with the provisions of the Act and this regulation.

212. The provisions of the Act and these Regulations shall apply to all national government entities declared under regulation 211 of these Regulations.

Scope and application.

213. (1) The Cabinet Secretary responsible for a national government entity that should have been declared or ought to be declared under the Act and these regulations as a national entity but has not been declared in either of the Schedules, shall notify the Cabinet Secretary, in writing of that the national government entity is not listed

Application for listing by governing bodies of undeclared state corporations.

or ought to be listed in the Schedules within 30 days after the gazettment of these Regulations.

(2) The Cabinet Secretaries of the responsible national government entities under paragraph (1) shall submit the following information to the Cabinet Secretary in support of its application for listing—

- (a) name of the public entity;
- (b) its main function or business activities;
- (c) department responsible for the public entity;
- (d) legal instrument under which the entity was established;
- (e) dates of its establishment and financial year end;
- (f) names of members of the governing body controlling the public entity;
- (g) its registered address and telephone numbers;
- (h) name of the chief executive officer;
- (i) name of the chief financial officer;
- (j) name of the company secretary, if any;
- (k) authority responsible for appointing the chief executive officer and governing body;
- (l) subsidiaries, if any, under the ownership control of the entity;
- (m) latest audited financial statements;
- (n) amount of budgetary fiscal transfers received over the past three financial years; and
- (o) most recent strategic plan of the public entity.

214. The following principles shall apply when determining establishment and dissolution of a Public Corporation under section 86 and 182 of the Act—

- (a) there shall be a role for national government entity to fill a gap left by the market forces through—
  - (i) social inclusion, where the national government entity addresses social inequity by redistributing resources in ways that improve opportunity and support for individuals, families and communities, allowing them to participate in the economy and society consistent with the national government's social inclusion agenda; or
  - (ii) correction of market failure, where the national government entity's activity shall address market failures by improving social and economic welfare through improved resource allocation, where the benefits of national government intervention outweigh its cost;

Guiding principles  
for the establishment  
of state corporations.

- (b) activities promoted by the corporation shall have clear and consistent objectives and be effective in achieving their national objectives and represent value for money for the expenditure of taxpayer funds;
- (c) a government owned enterprise shall operate on commercial principles and with a defined commercial income stream that substantially supports the associated commercial activities;
- (d) where activities involving tax expenditures demonstrate that public expenditure is less effective in achieving the national government objective but can effectively be undertaken on a commercial basis;
- (e) there is no overlap or duplication of functions when establishing a state corporation within the national government.

215. (1) In exercising the powers under section 182 of the Act, the Cabinet Secretary and National Assembly shall be guided by regulation 214, this regulation and any other relevant regulation of these Regulations.

Criteria for establishing state corporations.

(2) A state corporation may be established only with the prior approval of the Cabinet, with reference to a legislation enacted to govern the establishment, management and dissolution of such government commercial enterprises.

(3) In order to establish a state corporation or a subsidiary of a state corporation—

- (a) the responsible Cabinet Secretary shall submit a written business case to the Cabinet Secretary, with detailed justification for establishing the state corporation or the subsidiary;
- (b) the business case in paragraph subparagraph(a) shall be informed by a feasibility assessment of the proposed state corporation or the subsidiary for the purpose of ascertaining—
  - (i) the economic and financial viability of establishing the state corporation;
  - (ii) whether the proposed activity cannot be conducted through an existing corporation or the parent department;
  - (iii) whether or not there is need to establish a new corporation;
  - (iv) the functions and objective that its establishment is supposed to attain;
  - (v) how the activities of the proposed corporation will fit in the department's legislative mandate and medium term strategy, and aid the realization of the objectives of the programmes associated with that department;

(vi) how it shall impact the fiscal position of the government; and

(vii) the amount of government share;

(c) the feasibility and viability assessment conducted under subparagraph (b) shall be submitted to the Cabinet for approval.

(4) Upon approval of the business case by the Cabinet, the necessary establishment processes shall be undertaken by the relevant department as required by a legislation on formation, management and dissolution of state corporations to allow it perform the functions stipulated in the instruments for incorporation;

(5) The national government entity responsible for investment portfolio management in the National Treasury shall be constantly updated on the progress of a state corporation.

(6) The department responsible for investment portfolio management in the National Treasury shall conduct regular review of state corporation to assess the relevance of the mandate and the justification for their continued existence and where necessary make recommendations to the Cabinet for the dissolution or merger of corporations.

216. (1) A state corporation may be dissolved only with the prior approval of the Cabinet, with reference to legislation enacted to govern the establishment, management and dissolution of such state corporation.

Dissolution of State Corporations.

(2) Subject to the provisions of a legislation enacted for the formation, management and dissolution of state corporations, a state corporation may be dissolved—

(a) upon expiry of the lifespan of the state corporation as may be defined in the instrument of establishment;

(b) where a state corporation has carried out the mandate for which it was created;

(c) upon reorganization of the corporation and associated government functions, and

(d) upon a merger of the corporation with another.

(3) The accounting officer related to the corporation in question shall follow-up implementation of the findings and eventual recommendations for dissolution to ensure compliance.

(4) The Cabinet Secretary may by notice in the gazette prescribe guidelines for dissolution and mergers of state corporations.

(5) Upon approval by Cabinet of the recommendations to dissolve or merge state corporations, the Cabinet Secretary shall cause the dissolution or merge the corporation with another.

(6) Upon dissolution of a state corporation, the funds corresponding to government equity in the corporation shall be deposited into the Consolidated Fund.

(7) Upon ceasing of an entity to be a public entity, the Cabinet Secretary shall vest all the assets and liabilities to the responsible national government entity.

(8) No national state corporation shall vest its assets in another entity without prior approval of the Cabinet.

(9) The provisions of this regulation shall be subject to the provisions of a legislation enacted for the formation, management and dissolution of state corporations, or the Act of Parliament establishing that state corporation.

217. (1) The Cabinet Secretary responsible for public investments, in consultation with Cabinet Secretary shall annually agree on the performance targets with the governing body for a national government entity listed in Schedule 2 and 3.

Evaluation of state corporation's performance.

(2) The annual performance contract shall document the mandated key performance measures and indicators to be attained by the national government entity as agreed between the governing body and the responsible Cabinet Secretary, who shall give the governing board policy direction.

(3) The Cabinet Secretary responsible for finance shall establish procedures for quarterly reporting to the Cabinet Secretary responsible for the controlling department in order to facilitate effective performance monitoring, evaluation and implementation of corrective actions.

(4) Without limiting the provisions of paragraph (3) of this regulation, the National Treasury shall design the procedures by which the Cabinet Secretary shall monitor the implementation of strategic plans of Schedules 2 and 3 national government entities and assess their performance and achievements.

(5) The Cabinet Secretary responsible for public investments shall issue guidelines on performance reward and sanctions of Schedules 2 and 3 national entities.

218. (1) The Cabinet Secretary responsible for the state corporation shall approve the estimates of budget for the state corporation and shall not later than January every year, submit to the National Treasury for approval those estimates for the following financial year.

Annual budget.

(2) The National Treasury shall provide guidelines and the format on which the budget shall be prepared.

(3) Budget estimates submitted under paragraph (1), shall be classified as follows—

- (a) compensation of employees;
- (b) use of goods and services;
- (c) transfers to other levels of government; and
- (d) capital.



219. (1) The National Treasury shall prepare and issue dividend policy guidelines on how national government entities referred to under regulation 211(3) and (4) and remit dividends to the National Treasury.

Dividends policy and surplus funds.

(2) A regulatory authority established by an Act of Parliament and referred to under regulation 211 (4), shall remit into Consolidated Fund, ninety per centum of its surplus funds reported in the audited financial statements after the end of each financial year.

(3) A regulatory authority to which this section applies shall be exempt from the income tax.

(4) The governing body of a public entity listed in Schedule 2 referred to under regulation 211 (3), shall formulate an appropriate dividend policy in line with the policy guidelines referred under paragraph (1), and submit to the National Treasury and the respective County Treasury.

220. (1) Pursuant to section 83(6) of the Act, the accounting officer of a national government entity listed in Schedules 2, 3 and 4 shall prepare and submit quarterly financial and non-financial statements within 15 days after the end of the each quarter to the Cabinet Secretary responsible for the national government entity with a copy to the National Treasury and the Auditor-General.

Quarterly reporting by governing bodies.

(2) The quarterly reports prepared under paragraph (1) shall be in the format gazetted by the Cabinet Secretary and shall include information on—

- (a) revenue, including funding from grants;
- (b) expenditure;
- (c) borrowing, including guarantees issued by the national government and any outstanding loan arrears; and
- (d) amount of profit or loss of the public entity for the quarter.

221. (1) The accounting officer for a national government entity listed in Schedule 2 and 3 shall prepare and submit annual financial and non-financial statements in the format gazetted by the Cabinet Secretary within three months to the Auditor General with copies to the responsible Cabinet Secretary and the National Treasury.

Annual financial statements.

(2) the annual financial and non-financial statements referred to under paragraph (1), shall be prepared—

- (a) in compliance with the International Financial Reporting Standards and as prescribed by the Public Sector Accounting Standard Board from time to time; and
- (b) the annual financial statements must be approved by the governing body.

#### PART XVII—INTERGOVERNMENTAL FISCAL RELATIONS

222. (1) The Inter-governmental Budget and Economic Council members shall exercise their mandate under the Act and these Regulations in the spirit of cooperative governance.

Establishment, purpose and composition of the Intergovernmental Budget and

(2) Reviews, resolutions and recommendations of the Inter-governmental Budget and Economic Council shall be published on the website of the National Treasury as soon as possible after their preparation.

(3) The Intergovernmental Budget and Economic Council shall be kept informed about the following—

- (a) stoppage of funds to a county government and any national government intervention in county government due to serious or persistent material breaches of service delivery imperatives;
- (b) applications for national guarantees of county debts;
- (c) changes in the laws and regulations governing public finance management and sharing of revenue raised nationally;
- (d) Budget calendar and budget process;
- (e) the draft Budget Policy Statement prior to submission to the Cabinet;
- (f) the draft Annual Debt Management Strategy Paper, prior to submission to the Cabinet;
- (g) the draft Division of Revenue Bill and the draft County Allocation of Revenue Bill, prior to submission to the Cabinet;
- (h) audit outcomes on financial and non-financial performance information; and
- (i) changes to the categorization and listing of national government entities.

(4) The Cabinet Secretary may take into account any recommendation by the Council arising from any matter under paragraph 3 of this regulation, prior to submission to the Cabinet.

(5) All scheduled meetings of IBEC should be clearly indicated in the Budget Calendar issued by the National Treasury.

223. (1) The Cabinet Secretary may stop the transfer of funds to a county government immediately or in the alternative apply the provisions of section 96 (3) of the Act.

Recovery Plan and assumption of executive responsibilities of the county.

(2) Where the Cabinet Secretary decides to use the alternative provided for under section 96(3)(b) of the Act, the Cabinet Secretary shall notify, in writing, the county government and Cabinet Secretary responsible for devolved government of the need to assume executive functions of a county that has failed to address material breaches in service delivery as per the directive in section 96 of the Act.

(3) The issuance of a notification under section 96 of the Act shall not amount to assumption of executive functions of the county by the national government.

(4) The notification issued under paragraph (1) shall—

- (a) specify the serious material breaches and persistent material breaches which a county government has committed;
- (b) invite the county government to make written representations with regard to its efforts to address the serious material breaches or persistent material breaches to mitigate stoppage of funds; and
- (c) give a reasonable time period for the county government to respond to the Cabinet Secretary's request.

(5) The Cabinet Secretary shall consider representations as made by the relevant county government and decide, with concurrence of the Joint Intergovernmental Technical Committee, whether or not to proceed with the assumption of county functions on the basis of an approved county recovery plan.

(6) For purposes of section 94 of the Act, a State organ or public entity shall be in serious material breach if in any financial year, it operates a primary fiscal deficit that is inconsistent with the fiscal targets set under 107 of the Act.

(7) The decision by the Cabinet Secretary to assume executive functions of the county government in terms of section 99 of the Act shall be communicated, in writing, to the relevant county governor, and request for the cooperation of county government in the development of a recovery plan for approval by the Joint Committee.

(8) The decision to assume county executive functions communicated under paragraph (7) shall—

- (a) make reference to Article 225 of the Constitution and section 99 of the Act;
- (b) specify the steps in the directive that the county did not comply with;
- (c) announce that the national executive assumes responsibility for those county executive obligations, where the steps in the directives were not complied with;
- (d) specify the expected date, on which the assumption of responsibility takes effect;
- (e) specify the extent to which and the expected period for which the national government will assume responsibility; and
- (f) provide an outline of the programme for the implementation of the assumption of responsibility, specifying designation of persons, acting for the national government in the assumption of the responsibility.

(9) The Cabinet Secretary shall seek approval from the Joint Committee of the recovery plan and the release of the withheld intergovernmental fiscal transfers for the implementation of the plan.

(10) The recovery plan approved by the Joint Committee, which shall meet the minimum requirements in section 99(3) of the Act, shall

form the basis for releasing funds withheld during the period of stoppage.

#### PART XVIII—MISCELLANEOUS

224. (1) The Cabinet Secretary shall gazette the financial, accounting and reporting formats for use by national government entities soon after these regulations become effective.

Gazettement of  
financial accounting  
and reporting  
formats

#### EXPLANATORY MEMORANDUM TO THE PUBLIC FINANCE MANAGEMENT (NATIONAL GOVERNMENT) REGULATIONS, 2015

##### 1. The Purpose of Public Finance Management (National Government) Regulations, 2015.

The purpose of these Regulations is to:

- (i) to provide means of administering the powers vested in the Cabinet Secretary for the National Treasury under the Constitution, the Act and any other related legislation;
- (ii) to harmonize and standardize their application throughout government service in controlling and managing the finances;
- (iii) to set out a standardized financial management system for use in Government service which is capable of producing accurate and reliable accounts free from errors, fraud and which will be useful in management decisions and statutory reporting;
- (iv) to provide for the conduct of fiscal relations between the national and county governments;; and
- (v) to ensure accountability, transparency and the effective, economic and efficient collection and utilization of public resources.

##### 2. The Legislative Context

The process of developing a comprehensive PFM Regulations started in 2012 after enactment of the Public Finance Management Act, 2012 which consolidated all Public Finance Management legislations catering for both the National and County Governments.

The development of the PFM Regulations, 2014 was guided by the following considerations; (i) ensuring financial autonomy of National and County Governments within a unitary system of government and guided by provisions in the constitution such as Article 6 and the Public Finance Management Act, 2012. As a result, functions of PFM institutions at the national and county level were mirrored; (ii) ensuring the PFM Regulations encapsulates best international practices; and (iii) the need to separate the

PFM Regulations for national and county governments to capture the unique needs of each level of government

These PFM Regulations, 2015 are therefore firmly anchored in Chapter 12 of the Constitution and gives effect to the provisions of the Public Finance Management Act, 2012.

3. Policy Background.

Parliament enacted the Public Finance Management (PFM) Act, 2012 in August, 2012 and over the past two years Kenya has been rolling out devolution as envisaged in the Constitution. The Act on its own, however, is not sufficient since it does not provide guidelines on all matters relating to public finance management at the national and county level. In order to provide further clarity on various aspects of public finance management, it is therefore necessary to have regulations.

An efficient and effective PFM system is a necessary condition for achieving Vision 2030 and our development objectives. Investors, both foreign and local, require assurance that a country's PFM system can be relied upon to maintain fiscal discipline and in particular contain public debt both at the National and County level. Without a credible public financial management system, our ability to borrow or even attract donor funds will be curtailed. In addition, an effective PFM system is very critical in supporting the mobilization of resources to be equitably shared between the two levels of government.

In order to make the regulations user friendly and to capture the unique needs of the two levels of government, two volumes of Regulations have been prepared — one for the National Government and the other for the County Governments. The provisions of Parts I to XVI in the two sets of Regulations are largely mirrored but tailored to each level of government. Parts XVII onwards, however, include provisions that are specific to each level of government.

Further, there is need to ensure prudent use of public resources in line with Article 201 of the Constitution by providing ceilings in both the Public Finance Management Act, 2012 and PFM (County) Regulations, 2014 for expenditures of County Assemblies.

It is considered that the provisions of the proposed Public Finance Management (National and County Governments) Regulations, 2014 will provide a sufficient level of economic, fiscal and financial detail and adequate time for the legislatures at the National and County Governments to perform their oversight role in an effective manner.

On the basis of the foregoing, it is considered prudent to anchor the fundamental concepts of a modern public financial management system and its application in Kenya in a comprehensive PFM law.

Some of the salient features of these regulations are:-

- The Regulations provide additional Fiscal responsibility principles such as—
  - compensation of national and county government employees shall not exceed 35% of either level of government equitable revenue share;

- the approved expenditures of a county assembly shall not exceed seven per cent of the total revenues of the county government or twice the personnel emoluments of that county assembly, whichever is lower; and
- national public debt shall not exceed 50% of GDP in terms of NPV among others;
- Provides for expenditures before approval of budget estimates by national and county assemblies under extreme circumstances.
- Provides any request for expenditures from the Contingencies Fund to have a certificate of the relevant Cabinet Secretary confirming compliance with PFM Act provisions.
- Provides all Government Bank Accounts for both the National and County Governments will be held at the Central Bank of Kenya except where the cabinet Secretary has expressly granted exemption and approved.
- Provides that the Cabinet Secretary shall provide further guidelines for loans and advances including benefits and allowances for public officers.
- provides for lease financing transactions by accounting officers.
- Provides for equitable transfers before approval of County Allocation of Revenue Bill.
- Provides for various thresholds for approval of losses and write-offs including responsibility for Accounting Officers, Cabinet Secretary, Cabinet and Parliament.
- Provides for guiding principles for national and county government borrowing; borrowing purposes and objectives of public debt management, the criteria for issuance of government securities both domestic and external, sets the overall debt limit for the country at 50% of the net present value of GDP while the debt limit for county governments is set at 20% of the audited total annual revenue and approved by the county assembly.
- Provides for establishment of a Sinking Fund for debt redemption both levels of government.
- Provides for criteria for establishment of public funds, management and winding up of a national public fund or a county government public fund.
- Provides the guiding principles for establishment of state corporations or county corporations, criteria for establishment of a state or county corporations as well as dissolution of state corporations; evaluation of state or county corporation performance.
- Provides for the powers of the Cabinet Secretary to gazette financial, accounting and reporting formats.

#### 4. Public Consultations

The PFM Regulations have taken into account the views of key stakeholders such as the Commission on Revenue Allocation, the Commission for the Implementation of the Constitution, Accounting Officers, Council of Governors, County Executive Committee Members of finance, civil society, the general public and international and local experts on public financial management.

It is important to appreciate that one of the key recommendation from different stakeholders was to separate the Regulations governing National and County levels of Governments. In order to address this recommendation, the Regulations were separated to deal each level of Government, hence the reason why we have submitted two volumes of Public Finance Management Regulations; PFM (National Government) Regulations, 2015 and PFM (County Government) Regulations, 2015. This will give flexibility on the application of the Regulations to each level of Government and ensure maximum impact of the Regulations on public finance accountability architecture.

#### 5. Guidance

The National Treasury will sensitize stakeholders including Parliament, accounting officers of national and county governments and the general public, on the provisions of the public finance management (National & County Governments) Regulations, 2015, the accountability mechanism, the monitoring and evaluation mechanism and the need to ensure regular reporting to both the Parliament and relevant County Assemblies.

#### 6. Review of the Regulations.

The National Treasury shall monitor the application of the PFM Regulations. This will be done through quarterly reports sent by the relevant accounting officer of the national or county government. In addition, the National Treasury will also carry out regular monitoring and evaluation of the specific provisions of these Regulations through interaction with the implementers of these Regulations, studying various reports by Constitutional Commissions, Independent Offices, Civil Society and the general public.

It is important to note that the Regulations shall apply to the level of government as indicated in their headings from the commencement date of these Regulations. In this respect, a review thereof will be done by the National Treasury with the approval by Parliament in line with Section 205 of the Public Finance Management Act, 2012.

#### 7. National Treasury Contact Person.

The contact person at the National Treasury is the Cabinet Secretary, Mr. Henry Rotich or the Principal Secretary, Dr. Kamau Thugge, EBS.

Dated the 20th March, 2015.

HENRY ROTICH,  
*Cabinet Secretary to the National Treasury.*