



REPUBLIC OF KENYA

PARLIAMENT

NATIONAL ASSEMBLY BILLS
(Bill No. 51 of 2017)

**THE PUBLIC FINANCE MANAGEMENT
(AMENDMENT) BILL, 2017**

(A Bill published in the Kenya Gazette Supplement No. 195 of 29th December, 2017 and passed by the National Assembly, with amendments, on 21st November, 2019)

**THE PUBLIC FINANCE MANAGEMENT
(AMENDMENT) BILL, 2017**

A Bill for

**AN ACT of Parliament to amend the Public Finance
Management Act, 2012**

ENACTED by the Parliament of Kenya, as follows—

1. This Act may be cited as the Public Finance Management (Amendment) Act, 2017.

Short title.

2. The Public Finance Management Act, 2012, in this Act referred to as “the principal Act”, is amended in section 2—

Amendment of section 2 of No.18 of 2012.

(a) in the definition of “national government entity”, by inserting the words “State Organ” immediately after the word “any”;

(b) by deleting the definition of “national Exchequer Account” and substituting therefor the following new definition —

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

- (c) deleting the definition of “public money” and substituting therefor the following new definition—

“public money” includes—

(a) all money that comes into possession of, or is distributed by, a national or county government entity and money raised by a private body where it is doing so under statutory authority; and

(b) money held by national or county government entities in trust for third parties and any money that can generate liability for the Government;

- (d) in the definition of “short term borrowing” by—

(i) deleting the phrase “bank overdraft” appearing immediately after the phrase “Treasury Bills” and substituting therefor the phrase “Central Bank of Kenya-overdraft”;

(ii) inserting the phrase “Central Bank of Kenya” immediately before the word “instrument”;

- (e) in the definition of “Treasury Single Account”, by—

(i) inserting the word “funds” immediately after the word “draws” appearing in paragraph (a);

(ii) inserting the word “funds” immediately after the word “draws” appearing in paragraph (b).

- (f) by inserting the following new definitions in their proper alphabetical sequence—

“Consolidated Fund” means the Fund established under Article 206(1) of the Constitution; and

“County Revenue Fund” means the Fund established under Article 207(1) of the Constitution in respect of each County.

3. Section 5 of the principal Act is amended—

Amendment of
section 5 of No.
18 of 2012.

- (a) in subsection (1), by deleting the words “and county assembly” appearing immediately after the words “County Executive Committee” and substituting therefor the words “the county assembly and Parliament”;
- (b) in subsection (4), by inserting the words “and county executive committee” immediately after the words “County Assembly”.

4. Section 8 of the principal Act is amended—

Amendment of
section 8 of No.
18 of 2012.

- (a) in subsection (1) by deleting the word “Senate” appearing in paragraph (d) and substituting therefor the words “county governments”;
- (b) in subsection (2) by inserting the words “Cabinet Secretary” immediately before the words “Commission on Revenue Allocation”.

5. Section 10 of the principal Act is amended—

Amendment of
section 10 of No.
18 of 2012.

- (a) in subsection (1) –
 - (i) by inserting the words “Speaker and” immediately after the words “report to the relevant” and the words “Article 114 of the Constitution immediately after the words “making reference to” in paragraph (g); and
 - (ii) by inserting the following new paragraphs immediately after paragraph (h) –
 - (i) undertake monitoring and evaluation of government programmes and projects with a view to inform the legislative budget and economic analysis;
 - (j) produce the Budget Options Paper which shall be the basis of evaluating the Budget Policy Statement and annual estimates; and
 - (k) review the County Fiscal Strategy Papers and the Controller of Budget Reports with a view to informing the relevant Committees of Parliament on revenue allocation.

(b) by inserting the following new subsection after subsection (2) –

“(3) A public officer or national government entity shall upon request in writing by the Clerk of the National Assembly, provide information in such manner as may be specified by the Clerk of the National Assembly for the better carrying out of the functions specified under subsection (1)”.

6. Section 13 of the principal Act is amended—

Amendment of section 13 of No. 18 of 2012.

(a) in subsection (1), by—

(i) deleting the words “Cabinet Secretary and” appearing immediately after the words “facilitate the”;

(ii) inserting the word “management” immediately after the word “financial” appearing in paragraph (f);

(b) in subsection (2), by inserting the words “or any other person designated by the National Treasury” after the word “officers”.

7. Section 15 of the principal Act is amended—

Amendment of section 15 of No. 18 of 2012.

(a) in subsection (2), by—

(i) deleting the words “national and county governments” appearing in paragraph (a) and substituting therefor the words “national government”;

(ii) deleting the words “and the county assembly for the county government” appearing in paragraph (d) ;

(b) in subsection (5), by inserting the word “responsibility” immediately after the word “fiscal”.

8. Section 17 of the principal Act is amended—

Amendment of section 17 of No. 18 of 2012.

- (a) by deleting subsection (2) and substituting therefor the following new subsection—

(2) The National Treasury shall maintain the Consolidated Fund in Kenya Shilling or foreign denominated currency accounts to be known as the Consolidated Fund Accounts, kept at the Central Bank of Kenya and shall, subject to Article 206(1) of the Constitution—

- (a) include the National Exchequer Accounts, Revenue Collection Accounts, Receipts into Domestic Debt Accounts, Overdraft Account, Special Project Deposit Accounts and any other accounts designated by the Cabinet Secretary;
- (b) facilitate payment into that account or accounts all money raised or received by or on behalf of the national government; and
- (c) pay from that National Exchequer Account or National Exchequer Accounts without undue delay all amounts that are payable for public services.

- (b) by deleting subsection (3) and substituting therefor the following new subsection—

(3) The National Treasury shall ensure that no National Exchequer Account is overdrawn at any time.

(c) by deleting subsection (4) and substituting therefor the following new subsection—

(4) Where a withdrawal from the Consolidated Fund is authorised under the Constitution or an Act of Parliament for the appropriation of money, the National Treasury shall make a requisition for the withdrawal and submit it to the Controller of Budget for approval, which request shall be made manually or electronically through a designated form prescribed by the Cabinet Secretary, provided that inter-account transfers within the Consolidated Fund Accounts shall require the Controller of Budget's approval.

(d) by deleting subsection (5) and substituting therefor the following new subsection—

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

(e) by inserting the following new subsection immediately after subsection (7) –

“(8) Three months prior to a general election, no procurement shall be carried out by the national and county governments, or their respective entities, in respect of their respective development votes unless with the approval of the National Treasury”.

9. Section 24 of the principal Act is amended in subsection (9), by deleting the words “a final” appearing in paragraph (c) and substituting therefor the words “an audited”

Amendment of
section 24 of No.
18 of 2012.

9A. Section 25 of the principal Act is amended— Amendment of section 25 of No. 18 of 2012.

- (a) in subsection (2) by deleting the expression “15th” and substituting therefor the expression “1st”; and
- (b) in subsection (7) by deleting the words “fourteen days” and substituting therefor the words “thirty days”

9B. Section 28 of the principal Act is amended by Amendment of section 28 of No. 18 of 2012. inserting—

- (a) the following new subsections immediately after subsection (1)—

“(1A) Any bank account opened under subsection (1), for the primary purpose of collecting money raised or received by or on behalf of the national government shall be designated as a Revenue Collection Account and shall be used only for purposes of collecting money raised or received by or on behalf of the national government.

(1B) Money paid into a bank account designated as Revenue Collection Account shall be promptly credited into a National Exchequer Account and shall be withdrawn in accordance with Article 206 of the Constitution and section 17 of the Act.

(1C) For avoidance of doubt, no expenditure shall be paid out of a bank account designated as a Revenue Collection Account except as otherwise authorized by law.

(1D) Each financial year, an Accounting Officer of a national government entity shall prepare and submit to the National Treasury a record of all bank accounts operated by that entity during the year, with a copy to the Controller of Budget and the Auditor General.”

- (b) the word “system” immediately after the words “Treasury Single Account” appearing in subsection (2);
- (c) inserting the following new subsection immediately after subsection (2)—
 - (2A) The Treasury Single Account system shall include the Consolidated Fund Accounts under section 17(2), including accounts of State Departments.
- (d) the word “system” immediately after the words “Treasury Single Account” appearing in subsection (3); and

11. Section 38(1) of the principal Act is amended by deleting the expression “202(2)” appearing in paragraph (b)(iii) and substituting therefor the expression “202”.

Amendment of section 38 of No. 18 of 2012.

12. Section 39(7) of the principal Act is amended by inserting the words “or is not likely to be assented to, by the beginning of the financial year” immediately after the words “assented to”.

Amendment of section 39 of No. 18 of 2012.

12A. Section 39A is amended by inserting the following new paragraph immediately after paragraph 4—

Amendment of section 39A of No. 18 of 2012.

(5) The recommendation of the cabinet secretary in subsection (4) (f) shall be included in the report and tabled in the National Assembly.

12B. The principal Act is amended in section 40 by deleting sub-section (3), (4) (5) and (6).

Amendment of section 40 of No. 18 of 2012.

13. Section 46 of the principal Act is amended in subsection (2) by deleting the words “the National Treasury” and substituting therefor the words “programmes and projects”.

Amendment of section 46 of No. 18 of 2012.

14. Section 52 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection—

Amendment of section 52 of No. 18 of 2012.

“(2) Despite the provisions of subsection (1), the following persons may be authorized by the Cabinet Secretary to execute loan documents for borrowing by a national government entity—

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

15. Section 66(1) (g) of the principal Act is amended by inserting the words “and non-financial” immediately after the word “financial”.

Amendment of section 66 of No. 18 of 2012.

16. Section 68(3) of the principal Act is amended by inserting the words “responsible for that entity” immediately after the words “Cabinet Secretary”.

Amendment of section 68 of No. 18 of 2012.

17. Section 77 of the principal Act is amended by—

Amendment of section 77 of No. 18 of 2012.

- (a) inserting the words “or vary” immediately after the words “may waive”;
- (b) inserting the words “or variation” immediately after the word “waiver” wherever it occurs in paragraph (a).

18. Section 78 of the principal Act is amended by –

Amendment of section 78 of No. 18 of 2012.

- (a) renumbering the existing provision as sub-section (1); and
- (b) inserting the following new sub-section immediately after sub-section (1)-
 - (2) Notwithstanding sub-section (1), the Kenya Revenue Authority may delegate its revenue collection responsibility to other agents.

19. Section 82(4) of the principal Act is amended by deleting the words “by the receiver or collector”.

Amendment of section 82 of No. 18 of 2012.

20. Section 87(1) of the principal Act is amended by deleting the word “company” appearing in paragraph (b) and substituting therefor the word “corporation”.

Amendment of section 87 of No. 18 of 2012.

21. Section 88 of the principal Act is amended in subsections (1) and (2)(a) and (b), by inserting the words “and government-linked corporation” immediately after the word “state corporation”.

Amendment of section 88 of No. 18 of 2012.

22. Section 89 of the principal Act is amended—

Amendment of section 89 of No. 18 of 2012.

(a) in subsection (2) by—

- (i) inserting the words “and government-linked corporation” immediately after the words “state corporation” appearing in paragraph (c);
- (ii) inserting the words “or government-linked corporation” immediately after the words “in respect of state corporation” appearing in paragraph (e);
- (iii) inserting the words “or government-linked corporation” immediately after the words “state corporation” appearing in paragraph (f);
- (iv) inserting the words “or government linked-corporation” immediately after the words “state corporation” appearing in paragraph (g);
- (v) inserting the words “or government-linked corporation” immediately after the words “assets of that state corporation” appearing in paragraph (h);
- (vi) inserting the words “or government-linked corporation” immediately after the words “state corporation” appearing in paragraph (j).

(b) in subsection (4), by deleting the expression “(2)” and substituting therefor the expression “(1)”.

23. Section 91 of the principal Act is amended in paragraph (b), by inserting the words “and government-linked corporation” immediately after the word “state corporation”.

Amendment of
section 91 of No.
18 of 2012.

24. Section 93(3)(b) of the principal Act is amended by inserting space after the word “Act” and the rest of the text forming the sandwich to read as follows—

Amendment of
section 93 of No.
18 of 2012.

“this shall constitute a serious material breach or persistent material breach for purposes of stopping transfer of funds under Article 225 (3) of the Constitution”.

The Public Finance Management (Amendment) Bill, 2017

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| <p>25. Section 96(1) of the principal Act is amended by deleting the word “entity”.</p> | <p>Amendment of section 96 of No. 18 of 2012.</p> |
| <p>26. Section 97(4) of the principal Act is amended by deleting the words “or renew”.</p> | <p>Amendment of section 97 of No. 18 of 2012.</p> |
| <p>27. Section 98(2) of the principal Act is amended by inserting the word “serious” immediately after the words “findings on details of the”.</p> | <p>Amendment of section 98 of No. 18 of 2012.</p> |
| <p>28. Section 104(1) of the principal Act is amended by inserting the word “county” immediately after the words “and other” appearing in paragraph (j).</p> | <p>Amendment of section 104 of No. 18 of 2012.</p> |
| <p>29. Section 105(2) of the principal Act is amended by inserting the words “or any other person designated by the County Treasury” immediately after the word “officers”.</p> | <p>Amendment of section 105 of No. 18 of 2012.</p> |
| <p>30. Section 107(2) of the principal Act is amended by—</p> <ul style="list-style-type: none">(a) inserting the word “county” immediately after the words “medium term, the” appearing in paragraph (d);(b) deleting paragraph (e) and substituting therefor the following new paragraph—“(e) the county governments debts and obligations shall be maintained at such a sustainable level as approved by the county assembly”. | <p>Amendment of section 107 of No. 18 of 2012.</p> |

31. Section 109 of the principal Act be amended—

Amendment of
section 109 of No.
18 of 2012.

(a) in subsection (4)(a) by deleting the words “or a bank approved by the County Executive Committee member responsible for finance and shall be kept”; and

(b) by inserting the following new subsections immediately after subsection (6)—

(6A) The County Treasury shall submit all requisitions to the controller of Budget as soon as is practically possible, but no later than forty eight hours upon receiving the request from respective entities.

(6B) An accounting officer when requisitioning for exchequer releases for a county assembly shall submit a copy of the requisition to the Controller of Budget and the Controller of Budget shall only release the funds upon verifying that the requisition submitted by the County Treasury and that by the County Assembly are in conformity.

(6C) A County Executive Committee member for finance shall not withhold or refuse to submit a requisition for a County Assembly to the Controller of Budget.

(6D) A County Executive Committee member commits an offence under this Act for withholding or refusing to the submit requisition on behalf of the County Assembly to the Controller of Budget

32. Section 112 of the principal Act is amended—

Amendment of
section 112 of No.
18 of 2012.

(a) in subsection (3) by inserting the following new paragraph immediately after paragraph (b)—

“(c) is meant to alleviate the damage, loss, hardship or suffering caused directly by the event”;

(b) by inserting the following new subsection immediately after subsection (3) —

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

- (a) loss of life, human illness or injury;
- (b) homelessness or damage to property;
- (c) disruption of food or water supply or provision of shelter; or
- (d) disruption of provision of services including health services”.

33. Section 116 of the principal Act is amended—

Amendment of
section 116 of No.
18 of 2012.

- (a) in subsection (1), by inserting the word “county” immediately after the words “establish other”; and
- (b) in subsection (7) by inserting the word “audited” immediately after the words “present the” appearing in paragraph (c).

34. Section 117 of the principal Act is amended –

Amendment of
section 117 of No.
18 of 2012.

- (a) in subsection (1) by deleting the expression “28th” and substituting therefor the expression “15th”; and
- (b) in subsection (6) by deleting the word “fourteen” and substituting therefor the word “twenty”.

35. Section 119 of the principal Act is amended—

Amendment of
section 119 of No.
18 of 2012.

- (a) by deleting sub-section (1) and substituting therefor the following new subsection—

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

- (b) by deleting subsection (2) and substituting therefor the following subsection—

(2) Each County Treasury shall establish a Treasury Single Account system at the Central Bank of Kenya through which payments of money to and by the various county government entities are to be made.

- (c) by inserting the following new subsection immediately after subsection (2)—

(2A) The County Treasury Single Account system shall include the County Revenue Fund accounts referred to in section 109(2), county department accounts and any other account designated by the County Treasury.

- (d) by deleting subsection (3) and substituting therefor the following new subsection—

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

- (e) in subsection (4) by inserting the phrase “and by 5th of every month, the National Treasury shall publish and publicize a report on the website on levels of overdraft by county governments immediately after the phrase “if any”.

36. The principal Act is amended by inserting the following new clause immediately after section 119—

Insertion of section
in No. 18 of 2012.

Criteria for approval to open bank account.. 119A.(1) Subject to the provisions of Section 119, a County Treasury may authorize a county government entity, including a county assembly to open and operate bank accounts only at the Central Bank of Kenya except—

- (a) an imprest bank account which may be opened in a commercial bank account to facilitate the day to day operation of offices, provided the balance for the account shall not exceed a limit set by the Cabinet Secretary;
- (b) a revenue collection account to facilitate receipt and transfer of revenue to the relevant County Revenue Fund;
- (c) a bank account relating to a county public fund established pursuant to section 116 to facilitate administration of the fund; and
- (d) any other bank account authorized by the Cabinet Secretary to opened in a commercial bank.

(2) Any bank account opened under subsection (1), for the primary purpose of collecting money raised or received by or on behalf of the county government shall be designated as a County Revenue Collection Account and shall be used only for the purposes of collecting money raised or received by or on behalf of the county government.

(3) Money paid into a bank account designated as a County Revenue Collection Account shall be promptly credited into the County Exchequer Account and shall be used and accounted for in accordance with Article 207 of the Constitution and section 109.

(4) No expenditure shall be paid out of a bank account designated as County Revenue Collection Account except as otherwise authorized by law.

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

(6) No official county government bank account shall be overdrawn, nor shall any advance or loan be obtained from a bank account for official purposes beyond the limit authorized by the County Treasury in line with section 119(4) and the authority shall be conveyed in writing.

(7) An accounting officer of a county shall, for each quarter of a financial year, prepare and submit to the County Treasury a record of all bank accounts operated by the entity during the year, with a copy to the Controller of Budget, the Auditor General, and the National Treasury.

36A. The principal Act be amended by inserting the following new section immediately after section 124—

Insertion of new section 124A into No. 18 of 2012.

County
Assembly
Fiscal
Bureau

124A. (1) There is established in every County Assembly, a County Assembly Fiscal Bureau which shall be an office in the County Assembly Service.

(2) A County Assembly Fiscal Bureau shall consist of persons appointed on merit by virtue of their experience in public finance, economics or public policy.

(3) The County Assembly Fiscal Bureau shall—

- (a) provide non-partisan information, analysis, and reports with respect to budget, budget proposals, and finance to the relevant committees of the county assembly;
- (b) prepare reports on county budgets and economic trends and make proposals to the committees of the county assembly responsible for budgetary matters;
- (c) analyze any bill submitted to the county assembly with reference to the fiscal responsibility principles and fiscal objectives set out in the relevant County Fiscal Strategy Paper;
- (d) establish and foster relationships with the National Treasury, Parliamentary Budget Office, County Treasury, and other county treasuries for the efficient and effective performance of its functions; and
- (e) ensure that all reports produced by the Bureau are published and publicized not later than fourteen days after production.

37. Section 125(1) of the principal Act is amended by deleting the words “planning and” appearing in paragraph (b). Amendment of section 125 of No. 18 of 2012.

38. Section 126 of principal Act is amended— Amendment of section 126 of No. 18 of 2012.

(a) in subsection (1), by deleting the words “prepare a” and substituting therefor the words “prepare an integrated”;

(b) in subsection (2), by inserting the word “annual” immediately after the words “prepare the”;

(c) in subsection (3), by—

(i) deleting expression “1st September” and substituting therefor the “expression 30th September”;

(ii) inserting the word “annual” immediately after the words “submit the”.

(d) by inserting the following new subsection immediately after subsection (3)—

“(4) The County Assembly shall consider and approve the annual development plan submitted under subsection (3) above, not later than 30th October”.

39. Section 127(1) of the principal Act is amended by deleting the expression “15th June” and substituting therefor the expression “30th April”. Amendment of section 127 of No. 18 of 2012.

40. Section 128 of the principal Act is amended in subsection (2) by deleting the expression “30th August” and substituting therefor the expression “15th September”. Amendment of section 128 of No. 18 of 2012.

41. Section 129 of the principal Act is amended in subsection (3) by inserting the words “by 30th April each year” immediately after the words “member for finance” Amendment of section 129 of No. 18 of 2012.

42. Section 131 of the principal Act is amended— Amendment of section 131 of No. 18 of 2012.

(a) in subsection (1), by inserting the words “except the County Finance Bill” immediately after the words “implement the budget”;

- (b) by inserting the following new subsection after subsection (4)—

“(5) Where a County Assembly approves any changes in the annual estimates of budget under this section, any increase or reduction in expenditure of a Vote, shall not exceed ten percent of the Vote’s ceilings’ set out in the County Fiscal Strategy Paper adopted by the County Assembly”;

- (c) by renumbering subsection (5) to be subsection (6) and inserting the following new subsection after subsection (6)—

“(7) The County Executive Committee Member shall submit a copy of the budget estimates approved under subsection (5) to the National Treasury, the Controller of Budget and the Senate within fourteen days of its approval”.

42A. The principal Act is amended by inserting the following new section immediately after section 131—

Insertion of new section 131A of No. 18 of 2012.

Responsibilities of County Assemblies Budget Committee in county public finance.

131A. The Committee of a County Assembly established to deal with county budgetary matters has responsibility for the following matters, in addition to the functions set out in the respective County's Standing Orders—

- (a) discuss and review the County fiscal Strategy Paper and county budget estimates and make recommendations to the county assembly;
- (b) provide general direction on county budgetary matters;
- (c) monitor all county budgetary matters falling within the competence of the county assembly under this Act and report on those matters to the county assembly; and
- (d) review and scrutiny of relevant planning and budget documents before the county assemblies.

43. Section 132(1) of the principal Act is amended by deleting the words "County Executive Member" and substituting therefor the words "County Executive Committee Member".

Amendment of section 132 of No. 18 of 2012.

44. Section 133 of the principal Act is amended by inserting the word "County" immediately after the words "approve the".

Amendment of section 133 of No. 18 of 2012.

45. Section 136 of the principal Act is amended by inserting the following new subsection immediately after subsection (2)—

Amendment of section 136 of No. 18 of 2012.

"(3) The balances declared under subsection (2) above shall be surrendered within fourteen days after receipt of the audit report".

46. Section 137(3) of the principal Act is amended by inserting the word “County” immediately after the words “and the” appearing in paragraph (a). Amendment of section 137 of No. 18 of 2012.
47. The Heading appearing immediately after section 137 of the principal Act is amended by inserting the words “grants and loans” immediately after the words “public finances”. Amendment of the Heading immediately after section 137 of No. 18 of 2012.
48. Section 141 of the principal Act is amended— Amendment of section 141 of No. 18 of 2012.
- (a) in subsection (1), by inserting the words “the county’s” immediately after the words “level of”;
- (b) in subsection (9), by deleting the words “together with the principal amount”.
49. Section 143 of the principal Act is amended by deleting subsection (2) and substituting therefor the following new subsection— Amendment of section 143 of No. 18 of 2012.
- “(2) Despite the provisions of subsection (1), the following persons may be authorized by the County Executive Committee member to execute loan documents for borrowing by a county government entity—
- (a) the accounting officer responsible for the entity; or
- (b) any other specified officer authorised by legislation to execute such documents on behalf of the entity”.
50. Section 144(8) of principal Act is amended by deleting the word “delegate” appearing in paragraph (b) and substituting therefor the word “person”. Amendment of section 144 of No. 18 of 2012.
51. Section 145(1) of the principal Act is amended by deleting the word “entity”. Amendment of section 145 of No. 18 of 2012.
52. Section 155 of the principal Act is amended— Amendment of section 155 of No. 18 of 2012.
- (a) in subsection (2), by inserting the word “internal” immediately after the word “any”;
- (b) in subsection (5), by deleting the words “internal auditing” and substituting therefor the word “audit”.
53. Section 159 of the principal Act is amended by— Amendment of section 159 of No. 18 of 2012.

- (a) deleting the expression “(1)”;
- (b) inserting the words “or vary” immediately after the word “waive”;
- (c) deleting paragraph (a) and substituting therefor the following new paragraph—

“(a) the County Treasury shall maintain a public record of each waiver or variation together with the reason for the waiver or variation and report on each waiver or variation in accordance with section 164 of this Act”;

54. The Heading appearing immediately after section 162 of the principal Act is amended by inserting the words “county governments and” immediately after the word “by”.

Amendment of the Heading immediately after section 162 of No. 18 of 2012.

54A. Section 164 (4) of the principal Act is amended by inserting the words “the National Treasury” immediately after the words “County Treasury” appearing in paragraph (b).

Amendment of section 164 of No. 18 of 2012.

55. Section 165(4) of the principal Act is amended by—

Amendment of section 165 of No. 18 of 2012.

- (a) deleting the words “two months” and substituting therefor the word “three months”;
- (b) deleting the words “by the receiver”.

56. Section 171(2) of the principal Act is amended by deleting the words “organ of state” wherever they occur in paragraph (c) and substituting therefor the words “State Organ”.

Amendment of section 171 of No. 18 of 2012.

57. Section 174 of the principal Act is amended—

Amendment of section 174 of No. 18 of 2012.

(a) in paragraph (a), by deleting the words “their allocation” and substituting therefor the words “its total revenue”;

(b) in paragraph (b), by inserting the word “total” immediately after the word “its”.

58. Section 176(2) of the principal Act is amended by inserting the words “until such a time as the relevant appropriation law is passed” immediately after the word “approval” appearing in paragraph (a).

Amendment of section 176 of No. 18 of 2012.

59. Section 178 of the principal Act is amended—

Amendment of
section 178 of
No. 18 of 2012.

- (a) in subsection (2), by inserting the words “or donations” immediately after the word “grants”;
- (b) in subsection (7), by—
 - (i) inserting the words “upon authorization by the Cabinet Secretary” immediately after the word “finance”;
 - (ii) inserting the words “or donation” immediately after the word “grant”.

60. Section 180 of the principal Act is amended—

Amendment of
section 180 of
No. 18 of 2012.

- (a) in subsection (1), by inserting the word “reporting” immediately after the words “follows the”;
- (b) in subsection (2), by—
 - (i) inserting the words “within three months of the end of a financial year” immediately before the words “the Accounting Officer”;
 - (ii) inserting the words “and submit copies to the Auditor-General and the County Treasury” immediately after the word “accounts”.

61. Section 183 of the principal Act is amended by deleting the word “company” appearing in paragraph (b) and substituting therefor the word “corporation”.

Amendment of
section 183 of
No. 18 of 2012.

62. Section 184 of the principal Act is amended—

Amendment of
section 184 of
No. 18 of 2012.

- (a) in subsection (1) by inserting the words “and county government linked-corporations” immediately after the words “County corporations” appearing in paragraph (b);
- (b) in subsection (2), by—
 - (i) inserting the words “or county government-linked corporation” immediately after the words “county corporation” appearing in paragraph (a);

- (ii) inserting the words “or county government-linked corporation” immediately after the words “county corporation” appearing in paragraph (b).

63. Section 185 of the principal Act is amended—

Amendment of
section 185 of
No. 18 of 2012.

(a) in subsection (2), by—

- (i) inserting the words “or county government-linked corporation” immediately after the words “county corporations” appearing in paragraph (a);
- (ii) inserting the words “or county government-linked corporation” immediately after the words “county corporations” appearing in paragraph (b);
- (iii) inserting the words “or county government-linked corporation” immediately after the words “county corporations” appearing in paragraph (c);
- (iv) inserting the words “or county government-linked corporation” immediately after the words “county corporations” appearing in paragraph (d);
- (v) inserting the words “or county government-linked corporation” immediately after the words “county corporations” appearing in paragraph (e);
- (vi) inserting the words “or county government-linked corporation” immediately after the words “the corporation” appearing in paragraph (f);
- (vii) inserting the words “or county government-linked corporation” immediately after the words “county corporation” appearing in paragraph (g);
- (viii) inserting the words “or county government-linked corporation” immediately after the words “county corporation” wherever they occur in paragraph (h);

- (ix) inserting the words “or county government-linked corporation” immediately after the words “county corporation” appearing in paragraph (j);
- (b) in subsection (3), by deleting the word “company” appearing immediately after the words “government linked” and substituting therefor the word “corporation”;
- (c) in subsection (4), by inserting the words “County Executive Committee member and the respective county assembly” immediately after the words “to the”.

64. Section 186 of the principal Act is amended by—

Amendment of
section 186 of
No. 18 of 2012.

- (a) deleting the word “and” appearing immediately after the expression “183”;
- (b) inserting the expression “and 185” immediately after the expression “184”;
- (c) inserting the words “or government-linked corporation” immediately after the words “county corporation” appearing in paragraph (b).

65. Section 187 of the principal Act is amended —

Amendment of
section 187 of
No. 18 of 2012.

- (a) in subsection (1) by inserting the following new paragraph immediately after paragraph (h)—
 - (i) chairpersons of the Committees of the Council of Governors; and
- (b) by deleting sub-section (3).

66. Section 193 of the principal Act is amended by—

Amendment of
section 193 of
No. 18 of 2012.

- (a) inserting the following new subsections immediately after subsection (3)—
 - “(4) The Public Sector Accounting Standards Board shall be accountable to the Cabinet Secretary for matters relating to finance for the effective, efficient and economical fulfillment of its purpose and objectives.
 - (5) The Public Sector Accounting Standards Board shall prepare and submit to the Cabinet Secretary a report on—

- (a) its annual work plan demonstrating its priorities and agenda on how it intends to meet its objectives and responsibilities for the following financial year; and
 - (b) its annual report on its activities demonstrating the extent to which its plans and mandate were achieved;
- (6) 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”.
- (b) deleting subsection (4) and substituting therefor with the following new subsection –
“(4) Members of the Board except *ex officio* members shall be appointed by the Cabinet Secretary and serve for a term of three years, renewable once for a further term of three years”.
 - (c) renumbering subsections (4), (5) and (6) as (7), (8) and (9), respectively.

67. Section 197(1) of the principal Act is amended by—

Amendment of section 197 of No. 18 of 2012.

- (a) inserting the words “county government or county government entity” before the word “commits”;
- (b) deleting the word “public” appearing in paragraph (a);
- (c) deleting the word “wrongfully” appearing in paragraph (l) and substituting therefor the word “knowingly”.

68. The Second Schedule to the principal Act is amended in paragraph 8, by—

Amendment of the Second Schedule to No. 18 of 2012.

- (a) deleting the words “National Government Guarantees (Loans) Act” and substituting therefor the words “National Government Guarantees Loans Act”;

- (b) deleting the expression “section 51” and substituting therefor the expression “section 58(2) (f)”.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to amend the Public Finance Management Act (No. 18 of 2012) so as to ensure smooth implementation of the Act.

CLAUSE 1 of the Bill sets out the short title.

CLAUSE 2 of the Bill proposes to amend section 2 of the Bill so as to clarify the definitions of “national government entity”, “short term borrowing” and “Treasury Single Account”.

CLAUSE 3 of the Bill proposes to amend the section 5(1) of the Act by including the Parliament in the approval process of the declaration of county government entities. Further, the clause also proposes to amend section 5(4) of the Act by including the County Executive Committee in the approval process where a county government entity ceases to be a County Government entity in accordance with the Act.

CLAUSE 4 of the Bill proposes to amend section 8 of the Act to align the provisions of this section with the role of the Senate as provided for under Article 189 of the Constitution. The Bill further proposes to include the Cabinet Secretary responsible for matters relating to finance in carrying out the functions provided under the section for the purposes of guiding the Senate and other players on the implications and moving of resources from one county to another vis-à-vis the proposals made in the County Allocation Revenue Bill.

CLAUSE 5 of the Bill proposes to amend section 10 of the Act to enable the County Assemblies request the Budget Office for capacity building where necessary.

CLAUSE 6 of the Bill proposes to amend section 13 of the Act since the Cabinet Secretary cannot delegate a duty under his or her watch to himself or herself.

CLAUSE 7 of the Bill proposes to amend section 15 of the Act so as to restrict the provisions of this section to National Government. The section is further amended so as to clarify that it is only external borrowing that is limited to capital projects.

CLAUSE 8 of the Bill proposes to amend section 17(7) to ensure that the provision is in line with the provisions of section 127 of the Act.

CLAUSE 9 of the Bill proposes to amend section 24 of the Act so as to provide for the role of the National Treasury in specifying the accounting procedures and systems and the role of the Auditor-General in auditing the accounts before submission to Parliament.

CLAUSE 10 of the Bill proposes to amend section 35 of the Act so as to mirror what is provided for under section 125(1)(c) of the Act.

CLAUSE 11 of the Bill proposes to amend section 38 of the Act so as to apply the provision of the section to the entire Article 202 of the Constitution.

CLAUSE 12 of the Bill proposes to amend section 39 of the Act so as to mirror the language used in Article 222(1) of the Constitution to avoid any contradiction.

CLAUSE 13 of the Bill proposes to amend section 46 of the Act to ensure that the exchequer issues are reported per programme and project for effective monitoring and evaluation.

CLAUSE 14 of the Bill proposes to amend section 52(2) of the Act to provide for delegation of powers to execute loan documents by the Cabinet Secretary to the accounting officers and other officers.

CLAUSE 15 of the Bill proposes to amend section 66 of the Act so as to include monitoring of non- financial performance.

CLAUSE 16 of the Bill proposes to amend section 68 of the Act so as to clarify that the Cabinet Secretary for the relevant entity is the one being referred to and not the Cabinet Secretary for finance.

CLAUSE 17 of the Bill proposes to amend section 77 of the Act so as to align it with the wording of Article 210 of the Constitution.

CLAUSE 18 of the Bill proposes to amend section 78 of the Act so as to recognize and include other collectors of revenue.

CLAUSE 19 of the Bill proposes to amend section 82 of the Act so as to restrict the power to grant waivers or variations only to the Cabinet Secretary.

CLAUSE 20 of the Bill proposes to amend section 87 of the Act so as to align it with the rest of the provisions making reference to corporations.

CLAUSE 21 of the Bill proposes to amend section 88 of the Act so as to make it consistent with the rest of the section.

CLAUSE 22 of the Bill proposes to amend section 89 of the Act so as to align it with the rest of the provisions of the section.

CLAUSE 23 of the Bill proposes to amend section 91 of the Act to include any form of funding given to government linked corporations as investments.

CLAUSE 24 of the Bill proposes to amend section 93 of the Act to enhance better presentation and understanding of the Act.

CLAUSE 25 of the Bill proposes to amend section 96 of the Act so as to align it with the wording of the marginal note.

CLAUSE 26 of the Bill proposes to amend section 97(4) of the Act so as to clarify the content under the subsection.

CLAUSE 27 of the Bill proposes to amend section 98 of the Act so as to align it with the wording in the Constitution.

CLAUSE 28 of the Bill proposes to amend section 104 of the Act so as to clarify and make it uniform with other sections referring to county public funds.

CLAUSE 29 of the Bill proposes to amend section 105 of the Act so as to cater for public officers and any other persons designated to perform duties or any other responsibilities on behalf of County Treasuries.

CLAUSE 30 of the Bill proposes to amend section 107 of the Act so as to clarify as to which level of government the provision refers to.

CLAUSE 31 of the Bill proposes to amend section 109 of the Act so as to facilitate the easy operationalization of the Treasury Single Account (for both level of government) by having all County Exchequer Accounts in the Central Bank of Kenya.

CLAUSE 32 of the Bill proposes to amend section 112 of the Act so as to reflect what is provided for at national level under section 28(3) and (4).

CLAUSE 33 of the Bill proposes to amend section 116 of the Act so as to provide a distinction between public funds and county public funds. It further proposes to amend the Act so as to provide that statements must be audited before being presented to Parliament.

CLAUSE 34 of the Bill proposes to amend section 117 of the Act to extend the period of consideration of the County Fiscal Strategy Paper by the county assemblies from fourteen days to thirty days.

CLAUSE 35 of the Bill proposes to amend section 119 of the Act so as to facilitate the easy operationalization of the Treasury Single Account (for both levels of government) by having all County Exchequer Accounts in the Central Bank of Kenya.

CLAUSE 36 of the Bill proposes to introduce a new section 119A to the Act to address the issue of county governments and county entities operating many bank accounts by providing guidelines that a county entity must comply with before opening a bank account.

CLAUSE 37 of the Bill proposes to amend section 125 of the Act so as to remove the planning aspect from the provision.

CLAUSE 38 of the Bill proposes to amend section 126 of the Act so as to provide a linkage between the plan being referred to in section 125(1) and to distinguish it from the annual development plan being referred to in section 126(2), (3) and (4). The amendment further proposes to extend time to allow the County Governments sufficient time to prepare their annual development plans.

CLAUSE 39 of the Bill proposes to amend section 127 of the Act so as to align it with the wording of Article 210 of the Constitution.

~~**CLAUSE 40** of the Bill proposes to amend section 128 of the Act to increase the days that the county executive committee member for finance shall have to issue the circular setting out the guidelines to be followed by all the county government entities in the budget making process.~~

CLAUSE 41 of the Bill proposes to amend section 129 of the Act to require county assemblies to submit their budget estimates through the County Executive.

CLAUSE 42 of the Bill proposes to amend section 131 of the Act so as to align it with the wording of section 39.

CLAUSE 43 of the Bill proposes to amend section 132 of the Act so as to complete the wording in reference to County Executive Committee Member.

CLAUSE 44 of the Bill proposes to section 133 of the Act for proper reference.

CLAUSE 45 of the Bill proposes to amend section 136 of the Act by inserting a new subsection (3) to require county governments to surrender to the county exchequer account any funds withdrawn from the County Revenue Fund but not spent at the end of the financial year within fourteen days upon receipt of the audit report for that financial year.

CLAUSE 46 of the Bill proposes to amend section 137 of the Act so as to complete the wording in reference to County Budget Review Outlook Paper.

CLAUSE 47 of the Bill proposes to amend the heading appearing between sections 137 and 138 to reflect the equivalent heading in provisions relating to the same at the National Government level appearing between sections 45 and 46.

CLAUSE 48 of the Bill proposes to to amend section 141 of the Act so as to reflect the correct position.

CLAUSE 49 of the Bill proposes to amend section 143(2) of the Act to provide for delegation of powers to execute loan documents by the County

Executive Committee member to the accounting officers and other officers.

CLAUSE 50 of the Bill proposes to amend section 144 of the Act by deleting the word delegate which is not defined in the Act.

CLAUSE 51 of the Bill proposes to amend section 145 of the Act so as to correspond with the text in the section.

CLAUSE 52 of the Bill proposes to amend section 155 of the Act so as to clarify that the reference is to internal audit and not audits in general.

CLAUSE 53 of the Bill proposes to amend section 159 of the Act so as to align it with the provisions of Article 210 of the Constitution.

CLAUSE 54 of the Bill proposes to amend the heading immediately after section 162 of the Act so as to relate it to the content referring to County Governments and County Government Entities.

CLAUSE 55 of the Bill proposes to amend section 165 of the Act so as to synchronize the reports with the provisions of annual reporting at the national and county government levels. Furthermore, it proposes to amend the section to make it a responsibility of the County Executive Committee Member in granting waivers and not by receivers of revenue.

CLAUSE 56 of the Bill proposes to amend section 171 of the Act so as to delete the reference to Organ of State which is not the correct expression.

CLAUSE 57 of the Bill proposes to amend section 174 of the Act so as to align it with section 172.

CLAUSE 58 of the Bill proposes to amend section 176 of the Act so as to make it necessary for withdrawal of the funds limited to the time when Appropriation Bill is enacted.

CLAUSE 59 of the Bill proposes to amend section 178 of the Act so as to make it consistent with the rest of the references to grants and donations in this section.

CLAUSE 60 of the Bill proposes to amend section 180 of the Act so as to make it clear and consistent with the equivalent provisions in the National and County Governments.

CLAUSE 61 of the Bill proposes to amend section 183 of the Act so as to clarify what was intended in the Act.

CLAUSE 62 of the Bill proposes to amend section 184 of the Act so as to be consistent with the provisions of the section and the Act.

CLAUSE 63 of the Bill proposes to amend section 185 of the Act so as to be consistent with the provisions of the section and the Act. Furthermore,

it proposes to amend the section to reflect the provisions of section 89(4) and also to recognize the role of the County Executive Committee Member in overseeing county public finances.

CLAUSE 64 of the Bill proposes to amend section 186 of the Act so as to apply the definitions to section 185 and to ensure that county corporations or county-linked corporations are referred to together as provided for in other sections of the Act.

CLAUSE 65 of the Bill proposes to amend section 187 by deleting subsection (3) to correct an error.

CLAUSE 66 of the Bill proposes to amend section 193 by inserting new subsections (3), (4) and (5) to require the Public Sector Accounting Standards Board to account and report to the Cabinet Secretary.

CLAUSE 67 of the Bill proposes to amend section 197 of the Act so as to make the provision clear of the intention.

CLAUSE 68 of the Bill proposes to amend the Second Schedule of the Act for avoidance of any doubt.

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not delegate legislative powers to the Cabinet Secretary nor does it limit any fundamental rights and freedoms.

Statement that the Bill concerns county governments

The Bill affects the functions of the county governments as set out in the Fourth Schedule to the Constitution and is therefore a Bill concerning counties for purposes of the Standing Orders.

Statement that the Bill is a money Bill within the meaning of Article 114 of the Constitution

The Bill is a money Bill within the meaning of Article 114 of the Constitution.

Dated the, 2017.

Section 2 of No. 18 of 2012, which it is proposed to amend—

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

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

“Treasury Single Account”—

- (a) in relation to the national government, means a centralised bank account system where all deposits and payment transactions are processed for State Departments, Commissions and Independent Offices, and any National Government entity which draws directly from the Consolidated Fund;
- (b) in relation to the county government, means a centralised bank account system established in each county where all deposits and payment transactions are processed for county departments and any other county entity which draws directly from the County Revenue Fund;

Section 5 of No.18 of 2012, which it is proposed to amend—

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

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

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

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

Section 8 of No.18 of 2012, which it is proposed to amend—

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

(a) present to the Senate, subject to the exceptions in the Constitution, the proposal for the basis of allocating revenue among the Counties and consider any bill dealing with county financial matters;

(b) review the County Allocation of Revenue Bill and the Division of Revenue Bill in accordance with Article 218(1)(b) of the Constitution at least two months before the end of the financial year;

(c) examine financial statements and other documents submitted to the Senate under Part IV of this Act, and make recommendations to the Senate for improving the management of government's public finances; and

(d) monitor adherence by the Senate to the principles of public finance set out in the Constitution, and to the fiscal responsibility principles of this Act.

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

Section 10 of No. 18 of 2012, which it is proposed

(1) The Parliamentary Budget Office shall—

(a) provide professional services in respect of budget, finance, and economic information to the committees of Parliament;

(b) prepare reports on budgetary projections and economic forecasts and make proposals to Committees of Parliament responsible for budgetary matters;

(c) prepare analyses of specific issues, including financial risks posed by Government policies and activities to guide Parliament;

(d) consider budget proposals and economic trends and make recommendations to the relevant committee of Parliament with respect to those proposals and trends;

(e) establish and foster relationships with the National Treasury, county treasuries and other national and international organisations, with an interest in budgetary and socio-economic

matters as it considers appropriate for the efficient and effective performance of its functions;

(f) subject to Article 35 of the Constitution, ensure that all reports and other documents produced by the Parliamentary Budget Office are prepared, published and publicised not later than fourteen days after production; and

(g) report to the relevant committees of Parliament on any Bill that is submitted to Parliament that has an economic and financial impact, making reference to the fiscal responsibility principles and to the financial objectives set out in the relevant Budget Policy Statement; and

(h) propose, where necessary, alternative fiscal framework in respect of any financial year.

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

Section 13 of No.18 of 2012, which it is proposed to amend—

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

(a) with prior notification to the entity, access any system of public financial management and control of national government entity;

(b) where reasonably necessary in the execution, of its functions, access the premises of any national State Organ or other public entity and inspect the entity's records and other documents relating to financial matters after giving notice;

(c) require national government entities to comply with any specified applicable norms or standards regarding accounting practices and budget classification systems;

(d) require any public officer in the national government to provide information and if necessary, explanations with respect to matters concerning public finance:

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

(e) provide any County Treasury with any information as it may require to carry out its responsibilities under the Constitution and this Act; and

(f) perform any other act as the Cabinet Secretary may consider necessary including power to intervene where a state entity or state organ fails to operate a financial system that complies with requirements provided for under this Act or is in serious material breach under this Act or in accordance with Articles 190 and 225 of the Constitution.

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

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

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

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

Section 15 of No.18 of 2012, which it is proposed to amend—

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

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

(a) over the medium term a minimum of thirty percent of the national and county governments budget shall be allocated to the development expenditure.

(b) the national government's expenditure on wages and benefits for its public officers shall not exceed a percentage of the national government revenue as prescribed by regulations;

(c) over the medium term, the national government's borrowings shall be used only for the purpose of financing development expenditure and not for recurrent expenditure;

(d) public debt and obligations shall be maintained at a sustainable level as approved by Parliament for the national government and the county assembly for county government;

(e) fiscal risks shall be managed prudently; and

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

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

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

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

Section 17 of No.18 of 2012, which it is proposed to amend—

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

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

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

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

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

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

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

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

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

Section 24 of No.18 of 2012, which it is proposed to amend—

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

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

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

(a) establish procedures and systems for proper and effective management of the monies and property of the Fund;

(b) establish accounting procedures and systems for the Commission to properly account for the monies and property;

(c) superintend the expenditure of the monies of the Fund to ensure that the monies are properly accounted for;

(d) prepare and submit accounts for each financial year in accordance with the written law for the time being relating to audit for audit by the Auditor-General; and

(e) ensure that accounts prepared under paragraph (d) comply with the provisions of this Act.

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

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

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

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

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

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

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

(b) the Cabinet Secretary shall pay any deficit in the fund from funds of the national government in the National Exchequer Account with the approval of the National Assembly; and

(c) the Cabinet Secretary shall submit a final statement of accounts to Parliament.

(10) The administrator of a national public fund—

(a) shall prepare financial statements for the fund for each financial year in a form specified by the Accounting Standards Board; and

(b) not later than three month after the end of each financial year, submit those statements to the Auditor-General and deliver a copy of the statements to the National Treasury, Commission on Revenue Allocation and the Controller of Budget.

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

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

(13) In this section—

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

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

Section 35 of No.18 of 2012, which it is proposed to amend—

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

- (a) integrated development planning process which shall include both long term and medium term planning;
 - (b) planning and determining financial and economic policies and priorities at the national level over the medium term;
 - (c) preparing overall estimates in the form of the Budget Policy Statement of national government revenues and expenditures;
 - (d) adoption of Budget Policy Statement by Parliament as a basis for future deliberations;
 - (e) preparing budget estimates for the national government;
 - (f) submitting those estimates to the National Assembly for approval;
 - (g) enacting the appropriation Bill and any other Bills required to implement the National government's budgetary proposals;
 - (h) implementing the approved budget;
 - (i) evaluating and accounting for, the national government's budgeted revenues and expenditures; and
 - (j) reviewing and reporting on those budgeted revenues and expenditures every three months.
- (2) The Cabinet Secretary shall ensure public participation in the budget process provided for under subsection (1).

Section 38 of No.18 of 2012, which it is proposed to amend—

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

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

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

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

(a) is accurate, precise, informative and pertinent to budget issues; and

(b) clearly identifies the appropriations by vote and programme.

Section 39 of No.18 of 2012, which it is proposed to amend—

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

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

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

(a) an increase in expenditure in a proposed appropriation is balanced by a reduction in expenditure in another proposed appropriation; or

(b) a proposed reduction in expenditure is used to reduce the deficit.

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

(a) the Division of Revenue Act;

(b) Article 114 of the Constitution; and

(c) any increase in expenditure in a proposed appropriation is balanced by a reduction in expenditure in another proposed appropriation or any proposed reduction in expenditure is used to reduce the deficit.

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

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

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

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

Section 46 of No.18 of 2012, which it is proposed to amend—

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

(a) oversee the formulation of macro-economic and financial policies of the Government;

(b) by agreement, assist national government entities and county governments in building capacity for efficient, effective and transparent financial management;

(c) where applicable, support the efforts of national government entities and county governments to avert or resolve their financial problems.

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

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

(a) seek views from county governments on the proposed macro-economic and financial policies using the Intergovernmental Budget and Economic Council established under this Act;

(b) share with national government entities and county governments any findings that may assist national government entities and county governments in improving their financial management; and

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

Section 52 of No.18 of 2012, which it is proposed to amend—

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

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

(a) the accounting officer responsible for the entity; or

(b) any other specified officer authorised by legislation to execute such documents on behalf of the entity.

Section 66 of No.18 of 2012, which it is proposed to amend—

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

(a) the promotion and enforcement of transparency, effective management and accountability with regard to the use of public finances;

(b) ensuring that accounting standards are applied;

(c) the implementation of financial policies in relation to public finances;

(d) ensuring proper management and control of, and accounting for, their finances in order to promote the efficient and effective use of budgetary resources;

(e) the preparation of annual estimates of expenditures;

(f) acting as custodian of the entity's assets, except where provided otherwise by any other legislation or the Constitution;

(g) monitoring the management of public finances and their financial performance;

(h) making quarterly reports to the National Assembly on the implementation of their budget; and

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

Section 68 of No.18 of 2012, which it is proposed to amend—

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

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

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

(a) ensure that all expenditure made by the entity complies with subsection (1);

(b) ensure that the entity keeps financial and accounting records that comply with this Act;

(c) ensure that all financial and accounting records the entity keeps in any form, including in electronic form are adequately protected and backed up;

(d) ensure that all contracts entered into by the entity are lawful and are complied with;

(e) ensure that all applicable accounting and financial controls, systems, standards, laws and procedures are followed when procuring or disposing of goods and services and that, in the case of goods, adequate arrangements are made for their custody, safeguarding and maintenance;

(f) bring any matter to the attention of the Cabinet Secretary responsible for the entity, or the Chief Justice or the Speaker of the National Assembly if, in the accounting officer's opinion, a decision or policy or proposed decision or policy of the entity may result in resources being used in a way that is contrary to subsection (1);

(g) prepare a strategic plan for the entity in conformity with the medium term fiscal framework and fiscal policy objectives of the national government;

(h) prepare estimates of expenditure and revenues of the entity in conformity with the strategic plan referred to in paragraph (g);

(i) submit the estimates of the public entity which is not a state corporation to the Cabinet Secretary;

(j) submit the estimates of a public entity which is a state corporation to the Cabinet Secretary responsible for that state corporation who, after approving it, shall forward it to the Cabinet Secretary;

(k) prepare annual financial statements for each financial year within three months after the end of the financial year, and submit them to the Controller of Budget and the Auditor-General for audit, and in the case of a national government entity, forward a copy to the National Treasury;

(l) take appropriate measures to resolve any issues arising from audit which may remain outstanding;

(m) provide information on any fraud, losses, or any violation of subsection (1) and explanation for the actions taken to prevent a similar problem in future;

(n) provide the National Treasury and any other office, where relevant, with any information it may require to fulfil its functions under this Act; and

(o) in case of a national government entity, carry out such other functions as may be specified by the Cabinet Secretary.

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

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

(a) prepare a report on actions taken by the entity to implement any recommendations made in the committee's report as adopted by the National Assembly; and

(b) submit the report to the National Assembly and in case of a national government entity, copy to the National Treasury and the Controller of Budget.

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

Section 77 of No.18 of 2012, which it is proposed to amend—

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

(a) the National Treasury shall maintain a public record of each waiver together with the reason for the waiver and report on each waiver in accordance with Section 82 of this Act;

(b) such a waiver or variation has been authorised by an Act of Parliament; and

(c) a State Officer may not be excluded from payment of a tax, fee or charge by reason of the office of the State Officer or the nature of work of the State Officer.

Section 78 of No.18 of 2012, which it is proposed to amend—

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

Section 82 of No.18 of 2012, which it is proposed to amend—

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

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

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

(b) a statement of arrears of revenue.

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

(a) submit the accounts to the Auditor-General and a copy to the National Treasury, Controller of Budget and the Commission on Revenue Allocation; and

(b) publish and publicise the financial statements.

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

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

(a) the full name of each person benefitting from the waiver or variation;

(b) the amount of tax, fee or charge affected by the waiver or variation;

(c) the year to which the waiver or variation relates;

(d) the reasons for waive or variation; and

(e) the law in terms of which the waiver was granted.

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

Section 87 of No.18 of 2012, which it is proposed to amend—

87. (1) The national government or national government entity may not invest—

(a) in a state corporation; or

(b) in a government-linked company,

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

Section 88 of No.18 of 2012, which it is proposed to amend—

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

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

(b) the performance of that state corporation and the activities affecting its financial performance; and

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

(2) The Cabinet Secretary shall—

(a) analyse financial and other reports that are required to be prepared by a state corporation under the State Corporations Act (Cap. 446) or any other relevant Act;

(b) report to the Cabinet on the financial performance of those state corporations; and

(c) make recommendations to the Cabinet as to how a particular state corporation or government-linked corporation could improve its financial performance.

Section 89 of No.18 of 2012, which it is proposed to amend—

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

investment in, or funding of, all state corporations and government-linked corporations for that financial year.

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

(a) the date of incorporation and objects of the corporation;

(b) the amount of national government shareholding, directly or indirectly, in the state corporation;

(c) any changes in the shareholding of the state corporation during the financial year;

(d) the amount of any funding in the form of grants or subsidies provided by the national government to the state corporation or government-linked state corporations, excluding profit-making state corporation, during the financial year;

(e) the amount of any loans made by the national government to the state corporation, and the amount of any guarantees issued by the national government in respect of the state corporation, during the financial year;

(f) the cumulative amount of undischarged loans and guarantees in respect of the state corporation;

(g) the amount of the profit or loss of the state corporation for the financial year;

(h) the amount of any revenue received by the national government from the state corporation during the financial year, including dividends, interest and proceeds from any divestiture of assets of the state corporation;

(i) the amount of payments made, or losses incurred, by the national government to meet contingent liabilities as a result of loans or guarantees during the financial year, including payments made in respect of guarantees, loan write-offs or waiver of interest on loans; and

(j) an assessment of the financial and related non-financial performance of the state corporation for the financial year.

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

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

Section 91 of No.18 of 2012, which it is proposed to amend—

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

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

Section 93 of No.18 of 2012, which it is proposed to amend—

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

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

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

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

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

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

(4) When determining whether the conditions for the Cabinet Secretary to stop transfer of funds referred to in Article 225(3) of the Constitution are

met, all relevant facts shall be considered before the Cabinet Secretary acts.

Section 96 of No.18 of 2012, which it is proposed to amend—

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

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

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

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

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

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

Section 97 of No.18 of 2012, which it is proposed to amend—

97. (1) Where the Cabinet Secretary makes a decision to stop the transfer of funds to a State organ or public entity in accordance with Article 225(3) of the Constitution and provisions of this Act, the Cabinet Secretary shall stop the payment and inform the Controller of Budget in respect of—

(a) the date from when the stoppage of transfer of funds takes effect; and

(b) the nature of serious material breaches, or persistent material breaches, committed by the State organ or public entity.

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

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

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

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

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

Section 98 of No.18 of 2012, which it is proposed to amend—

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

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

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

(a) the serious or persistent material breach in the State organ's or public entity's financial affairs has been resolved;

(b) the State organ's or public entity's ability to meet its obligations to provide basic services or its financial commitments is secured; or

(c) Parliament has declined to renew the Cabinet Secretary's decision to stop transfer of funds.

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

Section 104 of No.18 of 2012, which it is proposed to amend—

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

(a) developing and implementing financial and economic policies in the county;

(b) preparing the annual budget for the county and co-ordinating the preparation of estimates of revenue and expenditure of the county government;

(c) co-ordinating the implementation of the budget of the county government;

(d) mobilising resources for funding the budgetary requirements of the county government and putting in place mechanisms to raise revenue and resources;

(e) managing the county government's public debt and other obligations and developing a framework of debt control for the county;

(f) consolidating the annual appropriation accounts and other financial statements of the county government in a format determined by the Accounting Standards Board;

(g) acting as custodian of the inventory of the county government's assets except where provided otherwise by other legislation or the Constitution;

(h) ensuring compliance with accounting standards prescribed and published by the Accounting Standards Board from time to time;

(i) ensuring proper management and control of, and accounting for the finances of the county government and its entities in order to promote efficient and effective use of the county's budgetary resources;

(j) maintaining proper accounts and other records in respect of the County Revenue Fund, the County Emergencies Fund and other public funds administered by the county government;

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

Section 105 of No.18 of 2012, which it is proposed to amend—

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

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

(e) requiring any public officer employed by a county government or county government entity to provide explanations, information and assistance in respect to matters relating to the county government's public finances:

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

(f) issuing guidelines to accounting officers for the county government entities, or public officers employed by those entities, with respect to the financial affairs of that Government or those entities, and monitoring compliance with those guidelines; and

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

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

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

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

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

Section 107 of No.18 of 2012, which it is proposed to amend—

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

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

(a) the county government's recurrent expenditure shall not exceed the county government's total revenue;

(b) over the medium term a minimum of thirty percent of the county government's budget shall be allocated to the development expenditure;

(c) the county government's expenditure on wages and benefits for its public officers shall not exceed a percentage of the county government's total revenue as prescribed by the County Executive member for finance in regulations and approved by the County Assembly;

(d) over the medium term, the government's borrowings shall be used only for the purpose of financing development expenditure and not for recurrent expenditure;

(e) the county debt shall be maintained at a sustainable level as approved by county assembly;

(f) the fiscal risks shall be managed prudently; and

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

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

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

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

Section 109 of No.18 of 2012, which it is proposed to amend—

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

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

(a) is excluded front payment into that Fund because of a provision of this Act or another Act of Parliament, and is payable into another county public fund established for a specific purpose;

(b) may, in accordance with other legislation, this Act or County legislation, be retained by the county government entity which received it for the purposes of defraying its expenses; or

(c) is reasonably excluded by an Act of Parliament as provided in Article 207 of the Constitution.

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

(4) The County Treasury shall—

(a) arrange for the County Revenue Fund to be kept in the Central Bank of Kenya or a bank approved by the County Executive Committee member responsible for finance and shall be kept in an account to be known as the “County Exchequer Account; and

(b) ensure that all money authorised to be paid by the county government or any of its entities for a public purpose is paid from that account without undue delay.

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

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

(a) an Act of the county assembly that appropriates money for a public purpose;

(b) an Act of Parliament or county legislation that imposes a charge on that Fund; or

(c) this Act in accordance with sections 134 and 135.

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

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

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

Section 112 of No.18 of 2012, which it is proposed to amend—

(1) Subject to section 113, the County Executive Committee member for Finance may make payments from the county government’s Emergency

Fund only if he or she is satisfied that there is an urgent and unforeseen need for expenditure for which there is no legislative authority and shall be in accordance with operational guidelines made under regulations approved by Parliament and the law relating to disaster management.

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

(a) payment not budgeted for cannot be delayed until a later financial year without harming the general public interest;

(b) payment is meant to alleviate the damage, loss, hardship or suffering which may be caused directly by the event; and

(c) the damage caused by the event is on a small scale and limited to the county.

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

(a) threatens damage to human life or welfare; or

(b) threatens damage to the environment.

Section 116 of No.18 of 2012, which it is proposed to amend—

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

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

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

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

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

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

(a) the administrator of the fund shall pay any amount remaining in the fund into the County Exchequer Account; and

(b) the County Executive Committee member for finance shall, with the approval of the county assembly, pay any deficit in the fund from the County Exchequer Account.

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

(a) prepare accounts for the fund for each financial year;

(b) not later than three months after the end of each financial year, submit financial statements relating to those accounts to the Auditor-General; and

(c) present the financial statements to the county assembly.

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

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

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

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

(12) In this section—

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

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

Section 117 of No.18 of 2012, which it is proposed to amend—

(1) The County Treasury shall prepare and submit to the County Executive Committee the County Fiscal Strategy Paper for approval and the County Treasury shall submit the approved Fiscal Strategy Paper to the county assembly, by the 28th February of each year.

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

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

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

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

(a) the Commission on Revenue Allocation;

(b) the public;

(c) any interested persons or groups; and

(d) any other forum that is established by legislation.

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

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

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

Section 119 of No.18 of 2012, which it is proposed to amend—

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

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

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

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

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

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

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

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

Section 125 of No.18 of 2012, which it is proposed to amend—

125. (1) The budget process for county governments in any financial year shall consist of the following stages—

(a) integrated development planning process which shall include both long term and medium term planning;

(b) planning and establishing financial and economic priorities for the county over the medium term;

(c) making an overall estimation of the county government's revenues and expenditures;

(d) adoption of County Fiscal Strategy Paper;

(e) preparing budget estimates for the county government and submitting estimates to the county assembly;

(f) approving of the estimates by the county assembly;

(g) enacting an appropriation law and any other laws required to implement the county government's budget;

(h) implementing the county government's budget; and

(i) accounting for, and evaluating, the county government's budgeted revenues and expenditures.

(2) The County Executive Committee member for finance shall ensure that there is public participation in the budget process.

Section 126 of No.18 of 2012, which it is proposed to amend—

126. (1) Every county government shall prepare a development plan in accordance with Article 220(2) of the Constitution, that includes—

(a) strategic priorities for the medium term that reflect the county government's priorities and plans;

(b) a description of how the county government is responding to changes in the financial and economic environment;

(c) programmes to be delivered with details for each programme of—

- (i) the strategic priorities to which the programme will contribute;
- (ii) the services or goods to be provided;
- (iii) measurable indicators of performance where feasible; and
- (iv) the budget allocated to the programme;

(d) payments to be made on behalf of the county government, including details of any grants, benefits and subsidies that are to be paid;

(e) a description of significant capital developments;

(f) a detailed description of proposals with respect to the development of physical, intellectual, human and other resources of the county, including measurable indicators where those are feasible;

(g) a summary budget in the format required by regulations; and

(h) such other matters as may be required by the Constitution or this Act.

(2) The County Executive Committee member responsible for planning shall prepare the development plan in accordance with the format prescribed by regulations.

(3) The County Executive Committee member responsible for planning shall, not later than the 1st September in each year, submit the development plan to the county assembly for its approval, and send a copy to the Commission on Revenue Allocation and the National Treasury.

(4) The County Executive Committee member responsible for planning shall publish and publicise the annual development plan within seven days after its submission to the county assembly.

Section 127 of No.18 of 2012, which it is proposed to amend—

127. (1) Not later than the 15th June of each financial year, every county government shall prepare an annual cash flow projection for the county for the next financial year, and submit the cash flow projection to the Controller of Budget with copies to the Intergovernmental Budget and Economic Council and the National Treasury.

(2) Regulations shall prescribe the format and content of the annual cash flow projections.

Section 128 of No.18 of 2012, which it is proposed to amend—

128. (1) The County Executive Committee member for finance shall manage the budget process for the county.

(2) Not later than the 30th August in each year, the County Executive Committee member for finance shall issue a circular setting out guidelines to be followed by all of the county government's entities in the budget process.

(3) The County Executive Committee member for finance shall include in the circular—

(a) a schedule for preparation of the budget, specifying the key dates by which the various processes are to be completed;

(b) the methodology for the review and projection of revenues and expenditures;

(c) key policy areas and issues to be taken into consideration when preparing the budget;

(d) the procedures to be followed by members of the public who wish to participate in the budget process;

(e) the format in which information and documents relating to the budget are to be submitted;

(f) the information to be in conformity with standard budget classification systems as prescribed by regulations; and

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

(4) A county government entity shall comply with the guidelines and, in particular, shall adhere to the key dates specified in the schedule referred to in subsection (3)(a).

Section 129 of No.18 of 2012, which it is proposed to amend—

129. (1) A County Executive Committee member for finance shall submit to the County Executive Committee for its approval—

(a) the budget estimates and other documents supporting the budget of the county government, excluding the county assembly; and

(b) the draft Bills at county level required to implement the county government budget, in sufficient time to meet the deadlines prescribed by this section.

(2) Following approval by the County Executive Committee, the County Executive Committee member for finance shall—

- (a) submit to the county assembly the budget estimates, supporting documents, and any other Bills required to implement the budget, except the Finance Bill, by the 30th April in that year; and
 - (b) ensure that the estimates submitted in subsection (a) are in accordance with the resolutions adopted by county assembly on the County Fiscal Strategy Paper.
- (3) Each county assembly clerk shall prepare and submit to the county assembly the budget estimates for the county assembly and a copy shall be submitted to the County Executive Committee member for finance.
- (4) The County Executive Committee member for finance shall prepare and present his or her comments on the budget estimates presented by the county assembly clerk.
- (5) The County Executive Committee member for finance shall ensure that the budget process is conducted in a manner and within a timeframe sufficient to permit the participants in the process to meet the requirements of the Constitution and this Act.
- (6) As soon as is practicable after the budget estimates and other documents have been submitted to the County Assembly under this section, the County Executive Committee member for finance shall publish and publicise the documents.
- (7) Upon approval of the budget estimates by the county assembly, the County Executive Committee member for finance shall prepare and submit a County Appropriation Bill to the county assembly of the approved estimates.

Section 131 of No.18 of 2012, which it is proposed to amend—

- 131.** (1) The county assembly shall consider the county government budget estimates with a view to approving them, with or without amendments, in time for the relevant appropriation law and any other laws required to implement the budget to be passed by the 30th June in each year.
- (2) Before the county assembly considers the estimates of revenue and expenditure, the relevant committee of the county assembly shall discuss and review the estimates and make recommendations to the county assembly, and in finalising the recommendations to county assembly, the committee shall take into account the views of the County Executive Committee member for finance and the public on the proposed recommendations.

(3) An amendment to the budget estimates may be made by the county assembly only if it is in accordance with the resolutions adopted regarding the County Fiscal Strategy Paper and if—

(a) any increase in expenditure in a proposed appropriation, is balanced by a reduction in expenditure in another proposed appropriation; and

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

(4) Where a Bill originating from a member of a county assembly proposes amendments after the passing of budget estimates and the Appropriations Bill by the county assembly, the county assembly may proceed in accordance with the resolutions adopted regarding the County Fiscal Strategy Paper and ensure—

(a) an increase in expenditure in a proposed appropriation is balanced by a reduction in expenditure in another proposed appropriation; or

(b) a proposed reduction in expenditure is used to reduce the deficit.

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

(6) The County Executive Committee member for finance shall take all reasonably practicable steps to ensure that the approved budget estimates are prepared and published in a form that is clear and easily understood by, and readily accessible to, members of the public.

Section 132 of No.18 of 2012, which it is proposed to amend—

132. (1) Each financial year, the County Executive member for finance shall, with the approval of the County Executive Committee, make a pronouncement of the revenue raising measures for the county government.

(2) The County Executive Committee member for finance shall, on the same date that the revenue raising measures are pronounced, submit to the county assembly the County Finance Bill, setting out the revenue raising measures for the county government, together with a policy statement expounding on those measures.

(3) Any recommendations made by the relevant committee or adopted by the county assembly on revenue matters shall—

(a) ensure that the total amount of revenue raised is consistent with the approved fiscal framework and the County Allocation of Revenue Act;

(b) take into account the principles of equity, certainty and ease of collection;

(c) consider the impact of the proposed changes on the composition of tax revenue with reference to direct and indirect taxes;

(d) consider domestic, regional and international tax trends;

(e) consider the impact on development, investment, employment and economic growth; and

(f) take into account the taxation and other tariff agreements and obligations that Kenya has ratified, including taxation and tariff agreements under the East African Community Treaty.

(4) The recommendation of the County Executive Committee member for finance shall be included in a report and tabled in the county assembly.

Section 133 of No.18 of 2012, which it is proposed to amend—

133. Not later than ninety days after passing the Appropriation Bill, the county assembly shall consider and approve the Finance Bill with or without amendments.

Section 136 of No.18 of 2012, which it is proposed to amend—

(1) Subject to any other legislation, an appropriation that has not been spent at the end of the financial year for which it was appropriated lapses immediately at the end of that financial year.

(2) If, at the end of a financial year, a county government entity is holding appropriated money that was withdrawn from the County Exchequer Account but has not been spent, it shall repay the unspent money to the County Exchequer Account and prepare a refund statement which shall be forwarded to the Controller of Budget.

Section 137 of No.18 of 2012, which it is proposed to amend—

137. (1) As soon as practicable after the commencement of this Act, a county government shall establish a forum to be known as the (Name of the County) County Budget and Economic Forum.

(2) The County Budget and Economic Forum shall consist of—

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

(b) other members of the county executive committee;

(c) a number of representatives, not being county public officers, equal to the number of executive committee members appointed by the Governor from persons nominated by organisations representing professionals, business, labour issues, women, persons with disabilities, the elderly and faith based groups at the county level.

(3) The purpose of the Forum is to provide a means for consultation by the county government on—

(a) preparation of county plans, the County Fiscal Strategy Paper and the Budget Review and Outlook Paper for the county; and

(b) matters relating to budgeting, the economy and financial management at the county level.

(4) In addition to the above, consultations shall be in accordance with the consultation process provided in the law relating to county governments.

RESPONSIBILITIES OF COUNTY EXECUTIVE COMMITTEE MEMBER FOR FINANCE AND FUNCTIONS OF THE COUNTY GOVERNMENT IN RESPECT TO PUBLIC FINANCES

Section 141 of No.18 of 2012, which it is proposed to amend—

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

(2) A county government may borrow money only in accordance with this Act or any other legislation and shall not exceed the limit set by the county assembly.

(3) A county government may borrow money in accordance with section 58, and only for purposes that are prescribed by regulations made under this subsection.

(4) A public debt incurred by a county government is a charge on the County Revenue Fund, unless the County Executive Committee member for finance determines that all or part of the public debt that would otherwise be a charge on that Fund shall be a charge on another public fund established by that county government or any of its entities.

(5) The County Executive Committee member for finance shall pay the proceeds of any loan raised under this Act into the County Revenue Fund or into any other public fund established by the county government or as the County Executive Committee member for finance may determine.

(6) A County Executive Committee member for finance may establish such sinking fund or funds for the redemption of loans raised under this Act for the purposes of the county government or any of its entities as the County Executive Committee member for finance considers necessary.

(7) A County Executive Committee member for finance may in accordance with national legislation on public procurement and disposal of assets—

(a) appoint advisers, agents and underwriters for the purposes of raising loans; and

(b) enter into agreements with those advisers, agents and underwriters as to the role to be undertaken by them and the remuneration to be paid to them.

(8) Any expenses incurred in connection with borrowing by a county government shall be a charge—

(a) on the County Revenue Fund; or

(b) on such other county public fund established by the county government or any of its entities as the County Executive Committee member for finance may determine in accordance with regulations approved by the county assembly.

(9) The costs, interests and principal payments made by the national government on behalf of the county concerning loans to the county government shall, together with the principal amount, be reimbursed to the national government by the county government.

Section 143 of No.18 of 2012, which it is proposed to amend—

143 (1) The County Executive Committee member for finance or any person designated by the County Executive Committee member for finance in writing is authorised to execute loan documents for borrowing by the county government.

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

(a) the accounting officer responsible for the entity; and

(b) any other specified office holder authorised by legislation to execute such documents on behalf of an entity.

Section 144 of No.18 of 2012, which it is proposed to amend—

144. (1) The county government may issue securities, whether for money that it has borrowed or for any other purpose, only in one or more series and only in accordance with this Act and regulations.

(2) The County Executive Committee member for finance may issue securities on behalf of the county government, for money borrowed by the county government in accordance with the criteria prescribed by regulations made for the purpose of this subsection.

(3) Subject to the provisions of section 141 of this Act, the authority of the County Executive Committee member for finance to borrow money includes the authority to borrow money by issuing county government securities in accordance with the regulations.

(4) Any county government securities issued by the County Executive Member for finance under this section shall be within the borrowing limits set out by the county assembly under section 141(2) of this Act.

(5) A county government securities—

(a) may be issued in one or more series; and

(b) may be issued in accordance with loan agreements entered into in accordance with regulations developed by the County Executive Committee member for finance and approved by the County Assembly.

(6) An agreement to obtain a loan by a county government entity made under subsection (5), may be amended from time to time and where the amendment results in further indebtedness or prejudice to the entity that borrowed, the amendment shall be approved by the county assembly.

(7) The County Executive Committee member for finance shall ensure that every county government security issued under this section is given in the name of that County.

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

(a) the County Executive Committee member for finance;

(b) a delegate appointed by the County Executive Committee member for finance; or

(c) a borrowing agent appointed for that purpose under this Act.

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

(10) At the request of the holder of a county government security, the County Executive Committee member for finance—

(a) may authorise the principal, or any interest payable in respect of the principal, to be paid at a place in Kenya or elsewhere different from the place otherwise provided; and

(b) may revoke such an authorisation and substitute thereof.

(11) A person to whom an authorisation is given under subsection (10) shall comply with the authorisation.

(12) The County Executive Committee member for finance may authorise in writing the issue of a duplicate county government security to replace a county Government security that is lost, damaged, or destroyed, but only if the County Executive Committee member for finance is satisfied that loss, damage or destruction has occurred.

(13) Subject to this Act or any other legislation, secondary trading of county government securities may be carried out only in such manner as may be prescribed by regulations made for the purposes of this subsection and in accordance with the provisions of this Act.

(14) In this section, “secondary trading” means any activity leading to a change in the ownership of a county government security before its redemption date.

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

(16) If the proceeds of a county government security have not been collected by, or cannot be paid to, the holder of the security because the whereabouts of the holder or, if the holder has died, the whereabouts of the holder’s personal representatives, are unknown, the County Executive Committee member for finance shall arrange for the County Treasury to credit the amount of money due to the holder to an interest free account for the holder’s benefit.

(17) If, after six years from the redemption date of a county government security, the proceeds of the security have not been collected by, or paid to, the holder or the holder’s personal representatives, the County Executive Committee member for finance shall return the uncollected amount to the County Exchequer Account to form part of the County Revenue Fund in accordance with regulations.

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

(19) The County Executive Committee member for finance shall publish and publicise annually all payments made in terms of subsection (17).

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

Section 145 of No.18 of 2012, which it is proposed to amend—

145. (1) A county government entity may lend money in accordance with this Act or any county legislation.

(2) ~~The County Executive Committee member for finance may, in relation to any money lent by the county government under this section—~~

(a) accept, in consultation with the Central Bank of Kenya, all money payable under the loan in any currency the County Executive Committee member for finance considers appropriate; and

(b) agree at any time to the variation of any security given in respect of the loan.

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

(a) from an appropriation for development expenditures; or

(b) from some other authority approved by the county assembly for the purpose for which the loan is made.

(4) The County Executive Committee member for finance shall ensure that a security given in respect of a loan under this section is given in the name of the county government.

(5) The County Executive Committee member for finance may, on behalf of the county government, carry out any of the responsibilities, and exercise any of the powers, of the county government with respect to securing a loan granted by that county government.

Section 155 of No.18 of 2012, which it is proposed to amend—

155. (1) A county government entity shall ensure that it complies with this Act and—

(a) has appropriate arrangements for conducting internal audit according to the guidelines issued by the Accounting Standards Board; and

(b) if any regulations are in force under subsection (2), those regulations are complied with.

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

(3) The arrangements for the conduct of internal auditing for a county government entity include—

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

(4) A county government entity shall ensure that the arrangements for conducting internal audits in respect of the entity are in accordance with international best practices for internal auditing.

(5) A county government entity shall establish an internal auditing committee whose composition and functions are to be prescribed by the regulations.

Section 159 of No.18 of 2012, which it is proposed to amend—

159. (1) The County Executive Committee member for finance may waive a county tax, fee or charge imposed by the county government and its entities in accordance with criteria prescribed in regulations provided that—

- (a) the County Treasury shall maintain a public record of each waiver together with the reason for the waiver and report on each waiver in accordance with section 164 of this Act;
- (b) a State Officer may not be excluded from payment of a tax, fee or charge by reason of the office of the State Officer or the nature of work of the State Officer; and
- (c) such waiver or variation has been authorised by an Act of Parliament or county legislation.

Heading appearing immediately after section 162

FINANCIAL REPORTING BY COUNTY GOVERNMENT ENTITIES

Section 165 of No.18 of 2012, which it is proposed to amend—

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

(2) The account under subsection (1) shall include—

- (a) a statement of receipts and disbursement in a form prescribed by the Accounting Standards Board from time to time; and
- (b) a statement of arrears of revenue.

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

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

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

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

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

Section 171 of No.18 of 2012, which it is proposed to amend—

171. (1) The accounting officer of an urban area or city is responsible for the management of the revenue received by that urban area or city in accordance with section 172.

(2) The accounting officer shall—

- (a) for the purposes of collection systems consistent with this Act and the Urban Areas and Cities Act, manage, the urban area or city's credit control and debt collection policy;

(b) immediately inform the County Executive Committee member for finance of any payments due to the urban area or city by a State organ in respect of city or urban area tax, or services, if such payments are regularly in arrears for periods of more than thirty days; and

(c) take all reasonable steps to ensure that any funds collected by the urban area or city on behalf of another organ of state is transferred to that organ of state within three days and that such funds are not used for purposes of the city or urban area.

Section 174 of No.18 of 2012, which it is proposed to amend—

174. The accounting officer of an urban area or city shall observe the following principles in managing public finances of that entity—

- (a) the actual expenditure on the personnel shall not exceed a percentage of their allocation to be prescribed by the County Assembly;
- (b) on an annual basis the urban area's or city's recurrent expenditure shall not exceed its revenue;
- (c) in the medium term, the recurrent expenditure may not exceed a percentage of total revenue, which will be approved by the county assembly;
- (d) an urban area's or city's debts are maintained at a sustainable level; and
- (e) over the medium term, the proceeds of borrowing by an urban area or city are used only for purposes of financing development expenditure and not recurrent expenditure.

Section 176 of No.18 of 2012, which it is proposed to amend—

176. (1) If the annual County Appropriation Act for the financial year has not been assented to or is not likely to be assented to by the beginning of the financial year, the relevant county assembly may authorise the withdrawal of funds from the County Revenue Fund for the purpose of meeting expenditure of an urban area or city in accordance with subsection (2).

(2) Funds withdrawn under subsection (1)—

- (a) may only be used to meet expenditure necessary to carry on the services of the urban area or city during the financial year concerned using the estimates submitted to the county assembly for approval; and

- (b) may not exceed in total one-half of the amount included in the estimates of expenditure submitted to the county assembly for approval.

Section 178 of No.18 of 2012, which it is proposed to amend—

178. (1) An urban area or city may receive a grant or donation from a development partner only with the approval of the County Executive Committee member for finance concerned, and only as provided under section 138 of this Act.

(2) The grants referred to in subsection (1) shall be expended in accordance with the strategic plan as provided for under section 175.

(3) As soon as possible after receiving the grant or donation, the recipient shall notify the County Executive Committee member for finance and the Cabinet Secretary of the receipt.

(4) If a project that is being financed by a grant or donation from a development partner requires county government funding, the project may only be started when—

(a) the required funding has been appropriated in accordance with this Act or is otherwise authorised by legislation; or

(b) the County Executive Committee member for finance has given a written authorisation for the project to begin.

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

(6) Subject to Article 229(4) of the Constitution, the recipient of a grant or donation from a development partner shall administer and account for the grant or donation by using government financial and accounting laws, rules and regulations and, administrative procedures, accounting and auditing procedures, or any of its financial accounting rules and procedures for accounting for the receipt or expenditure of money that are specified in, or referred to, in any agreement between the recipient and the development partner.

(7) The County Executive Committee member for finance may in addition to the audit above, permit a donor of a grant to audit such funds on the basis of its own financial accounting rules.

Section 180 of No.18 of 2012, which it is proposed to amend—

180. (1) The Board of an urban area or city shall ensure that the urban area or city follows the guidelines prescribed by the Accounting Standards Board.

(2) The Accounting Officer of an urban area or city shall prepare an annual report including accounts in accordance with the provisions of the Urban Areas and Cities Act, 2011 and other reports as required by this Act.

(3) The annual report of an urban area or city shall contain such additional information as is necessary to enable an informed assessment of the activities of the urban area or city.

Section 183 of No.18 of 2012, which it is proposed to amend—

183. The county government or county government entity may not invest—

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

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

Section 184 of No.18 of 2012, which it is proposed to amend—

184. (1) The County Executive Committee Member for that entity is responsible for monitoring—

- (a) the financial performance of County corporations and County Government-linked corporation; and
- (b) the performance of any functions or activities that affect the financial performance of those county corporations.

(2) The responsibilities of the County Executive Committee member for that entity under subsection (1) shall include in particular—

- (a) analysing financial and other reports that are required to be prepared by a county corporation under any Act or county legislation;
- (b) reporting to the County Executive Committee on the performance of those county corporations; and
- (c) making recommendations to the County Executive Committee as to how a particular county corporation or county government-linked corporation could improve its performance.

Section 185 of No.18 of 2012, which it is proposed to amend—

185. (1) Not later than four months after the end of each financial year, the County Treasury shall prepare and submit to the county assembly a consolidated report summarising the extent of county government

involvement or investment in, or funding of, all county corporations and county government-linked corporations for the financial year.

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

- (a) the date of incorporation and objects of the county corporation;
- (b) the amount of county government shareholding, directly or indirectly, in the county corporation;
- (c) any changes in the shareholding of the county corporation during the financial year;
- (d) the amount of any funding in the form of grants or subsidies provided by the county government to the county corporation or public entity, excluding profit making entities, during the financial year;
- (e) the amount of any loans made by the government to the county corporation, during the financial year;
- (f) the cumulative amount of undischarged loans in respect of the corporation;
- (g) the amount of profit or loss of the County corporation for the financial year;
- (h) the amount of any revenue received by the county government from the county corporation during the financial year, including dividends, interest and proceeds from any divestiture of assets of the county corporation;
- (i) the payments made, or losses incurred, by the county government to meet contingent liabilities as a result of loans during the financial year, including payments made in respect of loan write-offs or waiver of interest on loans; and
- (j) an assessment of the financial and related non-financial performance of the county corporation for the financial year.

(3) Once every three years, the County Executive Committee member responsible for matters relating to public investments shall prepare a report on the need for the county government continued involvement in, or funding of, the County Corporation or county government-linked company.

(4) Copies of the reports prepared in subsections (1) and (3) shall be submitted to the Controller of Budget, the Commission on Revenue Allocation and the Auditor-General.

Section 186 of No.18 of 2012, which it is proposed to amend—

186. For the purposes of sections 182, 183, 184 and 185—

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

Section 187 of No.18 of 2012, which it is proposed to amend—

187. (1) There is established a council to be known as the Intergovernmental Budget and Economic Council comprising—

- (a) the Deputy President who shall be the Chairperson;
- (b) the Cabinet Secretary;
- (c) a representative of the Parliamentary Service Commission;
- (d) a representative of the Judicial Service Commission;
- (e) the Chairperson of the Commission on Revenue Allocation or a person designated by the Chairperson;
- (f) the Chairperson of the Council of County Governors;
- (g) every County Executive Committee member for finance; and
- (h) the Cabinet Secretary responsible for intergovernmental relations.

(2) The purpose of the Council is to provide a forum for consultation and cooperation between the national government and county governments on—

- (a) the contents of the Budget Policy Statement, the Budget Review and Outlook Paper and the Medium-Term Debt Management Strategy;
- (b) matters relating to budgeting, the economy and financial management and integrated development at the national and county level;
- (c) matters relating to borrowing and the framework for national government loan guarantees, criteria for guarantees and eligibility for guarantees;
- (d) agree on the schedule for the disbursement of available cash from the Consolidated Fund on the basis of cash flow projections;

- (e) any proposed legislation or policy which has a financial implication for the counties, or for any specific county or counties;
- (f) any proposed regulations to this Act; and
- (g) recommendations on the equitable distribution of revenue between the national and county governments and amongst the county governments as provided in section 190; and
- (h) any other matter which the Deputy President in consultation with other Council members may decide.

(3) An appointed member of the Council holds office for two years and is eligible for re-nomination and re-appointment at the end of a term of office for another term not exceeding two years.

(4) The National Treasury shall provide secretariat services to the Council and assign or appoint such support staff as may be necessary for the Council to effectively perform its functions.

(5) The Council shall meet at least twice a year and the Deputy President shall decide the time and agenda for meetings of the Council in consultation with the other members of the Council.

(6) In the absence of the Chairperson from any meeting of the Council, the Cabinet Secretary shall chair the meeting.

(7) The Council may determine its own rules and procedures in such manner as it considers appropriate.

(8) The Council may invite other persons to attend any of its meetings.

Section 193 of No.18 of 2012, which it is proposed to amend—

(1) The Accounting Standards Board shall consist of a representative of each of the following bodies who shall serve on a part-time basis—

- (a) the National Treasury;
- (b) the Controller of Budget;
- (c) the Intergovernmental Budget and Economic Council;
- (d) the Auditor-General;
- (e) the Institute of Certified Public Accountants of Kenya;
- (f) the Association of Professional Societies of East Africa;
- (g) the Capital Markets Authority;
- (h) the Institute of Internal Auditors; and
- (i) the Institute of Certified Public Secretaries of Kenya.

(2) The Cabinet Secretary shall appoint a chairperson of the Board from members nominated under subsection (1).

(3) In making nominations to the Board, the respective organisations shall ensure that their nominees are certified members in good standing of a professional body in accounting or finance recognised by law in Kenya.

(4) Members of the Board except ex-officio members shall be appointed by the Cabinet Secretary and serve for a term of three years, renewable once for a further and final term of three years.

(5) The National Treasury shall provide secretariat services to the Board and assign or appoint such support staff as may be necessary for the Board to effectively perform its functions.

(6) The Board may establish and regulate its own operating procedures.

Section 197 of No.18 of 2012, which it is proposed to amend—

197. (1) A public officer employed by the National Government or a National Government entity commits an offence of financial misconduct if, without lawful authority, the officer—

- (a) issues public government securities, or varies their terms and conditions;
- (b) opens a bank account in the name of the government;
- (c) lends money on behalf of the Government;
- (d) issues guarantees or indemnities on behalf of the Government;
- (e) issues securities for loans made to the government;
- (f) disposes of properly belonging to or under the control of, that government or entity;
- (g) fails to pay into a government bank account any public money entrusted to the officer or received by the officer for or on behalf of that government or that entity;
- (h) incurs expenditure or makes a commitment on behalf of that government or entity;
- (i) incurs wasteful expenditure on behalf of that government or entity;
- (j) fails to deliver to that government or entity a gift or donation made on a public or official occasion in accordance with the Public Officers Ethics Act;

- (k) fails to provide any information in the officer's possession, or under the officer's control, in relation to the financial management, financial performance, or banking activities of that government or entity or in relation to the management or control of an asset or liability of that government or entity when required to do so, except where such refusal or failure is required or authorised by this Act or any other written law;
- (l) fails to keep proper records or conceals, or wrongfully destroys, information that is required to be recorded;
- (m) intentionally or recklessly obstructs or hinders a person while that person is acting in the performance or exercise of the person's functions or powers under this Act;
- (n) makes any statement or declaration, or gives any information or certificate, lawfully required by or under this Act knowing it to be false or misleading in a material respect;
- (o) for the purpose of procuring for the public officer or any other person or organisation—
 - (i) makes improper payment of public money belonging to or entrusted to that government or entity; or
 - (ii) makes improper use of any public property of that government or entity; or
- (p) fails to remit revenue received contrary to the provisions of sections 76(2) and 158(2) of this Act.

Second Schedule of No.18 of 2012, which it is proposed to amend—

SAVINGS AND TRANSITIONAL PROVISIONS

1. On the commencement of this Act, and in line with Article 262(15) of the Constitution, the National Treasury shall prior to the establishment of the county government, deploy such staff to that county as may be necessary to support the county in—
 - (a) carrying out its responsibilities under this Act; and
 - (b) performing its functions under the Constitution relating to matters of public finance.
2. On the commencement of this Act, and pending the establishment of the Accounting Standards Board, the functions of the Board as provided for under this Act shall continue to be performed by the relevant National Treasury department.
3. (1) On the commencement of this Act—
 - (a) the office known as the Treasury, as in existence immediately before that commencement, is abolished; and

- (b) subject to this Act, the National Treasury becomes responsible for any matter for which the Treasury was responsible but which was not completed before that commencement.
- (2) On the commencement of this Act, all public officers employed in the Treasury as in existence immediately before that commencement, become public officers employed in the National Treasury on the same terms and conditions as those on which they were employed immediately before that commencement.
- (3) Any reference to the Treasury in a written law is to be read as a reference to the National Treasury.
4. (1) On the commencement of this Act, any reference to the Principal Secretary to the National Treasury in a written law is to be read as a reference to the Permanent Secretary to the Treasury until the first election held under the Constitution.
5. A person holding office as an accounting officer shall continue in office until the Cabinet Secretary designates otherwise.
6. A person holding office as a receiver of revenue continues in office until the Cabinet Secretary designates otherwise.
7. On the commencement of this Act—
- (a) the Civil Contingencies Fund in operation under the Civil Contingencies Fund Act (Cap. 425) is abolished; and
 - (b) any money held in that Fund is payable into the Contingencies Fund established by Article 208 of the Constitution.
- (2) Any reference to the Civil Contingencies Fund in a written law is to be read as a reference to the Contingencies Fund established by Article 208 of the Constitution.
8. Despite the repeal of the National Government Guarantee (Loans) Act, (No. 18 of 2011) by this Act, the limit of contingent liability established by resolution of the National Assembly on the 16th June 2011 under that Act continues in effect, until such time as the National Assembly sets a financial limit under section 51 of this Act.
9. Any public fund that was established before the coming into operation of this Act and was in existence immediately before the coming into operation of this Act is continued as a public fund under this Act.
10. Any regulations, directions or instructions that were made or issued under legislation that is repealed by this Act and that were in force immediately before the coming into operation of this Act shall, so far as not inconsistent with this Act, remain in force until regulations or instructions under this Act come into force.

11. (1) The regulations may contain provisions of a savings or transitional nature, not inconsistent with this Schedule, consequent on the enactment of this Act.

(2) Any such provision may, if the regulations so provide, take effect from the date of assent to the Act concerned or a later date.

(3) To the extent to which any such provision takes effect from a date that is earlier than the date of its publication in the Gazette, the provision does not operate so as—

(a) to affect, in a manner prejudicial to any person (other than the national government or any of its entities or a county government or any of its entities), the rights of that person existing before the date of its publication; or

(b) to impose liabilities on any person (other than the national government or any of its entities or a county government or any of its entities) in respect of anything done or omitted to be done before the date of that publication.

12. The implementation of programme budgets shall commence in 2013/14 financial year for the national government and in the 2014/15 financial year for the county governments constituted under Chapter eleven of the Constitution.

13. All issues that may arise on the repeal of the Local Government Act (Cap. 265) by the County Government Act, that are related to this Act, shall be dealt with and discharged by the body responsible for matters relating to transition.

14. For the period in between the first general elections under the Constitution and the end of the first financial year following the first general elections, cash disbursements to the county governments shall be on quarterly basis and in accordance with the transfer of functions to county governments.

15. On the commencement of this Act, the public service offices of the Accountant-General and the Internal Auditor-General established under the Government Financial Management Act (No. 5 of 2004) (now repealed) shall continue in existence as offices of the National Treasury established under section 11(2)(c) of this Act.

16. Despite the repeal of the External Loans and Credit Act (Cap. 422) by this Act, the debt limit set by the National Assembly as in existence at the commencement of this Act, shall continue in effect until such time as the National Assembly sets shall continue in effect until such time as the National Assembly sets another debt limit under section 50(2) of this Act.

The Public Finance Management (Amendment) Bill, 2017

I certify that this printed impression is a true copy of the Bill as passed by the National Assembly on Thursday, 21st November, 2019



Clerk of the National Assembly

Endorsed for presentation to the Senate in accordance with the provisions of Standing Order 142 of the National Assembly Standing Orders.



Speaker of the National Assembly