

THE COUNTY GOVERNMENTS FINANCIAL MANAGEMENT BILL, 2011

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A Bill for

An ACT of Parliament to secure the sound and sustainable management of the financial affairs of county governments, cities and urban areas, and other county public entities and to provide for matters connected thereto

ENACTED by the Parliament of Kenya, as follows-

Part 1: PRELIMINARY

- | | |
|----------------|---|
| Short title | 1. This Act may be cited as the County Governments Financial Management Act, 2011. |
| Commencement | 2. This Act shall come into operation on the day on which it is published in the Gazette. |
| Interpretation | 3. In this Act, unless the context otherwise requires—

“accounting officer”-

(a) in relation to a county, means the county official referred to in section 8;

(b) in relation to in relation to a county entity, means the official of the entity referred to in section 65;

“allocation” includes-
(a) county governments equitable share of national revenues referred to in article 202 of the constitution;

(b) a county government equitable share of national revenues referred to in article 203 of the constitution;

(c) a city’s or municipality’s equitable share of national revenues referred to in the Urban Areas and Cities Act

(d) a city or municipality equitable share of county own revenues referred to in the Urban Areas and Cities Act

“annual Division of Revenue Bill” means the Bill introduced in Parliament in accordance with article 218 (1)(a) of the constitution;

“annual County Allocation of Revenue Bill” means the Bill introduced in of Parliament in accordance with article 218 (1)(b) of the constitution;

“annual report”, in relation to a county means the annual report contemplated in section 121; |

“approved budget” means an annual budget approved by a county assembly;

“Auditor-General” means the person appointed as Auditor-General in terms of article 229 of the constitution;

“Budget Council” means intergovernmental budget council established under the Intergovernmental Fiscal Relations Act;

“board of directors”, in relation to a municipal entity has the meaning assigned to it in the Urban Areas and Cities Act;

“budget forum” has the meaning assigned in Part 6 of this Act;

“budget-related policy” means a policy of a county affecting or affected by the annual budget of the county, including-

- (a) the taxation policy which the county must adopt in terms of this Act;
- (b) the rates policy which the county governments and semi autonomous cities and municipalities must adopt in terms of legislation;
- (c) the credit control and debt collection policy which the county governments, cities and urban areas and county public entities must adopt in terms of this Act;

“budget year” means the financial year for which an annual budget is to be approved in terms of this Act;

“county” where the context so admits includes county governments, cities and urban areas and county public entities

“category” in relation to cities and urban areas, means cities and municipalities referred to in the Urban Areas and Cities Act;

“County secretary” means a person designated as such in terms of the Devolution Act;

“councillor” means a member of a municipal council;

“creditor”, in relation to a municipality, means a person to whom money is owing by the municipality;

“current year” means a financial year which has already commenced but not yet ended;

“debt” means-

- (a) a monetary liability or obligation created by a financing

agreement, note, debenture, bond or overdraft, or by the issuance of county, city, municipality or other county public entity debt instruments: or

(b) a contingent liability such as that created by guaranteeing a monetary liability or obligation of another;

“delegation”, in relation to a duty, includes a lawful instruction or request to perform or to assist in performing the duty;

“financial recovery plan” means a plan prepared in terms of this Act;

“financial statements”, in relation to county governments, cities and urban areas, or county public entities means statements consisting of at least-

- (a) a statement of the financial position;
- (b) a statement of the financial performance;
- (c) a cash-flow statement;
- (d) any other statements that may be prescribed; and
- (e) any notes to these statements;

“financial year” means the period of twelve months ending on 30th June of every year;

“financing agreement” includes any loan agreement, lease, instalment purchase contract or hire purchase arrangement under which a county, city, municipality and county public entity undertakes to repay a long-term debt over a period of time;

“fruitless and wasteful expenditure” means expenditure that was made in vain and would have been avoided had reasonable care been exercised;

“irregular expenditure” in relation to a county, city, municipality and county public entity, means-

- (a) expenditure incurred by a county government, cities and urban areas, or county public entities in contravention of, or that is not in accordance with, a requirement of this Act;
- (b) expenditure incurred by a county government, cities and urban areas, or county public entities in contravention of, or that is not in accordance with, a requirement of the Devolution Act and Urban Areas and Cities Act which is illegal in terms of the Acts;
- (c) expenditure incurred by a county in contravention of, or that is not in accordance with a requirement of the code of regulation for public servants; or

- (d) expenditure incurred by a county in contravention of, or that is not in accordance with, a requirement of the supply chain management policy of the county or any other by-laws giving effect to such policy, and which has not been condoned in terms of such policy or by-law, but excludes expenditure by a county which falls within the definition of “unauthorized expenditure”;

“investment”, in relation to funds of a county, means-

(a) the placing on deposit of funds of a county with a financial institution;

(b) the acquisition of assets with funds of a county not immediately required.

“lender”, in relation to a county, means a person who provides debt finance to a county;

“local community” has the meaning assigned to it in the Devolution Act;

“long-term debt” means debt repayable over a period exceeding one year;

- | | |
|------------------------------|--|
| Principles of public finance | 4. A county government shall be guided and bound by the principles of public finance set out in article 201 of the constitution. |
| Object of Act | 5. The object of this Act is to secure the sound and sustainable management of the fiscal and financial affairs of the county governments. |
| Application | 6. (1) This Act applies to - <ul style="list-style-type: none">(a) all the county governments established by article 6 of the constitution;(b) all the decentralised units envisaged by article 176 of the constitution;(c) cities and urban areas envisaged under article 184 of the constitution and established under the Urban Areas and Cities Act;(d) the capital city as envisaged under article 200 of the constitution;(e) all the county public entities established by the county governments under any law;(f) the national level departments and public entities, to the |

extent that they have dealings with the counties;

(2) In the event of any inconsistency between a provision of this Act and any other legislation in force when this Act takes effect and which regulates any aspect of the fiscal and financial affairs of county, the provision of this Act shall prevail.

Amendments to Act

7. Amendment to this Act may only be originated through consultation and concurrence between the cabinet secretary responsible for devolved government and the cabinet secretary responsible for finance

PART 2: RESPONSIBILITIES OF THE COUNTY EXECUTIVES AND OTHER OFFICIALS

Duties of governor

8. (1) The governor of the county shall-

- (a) provide general political guidance over the fiscal and financial affairs of the county;
- (b) monitor and, to the extent provided in this Act, oversee the exercise of responsibilities assigned in terms of this Act to the accounting officer and the chief financial officer;
- (c) take all reasonable steps to ensure that the county performs its constitutional and statutory functions within the limits of the county's approved budget;
- (d) within 30 days of the end of each quarter, submit a report to the county on the implementation of the budget and the financial state of affairs of the county; and
- (e) exercise the other powers and perform the other duties assigned to the governor in terms of this Act or delegated by the county to units of decentralization, cities and urban areas, joint authorities and county public entities

(2) On the budget process and related matters the governor of a county shall-

- (a) provide general political guidance over the budget process and the priorities that must guide the preparation of a budget;
- (b) co-ordinate the annual revision of the county integrated development plan in accordance with the Devolution Act and the Urban Areas and Cities Act;
- (c) coordinate the preparation of the annual budget
- (d) determine how the integrated development plan is to be taken into account or revised for the purposes of the budget; and
- (e) take all reasonable steps to ensure-
 - (i) that the county approves its annual budget before the start of the budget year;
 - (ii) that the county's service delivery and budget implementation plan is approved by the governor within 28 days after the

approval of the budget; and

(iii) that the annual performance contracts as required in by the Devolution Act and the Urban Areas and Cities Act for the county executive committee members and all senior managers-

(aa) comply with this Act in order to promote sound financial management;

(ba) are linked to the measurable performance objectives approved with the budget and to the service delivery and budget implementation plan; and

(ca) are concluded in accordance with the Devolution Act and the Urban Areas and Cities Act.

(3) The governor must promptly report to the county assembly and the Cabinet Secretary responsible for devolution and the Cabinet Secretary responsible for finance any delay in the tabling of an annual budget, the approval of the service delivery and budget implementation plan or the signing of the annual performance contracts.

4) The governor shall ensure that -

(a) the revenue and expenditure projections for each month and the service delivery targets and the performance indicators for each quarter as set out in the service delivery and budget implementation plan are made public no later than 14 days after the approval of the service delivery and budget implementation plan;

(b) the performance contracts of the county executive committee members, all senior managers and any other categories of officials as may be prescribed are made public no later than 14 days after the approval of the county's service delivery and budget implementation plan.;

(c) copies of such performance contracts must be submitted to the county assembly and the secretary responsible for devolved government.

Budgetary control

9. (1) On receipt of a statement or report submitted by the accounting

officer of the county in accordance with this Act the governor shall-

- (a) consider the statement or report;
- (b) check whether the county's approved budget is implemented in accordance with the service delivery and budget implementation plan;
- (c) consider and, if necessary, make any revisions to the service delivery and budget implementation plan, provided that revisions to the service delivery targets and performance indicators in the plan may only be made with the approval of the county assembly following approval of an adjustments budget;
- (d) issue any appropriate instructions to the accounting officer to ensure-
 - (i) that the budget is implemented in accordance with the service delivery and budget implementation plan: and
 - (ii) that spending of funds and revenue collection proceed in accordance with the budget;
- (e) identify any financial problems facing the county, including any emerging or impending financial problems; and
- (f) in the case of annual report referred in this Act, submit the report to the county by 31st January of each year.

(2) If the county faces any serious financial problems the governor must-

- (a) promptly respond to and initiate any remedial or corrective steps proposed by the accounting officer to deal with such problems, which may include-
 - (i) steps to reduce spending when revenue is anticipated to be less than projected in the county's approved budget;
 - (ii) the tabling of an adjustment budget: or
 - (iii) steps in terms of Part 13 of this Act; and
- (b) alert the county assembly, the Controller of Budget and the Cabinet Secretary responsible for devolved government to those problems.

(3) The governor shall ensure that any revisions of the service

delivery and budget implementation plan are made public promptly.

(4)The governor shall report to the Cabinet Secretary responsible for devolved government if conditions for national government intervention within the meaning of Part 13 of this Act and article 190 of the Constitution exist.

Rights and powers
overcounty public
entities

10. (1) If a county assembly has not approved an annual budget by the first day of the budget year or if the county government encounters a serious financial problem referred to in Part 13, the governor of the county-

- (a) shall immediately report the matter to the Cabinet Secretary responsible for devolved government and the Cabinet Secretary responsible for finance; and
- (b) may recommend to the Cabinet Secretary responsible for devolved government an appropriate intervention in terms of article 190 of the Constitution.

Delegations of powers
and duties

11. (1) The powers and duties assigned under this Act to the governor of a county, may-

- (a) delegate powers to an county executive member;
 - (b) in the case of a county government be delegated to the county chief secretary;
 - (c) in the case of a city or municipality established under the Urban Areas and Cities Act be delegated to the manager of the city or municipality as the case may be;
 - (d) in the case of a county public entity which has a board of directors referred to in this Act and the Devolution Act, be delegated to the managing director of the public entity.
- (2) A delegation in terms of subsection (1)-
- (a) must be in writing;
 - (b) is subject to any limitations or conditions that the governor in consultation with the county executive committee may impose; and
 - (c) does not divest the governor of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.

(3) The governor may confirm, vary or revoke any decision taken in consequence of a delegation in terms of this section, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

PART 3: THE ROLE OF THE NATIONAL TREASURY

General

12. (1) The National Treasury, acting through the Cabinet Secretary responsible for finance shall-

- (a) undertake its functions as provided in the Public Finance Management Act, 2011 and Intergovernmental Fiscal Relations Act
- (b) promote the object of this Act-
 - (i) within the framework of co-operative government set out in Articles 6, 189, 220 and 225 of the Constitution; and
 - (ii) when implementing intergovernmentalfiscal relations matters in terms of the Intergovernmental Fiscal Relations Act, 2011, and the annual Division of Revenue Act.

Macroeconomic policy management

13. (1) The national treasury shall ensure the formulation, implementation, monitoring and coordination of fiscal and monetary policies that promote macro-economic stability.

(2) In furtherance of the objects of sub-section (1), the national treasury shall-

- (a) monitor revenue and expenditures of county governments and other public agencies;
- (b) money supply, remittances, interest rates, exchange rates and inflation;
- (c) lending, borrowing and public debt; and
- (d) any other matters pertaining to macro-economic stability.

(3) County governments will, through the Cabinet Secretary responsible for devolved government shall be obligated to prepare and submit information necessary for the National Treasury to perform its function outlined in subsection (2)

Intergovernmental transfers

14. (1) Intergovernmental transfers shall be effected in a cooperative

and consultative manner as envisaged in chapter 12 of the Constitution and the Intergovernmental Fiscal Relations Act.

PART 4: INSTITUTIONAL SETUP FOR COUNTY FINANCIAL MANAGEMENT

Accounting officers

County chief secretary

15. (1) The County chief secretary of a county government is the accounting officer of the county, and for the purposes of this Act, must-

- (a) exercise the functions and powers assigned to an accounting officer in terms of this Act; and
- (b) provide advice relating to compliance with this Act, to-
 - (i) the county assembly, county executives and their elected and appointed office-bearers;
 - (ii) the decentralised county government units including the capital city, other category of cities and urban areas;
 - (iii) the county public entities that are either under the sole or shared control of county governments;
 - (iv) the private institutions contracted by the county governments to provide services on the basis of public private partnerships or other contractual arrangements.

Fiduciary responsibilities of accounting officers

16. (1) The accounting officer of a county government must-

- (a) act with fidelity, honesty, integrity and in the best interests of the county in managing its financial affairs;
- (b) disclose to the county assembly and the governor all material facts which are available to the accounting officer or reasonably discoverable and which in any way might influence the decisions or actions of the county government and the governor;
- (c) seek within the sphere of influence of the accounting officer to prevent any prejudice to the financial interests of the county.

(2) An accounting officer may not-

- (a) act in a way that is inconsistent with the duties assigned to accounting officers of a county government; or
- (b) use the position or privileges of, or confidential

information obtained as accounting officer for personal gain or to improperly benefit another person.

Financial management

General financial
management functions

17. (1) The accounting officer of a county is responsible for managing the financial affairs of the county, and must for this purpose take all reasonable steps to ensure that-

- (a) the resources of the county are used effectively, efficiently and economically and within the meaning of value for money;
- (b) full and proper records of the financial affairs of the county are kept in accordance with the norms and standards prescribed in the Public Finance Management Act;
- (c) the county has and maintains effective, efficient and transparent systems-
 - (i) of financial and risk management and internal control; and
 - (ii) of internal audit operating in accordance with any prescribed norms and standards;
- (d) unauthorised, irregular, wasteful and fruitless expenditure and other losses are prevented;
- (e) disciplinary or, when appropriate, criminal proceedings are instituted against any official of the county who is suspected to have committed an act of financial misconduct; and
- (f) the county has and implements-
 - (i) a taxation policy prescribed under Article 209 (2) of the constitution or prescribed by an Act of Parliament;
 - (ii) a credit control and debt collection policy;
 - (iii) a supply chain management policy in accordance referred to in this Act and any national legislation enacted to give effect to article 227 of the Constitution;

(2) The accounting officer is responsible for and must account for the County Revenue Fund bank account, all other county bank accounts opened for other purposes including-

- (a) any relief, charitable, trust or other fund set up by the

county government;

- (b) other purposes as may be provided by an Act of Parliament or law made by the county assembly.

Asset and liability management

18. (1) The accounting officer of a county is responsible for the management of-

- (a) the assets of the county government, including the safeguarding and the maintenance of those assets; and
- (b) the liabilities of the county government.

(2) The accounting officer must for the purposes of subsection (1) take all reasonable measures to ensure-

- (a) that the county has and maintains a management, accounting and information system that accounts for the assets and liabilities of the county government;
- (b) that the county government's assets and liabilities are valued in accordance with standards of generally recognised accounting practice; and
- (c) that the county government has and maintains a system of internal control of assets and liabilities, including an asset and liabilities register, as may be prescribed.

Revenue management

19. (1) The accounting officer of a county is responsible for the management of the revenues of the county government.

(2) The accounting officer must for the purposes of subsection (1) take all reasonable measures to ensure--

- (a) that the revenue collector remits all the revenues collected into the revenue fund account established as per Article 207 of the constitution;
- (b) that accounts for county tax, royalties, fees and charges for county services are prepared on monthly basis;
- (c) that all money received is promptly deposited in accordance into the Revenue Fund bank account;
- (d) that the county government has and maintains a management, accounting and information system which-
 - (i) recognises revenue when it is earned;
 - (ii) accounts for debtors; and
 - (iii) accounts for receipts of revenue;

- (e) that the county government has and maintains a system of internal controls in respect of debtors and revenue, as may be prescribed;
- (f) that the county government charges interest on arrears without exception; and
- (g) that all revenue received by the county government, including revenue received by any collecting agent on its behalf, is reconciled at least on a weekly basis.

(3) The accounting officer must immediately inform both the cabinet secretary responsible for finance and the cabinet secretary responsible for devolution of any payments due by an organ of state to the county government or its entities in respect of rates or any tax or fees and charges due to the county government for services, if such payments are regularly in arrears for periods of more than 30 days.

(4) Upon receipt of such information, the cabinet secretary responsible for finance, shall within 30 days cause the defaulting organ of state to make payment failure of which it shall be incumbent upon the national treasury to make good the said payment;

(5) The accounting officer must take all reasonable steps to ensure-

- (a) that any funds collected by the county government on behalf of another state organ is transferred to that organ of state at least on a weekly basis; and
- (b) that such funds are not used for the purposes of the county government.

Expenditure management 20. (1) The accounting officer of a county government is responsible for the management of the expenditure of the county government.

(2) The accounting officer must for the purpose of subsection (1) take all reasonable steps to ensure—

- (a) that the county government has and maintains an effective system of expenditure control, including procedures for the approval, authorisation, withdrawal and payment of funds;
- (b) that the county government has and maintains a management, accounting and information system which-
 - (i) recognises expenditure when it is incurred;
 - (ii) accounts for creditors of the county government;

and

- (iii) accounts for payments made by the county government;
- (c) that the county government operates and maintains a system of internal control in respect of creditors and payments;
- (d) that payments by the county government are made-
 - (i) directly to the person to whom it is due unless authorized by the creditor in writing for the payment to be made to a third party with reasons as may be prescribed; and
 - (ii) either electronically or by way of non-transferable cheques, provided that cash payments and payments by way of cash cheques may be made for exceptional reasons only and only up to a prescribed limit;
- (e) that all monies owed by the county government shall be paid within 30 days of receiving the relevant invoice or statement, unless prescribed otherwise for certain categories of expenditure;
- (f) that the county government makes all the remittances of taxes, levies, duty, pension, health insurance, audit fees and other statutory commitments;
- (g) that any dispute concerning payments due by the county government to another organ of state is disposed of in terms of legislation and frameworks provided for disputes between organs of state;
- (h) that the county's working capital is managed effectively and economically in terms of the prescribed cash management and investment framework;
- (i) that the county government's supply chain management policy is implemented in a way that is fair, equitable, transparent, competitive, and cost-effective in a manner that is consistent with Article 227 of the Constitution; and
- (j) that all financial accounts of the county government are closed at the end of each month and reconciled with its records.

Expenditure on staff benefits 21.(1) The accounting officer of a county must, on a quarterly basis and in a format as may be prescribed by the county assembly, report to the county assembly on all expenditure incurred by the county on

staff salaries, wages, allowances and benefits, and in a manner that discloses such expenditure per type of expenditure, namely-

- (a) salaries and wages;
- (b) contributions for pensions and medical aid;
- (c) travel, motor car and other communication expenses;
- (d) accommodation, subsistence and other allowances;
- (e) housing benefits and allowances;
- (f) overtime payments;
- (g) loans and advances; and
- (h) any other type of benefit or allowance related to staff.

Funds transferred to organisations and bodies outside government

22. (1) Before transferring funds of the county government to an organisation or body outside any level of government otherwise than in compliance with a commercial or other business transaction, the accounting officer must be satisfied that the organization or body-

- (a) has the capacity and has agreed-
 - (i) to comply with any agreement with the county government;
 - (ii) for the period of the agreement to comply with all reporting, financial management and auditing requirements as may be stipulated in the agreement;
 - (iii) to report at least monthly to the accounting officer on actual expenditure against such transfer; and
 - (iv) to submit its audited financial statements for its financial year to the accounting officer promptly;
- (b) implements effective, efficient and transparent financial management and internal control systems to guard against fraud theft and financial mismanagement; and
- (c) has in respect of previous similar transfers complied with all the requirements of this section.

(2) If there has been a failure by an organisation or body to comply with the requirements of subsection (1) in respect of a previous transfer, the county may despite subsection (1)(c) make a further transfer to that organisation or body provided that-

- (a) subsection (1)(a) and (b) is complied with; and
- (b) the county assembly has approved the transfer.

(3) The accounting officer must through contractual and other appropriate mechanisms enforce compliance with subsection (1).

(4) Subsection (1) (a) does not apply to an organisation or body serving the poor or used by the county government as an entity to serve the poor, provided-

- (a) that the transfer does not exceed a prescribed limit; and
- (b) that the accounting officer-
 - (i) takes all reasonable steps to ensure that the targeted beneficiaries receive benefit of the transferred funds; and
 - (ii) certifies to the Auditor-General that compliance by that organisation or the body with subsection (1) (a) is uneconomical or unreasonable.

Budget preparation

23. The accounting officer of a county government must-

- (a) assist the governor in performing the budgetary functions assigned to the governor; and
- (b) provide the governor with the administrative support, resources and information in terms of Parts 2 necessary for the performance of those functions.

Budget implementation

24. (1) The accounting officer of a county is responsible for implementing the county's approved budget, including taking all reasonable steps to ensure-

- (a) that the spending of funds is in accordance with the budget and is reduced as necessary when revenue is anticipated to be less than projected in the budget or in the service delivery and budget implementation plan; and
- (b) that revenue and expenditure are properly monitored.

(2) When necessary, the accounting officer must prepare adjustments of budget and submit it to the executive committee for consideration and tabling in the county assembly.

(3) The accounting officer must no later than 14 days after the approval of an annual budget submit to the executive committee-

- (a) a draft service delivery and budget implementation plan

for the budget year;

- (b) drafts of the annual performance contracts as required in terms of this Act and the Devolution Act for the county chief secretary and all the other county principalsecretaries.

Impending shortfalls, etc. 25. (1) The accounting officer of a county must report in writing to the county assembly within 14 days-

- (a) any impending-
 - (i) shortfalls in budgeted revenue; and
 - (ii) overspending of the county's budget; and
- (b) any steps taken to prevent or rectify such shortfalls or overspending.

(2) If county's bank account, or if the county has more than one bank account, the consolidated balance in those bank accounts, shows a net overdrawn position for a period exceeding a prescribed period, the accounting officer of the county must promptly notify the county assembly and the intergovernmental loans and grants council in the prescribed format of-

- (a) the amount by which the account or accounts are overdrawn;
- (b) the reasons for the overdrawn account or accounts; and
- (c) the steps taken or to be taken to correct the matter.

(3) When determining the net overdrawn position for purposes of subsection (2), the accounting officer must exclude any amounts reserved or pledged for any specific purpose or encumbered in any other way.

Reports and reportable matters

Monthly statements budget 26. (1) The accounting officer of a county must by no later than 10 working days after the end of each month submit to the executive committee of the county and the controller of budget a statement in the prescribed format on the state of the county's budget reflecting the following particulars for that month and for the financial year up to the end of that month-

- (a) actual revenue, per revenue source;
- (b) actual borrowings;
- (c) actual expenditure, per vote;

- (d) actual capital expenditure, per vote;
- (e) the amount of any allocations received;
- (f) actual expenditure on those allocations; and
- (g) when necessary, an explanation of-
 - (i) any material variances from the county's projected revenue by source, and from the county's expenditure projections per vote;
 - (ii) any material variances from the service delivery and budget implementation plan; and
 - (iii) any remedial or corrective steps taken or to be taken to ensure that projected revenue and expenditure remain within the county's approved budget.

(2) The statement prescribed in subsection (1) must include-

- (a) projection of the relevant county's revenue and expenditure for the rest of the fiscal year and any revisions from initial projections; and
- (b) the prescribed information relating to the state of the budget of each decentralised unit in the county, county entities as provided to the county in terms of this Act;

(3) The amounts reflected in the statement must in each case be compared with the corresponding amounts budgeted for in the county's approved budget and corresponding period for the previous financial year.

(4) The statement to the controller of budget must be in the prescribed format.

(5) The accounting officer of a county which has received an allocation referred to in subsection (1) (e) during any particular month must, by no later than 10 working days after the end of that month, submit that part of the statement reflecting the particulars referred to in subsection (1) (e) and (f) to the national treasury acknowledging the receipt of the transfer.

(6) The controller of budget must by no later than 20 working days after the end of each month submit to the Senate, the Cabinet Secretary responsible for devolved government and Cabinet Secretary responsible for finance a consolidated statements in the prescribed form on the state of the county's' budgets.

(7) The accounting officer must, within 30 days after the end of each quarter, make public as may be prescribed a consolidated

statement in the prescribed format on the state of county's budgets, including the budgets of each city and urban area and county public entity within the county.

Mid-year assessment

27. (1) The accounting officer of a county must by the 31st January of each year-

- (a) assess the performance of the county during the first half of the financial year, taking into account-
 - (i) the monthly statements referred to in section 19 for the first half of the financial year;
 - (ii) the county's service delivery performance during the first half of the financial year, and the service delivery targets and performance indicators set in the service delivery and budget implementation plan;
 - (iii) the past year's annual report, and progress on resolving problems identified in the annual report; and
 - (iv) the performance of every county public entity under the sole or shared control of the county, taking into account reports in terms of this Act from any such entities; and
- (b) submit a report on such assessment to the-
 - (i) county assembly
 - (ii) county executive committee; and
 - (iii) Controller of Budget.

(2) The statement referred to in section 19(1) for the sixth month of a financial year may be incorporated into the report referred to in subsection (1) (b) of this section.

(3) The accounting officer must, as part of the review-

- (a) make recommendations as to whether an adjustment budget is necessary; and
- (b) recommend revised projections for revenue and expenditure to the extent that this may be necessary.

Reports on failure to adopt or implement

28. (1) The accounting officer, must, within 14 days of the occurrence, inform the Controller of Budget, in writing, of-

- (a) any failure by the county assembly to adopt or implement a budget-related policy or a supply chain management policy; or

- (b) any non-compliance by the county assembly, county executives and their elected office-bearers with any such policy.

General obligations

reporting

29. (1) The accounting officer of a county, must submit to the Controller of Budget such information, returns, documents, explanations and motivations in a prescribed format as required by this Act.

(2) If the accounting officer of a county is unable to comply with any of the responsibilities in terms of this Act, he or she must promptly report the inability, together with reasons, to the county executive committee through the governor.

Information to be made public

30. (1) The accounting officer of a county must place on the county website and any other media referred to in the meaning of the Devolution Act the following documents of the county;

- (a) The annual budgets and all budget-related documents;
- (b) all budget-related policies;
- (c) the annual report;
- (d) all performance contracts required in terms of of the Devolution Act;
- (e) all service delivery agreements;
- (f) all long-term borrowing contracts;
- (g) all supply chain management contracts above a prescribed value;
- (h) an information statement containing a list of assets over a prescribed value that have been disposed of during the previous quarter;
- (i) contracts to which subsection (1) of section 33 apply;
- (j) public-private partnership agreements;
- (k) all quarterly reports tabled in the county assembly; and
- (l) any other documents that must be placed on the website in terms of this Act or any other applicable legislation, or as may be prescribed.

(2) A document referred to in subsection (1) must be placed on the website not later than five days after its tabling in the county assembly or on the date on which it must be made public, whichever

occurs first.

Protection of accounting officers

31. (1) The accounting officer shall not be victimized, discriminated, demoted in rank, dismissed, removed from office or otherwise subjected to disciplinary action solely because he or she acted in compliance with the provisions of this Act.

(2) A member of the county assembly or county executive or any other person who directly or indirectly contravenes subsection (1) of this section commits an offence and is liable to imprisonment for a term not exceeding one year or a fine not exceeding one million shillings or both.

Financial administration

Management

32. (1) The top management of a county's administration consists of-

- (a) the county chief secretary;
- (b) the county secretary responsible for finance;
- (c) all other county principal secretaries responsible for managing the respective votes of the county and to whom powers and duties for this purpose have been delegated in accordance with this Act; and
- (d) any other senior officials designated by the accounting officer.

(2) The top management have an obligation to assist the accounting officer in managing and co-ordinating the financial administration of the county whenever he needs such assistance.

Senior managers etc.

33. (1) Each county principal secretary and each official of a county exercising financial management responsibilities must take all reasonable steps within their respective areas of responsibility to ensure-

- (a) that the system of financial management and internal control established for the county is carried out diligently;
- (b) that the financial and other resources of the county are utilised effectively, efficiently, economically and transparently;
- (c) that any unauthorised, irregular or fruitless and wasteful expenditure and any other losses are prevented;
- (d) that all revenue due to the county is collected;

- (e) that the assets and liabilities of the county are managed effectively and that assets are safeguarded and maintained to the extent necessary;
- (f) that all information required by the accounting officer for compliance with the provisions of this Act is timeously submitted to the accounting officer; and
- (g) that the provisions of this Act, to the extent applicable to that senior manager or official, including any delegation in terms of section 27 are complied with.

(2) A county principal secretary or such official must perform the functions referred to in subsection (1) subject to the directions of the accounting officer of the county.

Delegation

34. (1) The accounting officer of a county-

- (a) must, for the proper application of this Act in the county's administration, develop an appropriate system of delegation that will both maximise administrative and operational efficiency and provide adequate checks and balances in the county's financial administration;
- (b) may, in accordance with that system, delegate to a member of the county's top management referred to in section 25 or any other official of the county-
 - (i) any of the powers or duties assigned to an accounting officer in terms of this Act; or
 - (ii) any powers or duties reasonably necessary to assist the accounting officer in complying with a duty which requires the accounting officer to take reasonable or appropriate steps to ensure the achievement of the aims of a specific provision of this Act; and
- (c) must regularly review delegations issued in terms of paragraph (b) and if necessary, amend or withdraw any of those delegations.

(2) The accounting officer may not delegate to any member of the county assembly, county executive or any other elected official any of the powers or duties assigned to accounting officers in terms of this Act.

(3) A delegation in terms of subsection (1)-

- (a) must be in writing;
- (b) is subject to such limitations and conditions as the

accounting officer may impose in a specific case;

- (c) may either be to a specific individual or to the holder of a specific post in the county;
- (d) may, in the case of a delegation to a member of the county's top management in terms of subsection (1) (b), authorise that member to sub-delegate the delegated power or duty to an official or the holder of a specific post in that member's area of responsibility; and
- (e) does not divest the accounting officer of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.

(4) The accounting officer may confirm, vary or revoke any decision taken in consequence of a delegation or sub-delegation in terms of this section, but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

County governments Budget and Treasury Departments

Establishment

35. (1) Every county government must have a budget and treasury department.

(2) A budget and treasury department consists of-

- (a) county principal secretary responsible for finance designated by the accounting officer of the county;
- (b) officials of the county assigned by the accounting officer to the department of budget and treasury; and
- (c) any other persons employed by the county for the work of the office.

County secretary for finance

36. (1) The county principal secretary responsible for finance-

- (a) is administratively in charge of the budget and treasury department;
- (b) must advise the accounting officer on the exercise of powers and duties assigned to the accounting officer in terms of this Act;
- (c) must assist the accounting officer in the administration of the county's bank accounts and in the preparation and

implementation of the county's budget;

- (d) must advise other county principal secretaries and other senior officials in the exercise of powers and duties assigned to them in terms of section 26 or delegated to them in terms of section 27; and
- (e) must perform such budgeting, accounting, analysis, financial reporting, cash management, debt management, supply chain management, financial management, review and other duties as may in terms of section 27 be delegated by the accounting officer to the county principal secretary responsible for finance.

(2) The county principal secretary responsible for finance is accountable to the accounting officer for the performance of the duties referred to in subsection (1).

Delegations

37. (1) The county secretary responsible for finance may sub-delegate any of the duties referred to in section 36 (1)(b), (d) and (e)-

- (a) to an official in the budget and treasury department;
- (b) to the holder of a specific post in that department; or
- (c) with the concurrence of the accounting officer, to-
 - (i) any other official of the county government; or
 - (ii) any person contracted by the county government for the work of the department.

(2) If the county principal secretary responsible for finance sub-delegates any duties in terms of subsection (1) to a person who is not an employee of the county, the county principal secretary responsible for finance must be satisfied that effective systems and procedures are in place to ensure control and accountability.

(3) A sub-delegation in terms of subsection (1)-

- (a) must be in writing;
- (b) is subject to such limitations or conditions as the county principal secretary responsible for finance may impose; and
- (c) does not divest the county principal secretary responsible for finance of the responsibility concerning the delegated duty.

(4) The county principal secretary responsible for finance may confirm, vary or revoke any decision taken in consequence of a sub-delegation in terms of subsection (1), but no such variation or

revocation of a decision may detract from any rights that may have accrued as a result of the decision.

Competency levels

38. (1) All the senior officials of the budget and treasury department of a county government must meet the prescribed financial management competency levels.

(2) A county must for the purposes of subsection (1) provide resources or opportunities for the training of officials referred to in that subsection to meet the prescribed competency levels.

(3) The Cabinet Secretary responsible for devolution and the Cabinet Secretary responsible for finance may assist county governments in the training of officials referred to in subsection (1).

PART 5: REVENUES

Intergovernmental transfers

Equitable share of national revenue

39. (1) Revenue raised nationally shall include tolls, taxes, dividends, sale of shares, proceeds on privatizations, imposts, rates, duties, fines, forfeitures, rents, and dues and all other receipts of the government, from whatever source arising, over which parliament has power of appropriation and shall be shared equitably as per Article 203(2).

(2) County governments shall, in line with the principle of funds must match and follow functions, be allocated sufficient funds to enable their performance of the functions allocated to them under Schedule Four and any other functions that may be transferred to them in terms of section 187 of the Constitution

(3) the national government and the county governments, shall within the budgeting framework provided under the Intergovernmental Fiscal Relations Act, accurately cost the functions assigned to each level of government to determine the exact financial resources to be allocated to each level of government in terms of Article 202 and 203 of the constitution.

Conditional and unconditional grants

40. (1) Allocation of conditional and unconditional grants contemplated under Article 202 shall be based on the criteria for equitable sharing of national revenue under Article 203 to promote the objects of devolution under Article 174 of the constitution.

(2) money given to county governments as conditional grants shall be applied solely for the funding of specific projects and programs in the county's service delivery and

budget implementation plan; and

(3) A county government may use its share of unconditional grants to finance any of its programs in its annual budget.

Donor Grants

41. (1) County governments may solicit, receive, budget, utilize and account donor grants in accordance with the procedures specified in the Intergovernmental Fiscal Relations Act.

(2) National, public service values and principles of governance in the constitution shall be observed, in matters pertaining to donor grants.

Equalization fund

42. (1) Allocation of monies under the equalization fund shall be in accordance with the guidelines set out under Article 204 of the Constitution.

(2) The allocation of monies from the equalization fund amongst counties and within counties shall be effected in a manner that observes and promotes the principle of equitable development, including making provisions for marginalized groups and areas.

Contingency fund

43. (1) County governments shall establish a Contingencies Fund, the operation of which shall be in accordance with policy guidelines and legislation developed by the respective county governments.

(2) Withdrawals from the contingencies fund shall be approved by the County Governor following a resolution of the county executive provided, such a withdrawal is reported to the county assembly during their earliest next meeting.

Own sources

Property tax

44. (1) County governments may levy property rates on properties within their area of jurisdiction.

Cap. 267, Cap. 266

(2) In determining the rate to be levied, the county government shall adhere to the Rating Act, cap 265 and Valuation for Rating Act, cap 266 as may be amended.

(3) The county government shall not exempt any person, institution or state organ from the payment of rates.

(4) Contributions in lieu of rates for state organs to be discontinued.

(5) To ensure fairness, the county government shall ensure that all property owners within their area of jurisdiction pay

rates.

(6) The county government may consider adopting different methods of charging rates depending on the manner in which the land is being put into use, including basing it on improved and unproved site values.

(7) The county government in imposing rates shall provide tax and other incentives to promote investments within the county to broaden the tax base.

Entertainment tax
Cap. 479

45. County governments shall impose entertainment tax as per the Entertainments Tax Act and any other applicable law.

Fees and charges

46. County governments may charge fees for any licence or permit in respect of any person or matter, premise or trade, whom or which the county government is empowered by this or other Act to control, license or impose charges for any service or facility provided or goods or documents supplied in pursuance of the discharge of any power of the county government or otherwise.

Royalties

47. (1) A county government is be entitled to not less than 30% of any revenue accruing to the national government from the exploitation of, or licence fee charged or issued in relation to any natural resource found within the jurisdiction of the county.

(2) The revenues identified in sub section (1) will be subject to a maximum of 25% of the county's share of revenue from the national revenues.

(3) A county government shall be entitled to payment of a reasonable amount to ensure protection and sustainability of a resource that originates from its area of jurisdiction but whose benefits spread into the jurisdiction of another county.

(4) A county government shall form part of the negotiating team and party to any agreement that relates to the exploitation of any resource found within its area of jurisdiction.

Receiver of revenue

48. (1) The county executive responsible for finance shall appoint persons to be known as receivers of revenue for the purpose of receiving and accounting for such county revenue as specified in the various laws governing the taxes.

(2) The collector of revenue will ensure that-

- (a) all revenues collectable by the county government are collected, received and accounted for;
- (b) all revenue collected is banked into the Revenue Fund Account operated by the county as provided for in article

207 of the Constitution;

- (c) officer, the Auditor General and the Controller of an account of all revenue received and revenue outstanding for each year is prepared and submitted to the accounting Budget.

(3) The receiver of revenue appointed as per section (1) may authorise any public officer to be the collector of revenue for the purpose of collecting county revenue and remitting it to the receiver;

(4) A collector of revenue authorised as per subsection (3) shall remit all revenue collected to the receiver of county revenue within 3 days after receiving it.

(5) A collector of revenue duly authorised to collect revenue and collects revenue and fails to remit the revenue to the receiver of revenue will be guilty of an offence punishable by a fine of a minimum of double the amount the collector has failed to remit and this will not remove the collector from responsibility of remitting the money to the receiver which will continue accruing interest at the rate 10% per month for every month or proportion of the month it remains unremitted.

Tax administration
No. 2 of 1995

49. (1) The Kenya Revenue Authority established under the Kenya Revenue Authority Act, is in respect of all revenues from property and other taxes of the county governments appointed by each of the county governments as the collector of all taxes revenue in accordance with article 209 of the Constitution and any other Act of parliament existing or may come into force establishing a tax collectable by a county.

(2) county governments shall enact laws and adopt policy and management practices necessary to facilitate the Kenya Revenue Authority to effectively discharge its assigned tax revenue collection functions

(3) Kenya Revenue Authority will be entitled to charge a proportion of the total tax revenues collected in each county.

Receiver of fees

50. Every county shall establish a department to be referred to as the revenue collection department responsible for collecting all fees and charges on behalf of the county.

County Bank Accounts

Revenue Fund Account

51. (1) There shall be a fund, to be known as the County Revenue

Fund for each county government.

(2) All receipts, including those from intergovernmental transfers and own revenues shall be paid into, and all liabilities falling to be discharged by the county government, shall be paid out of the County Revenue Fund. finance acting on the written authority of the accounting officer may withdraw money from any of the County Government's bank accounts.

(3) The County Government shall prescribe a framework within which the accounting officer must

- (a) conduct cash management and investments and
- (b) invest money not immediately required.

(4) A County Government shall establish an appropriate and effective cash management and investment policy in accordance with any framework prescribed in in this Act.

(5) A bank where a county government at the end of a financial year holds a bank account, or held a bank account at any time during a financial year, must-

- (a) within 30 days after the end of that financial year notify the County Assembly and the Auditor-General in writing, of such bank account, including-
 - (i) the type and number of the account; and
 - (ii) the opening and closing balances of that bank account in that financial year.
- (b) promptly disclose information regarding the account when so requested by the County Assembly or the Auditor General.

Opening of bank accounts

52. (1) Every county must open and maintain at least one bank account in the name of the county.

(2) All money received by a county must be paid into its bank account or accounts, and this must be done promptly and in accordance with this Chapter and any requirements that may be prescribed.

(3) A county may not open a bank account-

- (a) abroad;
- (b) with an institution not registered as a bank in terms of the Banking Act; or

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(c) otherwise than in the name of the county.

(4) Money may be withdrawn from a county bank account only in terms of section 16(1).

Primary bank account

53. (1) A county must have a primary bank account and where a county-

(a) has only one bank account, that account is its primary bank account; or

(b) has more than one bank account, it must designate one of those bank accounts as its primary bank account.

(2) The following moneys must be paid into a county's primary bank account-

(a) All allocations to the county, including those made to the county for transmission to a county entity or other external mechanism assisting the county in the performance of its functions;

(b) all income received by the county on its investments;

(c) all income received by the county in connection with its interest in any county entity, including dividends;

(d) all money collected by a county entity or other external mechanism on behalf of the county; and

(e) any other moneys as may be prescribed.

(3) A county must take all reasonable steps to ensure that all moneys referred to in subsection (2) are paid into its primary bank account.

(4) No organ of state in the national, provincial or local sphere of government may transfer an allocation of money referred to in subsection (2) to a county except through the county's primary bank account.

(5) All allocations due by an organ of state to a county entity must be made through the parent county, or if there are more than one parent county, any of those parent counties as may be agreed between the parent counties.

(6) The accounting officer of a county must submit to the Controller of Budget and the Auditor-General, in writing, the name of the bank where the primary bank account of the county is held, and

the type and number of the account.

(7) If a county wants to change its primary bank account, it may do so only after the accounting officer has informed the Controller of Budget and the Auditor-General, in writing, at least 30 days before effecting the change.

Bank account details

54. (1) The accounting officer of a county must submit to the relevant provincial treasury and the Auditor-General, in writing-

- (a) within 90 days after the county has opened a new bank account, the name of the bank where the account has been opened, and the type and number of the account; and
- (b) annually before the start of a financial year, the name of each bank where the municipality holds a bank account, and the type and number of each account.

Control of county bank accounts

55.(1) The accounting officer of a county-

- (a) must administrator all the county's bank accounts, including a bank account;
- (b) is accountable to the county governor for the county's bank accounts: and
- (c) must enforce compliance with this Act.

(2) The accounting officer may delegate the duties referred to in subsection (1)(c) only to the county's chief financial officer.

Withdrawal from county bank accounts

56. (1) Only the accounting officer or the chief financial officer of a county or any other senior financial official of the county acting on the written authority of the accounting officer, may withdraw money or authorise the withdrawal of money from any of the county's bank accounts, and may do so only-

- (a) to defray expenditure appropriated in terms of an approved budget;
- (b) to defray expenditure authorised in terms of this Part of the Act;
- (c) to defray unforeseeable and unavoidable expenditure authorised in terms of this Act;
- (d) in the case of a bank account opened in terms of section (2), to make payments from the account in accordance with subsection (4) of that section;

- (e) to pay over to a person or organ of state money received by the county on behalf of that person or organ of state, including-
 - (i) money collected by the county on behalf of that person or organ of state by agreement; or
 - (ii) any insurance or other payments received by the county for that person or organ of state;
- (f) to refund money incorrectly paid into a bank account;
- (g) to refund guarantees, sureties and security deposits;
- (h) for cash management and investment purposes in accordance with this Part of the Act;
- (i) to defray increased expenditure in terms of this Part of the Act; or
- (j) for such other purposes as may be prescribed.

(2) Any authorisation in terms of subsection (1) to a senior financial officer to withdraw money or to authorise the withdrawal of money from a bank account must be in accordance with a framework as may be prescribed.

(3) The accounting officer may not authorise any official other than the chief financial officer to withdraw money or to authorise the withdrawal of money from the county's primary bank account if the county has a primary bank account which is separate from its other bank accounts.

(4) Money may be withdrawn from a bank account in terms of subsection (1)(b) to (j) without appropriation in terms of an approved budget.

(5) The accounting officer must within 30 days after the end of each quarter-

- (a) table in the municipal council a consolidated report of all withdrawals made in terms of subsection (1)(b) to (j) during that quarter; and
- (b) submit a copy of the report to the Controller of Budget and the Auditor-General.

trusts and other funds

a relief, charitable trust or other fund of whatever description except in the name of the county and only the county principal secretary may be the accounting officer of any such fund.

(2) A county may in terms of section ----- open a separate bank account in the name of the county for the purpose of a relief, charitable, trust or other fund.

(3) Money received by the county for the purpose of a relief, charitable trust or other fund must be paid into a bank account of the county or if a separate bank account has been opened in terms of subsection (2).

(4) Money in a separate account opened in terms of subsection (2) may be withdrawn from the account without appropriation in terms of an approved budget but only -

(a) by or on the written authority of the accounting officer acting in accordance with decisions of the county; and

(b) for the purposes for which, and subject to any conditions on which the fund was established or the money in the fund was donated.

Cash Management

County revenue fund

58. (1) There shall be a fund, to be known as the County Revenue Fund for each county government.

(2) All receipts, including those from intergovernmental transfers and own revenues shall be paid into, and all liabilities falling to be discharged by the county government, shall be paid out of the County Revenue Fund.

(3) A finance officer acting on the written authority of the accounting officer may withdraw money from any of the county government's bank accounts.

(4) The county government shall prescribe a framework within which the accounting officer must-

(a) conduct cash management and investments and

(b) invest money not immediately required.

(5) A county government shall establish an appropriate and effective cash management and investment policy in accordance with any framework prescribed in sub section (10).

(6) A bank where a county government at the end of a financial

year holds a bank account, or held a bank account at any time during a financial year, must-

- (a) within 30 days after the end of that financial year notify the County assembly and the Auditor-General in writing, of such bank account, including-
 - (i) the type and number of the account; and
 - (ii) the opening and closing balances of that bank account in that financial year.
- (b) promptly disclose information regarding the account when so requested by the County assembly or the Auditor General.

Maintenance of the revenue fund account

59. (1) A county government may not transfer ownership as a result of a sale or other transaction or otherwise permanently dispose of a capital asset needed to provide the minimum level of basic county services.

(2) A county government may transfer ownership or otherwise dispose of a capital asset other than one contemplated in subsection (1), but only after the county government, in a meeting open to the public-

- (a) has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic municipal services; and
- (b) has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.

(3) A decision by the County government that a specific capital asset is not needed to provide the minimum level of basic municipal services, may not be reversed by the County government after that asset has been sold, transferred or otherwise disposed of.

(4) A County government may delegate to the accounting officer to make the determinations referred to in this Act in respect of movable capital assets below a value determined by the County government.

(5) Any transfer of ownership of a capital asset in terms of this Act must be fair, equitable, transparent, competitive and consistent with the supply chain management policy which the County government must have and maintain.

Withdrawals from bank accounts

60. (1) The accounting officer of a county government will make quarterly requests for withdrawal of funds from the county revenue

fund to the Controller of budget.

(2) Requests for withdrawal shall be based on the cash flow projection contained as part of the annual budget.

(3) An accounting officer shall be required to submit a report of the previous quarter utilization of funds indicating level of compliance with the requirements of the Controller of Budget to qualify for approval to withdraw funds for the subsequent quarter.

(4) In the event that there is a disagreement between the Controller of Budget and the county government as to whether the county government has fulfilled the conditions necessary for the Controller of Budget to grant approval of withdrawals of funds, the matter shall be referred to an arbitration committee.

(5) The arbitration committee referred above shall be composed of five members, two nominated by the Controller of Budget and the county government respectively and the fifth member, who shall be the chair of the committee, shall be nominated by the Institute of Certified Public Accountants.

(6) The arbitration committee shall consider all facts and circumstances of the case and make a recommendation to the controller of budget having due regard to the need to ensure that service delivery is not unduly disrupted.

PART 6: PLANNING AND BUDGETING

General planning and budgeting principles

61 (1) Planning and Budgeting by county governments shall---

- (a) be participatory, consultative, transparent and inclusive of all stakeholders;
- (b) be comprehensive and inclusive of all fiscal operations of the county government;
- (c) be informative and encompass analysis of the current situation, current strategies, set goals and objectives;
- (d) be disciplined, realistic and linked to specific activities or objectives;
- (e) be predictable to ensure stability in macro and strategic policy;
- (f) be contestable to ensure that all sectors compete on equal footing for funding during budget planning and

formulation;

- (g) be derived from unbiased projections of revenue and expenditure;
- (h) Ensure that decision makers are responsible and accountable;
- (i) Ensure that the budget process conform to the essential principles for sound budget management; and
- (j) provide a performance perspective to the budget process by aligning expenditure to policy priorities.

Annual work plan

62. (1) Every County Government shall prepare an annual work plan that includes—

- (a) strategic priorities for the medium term that reflect the County Government's priorities and plans;
- (b) programmes to be delivered in the coming financial year detailing—
 - (i) the strategic priorities that the programme will contribute to,
 - (ii) the services or goods to be provided,
 - (iii) measurable indicators of performance where feasible,
 - (iv) the budget allocated to the programme,
- (c) payments on behalf of the County Government including grants, benefits and subsidies to be paid;
- (d) significant capital developments;
- (e) description of intentions to develop capability for physical, intellectual, human and other resources including measurable indicators where feasible;
- (f) summary budget; and
- (g) other relevant matters as shall be prescribed.

Appropriation bill

63. (1) Expenditure before annual budget is passed into law by the Appropriation Act-

- (a) If the Appropriation Act for a financial year has not been assented to by the Governor, or is not likely to be assented to, by the beginning of that financial year, the County Assembly may authorize the withdrawal of money from the County Revenue Fund for the purpose of meeting

expenditure necessary to carry on the services of the County government until such time as the Appropriation Act is assented to;

- (b) Such funds shall not exceed in total one-half of the amount included in the estimates of expenditure for that year that have been tabled in the County Assembly; and
- (c) Such funds shall be included, under respective votes for the several services in respect of which they were withdrawn, in the Appropriation Act.

Annual budgets

64. (1) The County Assembly must for each financial year approve an annual budget for the County Government before the start of that financial year;

(2) The county executives responsible for finance shall submit to the County Assembly estimates of the revenue and expenditure of the county government for the next financial year to be tabled in the County Assembly as provided in Article 221 of the Constitution;

(3) Budgets for county governments shall be prepared in line with guidelines provided by the Intergovernmental Budget and Economic Council established under the Intergovernmental Fiscal Relations Act;

(4) The form and manner of consultation between the national and county governments in the process of preparing plans and budgets is as provided in the Intergovernmental Fiscal Relations Act; and

(5) Budgets shall contain---

- (a) estimates of revenues and expenditure;
- (b) proposals for the financing of any anticipated deficit for the period for which the budget applies; and
- (c) borrowing proposals and other forms of public liability that will increase public debt during the subsequent year.

Budgeting process

Organisation of budgeting

of 65. (1) The county governments planning and budgeting process shall adopt the Medium Term Expenditure Framework (MTEF) process;

(2) The Intergovernmental Economic and Budget Council through cooperation and consultation between the two levels of governments shall issue the MTEF guidelines in August of every year in the format specified in the schedule to this Act.

(3) Each county shall organize its departments into sectors which have complementary mandates so as to enhance efficiency and impact to the development of the county;

(4) Each sector constituted in subsection (3) will in its MTEF planning and budgeting process will adopt a sector wide approach in the development and prioritisation of sector policies, programmes, information and resource mobilization;

(5) The budgeting process will constitute adhoc committees appointed by the accounting officer-

- (a) county budget steering committee
- (b) county estimate working groups
- (c) county sector working groups

Functions of budgets
adhoc working groups

66. (1) The county budget steering committee shall be constituted of all the county government departmental heads with the chairperson being the county budget officer.

(2) The functions of the budget steering committee will be-

- (a) review the county's integrated development plans in line with the national integrated development plans and strategic plans;
- (b) ensure that the county integrated development plan are updated in terms of section -----of the Devolution Act, taking into account realistic revenue and expenditure projections for the MTEF period;
- (c) provide budget ceilings to the various sectors taking into account the county Allocation of Revenue Bill, the national government's fiscal and macro-economic policy, and the projected revenues from own sources;
- (d) Issue of the budget policy statement for the county in line strategic objectives and priorities; and
- (e) Advise the accounting officer on the appropriate budget ceilings based on the county's priorities;

(3) On receipt of the yearly budget guidelines, on 31st August the county budget steering committee shall, initiate the budgeting process by-

- (a) appointment of the county estimate working group;
- (b) appointment of the county sector working group;

- (c) initiation of the process to establish the sub-county, ward and village level budget forums in accordance with the provisions of the Devolution Act;
- (d) issue of the budgeting guidelines to the various working groups and budget forums in the prescribed form;

(2) The county estimate working group shall receive and review budget submissions to confirm that they comply with the guidelines.

(3) The county sector working groups in coordination with the sub-county, ward and village budget forums shall receive budget submissions which will guide in preparation of the budget proposals in compliance with the guidelines.

County structure, and documents

Budget Contents of supporting

67. (1) An annual budget must be accompanied by the following documents-

- (a) estimates of revenue and expenditure, differentiating between recurrent and development expenditure;
- (b) proposals for financing any anticipated deficit;
- (c) proposals regarding borrowing and other forms of public liability;
- (d) the structure of the development plans and budgets of counties;
- (e) when the plans and budgets of the counties shall be tabled in the county assemblies;
- (f) the form and manner of consultation between the County Governments and Budget Council in the process of preparing plans and budgets.
- (g) Summary of significant priorities;
- (h) Explanation of how the annual budget relates to the fiscal objectives in the Budget Policy Statement;
- (i) Estimates that include-
 - (i) the share of national revenues;
 - (ii) Share of conditional and unconditional Share of grants;
 - (iii) Share of any allocation of equalization fund and the conditions thereon;
 - (iv) all projected own revenues by classification

- (v) Appropriation bills
- (vi) Annual work plans
- (vii) County Strategic Plan
- (viii) County annual expenditure review reports
- (ix) Proposed amendments to the budget-related policies of the county;
- (x) Particulars of the county's investments;
- (xi) particulars of existing and proposed service delivery agreements
- (xii) material amendments to existing service delivery agreements;
- (xiii) particulars of any proposed allocations or grants by the County to other county governments or county public entities; and
- (xiv) the proposed cost of the salary, allowances and benefits of County public service personnel

Funding of expenditure-

68. (1) An annual budget may only be funded from-

- (a) Equitable share of the Revenue raised Nationally;
- (b) realistically anticipated revenues to be collected locally;
- (c) cash-backed accumulated funds from previous years' surpluses not committed for other purposes;
- (d) Conditional or unconditional grants;
- (e) Equalization fund allocations; and
- (f) borrowed and grants.

(2) Revenue projections in the budget must be realistic, taking into account-

- (a) projected revenue for the current year based on collection levels to date; and
- (b) actual revenue collected in previous financial years capital projects

Capital budget

69. (1) A County may spend money on a capital project only if-

- (a) the money for the project, excluding the cost of feasibility studies conducted by or on behalf of the County, has been appropriated in the capital budget
- (b) the project, including the total cost, has been approved by

the county assembly:

- (c) the sources of funding have been considered, are available and have not been committed for other purposes.

(2) Before approving a capital project, the council of a County Government must consider-

- (a) the projected cost covering all financial years until the project is operational; and
- (b) the future operational costs and revenue on the project, including county tax and tariff implications.

(3) A County Assembly may approve capital projects below a prescribed value either individually or as part of a consolidated capital programme.

Matters to be prescribed

70. (1) The Budget Council shall, in the annual budget circular regulate-

- (a) the form of the annual budget to be prepared by the Governments;
- (b) the form of resolutions and supporting documentation relating to the annual budget;
- (c) the number of years preceding and following the budget year for which revenue and expenditure history or projections must be shown in the supporting documentation;
- (d) inflation projections to be used with regard to the budget;
- (e) uniform norms and standards concerning the setting of County tariffs, financial risks and other matters where a County Government uses its' County entity or other external mechanism for the performance of a County service or other function;
- (f) uniform norms and standards concerning the budgets of County entities; and
- (g) any other uniform norms and standards aimed at promoting transparency and expenditure control.

(2) The Budget Council, may take appropriate steps to ensure that a county government in the exercise of its fiscal powers does not materially and unreasonably prejudice-

- (a) national economic policies, particularly those on inflation,

pricing and equity;

- (b) economic activities across County boundaries: and
- (c) the national mobility of goods, services, capital or labour.

Publication of annual budgets

71(1) At least 60 days before the start of the financial year to which the budget relate the county executive committee member responsible for finance shall submit the budget in the prescribed manner as provided in section 67 of this Act.

(2) Immediately after an annual budget is tabled in a county assembly, the county executive committee member responsible for budgets shall-

- (a) make public the annual budget and the relevant documents as prescribed; and
- (b) invite the public to submit representations in connection with the budget.

Consultations on tabled budgets-

72. (1) When the annual budget has been tabled, the County Assembly must consider any views of-

- (a) the local community; and
- (b) organs of the county government which made submissions on the budget.

(2) After considering all budget submissions, the County Assembly must give the county executive committee member responsible for finance an opportunity-

- (a) to respond to the submissions; and
- (b) if necessary, to revise the budget and table amendments for consideration by the County Assembly.

Approval of annual budgets

73. (1) The County Assembly must within 60 days before the start of the budget year consider and approve the county government annual budget.

(2) An annual budget must be approved together with the adoption of resolutions as may be necessary-

- (a) imposing any County tax for the budget year;
- (b) setting any County tariffs for the budget year;
- (c) approving measurable performance objectives for revenue from each source and for each vote in the budget;

- (d) approving any changes to the County's integrated development plan; and
- (e) approving any changes to the County's budget-related policies.

(3) The county executive committee member responsible for finance must submit the approved annual budget to the Budget Council and the Controller of budget.

Budget implementation

74. (1) The county secretary responsible for finance shall ensure that implementation of the county's approved budget, including taking all reasonable steps to certify-

- (a) that the spending of funds is in accordance with the budget and is reduced as necessary when revenue is anticipated to be less than projected in the budget or in the service delivery and budget implementation plan; and
- (b) that revenue and expenditure are properly monitored.

(2) When necessary, the county secretary responsible for finance shall prepare an adjustments budget and submit it to the County Assembly for consideration and submitting before the National Assembly and the Senate.

(3) The county secretary responsible for finance must no later than 14 days after the approval of an annual budget submit to the Governor-

- (a) a draft service delivery and budget implementation plan for the budget year; and
- (b) drafts of the annual performance contracts.

Failure to approve budget before start of budget year

75. (1) If a County Assembly fails to approve an annual budget, including revenue-raising measures necessary to give effect to the budget, the County Assembly must reconsider the budget and again vote on the budget, or on an amended version thereof, within seven days of the County Assembly meeting that failed to approve the budget.

(2) The process provided for in subsection (1) must be repeated until a budget, including revenue-raising measures necessary to give effect to the budget, is approved.

(3) If a county assembly has not approved an annual budget, including revenue-raising measures necessary to give effect to the budget, by the first day of the budget year, the Governor must immediately report to the Controller of Budget and the Cabinet

Secretary responsible for devolved government

Consequences of failure to approve budget before start of budget year-

76. (1) If by the start of the budget year the County Assembly has not approved an annual budget or any revenue-raising measures necessary to give effect to the budget, the national government must intervene in accordance to Article 192 of the Constitution by taking any appropriate steps to ensure that the budget or those revenue-raising measures are approved, including proposals for dissolving the county government by the President and-

- (a) appointing an administrator until a newly elected county government has been declared elected; and
- (b) approving a temporary budget or revenue-raising measures to provide for the continued functioning of the county government.

(2) When approving a temporary budget for a County Government the national government is not bound by any provision relating to the budget process applicable to a County in terms of this Act or other legislation.

(3) Such a budget must, after the intervention has ended, be replaced by a budget approved by the newly elected County government, provided that the provisions of this Part relating to annual budgets are substantially complied with in line with any revised time frames given by the Budget Council.

(3) Until a budget for the County is approved funds for the requirements of the County Government may, with the approval of the accounting officer be withdrawn.

(4) Funds withdrawn from a County's bank accounts-

- (a) may be used only to defray current and capital expenditure in connection with votes for which funds were appropriated in the approved budget for the previous financial year; and
- (b) may not-
 - (i) during any month, exceed ten per cent of the total amount appropriated in that approved budget for current expenditure, which percentage must be scaled down proportionately if revenue flows are not at least at the same level as the previous financial year; and
 - (ii) exceed the amount actually available.

Non-compliance with 77. (1) The Governor shall, upon becoming aware of any impending

provisions of this Chapter non-compliance by the county government of any provisions of this Act or any other legislation pertaining to the tabling or approval of an annual budget or compulsory consultation processes, inform the County Assembly, the Controller of Budget, the Cabinet Secretary responsible for devolved government and the Budget Council, in writing, of such impending non-compliance.

(2) If the impending non-compliance pertains to a time provision, the Budget Council may, on application by the Governor and on good cause shown extend any time limit or deadline contained in that provision..

(3) A Budget Council must-

- (a) exercise the power contained in this subsection in accordance with aprescribed framework; and
- (b) promptly notify the affected County Assembly, in writing, of any extensions given in terms of this subsection.

(4) The governor shall, upon becoming aware of any actual non-compliance by the county of a provision of this Part, inform the County Assembly, the Controller of Budget, the Cabinet Secretary responsible for devolved government and the Budget Council any remedial or corrective measures the county intends to implement to avoid a recurrence.

(5) Non-compliance by a county with a provision of this Part relating to the budget process or a provision in any legislation relating to the approval of a budget-related policy, does not affect the validity of an annual or adjustments budget.

(6) The National Government may intervene if a County Assembly cannot or does not comply with a provision of this Part, including a provision relating to the process.

Supplementary appropriation bills

78. (1) The County government may spend money that has not been appropriated if;-

- a) the amount appropriated under the Appropriation Act is insufficient or a need has arisen for expenditure for a purpose for which no amount has been appropriated by that Act; or
- b) money has been withdrawn from the Contingencies Fund.

(2) The approval of the County Assembly for any spending shall be sought within two months after the first withdrawal of the money.

(3) If the County Assembly is not sitting, or is sitting but adjourns before the approval has been sought, the approval shall be sought

within two weeks after it next sits.

(4) When the County Assembly has approved spending, an appropriation Bill shall be introduced for the appropriation of the money spend.

(5) In any particular financial year, the County Government may not spend more than ten per cent of the sum appropriated by the County Assembly for that financial year unless, in special circumstances, the County Assembly has approved a higher percentage.

(6) Each supplementary budget supporting a supplementary appropriation bill shall detail the effect of the expenditure changes on performance against the fiscal principles and the fiscal objectives in the budget policy statement.

(7) If County revise an approved annual budget through a supplementary budget it shall-

- (a) adjust the revenue and expenditure estimates downwards if there is material under-collection of revenue during the current year;
- (b) appropriate additional revenues that have become available over and above those anticipated in the annual budget, but only to revise or accelerate spending programmes already budgeted for;
- (c) within a prescribed framework, authorize unforeseeable and unavoidable expenditure recommended by the governor of the county;
- (d) authorize the utilization of projected savings in one vote towards spending under another vote;
- (e) authorize the spending of funds that were unspent at the end of the past financial year where the under-spending could not reasonably have been foreseen at the time to include projected roll-overs when the annual budget for the current year was approved by the County Assembly;
- (f) correct any errors in the annual budget: and
- (g) provide for any other expenditure within a prescribed framework.

(8) A supplementary budget must be in a prescribed form.

(9) When a supplementary budget is submitted to the county assembly, it must be accompanied by-

- (a) an explanation how the adjustments budget affects the county annual budget:
- (b) a motivation of any material changes to the county annual budget:
- (c) an explanation of the impact of any increased spending on the annual budget and the annual budgets for the next two financial years; and
- (d) any other supporting documentation that may be prescribed.

Unforeseen
unavoidable/
contingency
expenditure

and 79. (1) The Governor shall, in emergency or other exceptional circumstances authorize unforeseeable ,unavoidable or contingency expenditure for which no provision was made in an approved budget.

(2) Any such expenditure-

- (a) must be in accordance with any framework that may be prescribed:
- (b) may not exceed ten percent of the approved annual budget:
- (c) must be reported by the County Executive Committee member responsible for finance to the County Assembly at its next meeting; and
- (d) must be appropriated in an supplementary budget.

(3) If such supplementary budget is not passed within 60 days after the expenditure was incurred, the expenditure is unauthorized.

Reallocation of funds
appropriated

80. (1) an accounting officer for a County Government entity shall utilize a saving in a principal item of a Vote appropriated within a Vote towards the defraying excess expenditure under another principal item, unless the Governor directs otherwise.

(2) An accounting officer shall not authorize the transfer of amount that is appropriated—

- (a) for transfer to another entity or individual; or
- (b) for capital expenditure, except to defray other capital expenditure.

(3) An accounting officer for a County Government entity may reallocate funds between programs, activities, or between principal items, vote heads and sub-Votes, in the budget for a financial year if—

- (a) there are provisions in the budget of a program, activity, or

between principal items, vote head and sub-Votes which are unlikely to be utilized;

- (b) a request for the reallocation has been made to the accounting officer explaining the reasons for the reallocation and the accounting officer has approved the request; and
- (c) the total sum of all reallocations made to or from a programme, activity or between principal items, vote heads and sub-Votes does not exceed 10% of the total expenditure approved for that program , activity, or between principal items, vote heads and sub-Votes for that financial year.

Shifting of funds between multi-year appropriations-

81. When funds for a capital programme are appropriated for more than one financial year, expenditure for that programme during a financial year may exceed the amount of that year's appropriation for that programme, provided that-

- (a) the increase does not exceed 20 per cent of that year's appropriation for the programme;
- (b) the increase is funded within the following year's appropriation for that programme;
- (c) the County Executive Committee member responsible for finance certifies that-
- (d) (i) actual revenue for the financial year is expected to exceed budgeted revenue; and
- (e) (ii) sufficient funds are available for the increase without incurring further borrowing beyond the annual budget limit;
- (f) prior written approval is obtained from the Governor for the increase

Contracts having future budgetary implications

82. (1) A county may enter into a contract which will impose financial obligations on the county government beyond a financial year, but if the contract will impose financial obligations on the county beyond the three years covered in the annual budget for that financial year, it may do so only if-

- (a) the County Executive Committee member responsible for finance, at least 60 days before the meeting of the County Assembly at which the contract is to be approved-
 - (i) has, in accordance with this Act-
 - (aa) made public the draft contract and an information statement summarizing the County's obligations in terms of the

- proposed contract; and
 - (ba) invited the local community and other interested persons to submit to the county assembly comments or representations in respect of the proposed contract; and
 - (ii) has solicited the views and recommendations of-
 - (aa) the County Assembly and County Executive Committee and;
 - (ba) the relevant organs of Sub Counties.
 - (b) the County Assembly has taken into account-
 - (i) the County's projected financial obligations in terms of the proposed contract for each financial year covered by the contract;
 - (ii) the impact of those financial obligations on the County's future County tariffs and revenue;
 - (iii) any comments or representations on the proposed contract received from the local community and other interested persons; and
 - (iv) any written views and recommendations on the proposed contract by the county secretary responsible for finance; and
 - (c) the County Assembly has adopted a resolution in which-
 - (i) it determines that the County will secure a significant capital investment or will derive a significant financial economic or financial benefit from the contract;
 - (ii) it approves the entire contract exactly as it is to be executed; and
 - (iii) it authorizes the county secretary responsible for finance to sign the contract on behalf of the County.
- (2) The process does not apply to-
- (a) contracts for long-term debt; or
 - (b) contracts-
 - (i) for categories of goods as may be prescribed; or
 - (ii) in terms of which the financial obligation on the County is a prescribed value; or
 - (iii) percentage of the County's approved budget for the year in which the contract is concluded

- (3) All contracts that impose a financial obligation on a County-
 - (a) must be made available in their entirety to the County Assembly; and
 - (b) may not be withheld from public scrutiny except as provided for in terms of the Promotion of Access to Information Act,.

(4) Contracts in respect of which the financial obligation on the County is below a prescribed value are not affected by these provisions.

Monthly
statements-

budget

83. (1) The accounting officer of a County must by no later than 10 working days after the end of each month submit to the County Assembly a statement in the prescribed format on the state of the County's budget reflecting the following particulars for that month and for the financial year;

- (a) Actual revenue, per revenue source;
- (b) actual borrowings;
- (b) actual expenditure, per vote;
- (c) actual capital expenditure, per vote;
- (d) the amount of any allocations received;
- (e) actual expenditure on those allocations, excluding expenditure on-
 - (i) its share of the local government equitable share: and
 - (ii) allocations exempted by the annual Division of Revenue Act and;
- (f) when necessary, an explanation of-
 - (i) any material variances from the County's projected revenue by source, and from the County's expenditure projections per vote;
 - (ii) any material variances from the service delivery and budget implementation plan; and
 - (iii) any remedial or corrective steps taken or to be taken to ensure that projected revenue and expenditure remain within the County's approved budget.

(2) The statement must include-

- (a) a projection of the relevant County's revenue and

expenditure for the rest of the financial year, and any revisions from initial projections;

(b) the prescribed information relating to the state of the budget of the County

(3) The amounts reflected in the statement must in each case be compared with the corresponding amounts budgeted for in the County's approved budget.

(4) The statement to the County Assembly must be in the format of a signed document and in electronic format.

(5) The accounting officer of a County which has received an allocation during any particular month must, by no later than 30 working days, submit that part of the statement reflecting the particulars to the County allocation.

(6) The county secretary responsible for finance must at the end of each month submit to the County Assembly a consolidated statement in the prescribed format on the state of the Counties' budgets.

(7) The county secretary responsible for finance must, within 30 days after the end of each quarter, make public, a consolidated statement in the prescribed format on the state of County's' budgets.

(8) The County Executive Committee Member for finance must submit such consolidated statement to the County Assembly no later than 45 days after the end of each quarter.

Mid-year budget and performance assessment-

84. (1) The accounting officer of a County must by 25 January of each year-

(a) assess the performance of the County during the first half of the financial year, taking into account-

(i) the monthly statements for the first half of the financial year:

(ii) the County's service delivery performance during the first half of the financial year, and the service delivery targets and performance indicators set in the service delivery and budget implementation plan:

(iii) the past year's annual report, and progress on resolving problems identified in the annual report; and

(iv) the performance of every County entity under the sole or shared control of the County, taking into account reports from any such entities; and

- (b) submit a report on such assessment to-
 - (i) the County Assembly;
 - (ii) the National Assembly; and
 - (iii) the Senate.

(2) The accounting officer must, as part of the review-

- (a) make recommendations as to whether an adjustments budget is necessary: and
- (b) recommend revised projections for revenue and expenditure to the extent that this may be necessary.

Reports on failure to adopt or implement budget-related and other policies

85. (1) The accounting officer must inform the county assembly, in writing, of-

- (a) any failure by the county assembly to adopt or implement a budget-related policy or a supply chain management policy; or
- (b) any non-compliance by a political structure or office-bearer of the County with any such policy.

Unspent funds

86. (1) The appropriation of funds in an annual or adjustments budget lapses to the extent that those funds are unspent at the end of the financial year to which the budget relates except in the case of an appropriation for expenditure made for a period longer than that financial year.

(2) The balance of an appropriation that has not been spent or committed at the end of the financial year for which it was appropriated shall lapse at the end of that financial year.

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

PART 7: BORROWING

Approval assembly

by county

87. (1) A county may, in accordance with article 212 of the constitution and the Public Financial Management Act, the Intergovernmental Fiscal Relations Act and this Act-

- (a) raise loans for capital expenditure for the county government capital budget;
- (b) county governments may raise loans for current expenditure only when necessary for bridging purposes

during a fiscal year;

- (c) bind itself and a future county government in the exercise of its legislative and executive authority to secure loans or investments for the county; and
- (d) the borrowing and related loans are reviewed and recommended by the Intergovernmental Loans and Grants Council as provided for in the Intergovernmental Fiscal Relations Act.

Capital projects

88. (1) A county may spend money on a capital project only if-

- (a) the money for the project, excluding the cost of feasibility studies conducted by or on behalf of the county, has been appropriated in the capital budget referred to in this Act
- (b) the project, including the total cost, has been approved by the county assembly;
- (c) subsection (3) of this section has been complied with, to the extent that that section may be applicable to the project; and
- (d) the sources of funding have been considered, are available and have not been committed for other purposes.

(2) Before approving a capital project in terms of subsection (1)

(b) the county assembly must consider-

- (a) the projected cost covering all financial years until the project is operational: and
- (b) the future operational costs and revenue on the project, including county tax and tariff implications and ability of the capital project to generate necessary cash flows to repay the loan;
- (c) public participation in contributing to the budget and loan proposals;
- (d) application management and servicing of previous loans;
- (e) proportion of total loan portfolio of the county relative to both its annual budget and gross domestic product.

(3) A county assembly may in terms of subsection (1)(b) approve capital projects below a prescribed value either individually or as part of a consolidated capital programme to be implemented jointly with other counties, state corporations or in the context of public private

partnerships.

Loan Guarantees by the national government

89 (1) A county may incur debt only if-

- (a) the debt is denominated in Kenya shillings and is not indexed to, or affected by, fluctuations in the value of the Kenya shillings against any foreign currency;
- (b) provision of the guarantee has been reviewed and recommended by the Intergovernmental Loans and Grants Council as provided for in the Intergovernmental Fiscal Relations Act;
- (c) section 96 has been complied with, if security is to be provided by the county.

Security

90. (1) A county may, by resolution of its county assembly, provide security for-

- (a) any of its debt obligations;
- (b) any debt obligations of a county entity under its sole control; or
- (c) contractual obligations of the county undertaken in connection with capital expenditure by other persons on property, plant or equipment to be used by the county or such other person for the purpose of achieving the objects of devolved governments in terms of Article 227 of the constitution.

(2) A county may in terms of subsection (1) provide any appropriate security, including by-

- (a) giving a lien on, or pledging, mortgaging, ceding or otherwise hypothecating, an asset or right, or giving any other form of collateral;
- (b) undertaking to effect payment directly from money or sources that may become available and to authorise the lender or investor direct access to such sources to ensure payment of the secured debt or the performance of the secured obligations, but this form of security may not affect compliance with section 8(2);
- (c) undertaking to deposit funds with the lender, investor or third party as security;
- (d) agreeing to specific payment mechanisms or procedures to ensure exclusive or dedicated payment to lenders or investors, including revenue intercepts, payments into

dedicated accounts or other payment mechanisms or procedures;

- (e) ceding as security any category of revenue or rights to future revenue;
- (f) undertaking to have disputes resolved through mediation, arbitration or other dispute resolution mechanisms;
- (g) undertaking to retain revenues or specific county tariffs or other charges, fees or funds at a particular level or at a level sufficient to meet its financial obligations;
- (h) undertaking to make provision in its budgets for the payment of its financial obligations, including capital and interest;
- (i) agreeing to restrictions on debt that the county may incur in future until the secured debt is settled or the secured obligations are met; and
- (j) agreeing to such other arrangements as the county may consider necessary and prudent.

(3) A county assembly resolution authorising the provision of security in terms of subsection (2)(a)-

- (a) must determine whether the asset or right with respect to which the security is provided, is necessary for providing the minimum level of basic county services: and
- (b) if so, must indicate the manner in which the availability of the asset or right for the provision of that minimum level of basic county services will be protected.

(4) If the resolution has determined that the asset or right is necessary for providing the minimum level of basic county services, neither the party to whom the county security is provided nor any successor or assignee of such party, may, in the event of a default by the county, deal with the asset or right in a manner that would preclude or impede the continuation of that minimum level of basic county services.

(5) A determination in terms of subsection (3) that an asset or right is not necessary for providing the minimum level of basic county services is binding on the county until the secured debt has been paid in full or the secured obligations have been performed in full, as the case may be.

Disclosure

91. (1) Any person involved in the borrowing of money by a county must, when interacting with a prospective lender or when preparing

documentation for consideration by a prospective investor-

- (a) disclose all information in that person's possession or within that person's knowledge that may be material to the decision of that prospective lender or investor; and
- (b) take reasonable care to ensure the accuracy of any information disclosed.

(2) A lender or investor may rely on written representations of the county signed by the accounting officer, if the lender or investor did not know and had no reason to believe that those representations were false or misleading.

County guarantees

92. (1) A county may not issue any guarantee for any commitment or debt of any organ of state or person, except on the following conditions-

- (a) The guarantee must be within limits specified in the county's approved budget;
- (b) a county may guarantee the debt of a county public entity under its sole control only if the guarantee is authorised by the county assembly in the same manner and subject to the same conditions applicable to a county in terms of this Act if it incurs debt;
- (c) a county may guarantee the debt of a county public entity under its shared control or of any other person, but only with the approval of the Intergovernmental Loans and Grants Council and the National Government, and then only if-
 - (i) the county creates, and maintains for the duration of the guarantee a cash-backed reserve equal to its total potential financial exposure as a result of such guarantee; or
 - (ii) the county purchases and maintains in effect for the duration of the guarantee, a policy of insurance issued by a registered insurer, which covers the full amount of the county's potential financial exposure as a result of such guarantee.

Government guarantees

93. Neither the national nor a county government may guarantee the debt of a county or county public entity except as considered and recommended by the Intergovernmental Loans and Grants Council, established in the Intergovernmental Fiscal Relations Act.

Short-term debt

94. (1) A county may incur short-term debt only in accordance with and subject to the provisions of this Act and only when necessary to

bridge-

- (a) shortfalls within a financial year during which the debt is incurred, in expectation of specific and realistic anticipated income to be received within that financial year; or
- (b) capital needs within a financial year, to be repaid from specific funds to be received from enforceable allocations or long-term debt commitments.

(2) A county may incur short-term debt only if-

- (a) a certified resolution of the county assembly, approving the debt agreement signed by the clerk of the county assembly; and
- (b) the accounting officer has signed the agreement or other document which creates or acknowledges the debt;
- (c) the cumulative short term debt does not exceed 5% of the revenues received by the county in the previous financial year;

(3) For the purpose of subsection (2)(a), a county assembly may-

- (a) approve a short-term debt transaction individually; or
- (b) approve an agreement with a lender for a short-term credit facility to be accessed as and when required, including a line of credit or bankoverdraft facility, provided that-
 - (i) the credit limit must be specified in the resolution of the county assembly;
 - (ii) the terms of the agreement, including the credit limit, may be changed only by a resolution of the county assembly; and
 - (iii) if the county executive committee approves a credit facility that is limited to emergency use the accounting officer must notify the county assembly in writing as soon as practical of the amount, duration and cost of any debt incurred in terms of such a credit facility, as well as options for repaying such debt;

(4) A county-

- (a) must pay off short-term debt within the financial year; and
- (b) may not renew or refinance short-term debt, whether its own debt or that of any other entity, where such renewal

or refinancing will have the effect of extending the short-term debt into a new financial year;

(5) No lender may wilfully extend credit to a county for the purpose of renewing or refinancing short-term debt that must be paid off in terms of subsection 4(b).

(6) If a lender wilfully extends credit to a county in contravention of subsection (5) of this section the county is not bound to repay the loan or interest on the loan;

(7) Subsection (6) does not apply if the lender-

- (a) relied in good faith on written representations of the county as to the purpose of the borrowing; and
- (b) did not know and had no reason to believe that the borrowing was for the purpose of renewing or refinancing short-term debt.

Long-term debt

95. (1) A county may incur long-term debt only in accordance with and subject to any applicable provisions of this Act, and only for the purpose of-

- (a) capital expenditure on property, plant or equipment to be used for the purpose of achieving the objects of devolved government as set out in Article 175 and 220 of the Constitution, including costs referred to in subsection (4) of this section; or
- (b) re-financing existing long-term debt subject to subsection (5) of this section.

(2) A county may incur long-term debt only if-

- (a) the county assembly has approved the loan;
- (b) the national government has provided guarantee for the loan within the meaning of the provisions of the Intergovernmental Fiscal Relations Act; and
- (c) the accounting officer has signed the agreement or other document which creates or acknowledges the debt.

(3) A county may incur long-term debt only if the accounting officer of the county-

- (a) has, in accordance with the Devolution Act-
 - (i) at least 21 days prior to the meeting of the county at which approval for the debt is to be considered, made public an information

statement setting out particulars of the proposed debt, including the amount of the proposed debt, the purposes for which the debt is to be incurred and particulars of any security to be provided, and

- (ii) invited the public, including professional bodies and the national treasury to submit written comments or representations to the county in respect of the proposed debt; and
- (b) has submitted a copy of the information statement to the county assembly at least 21 days prior to the meeting of the county, together with particulars of
 - (i) the essential repayment terms, including the anticipated debt repayment schedule; and
 - (ii) the anticipated total cost in connection with such debt over the repayment period.

(4) Capital expenditure contemplated in subsection (1)(a) may include-

- (a) financing costs, including-
 - (i) capitalised interest for a reasonable initial period;
 - (ii) costs associated with security arrangements in accordance with section;
 - (iii) discounts and fees in connection with the financing;
 - (iv) fees for legal, financial, advisory, trustee, credit rating and other services directly connected to the financing; and
 - (v) costs connected to the sale or placement of debt, and costs for printing and publication directly connected to the financing.
- (b) costs of professional services directly related to the capital expenditure; and
- (c) such other costs as may be prescribed.

(5) A county may borrow money for the purpose of re-financing existing long-term debt, provided that-

- (a) the existing long-term debt was lawfully incurred;
- (b) the re-financing does not extend the term of the debt beyond the useful life of the property, plant or equipment

for which the money was originally borrowed;

- (c) the net present value of projected future payments (including principal and interest payments) after re-financing is less than the net present value of projected future payments before re-financing; and
- (d) the discount rate used in projecting net present value referred to in paragraph (c), and any assumptions in connection with the calculations, must be reasonable and in accordance with criteria set out in a framework that may be prescribed.

(6) A county's long-term debt must be consistent with its capital budget.

PART 8: URBAN AREAS AND CITIES

Managers

96. The manager of a city or a municipality is the accounting officer of the city or municipality for the purposes of this Act, and, as accounting officer, must-

- (a) exercise the functions and powers assigned to an accounting officer in terms of this Act; and
- (b) provide guidance and advice on compliance with this Act to-
 - (i) the political structures, political office-bearers and officials of the city or municipality; and
 - (ii) any city or municipal entity under the sole or shared control of the city or municipality.

Financial management

97. (1) The accounting officer of a city or municipality is responsible for managing the financial administration of the city or municipality, and must for this purpose take all reasonable steps to ensure-

- (a) that the resources of the city or municipality are used effectively, efficiently and economically;
- (b) that full and proper records of the financial affairs of the city or municipality are kept in accordance with any prescribed norms and standards;
- (c) that the city or municipality has and maintains effective, efficient and transparent systems-

- (i) of financial and risk management and internal control; and
- (ii) of internal audit operating in accordance with any prescribed norms and standards;
- (d) that unauthorised, irregular or fruitless and wasteful expenditure and other losses are prevented;
- (e) that disciplinary or, when appropriate, criminal proceedings are instituted against any official of the city or municipality who has allegedly committed an act of financial misconduct or an offence in accordance with this Act; and
- (f) that the city or municipality has and implements-
 - (i) a tariff policy referred to in Urban areas and Cities Act;
 - (ii) a rates policy as may be required in terms of this Act or any other applicable national legislation;
 - (iii) a credit control and debt collection policy referred to in section-----of this Act; and
 - (iv) supply chain management policy in accordance with this Act.

(2) The accounting officer is responsible for and must account for all bank accounts of the city or municipality, including any bank account opened for-

- (a) any relief, charitable, trust or other fund set up by the municipality in accordance with this Act; or
- (b) a purpose referred to in this Part.

Asset and liability management

98. (1) The accounting officer of a city or municipality is responsible for the management of-

- (a) the assets of the city or municipality, including the safeguarding and the maintenance of those assets; and
- (b) the liabilities of the municipality.

(2) The accounting officer must for the purposes of subsection (1) take all reasonable steps to ensure-

- (a) that the city or municipality has and maintains a management, accounting and information system

that accounts for the assets and liabilities of the municipality;

- (b) that the city's or municipality's assets and liabilities are valued in accordance with standards of generally recognised accounting practice; and
- (c) that the city municipality has and maintains a system of internal control of assets and liabilities, including an asset and liabilities register, as may be prescribed.

Revenue management

99. (1) The accounting officer of a city or municipality is responsible for the management of the revenue of the municipality.

(2) The accounting officer must for the purposes of collection systems consistent with this Act and the Urban Areas and Cities Act and municipality's credit control and debt collection policy ensure;

- (a) that revenue due to the city or municipality is calculated on a monthly basis;
- (b) that accounts for city or municipal tax and charges for city or municipal services are prepared on a monthly basis, or less often as may be prescribed where monthly accounts are uneconomical;
- (c) that all money received is promptly deposited in accordance with this Act into the city or municipality's primary and other bank accounts;
- (d) that the city or municipality has and maintains a management, accounting and information system which-
 - (i) recognises revenue when it is earned;
 - (ii) accounts for debtors; and
 - (iii) accounts for receipts of revenue;
- (e) that the city or municipality has and maintains a system of internal control in respect of debtors and revenue, as may be prescribed;
- (f) that the city or municipality charges interest on arrears, except where the council has granted exemptions in accordance with its budget-related policies and within a prescribed framework; and
- (g) that all revenue received by the city or municipality, including revenue received by any collecting agent

on its behalf, is reconciled at least on a weekly basis.

(3) The accounting officer must immediately inform the governor of any payments due by an organ of state to the city or municipality in respect of city or municipal tax or for city or municipal services, if such payments are regularly in arrears for periods of more than 30 days.

(4) The accounting officer must take all reasonable steps to ensure that any funds collected by the city or municipality on behalf of another organ of state is transferred to that organ of state at least on a weekly basis and that such funds are not used for purposes of the city or municipality.

Monthly reconciliations

100. The accounting officer of a county government entity must take all reasonable steps to ensure that all revenue received by the entity, including revenue received by any collecting entity on its behalf, is reconciled on a monthly or more regular basis; and that all accounts of the county government entity are reconciled each month.

Expenditure management

101. (1) The accounting officer of a county government entity is responsible for the management of the expenditure of the county government entity.

(2) The accounting officer must for the purpose of subsection (1) take all reasonable steps to ensure-

- (b) that the entity has and maintains an effective system of expenditure control including procedures for the approval, authorisation, withdrawal and payment of funds;
- (c) that all money owing by the entity is paid within 30 days of receiving the relevant invoice or statement unless prescribed otherwise for certain categories of expenditure;
- (d) that the entity has and maintains a management, accounting and information system which-
 - (i) recognises expenditure when it is incurred;
 - (ii) accounts for creditors of the entity; and
 - (iii) accounts for payments made by the entity;
- (e) that the entity has and maintains a system of internal control in respect of creditors and payments;
- (f) that payments by the entity are made-
 - (ii) directly to the person to whom it is due unless agreed otherwise only for reasons as

may be prescribed, and

(iii) either electronically or by way of non-transferable cheques, provided that cash payments and payments by way of cash cheques may be made for exceptional reasons only, and only up to a prescribed limit;

(g) that the entity complies with its tax, duty, pension, medical aid, audit fees and other statutory commitments;

(h) that the entity's available working capital is managed effectively and economically in terms of any prescribed cash management and investment framework; and that the entity has and implements a supply chain management policy in accordance with this Act in a way that is fair, equitable, transparent and cost-effective.

Budget implementation

102. (1) The accounting officer of a county government entity is responsible for implementing the entity's budget, including taking effective and appropriate steps to ensure that-

(a) the spending of funds is in accordance with the budget;

(b) revenue and expenditure are properly monitored; and

(c) spending is reduced as necessary when revenue is anticipated to be less than projected in the budget.

Fiduciary responsibilities

103. (1) The accounting officer of a city or municipality must-

(a) act with fidelity, honesty, integrity and in the best interests of the municipality in managing its financial affairs;

(b) disclose to the city or municipal council (or committee) and the mayor or chairman all material facts which are available to the accounting officer or reasonably discoverable, and which in any way might influence the decisions or actions of the council or the mayor; and

(c) seek, within the sphere of influence of the accounting officer, to prevent any prejudice to the financial interests of the city or municipality.

(2) An accounting officer may not-

(a) act in a way that is inconsistent with the duties

assigned to accounting officers of cities and municipalities in terms of this Act; or

- (b) use the position or privileges of, or confidential information obtained as, accounting officer for personal gain or to improperly benefit another person.

PART 9: COUNTY GOVERNMENTS PUBLIC ENTITIES

Establishment of county public entities

Financial governance

Bank accounts

104. (1) A county public entity can only open and operate bank accounts which are in the name of the entity and with the approval of the entity's board of directors.

(2) All money received by a county public entity must be paid into its bank account or accounts, and this must be done promptly and in accordance with any requirements that may be prescribed.

(3) A county public entity may not open a bank account abroad or with an institution not registered as a bank in accordance with the laws of Kenya.

(4) Money may be withdrawn from a county public entity's bank account only in accordance with requirements that may be prescribed.

(5) The accounting officer of a county public entity-

- (a) must administer all the entity's bank accounts;
- (b) is accountable to the board of directors of the entity for the entity's bank accounts; and
- (c) must enforce any requirements that may be prescribed under this Act.

Bank account details

105. (1) The accounting officer of a county public entity must submit to the entity's parent county treasury, in writing-

- (a) within 90 days after the entity has opened a new bank account, the name of the bank where the account has been opened, and the type and number of the account; and

- (b) annually before the start of a financial year, the name of each bank where the entity holds a bank account, and the type and number of each account.

(2) The accounting officer of the county public entity's parent county government, or if there are more than one parent county government, any one of the accounting officers of those county governments as may be agreed between them, must upon receipt of the information referred to in subsection (1), submit that information to the county assembly and Auditor-General, in writing.

Budgets

106. (1) The board of directors of a county public entity must for each financial year submit a proposed budget for the entity to its parent county government not later than 150 days before the start of the entity's financial year or earlier if requested by the parent county government.

(2) The parent county government must consider the proposed budget of the county public entity and assess the entity's priorities and objectives. If the parent county government makes any recommendations on the proposed budget, the board of directors of the entity must consider those recommendations and, if necessary, submit a revised budget to the parent county government not later than 100 days before the start of the financial year.

(3) The Governor of the parent county government must table the proposed budget of the county public entity in the county assembly when the annual budget of the county government for the relevant year is tabled.

(4) The board of directors of a county public entity must approve the budget of the county public entity not later than 30 days before the start of the financial year, taking into account any hearings or recommendations of the county assembly of the parent county government.

(5) The budget of a county government must-

- (a) be balanced;
- (b) be consistent with any service delivery agreement or other agreement between the entity and the entity's parent county government;
- (c) be within any limits determined by the entity's parent county government, including any limits on tariffs, revenue, expenditure and borrowing;
- (d) include a multi-year business plan for the entity that-
 - (i) sets key financial and non-financial performance

objectives and measurement criteria as agreed with the parent county government;

- (ii) is consistent with the budget and integrated development plan of the entity's parent county government;
 - (iii) is consistent with any service delivery agreement or other agreement between the entity and the entity's parent county government: and
 - (iv) reflects actual and potential liabilities and commitments, including particulars of any proposed borrowing of money during the period to which the plan relates; and
- (e) complies with the requirements of section 17(1) and (2) to the extent that such requirements can reasonably be applied to the entity.

(6) The board of directors of a county publicentity may, with the approval of the governor, revise the budget of the county public entity, but only for the following reasons,

- (a) to adjust the revenue and expenditure estimates downwards if there is material under-collection of revenue during the current year;
- (b) to authorise expenditure of any additional allocations to the county publicentity from its parent county government;
- (c) to authorise, within a prescribed framework, any unforeseeable and unavoidable expenditure approved by the county governor of the parent county public entity;
- (d) to authorise any other expenditure within a prescribed framework.

(7) Any projected allocation to a county publicentity from its parent county government must be provided for in the annual budget of the parent county government, and to the extent not so provided, the entity's budget must be adjusted.

(8) A county publicentity may incur expenditure only in accordance with its approved budget or an adjustments budget.

(9) The governor of a county government must table in the County assembly the budget or adjusted budget and any adjustments budget of a county publicentity as approved by its board of directors.

(10) A county publicentity's approved budget or adjusted budget must be made public in substantially the same way as

the budget of a county government must be made public.

(11) The accounting officer of a county public entity must by no later than seven working days after the end of each month submit to the accounting officer of the parent county government a statement in the prescribed format on the state of the entity's budget reflecting the following particulars for that month and for the financial year up to the end of that month:

- (a) actual revenue, per revenue source;
- (b) actual borrowings;
- (c) actual expenditure;
- (d) actual capital expenditure;
- (e) the amount of any allocations received;
- (f) actual expenditure on those allocations, excluding expenditure on allocations exempted by the annual Division of Revenue Bill from compliance with this paragraph; and
- (g) when necessary, an explanation of-
 - (i) any material variances from the county public entity's projected revenue by source, and from the county government entity's expenditure projections;
 - (ii) any material variances from the service delivery agreement and the business plan; and
 - (iii) any remedial or corrective steps taken or to be taken to ensure that projected revenue and expenditure remain within the county public entity's approved budget.

(12) The statement must include a projection of revenue and expenditure for the rest of the financial year, and any revisions from initial projections.

(13) The amounts reflected in the statement must in each case be compared with the corresponding amounts budgeted for in the county public entity's approved budget.

(14) The statement to the accounting officer of the county government must be in the format of a signed document and in both electronic and hard copy format or any other media prescribed in legislation.

January of each year--

- (a) assess the performance of the entity during the first half of the financial year, taking into account-
 - (i) the monthly statements referred to in section 106 for the first half of the of the financial year and the targets set in the service delivery, business plan or other agreement with the entity's parent county government; and
 - (ii) the entity's annual report for the past year and progress on resolving problems identified in the annual report: and
- (b) submit a report on such assessment to-
 - (i) the board of directors of the entity; and
 - (ii) the parent county government of the entity.

(2) The report referred to in subsection (1) must be made public.

Remuneration packages

108. (1) The parent county government of a county publicentity must-

- (a) determine the upper limits of the salary, allowances and other benefits of the chief executive officer and senior managers of the entity in line with the recommendations of the Salaries and Remuneration Commission established under article 230 of the constitution;
- (b) monitor and ensure that the county publicentity reports to the county assembly on all expenditure incurred by that county publicentity on directors and staff remuneration matters, and in a manner that discloses such expenditure per type of expenditure namely:
 - (i) salaries and wages;
 - (ii) contributions for pensions and medical aid, travel, motor car, accommodation, subsistence and other allowances;
 - (iii) housing benefits and allowances;
 - (iv) overtime payments;
 - (v) loans and advances; and
 - (vi) any other type of benefit or allowance related

to directors and staff.

Disposal of capital assets 109. (1) A county public entity may not transfer ownership as a result of a sale or other transaction or otherwise dispose of a capital asset needed to provide the minimum level of basic county government services.

(2) A county public entity may transfer ownership or otherwise dispose of a capital asset other than an asset contemplated in subsection (1), but only after the county assembly of its parent county government, in a meeting open to the public-

(a) has decided on reasonable grounds that the asset is not needed to provide the minimum level of basic county government services; and

(b) has considered the fair market value of the asset and the economic and community value to be received in exchange for the asset.

(3) A decision by a county assembly that a specific capital asset is not needed to provide the minimum level of basic county government services may not be reversed by the county government or county public entity after that asset has been sold, transferred or otherwise disposed of.

(4) A county assembly may delegate to the accounting officer of a county public entity its power to make the determinations referred to in subsection (2)(a) and (b) in respect of movable capital assets of the entity below a value determined by the county assembly.

(5) Any transfer of ownership of a capital asset in terms of subsection (2) or (4) must be fair, equitable, transparent and competitive and consistent with the supply chain management policy which the county government entity must have and maintain in terms of article 227 of the Constitution and any other applicable legislation.

(6) This section does not apply to the transfer of a capital asset to a county government or another county public entity or to a national organ of state in circumstances and in respect of categories of assets approved by the national treasury provided that such transfers are in accordance with a prescribed framework.

Financial year 110. The financial year of a county public entity is the same as that of a county government.

Audit 111. The Auditor-General must audit and report on the accounts, financial statements and financial management of each county publicentity.

Accounting officers

Chief executive officer 112. The chief executive officer of a county publicentityappointed in accordance with the Devolution Act is the accounting officer of the entity.

Fiduciary duties 113. (1) The accounting officer of a county publicentity must-

- (a) exercise utmost care to ensure reasonable protection of the assets and records of the entity;
- (b) act with fidelity, honesty, integrity and in the best interest of the entity in managing the financial affairs of the entity in line with chapter 6 of the Constitution and any applicable legislation.
- (c) disclose to the entity's parent county government and the entity's board of directors all material facts, including those reasonably discoverable, which in any way may influence the decisions or actions of the parent county government or the board of directors; and
- (d) seek, within the sphere of influence of that accounting officer, to prevent any prejudice to the financial interests of the parent county government or the county publicentity.

(2)The accounting officer must not-

- (a) act in a way that is inconsistent with the responsibilities assigned to accounting officers of county publicentities in terms of this Act; or
- (b) use the position or privileges of, or confidential information obtained as accounting officer, for personal gain or to improperly benefit another person.

(3) In performing all these functions the accounting officer shall be subject to the provisions of chapter 6 of the Constitution and any applicable legislation.

Financialmanagement 114. (1) The accounting officer of a county public entity is responsible for managing the financial administration of the entity, and must for

this purpose take all reasonable steps to ensure that-

- (a) the resources of the entity are used effectively, efficiently, economically and transparently;
- (b) full and proper records of the financial affairs of the entity are kept;
- (c) the entity has and maintains effective, efficient and transparent systems-
 - (i) of financial and risk management and internal control; and
 - (ii) of internal audit complying with and operating in accordance with any prescribed norms and standards;
- (d) irregular and fruitless and wasteful expenditure and other losses are prevented;
- (e) expenditure is in accordance with the approved plans and budgets and operational policies of the entity; and
- (f) disciplinary or, when appropriate, criminal proceedings, are instituted against any official of the entity who has allegedly committed an act of financial misconduct or an offence under this Act.

Assets and liability management

115. (1) The accounting officer of a county public entity is responsible for the management of-

- (a) the assets of the entity, including the safeguarding and maintenance of those assets: and
- (b) the liabilities of the entity.

(2) The accounting officer must take all reasonable steps to ensure that the entity has and maintains-

- (a) a management, accounting and information system that accounts for proper assets and liabilities of the management systems of the county public entity; and
- (b) a system of internal control of assets and liabilities, including an asset and liabilities register, as may be prescribed.

Revenue management

116. (1) The accounting officer of a county public entity must take all reasonable steps to ensure-

- (a) that the entity has and implements effective revenue

collection systems to give effect to its budget:

- (b) that all revenue due to the entity is collected;
- (c) that any funds collected by the entity on behalf of a county government-
 - (i) are transferred to that county government strictly in accordance with the agreement between the entity the county government; and
 - (ii) are not used for the purposes of the entity;
- (d) that the county public entity has effective revenue collection systems consistent with those of the parent county government;
- (e) that revenue due to the entity is calculated on a monthly basis;
- (f) that accounts for service charges are prepared on a monthly basis, or less often as may be prescribed where monthly accounts are uneconomical:
- (g) (g) that all money received is promptly deposited in accordance with this Act into the county public entity's bank accounts;
- (h) that the county public entity has and maintains a management, accounting and information system which-
 - (i) recognises revenue when it is earned;
 - (ii) accounts for debtors; and
 - (iii) accounts for receipts of revenue;
- (i) that the county public entity has and maintains a system of internal control in respect of debtors and revenue, as may be prescribed; and
- (j) that all revenue received by the county public entity, including revenue received by any collecting agent on its behalf, is reconciled at least on a weekly basis.
- (k) the accounting officer must immediately inform the parent county government of any payments due by an organ of state to the entity in respect of service charges, if such payments are regularly in arrears for periods of more than 30 days.

Expenditure
Management

117. (1) The accounting officer of a county government is responsible for the management of expenditure of the county government.

(2) The accounting officer must for the purpose of subsection (1) take all reasonable steps to ensure—

- (a) that the county government has and maintains an effective system of expenditure control, including procedures for the approval, authorisation, withdrawal and payment of funds;
- (b) that the county government has and maintains a management, accounting and information system which-
 - (i) recognises expenditure when it is incurred;
 - (ii) accounts for creditors of the county government; and
 - (iii) accounts for payments made by the county government.
- (c) that the county public entity has and maintains a system of internal control in respect of creditors and payments;
- (d) that payments by the county government are made-
 - (i) directly to the person to whom it is due unless authorized by the creditor in writing for the payment to be made to a third party with reasons as may be prescribed; and
 - (ii) either electronically or by way of non-transferable cheques, provided that cash payments and payments by way of cash cheques may be made for exceptional reasons only and only up to a prescribed limit;
- (e) that all money owing by the county government be paid within 30 days of receiving the relevant invoice or statement, unless prescribed otherwise for certain categories of expenditure;
- (f) that the county government makes all the remittances of taxes, levy, duty, pension, medical insurance, audit fees and other statutory commitments;
- (g) that any dispute concerning payments due by the county government to another organ of state is disposed of in terms of the provisions of the Constitution dealing with intergovernmental disputes and the Intergovernmental Relations Framework Act;
- (h) that the county's working capital is managed effectively

and economically in terms of the prescribed cash management and investment framework;

- (i) that the county government's supply chain management policy is implemented in a way that is fair, equitable, transparent, competitive, cost-effective and gives value for money in line with article 227 of the Constitution and any applicable legislation;
- (j) that all financial accounts of the county government are closed at the end of each month and reconciled with its records.

Budget implementation

118. (1) The accounting officer of a county is responsible for implementing the county's approved budget, including taking all reasonable steps to ensure-

- (a) that the spending of funds is in accordance with the budget and is reduced as necessary when revenue is anticipated to be less than projected in the budget or in the service delivery and budget implementation plan; and
- (b) that revenue and expenditure are properly monitored.

(2) When necessary, the accounting officer must prepare adjustments of budget and submit it to the executive committee for consideration and tabling in the county assembly.

(3) The accounting officer must no later than 14 days after the approval of an annual budget submit to the executive committee-

- (a) a draft service delivery and budget implementation plan for the budget year;
- (b) drafts of the annual performance contracts for the principal county secretary and all county secretaries.

Reports and reportable matters

Under-collection,
shortfalls. etc.

119. (1) The accounting officer of a county public entity must report, in writing, to the board of directors of the entity, at its next meeting, and to the accounting officer of the entity's parent county government any financial problems of the entity, including-

- (a) any impending or actual-
 - (i) under collection of revenue due;
 - (ii) shortfalls in budgeted revenue;

- (iii) overspending of the entity's budget;
- (iv) delay in the entity's payments to any creditors; or
- (v) overdraft in any bank account of the entity for a period exceeding 21 days; and

(b) any steps taken to rectify such financial problems.

(2) The accounting officer of the county government must submit a report referred to in subsection (1) in the county assembly at its next meeting.

Irregular or fruitless and wasteful expenditure

120. (1) On discovery of any irregular expenditure or any fruitless and wasteful expenditure, or any other expenditure that has no value for money, the board of directors of a county public entity must promptly report, in writing, to the governor and the accounting officer of the entity's parent county government and the Auditor-General-

- (a) particulars of the expenditure ;and
- (b) any steps that have been taken-
 - (i) to recover the expenditure; and
 - (ii) to prevent a recurrence of the expenditure.

(2) The board of directors of a county public entity must promptly report to the Kenya Police Service any-

- (a) irregular expenditure that may constitute a criminal offence: and
- (b) other losses suffered by the county public entity which resulted from suspected criminal conduct.

Improper interference.

121. The accounting officer of a county public entity must promptly report to the speaker of the county assembly of the entity's parent county government any interference by a county assembly member outside that county assembly member's assigned duties, in-

- (a) the financial affairs of the county public entity; or
- (b) the responsibilities of the board of directors of the county public entity.

General obligations

reporting

122. (1) The accounting officer of a county public entity-

- (a) is, except where otherwise provided in this Act, responsible for the submission by the entity of all reports, returns, notices and other information to the entity's parent county government, as may be required

by this Act; and

- (b) must submit to the accounting officer of the entity's parent county government and the Auditor-General such information, returns, documents, explanations and motivations as may be prescribed or as may be required.

(2) If the accounting officer of a county public entity is unable to comply with any of the responsibilities in terms of this Act, he or she must promptly report the inability, together with reasons, to the county assembly of the entity's parent county government.

Other officials of county public entities

Duties of officials

123. (1) Each official of a county public entity exercising financial management responsibilities must take all reasonable steps within that official's area of responsibility to ensure-

- (a) that the system of financial management and internal control established for the entity is carried out diligently;
- (b) that the financial and other resources of the entity are utilised effectively efficiently, economically and transparently;
- (c) that any irregular expenditure, fruitless and wasteful expenditure and other losses are prevented;
- (d) that all revenue due to the entity is collected;
- (e) that the provisions of this Act to the extent applicable to that official including any delegations in terms of section 106, are complied with; and
- (f) that the assets and liabilities of the entity are maintained, safeguarded and managed effectively.

(2) An official of a county public entity must perform the functions referred to in subsection (1) subject to the directions of the accounting officer of the entity.

Delegation of powers and duties

124. (1) The accounting officer of a county public entity-

- (a) may delegate to an official of that entity-
 - (i) any of the powers or duties assigned or delegated to the accounting officer in terms of

this Act; or

- (ii) any powers or duties reasonably necessary to assist the accounting officer in complying with a duty which requires the accounting officer to take reasonable or appropriate steps to ensure the achievement of the aims of a specific provision of this Act; and

- (b) must regularly review delegations issued in terms of paragraph (a) and, if necessary, amend or withdraw any of those delegations.

(2) A delegation in terms of subsection (1)-

- (a) must be in writing;
- (b) is subject to any limitations and conditions the accounting officer may impose;
- (c) may be either to a specific individual or to the holder of a specific post in the county government entity; and
- (d) does not divest the accounting officer of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.

(3) An accounting officer may confirm, vary or revoke any decision taken by an official in consequence of a delegation in terms of subsection (1), but no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

Competency levels

125. Accounting officers, senior managers, any chief financial officer and all other financial officers of a county government entity must meet the prescribed financial management competency levels.

General

Borrowing of money

126. A county public entity may borrow money, but only in accordance with-

- (a) the entity's multi-year business plan referred to in this Act; and
- (b) the provisions of this Act to the extent that those provisions can be applied to a county public entity.

(2) In applying Chapter 6 to a county public entity, a

reference in that Chapter to a county government, a county assembly or an accounting officer must be read as referring to a county public entity, the board of directors of a county government entity or the accounting officer of a county government entity, respectively.

Financial problems

127. (1) If the county public entity experiences serious or persistent financial problems and the board of directors of the entity fails to act effectively, the parent county government must either-

- (a) take appropriate steps in terms of its rights and powers over that entity, including its rights and powers in terms of any relevant service delivery or other agreement;
- (b) impose a financial recovery plan, which must meet the same criteria set out in section 142 for a county government financial recovery plan; or
- (c) liquidate and disestablish the entity.

PART 10: PROCUREMENT OF PUBLIC WORKS, GOODS AND SERVICES

Supply chain management

Supply chain.

128. (1) A county government and each county public entity must have and implement a supply chain management policy which gives effect to the provisions of this Part.

(2) The supply chain management policy of a county government or county public entity must be fair, equitable, transparent, competitive and cost-effective, produce value for money and comply with a prescribed regulatory framework for county government supply chain management, which must cover at least the following-

- (a) the range of supply chain management processes that county governments and county public entities may use, including tenders, quotations, auctions and other types of competitive bidding;
- (b) when a county government or county public entity may or must use a particular type of process;
- (c) procedures and mechanisms for each type of process;
- (d) procedures and mechanisms for more flexible

- processes where the value of a contract is below a prescribed amount;
- (e) open and transparent pre-qualification processes for tenders or other bids;
 - (f) competitive bidding processes in which only pre-qualified persons may participate;
 - (g) bid documentation, advertising of and invitations for contracts;
 - (h) procedures and mechanisms for-
 - (i) the opening, registering and recording of bids in the presence of interested persons;
 - (ii) the evaluation of bids to ensure best value for money;
 - (iii) negotiating the final terms of contracts; and
 - (iv) the approval of bids; screening processes and security clearances for prospective contractors on tenders or other bids above a prescribed value;
 - (i) compulsory disclosure of any conflicts of interests prospective contractors may have in specific tenders and the exclusion of such prospective contractors from those tenders or bids;
 - (j) participation in the supply chain management system of persons who are not officials of the county government or county public entity;
 - (k) the barring of persons from participating in tendering or other bidding processes, including persons-
 - (i) who were convicted for fraud or corruption during the past five years;
 - (ii) who wilfully neglected, reneged on or failed to comply with its government contract during the past five years; or whose tax matters are not cleared by the Kenya Revenue Authority;
 - (l) (L) measures for-
 - (i) combating fraud, corruption, favouritism and unfair and irregular practices in county

- government supply chain management; and
- (ii) promoting ethics of officials and other role players involved in county government supply chain management within the meaning of chapter six of the constitution;
- (m) the invalidation of recommendations or decisions that were unlawfully or improperly made, taken or influenced, including recommendations or decisions that were made, taken or in any way influenced by-
 - (i) county assembly members in contravention of this Act, the Constitution and any other legislation relating to such matters and the code of conduct for county assembly members;
 - (ii) county government executive officers in contravention of this Act, the constitution or any other law relating to such matters and the code of conduct established for county government executive officers;
 - (iii) county government officials in contravention of this Act, the Constitution or any other law relating to such matters and the code of conduct established for county government staff members.
- (n) the procurement of goods and services by county governments or county government agencies through contracts procured by other organs of state;
- (o) contract management and dispute settling procedures; and
- (p) the delegation of county government supply chain management powers and duties, including to officials.
- (q) Providing for affirmative action in favour of persons, categories of persons or groups of persons previously disadvantaged within the meaning of section 227 of the constitution;

(3) The regulatory framework for county government supply chain management must be fair, equitable, transparent, competitive and cost-effective.

Unsolicited bids

129. (1) A county government or county public entity is not obliged to

consider an unsolicited bid received outside its normal bidding process.

(2) If a tender other than the one recommended in the normal course of implementing the supply chain management policy of a county government or county government entity is approved, the accounting officer of the county government or county public entity must, in writing, notify the Auditor-General and the national treasury and, in the case of a county government entity, also the parent county government, of the reasons for deviating from such recommendation.

(3) Subsection (1) does not apply if a different tender was approved in order to rectify an irregularity.

Implementation

130. (1) The accounting officer of a county government or county public entity must-

- (a) implement the supply chain management policy of the county government or county public entity; and
- (b) take all reasonable steps to ensure that proper mechanisms and separation of duties in the supply chain management system are in place to minimise the likelihood of fraud, corruption, favouritism and unfair and irregular practices.

(2) No person may impede accounting officers from fulfilling their responsibility under this section.

Contracts management

131. A contract or agreement procured through the supply chain management system of a county government or county government entity must-

- (a) be in writing;
- (b) stipulate the terms and conditions of the contract or agreement, which must include provisions providing for-
 - (i) the termination of the contract or agreement in the case of non-performance or under-performance;
 - (ii) dispute resolution mechanisms to settle disputes between the parties;
 - (iii) a periodic review of the contract or agreement once every three years in the case of a contract or agreement longer than three years; and

(iv) any other matters that may be prescribed.

(2) The accounting officer of a county government or county government entity must-

- (a) take all reasonable steps to ensure that a contract or agreement procured through the supply chain management policy of the county government or county government entity is properly enforced;
- (b) monitor on a monthly basis the performance of the contractor under the contract or agreement;
- (c) establish capacity in the administration of the county government or county government entity-
 - (i) to assist the accounting officer in carrying out the duties set out in paragraphs (a) and (b); and
 - (ii) to oversee the day-to-day management of the contract or agreement;
- (d) regularly report to the county assembly of the county government or the board of directors of the entity, as may be appropriate, on the management of the contract or agreement and the performance of the contractor.

(3) A contract or agreement procured through the supply chain management policy of the county government or county government entity may be amended by the parties, but only after-

- (a) the reasons for the proposed amendment have been tabled in the county assembly of the county or, in the case of a county government entity, in the county assembly of its parent county government; and
- (b) the local community-
 - (i) has been given reasonable notice of the intention to amend the contractor agreement; and
 - (ii) has been invited to submit representations to the county government or county government entity.

Member of county assembly barred.

132. A member of a county assembly may be a member of a county assembly bid committee or any other committee evaluating or approving tenders, quotations, contracts or other bids, nor attend any

such meeting as an observer.

Competency levels.

133. (1) The accounting officer and all other officials of a county or county government entity involved in the implementation of the supply chain management policy of the county or county government entity must meet the prescribed competency levels.

(2) A county and a county government entity must for the purposes of subsection (1) provide resources or opportunities for the training of officials referred to in that subsection to meet the prescribed competency levels.

(3) The national treasury may assist counties and county government agencies in the training of officials referred to in subsection (1).

Public Private Partnerships

Entry conditions

134. (1) A county may enter into a public-private partnership agreement, but only if the county can demonstrate that the agreement will-

- (a) provide value for money to the county;
- (b) be affordable for the county; and
- (c) transfer appropriate technical, operational and financial risk to the private party.

(2) A public-private partnership agreement must comply with any prescribed regulatory framework for public-private partnerships.

(3) If the public-private partnership involves the provision of a county service, Chapter 8 of the Devolution Act must also be complied with.

(4) Before a public-private partnership is concluded, the county must conduct a feasibility study that-

- (a) explains the strategic and operational benefits of the public-private partnership for the county in terms of its objectives;
- (b) describes in specific terms-
 - (i) the nature of the private party's role in the

public-private partnership;

- (ii) the extent to which this role, both legally and by nature, can be performed by a private party;

PART 11: INTERNAL AUDIT

Internal audit

135. (1) Every county government shall establish an internal audit unit that shall report to an independent audit committee established as per section 139.

(2) A county government may, with the approval of the county assembly, outsource the internal audit services to build the capacity of its internal audit unit.

(3) The internal audit unit shall be managed by a county internal auditor who must meet the following qualification—

- (a) professional qualified as per the requirements of the board currently registering accountants in Kenya;
- (b) is vetted and meets all the qualities and criteria set in Chapter 6 of the constitution.

Functions of internal auditor

136. (1) The county internal auditor shall —

- (a) prepare the quarterly internal audit programmes and submit them to the independent audit committee by the 10th day of the start of each quarter;
- (b) conduct regular and continuous internal audits of the financial transactions of the county government, decentralised units, cities and urban areas, and county entities;
- (c) have unrestricted access to all establishments and financial records of the county government, decentralised units and county entities;
- (d) conduct regular systems audits of the county government including decentralised units, cities and urban areas, and county entities to ensure that operating systems

are functioning effectively;

- (e) conduct risk based audits to provide reasonable assurance that risk management processes and structures are operational;
- (f) assist the county government, decentralised units, cities and urban areas, and county entities in developing appropriate risk management, control and governance frameworks;
- (g) conduct regular value for money performance audits geared towards economic, effective and efficient use of public resources and sound management of public expenditure;
- (h) conduct information technology supported audits, including payroll audits, with the view to enhancing internal controls in computerized environments;
- (i) review, analyse, and evaluate periodical budgetary performance reports prepared by the accounting officer of the county;
- (j) review and evaluate annual appropriation accounts, fund accounts and statements of assets and liabilities before they are submitted to Auditor General by the accounting officer;
- (k) verify and analyse periodical financial returns that are required to be submitted to the county government by the decentralised units, cities and urban areas, and county entities;
- (l) carry out investigations or special audits on irregularities identified or reported and report on any wastage or misappropriation of public funds or resources;
- (m) conduct periodic public expenditure tracking surveys on specific programmes in different sectors to ascertain economic, effective and efficient utilization of resources and overall quality of public expenditure management;

- (n) carry out forensic audit where required and appropriate;
- (o) follow up outstanding audit issues to confirm whether corrective or remedial action is taken on reported audit findings and recommendations; and
- (p) prepare internal audit reports on a monthly basis by the 15th of the month and submit the report to the independent audit committee.

Fiduciary responsibilities.

137. (1) The county internal auditor must-

- (a) demonstrate integrity in all aspects of the work;
- (b) be impartial in discharging all responsibilities;
- (c) apply knowledge, skills and experience to their work;and
- (d) safeguard the information they receive in carrying out their duties.

Audit committee

138. (1) Each county government must have an audit committee subject to subsection (6).

(2) An audit committee is an independent advisory body which shall –

- (a) advise the county assembly, and the executive committee of the county on matters relating to-
 - (i) internal financial control and internal audits;
 - (ii) risk management;
 - (iii) accounting policies;
 - (iv) the adequacy, reliability and accuracy of financial reporting and information;
 - (v) performance management;
 - (vi) effective governance;
 - (vii) compliance with this Act, and any other applicable legislation;
 - (viii) performance evaluation; and
 - (ix) any other issues referred to it by the county internal auditor;
- (b) review the annual financial statements to provide the

county assembly with an authoritative and credible view of the financial position of the county, its efficiency and effectiveness and its overall level of compliance with this Act, and any other applicable legislation.

- (c) respond to the county assembly on any issues raised by the Auditor-General in the audit report;
- (d) require the county internal auditor to carry out such investigations into the financial affairs of the county, the decentralised units, cities and urban areas.

(3) In performing its functions, an audit committee shall-

- (a) access the financial records and other relevant information of the county governments and their entities;
- (b) liaise with--
 - (i) the internal audit unit of the county; and
 - (ii) the person designated by the Auditor-General to audit the financial statements of the county and its entities.

(4) An audit committee shall-

- (a) consist of six persons with appropriate experience, of whom three shall be nominated by the professional bodies and citizens representatives and three from among officers of the county nominated by the governor
- (b) be approved by the county assembly
- (c) meet as often as is required to perform its functions, but at least four times a year.

(5) The chairperson of the committee shall be a member nominated from outside the county

(6) A single audit committee will be set to oversee all matters of the county government including the decentralised units, cities and urban areas and the county government entities

(7) The audit committee shall-

- (a) demonstrate integrity in all aspects of the work;
- (b) be impartial in discharging all responsibilities;

- (c) safeguard the information they receive in carrying out their duties.

Part 12: FINANCIAL REPORTING AND AUDITING

Annual reports

139. (1) Every County government and every county public entity must prepare an annual report for each financial year in accordance with this Part.

(2) The County government must within nine months after the end of a financial year deal with the annual report of County government and every county public entity under the County government's sole or shared control in accordance with section 129.

(3) The purpose of an annual report is-

- (a) to provide a record of the activities of the County government and every county public entity during the financial year to which the report relates;
- (b) to provide a report on performance against the budget of the County government and every county public entity for that financial year: and
- (c) to promote accountability to the local community for the decisions made throughout the year by the County government and every county public entity.

(4) The annual report of a county government shall include-

- (a) the annual financial statements of the County government, and in addition, if any other part of this Act applies, consolidated annual financial statements, as submitted to the Auditor-General for audit in terms of this Act;
- (b) the Auditor-General's audit report in terms of this Act on those financial statements;
- (c) the annual performance report of the County government prepared by the County government in terms of section ..of the Devolution Act;
- (d) the Auditor-General's audit report in terms of section ... of the Devolution Act;
- (e) an assessment by the accounting officer of any arrears on County government taxes and service charges and other revenues;

- (f) an assessment by the accounting officer of the county governments performance against the measurable performance objectives referred to in Part 5 on revenue collection from each revenue source and for each vote in the county government's approved budget for the relevant financial year;
 - (g) particulars of any corrective action taken or to be taken in response to issues raised in the audit reports referred to in paragraphs (b) and (d);
 - (h) any explanations that may be necessary to clarify issues in connection with the financial statements;
 - (i) any information as determined by County government;
 - (j) any recommendations of the county government's audit committee: and
 - (k) any other information as may be prescribed by cabinet secretary responsible for devolved government
- (5) The annual report of a county public entity must include-
- (a) the annual financial statements of the entity as submitted to the Auditor- General for audit in terms of this Act;
 - (b) the Auditor-General's audit report in terms of this Act on those financial statements;
 - (c) an assessment by the entity's accounting officer of any arrears on revenues;
 - (d) an assessment by the entity's accounting officer of the entity's performance against any measurable performance objectives set in terms the service delivery agreement or other agreement between the entity and the county government;
 - (e) particulars of any corrective action taken or to be taken in response to issues raised in the audit report referred to in paragraph (b);
 - (f) any information as determined by the entity or its parent county government;
 - (g) any recommendations of the audit committee of the entity or the county government;
 - (h) any other information as may be prescribed by cabinet secretary responsible for devolved government.

Financial statements

140. (1) Every County government and every county public entity must for each financial year prepare annual financial statements which-

- (a) fairly presents the state of affairs of the County government and every county public entity, its performance against its budget, its management of revenue, expenditure, assets and liabilities, its business activities, its financial results, and its financial position as at the end of the financial year; and
- (b) discloses the information required in terms of this Act

(2) A County government which has the sole control of a county public entity or which has effective control within the meaning of the Devolution Act of a county public entity which is a private company, must in addition to complying with subsection (1), prepare consolidated annual financial statements incorporating the annual financial statements of the county government and of such county public entity.

(3) Both annual financial statements and consolidated annual financial statements must be prepared in accordance with generally recognised accounting practice prescribed in terms of section 91(1)(b) of the Public Finance Management Act.

Disclosures
allocations

on 141. The annual financial statements of a County government must disclose information on-

- (a) any allocations received by the County government from-
 - (i) national revenues or an organ of state in the national government; or
 - (j) county public entity,
- (b) any allocations made by the County government to-
 - (i) a county public entity or another county government; or
 - (ii) any other organ of state;
- (c) how any allocations referred to in paragraph (a) were spent, per vote, excluding allocations received by County government as its portion of the equitable share or where prescribed otherwise because of the nature of the allocation;
- (d) whether the County government has complied with the

conditions of-

- (i) any allocations made to the county government in terms of articles 202,203,204....214(1)(c) of 15 of the constitution; and
- (ii) any allocations made to the county government other than by national organs of state;
- (e) the reasons for any non-compliance with conditions referred to in paragraph (d); and
- (f) whether funds destined for the county government in terms of the annual County Allocation of Revenue Bill were delayed or withheld, and the reasons advanced to the County government for such delay or withholding.

(2) The annual financial statements of a county publicentity must disclose information on-

- (a) any allocations received by the entity from any County government or other organ of state;
- (b) any allocations made by the entity to a County government or other organ of state; and
- (c) any other information as may be prescribed.

Disclosure requirements

142. (1) The notes to the annual financial statements of a County government must include particulars of-

- (a) the salaries, allowances and benefits of political office-bearers county executive and county assembly members of the County government, whether financial or in kind, including a statement by the accounting officer whether or not those salaries, allowances and benefits are within the upper limits of the framework envisaged in article 219 of the Constitution;
- (b) any arrears owed by individual county assembly members, or a County governmententity under its sole or shared control, for rates, servicesor other debts and which at any time during the relevant financial year were outstanding for more than 90 days, including the names of those county assembly members; and
- (c) the salaries, allowances and benefits of the chief county secretary, the chief financial officer, principal county secretaries and such categories of other officials as may be prescribed by cabinet secretary responsible for devolved government.

(2) The notes to the annual financial statements of a municipal entity must include particulars of the salaries, allowances and benefits of-

- (a) the members of the board of directors of the entity; and
- (b) the chief executive officer of the entity, every senior manager and such categories of other officials as may be prescribed.

Other disclosures compulsory

143. (1) The notes to the financial statements of a County government must include-

- (a) a list of all County public entities under the sole or shared control of the County government during the financial year and as at the last day of the financial year;
- (b) the total amounts paid in audit fees, taxes, levies, duties and pension and medical insurance contributions, and whether any amounts were outstanding as at the end of the financial year.

(2) The notes to the annual financial statements of a County government or County public entity must disclose the following information;

- (a) in respect of each bank account held by the County government or entity during the relevant financial year-
 - (i) the name of the bank where the account is or was held, and the type of account; and
 - (ii) year opening and year end balances in each of these bank accounts;
- (b) a summary of all investments of the County government or entity as at the end of the financial year;
- (c) particulars of any contingent liabilities of the County government or entity as at the end of the financial year;
- (d) particulars of-
 - (i) any material losses and any material irregular or fruitless and wasteful expenditures, including in the case of a County government, any material unauthorised expenditure, that occurred during the financial year, and whether these are recoverable;
 - (ii) any criminal or disciplinary steps taken as a

result of such losses or such unauthorized, irregular or fruitless and wasteful expenditures: and

- (iii) any material losses recovered or written off;
- (e) particulars of non-compliance with this Act; and
- (f) any other matters that may be prescribed.

Submission and audit

144. (1) The accounting officer of a County government—

- (a) must prepare the annual financial statements of the County government and, within two months after the end of the financial year to which those statements relate, submit the statements to the Auditor-General for auditing; and
- (b) must in addition, in the case of a County government referred to in this Act, prepare consolidated annual financial statements in terms of that section and within three months after the end of the financial year to which those statements relate, submit the statements to the Auditor-General for auditing.

(2) The accounting officer of a County public entity must prepare the annual financial statements of the entity and, within two months after the end of the financial year to which those statements relate, submit the statements to—

- (a) the parent County government of the entity; and
- (b) the Auditor-General, for auditing.

(3) The Auditor-General must—

- (a) audit those financial statements; and
- (b) submit an audit report on those statements to the accounting officer of the County government or entity within three months of receipt of the statements.

(4) If the Auditor-General is unable to complete an audit within three months of receiving the financial statements from an accounting officer, the Auditor-General must promptly submit a report outlining the reasons for the delay to the relevant County government or County government entity and Parliament.

(5) Once the Auditor-General has submitted an audit report to the accounting officer, no person other than the Auditor-General may alter the audit report or the financial statements to which the audit report relates.

Annual reports

145. (1) The accounting officer of a public entity must, within six months after the end of a financial year, or on such earlier date as may be agreed between the entity and its parent County government, submit the entity's annual report for that financial year to the chief county secretary of the entity's parent County government.

(2) The Governor of a County government must, within seven months after the end of a financial year, table in the county assembly the annual report of the County government and of any County public entity under the County government's sole or shared control.

(3) If the Governor, for whatever reason, is unable to table in the county assembly the annual report of the County government, or the annual report of any County public entity under the County government's sole or shared control, within seven months after the end of the financial year to which the report relates, the Governor must-

- (a) promptly submit to the county assembly a written explanation referred to in this Act;
- (b) setting out the reasons for the delay, together with any components of the annual report listed in this Act that are ready; and
- (c) submit to the county assembly the outstanding annual report or the outstanding components of the annual report as soon as may be possible.

(4) The Auditor-General may submit the financial statements and audit report-

- (a) of a County government directly to the county assembly and any prescribed organ of state, if the governor fails to comply with this Act or
- (b) of a County government entity directly to the parent County government, and any prescribed organ of state, if the accounting officer of the entity fails to comply with subsection (1).

(5) Immediately after an annual report is tabled in the county assembly in terms of subsection (2), the accounting officer of the County government must-

- (a) in accordance with section 21A of the Devolution Act
 - (i) make public the annual report;
 - (ii) submit a copy to the cabinet secretary for devolved government and

(iii) invite the local community to submit representations in connection with the annual report; and

(b) submit the annual report to the Auditor-General.

(6) Subsection (5), with the necessary modifications as the context may require is also applicable if only components of the annual report are tabled in terms of subsection (3).

Monitoring compliance

146. (1) The accounting officer of a County government must-

(a) monitor whether the accounting officer of any County public entity under the sole or shared control of the County government has complied this Act;

(b) establish the reasons for any non-compliance; and

(c) promptly report any non-compliance, together with the reasons for such non-compliance, to the county assembly

Oversight reports

147. (1) The county assembly must consider the annual report of the County government and of any County public entity under the County government's sole or shared control, and by no later than two months from the date on which the annual report was tabled in the county assembly in terms of section 127, adopt an oversight report containing the county assembly's comments on the annual report, which must include a statement whether the county assembly-

(a) has approved the annual report with or without reservations;

(b) has rejected the annual report; or

(c) has referred the annual report back for revision of those components that can be revised.

(2) The accounting officer must-

(a) attend county assembly and county assembly committee meetings where the annual report is discussed, for the purpose of responding to questions concerning the report; and

(b) submit copies of the minutes of those meetings to the Auditor-General and the cabinet secretary for devolved government.

(3) The accounting officer must in accordance with section 21A of Devolution Act make public an oversight report referred to in subsection (I) within seven 5 days of its adoption.

- County meetings assembly 148. (1) The meetings of a county assembly at which an annual report is to be discussed or at which decisions concerning an annual report are to be taken, must be open to the public and any organs of state, and a reasonable time must be allowed-
- (a) for the discussion of any written submissions received from the local community or organs of state on the annual report; and
 - (b) for members of the local community or any organs of state to address the council.
- (2) The Auditor-General or his or her representatives are entitled to attend, and to speak at any council meeting referred to in subsection (1).
- (3) This section, with the necessary modifications as the context may require, is also applicable if only components of the annual report were tabled in terms of section 127(3).
- Auditor-General issues 149.(1) A County government shall address any issues raised by the Auditor-General in an audit report.
- (2) The Governor of a county government shall ensure compliance by the County government with this subsection.
- Non-compliance 150. (1) If the accounting officer of a county government or county government entity fails to submit financial statements to the Auditor-General in accordance with section 126(1) or (2), or if the governor fails to table the annual report of the county government or county government entity in the county assembly in accordance with section 127(2)-
- (a) the governor must promptly table in the county assembly a written explanation setting out the reasons for the failure;
 - (b) the Auditor-General, in the case of any failure to submit financial statements for auditing, must promptly-
 - (i) inform the governor and the speaker of the county assembly,
 - (ii) issue a special report on the failure to the county assembly; and
 - (c) the county assembly-
 - (i) shall appoint a person to investigate the reasons for the failure and report to the county assembly and the cabinet secretary for devolved government;

- (ii) must take appropriate steps to ensure that the financial statements are submitted to the Auditor-General or that the annual report, including the financial statements and the audit report on those statements, is tabled in the county assembly, as the case may be; and
- (iii) may order that disciplinary steps be taken against the accounting officer or other person responsible for the failure.

(2) The Auditor-General must submit to Parliament and the respective county assemblies-

- (a) by no later than 31 October of each year, the names of any county governments or county government entities which have failed to submit their financial statements to the Auditor-General in terms of this Act; and
- (b) at quarterly intervals thereafter, the names of any county governments or county government entities whose financial statements are still outstanding at the end of each interval.

Part 13: RESOLUTION OF FINANCIAL PROBLEMS

Identification of financial problems

- Primary responsibility. 151. (1) The primary responsibility to avoid, identify and resolve financial problems in a county rests with the county government itself.
- (2) A county must meet its financial commitments.
- (3) If a county encounters a serious financial problem or anticipates problems in meeting its financial commitments, it must immediately-
- (a) seek solutions for the problem;
 - (b) notify the Cabinet Secretary responsible for county governments and the Cabinet Secretary responsible for finance; and
 - (c) notify the organization of county governments.

National interventions

- National interventions 152. (1) If the Cabinet Secretary responsible for devolved government becomes aware that there is a serious financial problem in

a county, the Cabinet Secretary must promptly-

- (a) consult the governor of the county to determine the facts;
- (b) assess the seriousness of the situation and the county's response to the situation; and
- (c) in consultation with the Cabinet Secretary responsible for finance, determine whether the situation justifies or requires an intervention in terms of either Article 190 or Article 225 of the Constitution.

(2) If the financial problem has been caused by or resulted in a failure by the county to comply with an executive obligation in terms of legislation or the Constitution, and the conditions for an intervention in terms of section 190 (3) of the Constitution are met, the Cabinet Secretary must promptly decide whether or not to intervene in the county.

(3) If the Cabinet Secretary decides to intervene, section 158 applies.

(4) If the county has failed to approve a budget or any revenue-raising measures necessary to give effect to the budget, as a result of which the conditions for an intervention in terms of article 190(3) of the Constitution are met, Cabinet Secretary responsible for county governments must intervene in the county in accordance with the provisions of this Act.

(5) If the county, as a result of a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments, or admits that it is unable to meet its obligations or financial commitments, as a result of which the conditions for an intervention in terms of article 190 of the Constitution are met, the Cabinet Secretary responsible for county governments must intervene in the municipality in accordance with section 160 of this Act.

Discretionary interventions

153. (1) If the conditions for national intervention in a county in terms of section 190(3) of the Constitution are met and the Cabinet Secretary responsible for devolved government decides in terms of this Act to intervene in the county, the Cabinet Secretary responsible for devolved government after consulting the Cabinet Secretary responsible for may take any appropriate steps referred to in section 190 or Article 225 of the Constitution, including-

- (a) assessing the seriousness of the financial problem in the county;
- (b) seeking solutions to resolve the financial problem in a way that would be sustainable and would build the county's

capacity to manage its own financial affairs;

- (c) determining whether the financial problem, singly or in combination with other problems, is sufficiently serious or sustained that the county would benefit from a financial recovery plan and, if so, requesting any suitably qualified person or firm-
 - (i) to prepare an appropriate financial recovery plan for the county;
 - (ii) to recommend appropriate changes to the county's budget and revenue-raising measures that will give effect to the recovery plan; and
 - (iii) to submit the recovery plan and any recommendations referred to in subparagraphs (i) and (ii) to the Cabinet Secretary responsible for county governments within a period determined by the Cabinet Secretary; and
- (d) consulting the governor of the county to obtain the county government's co-operation in resolving the financial problem, and if applicable implementing the financial recovery plan.

(2) The Cabinet Secretary responsible for devolved government must submit any assessment in terms of subsection (1) (a), any determination in terms of subsection (1)(c) and a copy of any request in terms of subsection (1)(c), to the county, the Controller of Budget and the Cabinet Secretary responsible for finance.

(3) This section does not apply to a national intervention which is unrelated to a financial problem in a county.

Determination
of problems

154. (1) When determining for the purposes of section 137 the seriousness of a financial problem, all relevant facts must be considered, and the following factors, singly or in combination, may indicate a serious financial problem;

- (a) the county has failed to make payments as and when due;
- (b) the county has defaulted on financial obligations for financial reasons;
- (c) the actual current expenditure of the county has exceeded the sum of its actual current revenue plus available surpluses for at least two consecutive financial years;
- (d) the county had an operating deficit in excess of five per cent of revenue in the most recent financial year for which financial information is available;

- (e) the county is more than 60 days late in submitting its annual financial statements to the Auditor-General in accordance with this Act and article 190 (4) of the Constitution;
- (f) the Auditor-General has withheld an opinion or issued a disclaimer due to inadequacies in the financial statements or records of the county, or has issued an opinion which identifies a serious financial problem in the county;
- (g) any of the above conditions exists in a county public entity under the county's sole control, or in a county public entity for whose debts the county may be responsible, and the county has failed to intervene effectively; or
- (h) any other material condition exists which indicates that the county, or a county public entity under the county's sole control, is likely to be unable for financial reasons to meet its obligations.

Mandatory financial
interventions

155. (1) If a county, as a result of a crisis in its financial affairs, is in serious or persistent material breach of its obligations to provide basic services or to meet its financial commitments, or admits that it is unable to meet its obligations or financial commitments, the Cabinet Secretary responsible for county governments must promptly-

- (a) request the County Financial Recovery Service-
 - (i) to determine the reasons for the crisis in its financial affairs;
 - (ii) to assess the county's financial state;
 - (iii) to prepare an appropriate recovery plan for the county;
 - (iv) to recommend appropriate changes to the county's budget and revenue-raising measures that will give effect to the recovery plan: and
 - (v) to submit to the Cabinet Secretary responsible for county governments and the Cabinet Secretary responsible for finance-
 - (aa) the determination and assessment referred to in subparagraphs (i) and (ii) as a matter of urgency; and
 - (ba) the recovery plan and recommendations referred to in subparagraphs (iii) and (iv) within a period, not to exceed 90 days, determined jointly by the Cabinet Secretary responsible for county governments and the Cabinet Secretary responsible for

finance;and

- (b) consult the governor of a county to obtain the county government's co-operation in implementing the recovery plan, including the approval of a budget and legislative measures giving effect to the recovery plan.

(2) The Cabinet Secretary responsible for county governments must submit a copy of any request in terms of subsection (1)(a) and of any determination and assessment received in terms of subsection (1)(a) (v)(aa) to the county and the Cabinet Secretary responsible for finance.

(3) An intervention referred to in subsection (1) supersedes any discretionary intervention referred to in section 137, provided that any financial recovery plan prepared for the discretionary intervention must continue until replaced by a recovery plan for the mandatory intervention.

Determination criteria

156. (1) When determining whether the conditions for a mandatory intervention referred to in section 139 are met, all relevant facts must be considered.

(2) The following factors, singly or in combination, may indicate that a county is in serious material breach of its obligations to meet its financial commitments;

- (a) the county has failed to make any payment to a lender or investor as and when due;
- (b) the county has failed to meet a contractual obligation which provides security in terms of this Act;
- (c) the county has failed to make any other payment as and when due, which individually or in the aggregate is more than an amount as may be prescribed or, if none is prescribed, more than two per cent of the county's budgeted operating expenditure: or
- (d) the county's failure to meet its financial commitments has impacted or is likely to impact, on the availability or price of credit to other counties.

(3) Any recurring or continuous failure by a county to meet its financial commitments which substantially impairs the county's ability to procure goods, services or credit on usual commercial terms, may indicate that the county is in persistent material breach of its obligations to meet its financial commitments.

(4) Subsections (2) and (3) do not apply to-

- (a) disputed obligations as to which there are pending legal actions between the county and the creditor, provided that such actions are not instituted to avoid an intervention; or
- (b) obligations explicitly waived by the creditor.

Financial
plans

recovery

157. (1) Any suitably qualified person or firm may, on request by the Cabinet Secretary responsible for local government, prepare a financial recovery plan for a discretionary national intervention referred to in section 137.

(2) Only the County Financial Recovery Service may prepare a financial recovery plan for a mandatory provincial intervention referred to in section 139.

(3) When preparing a financial recovery plan, the person or firm referred to in subsection (1) or the County Financial Recovery Service must-

- (a) consult-
 - (i) the relevant county government;
 - (ii) the county's principal suppliers and creditors, to the extent they can reasonably be contacted;
 - (iii) Cabinet Secretary responsible for county governments and the Cabinet Secretary responsible for finance; and
 - (iv) the organization of county governments;
- (b) take into account-
 - (i) any financial recovery plan that has previously been prepared for the county government; and
 - (ii) any proposed financial recovery plan, or proposals for a financial recovery plan, that may be advanced by the county government or any creditor of the county; and
- (c) at least 14 days before finalising the plan-
 - (i) submit the plan for comment to-
 - (aa) the county government;
 - (ba) Cabinet Secretary responsible for county governments and the Cabinet Secretary responsible for finance;
 - (ca) organization of county governments;
 - (da) organization for county government workers and;

- (ea) any supplier or creditor of the county on request; and
- (fa) publish a notice in a newspaper of general circulation in the county, stating the place, including any website address, where copies of the plan will be available to the public free of charge or at a reasonable price; and inviting the local community to submit written comments in respect of the plan.

(4) The person charged with preparing the financial recovery plan or the County Financial Recovery Service must-

- (a) consider any comments received pursuant to subsection (3)(c);
- (b) finalise the financial recovery plan; and
- (c) submit the final plan to the Cabinet Secretary responsible for county governments and the Cabinet Secretary responsible for finance for approval in terms of this Act.

Aim of recovery plans

158. (1) A financial recovery plan shall be aimed at securing the county government's ability to meet its obligations to provide basic services or its financial commitments, and such a plan, whether for a mandatory or discretionary intervention-

- (a) must-
 - (i) identify the financial problems of the county;
 - (ii) be designed to place the county in a sound and sustainable financial condition as soon as possible;
 - (iii) state the principal strategic objectives of the plan, and ways and means for achieving those objectives;
 - (iv) set out a specific strategy for addressing the county's financial
 - (v) problems, including a strategy for reducing unnecessary expenditure and increasing the collection of revenue, as may be necessary;
 - (vi) identify the human and financial resources needed to assist in resolving financial problems, and where those resources are proposed to come from;
 - (vii) describe the anticipated time frame for financial recovery, and milestones to be achieved; and
 - (viii) identify what actions are necessary for the implementation of the plan, distinguishing

between actions to be taken by the county and actions to be taken by other parties; and

- (b) may-
 - (i) provide for the liquidation of specific assets, excluding those needed for the provision of the minimum level of basic county services;
 - (ii) provide for debt restructuring or debt relief in accordance with Part 3 of this Act;
 - (iii) provide for special measures to prevent unauthorised, irregular and fruitless and wasteful expenditures and other losses; and
 - (iv) identify any actual and potential revenue sources.

(2) In addition, a financial recovery plan-

- (a) for a mandatory intervention must-
 - (i) set spending limits and revenue targets;
 - (ii) provide budget parameters which bind the county government for a specified period or until stated conditions have been met; and
 - (iii) identify specific revenue-raising measures that are necessary for financial recovery, including the rate at which any county tax, fees and tariffs must be set to achieve financial recovery; and
- (b) for a discretionary intervention, may suggest for adoption by the county government-
 - (i) spending limits and revenue targets;
 - (ii) budget parameters for a specified period or until stated conditions have been met; and
 - (iii) specific revenue-raising measures that are necessary for financial recovery.

Approval of recovery plans

159. (1) On receipt, of a financial recovery plan pursuant to a discretionary intervention referred to in section 137, the Cabinet Secretary responsible for county governments may approve the recovery plan with or without amendments.

(2) On receipt of a financial recovery plan pursuant to a mandatory intervention referred to in section 139, the Cabinet Secretary responsible for county governments must verify that the process set out in section 141 has been followed and that the criteria contained in section 142 are met, and-

- (a) if so, approve the recovery plan; or
- (b) if not, direct what defects must be rectified.

(3) The Cabinet Secretary responsible for county governments must submit an approved recovery plan to-

- (a) the county government;
- (b) the Cabinet member responsible for finance;
- (c) the Controller of Budget and the Auditor-General; and
- (d) the organization of county governments.

Amendment
of recovery plans

160. (1) The Cabinet Secretary responsible for county governments may at any time, but subject to section 141(1) and (2), request any suitably qualified person or the County Financial Recovery Service to prepare an amended financial recovery plan in accordance with the directions of the Cabinet Secretary.

(2) Section 141, read with such changes as the context may require, apply to the amendment of a financial recovery plan in terms of this section.

(3) No amendment of a recovery plan may impede the implementation of any court order made or agreement reached in terms of the plan before the amendment.

Implementation
of discretionary recovery
plans

161. (1) If the financial recovery plan was prepared in a discretionary national intervention referred to in section 137, the county must-

- (a) implement the approved recovery plan; and
- (b) report monthly to the Cabinet Secretary responsible for county governments on the implementation of the plan, in such manner as the plan may determine.

(2) The financial recovery plan binds the county in the exercise of its executive authority, but only to the extent necessary to resolve the financial problems of the county.

(3) If the county cannot or does not implement the approved recovery plan, the Cabinet Secretary responsible for county governments may in terms of article 190 (3) and (4) of the constitution take further appropriate steps to ensure implementation of the plan.

Implementation
of mandatory recovery
plans

162. (1) If the recovery plan was prepared in a mandatory national intervention referred to in article 190 of the constitution-

- (a) the county must implement the approved recovery plan;
- (b) (b) all revenue, expenditure and budget decisions must be taken within the framework of, and subject to the limitations of, the recovery plan; and
- (c) (c) the county must report monthly to the Cabinet Secretary responsible for county governments on the implementation of the plan in such manner as the plan may determine.

(2) The financial recovery plan binds the county government in the exercise of both its legislative and executive authority, including the approval of a budget and legislative measures giving effect to the budget, but only to the extent necessary to achieve the objectives of the recovery plan.

(3) The President or the Cabinet Secretary responsible for county governments must in terms of either article 190 or article 192 of the constitution either-

- (a) dissolve the county assembly of the county, if the county government cannot or does not approve legislative measures, including a budget or any revenue-raising measures, necessary to give effect to the recovery plan within the time frames specified in the plan and-
 - (i) appoint an administrator until a newly elected county government has been declared elected; and
 - (ii) approve a temporary budget and revenue-raising measures, and other measures to give effect to the recovery plan and to provide for the continued functioning of the county; or
- (b) assume responsibility for the implementation of the recovery plan to the extent that the county executive committee cannot or does not take executive measures to give effect to the recovery plan.

(4) The Devolution Act apply when the President or Cabinet Secretary responsible for county governments intervenes or suspends county government in accordance with article 190 or article 192 of the constitution.

Review of interventions 163. (1) The Cabinet Secretary responsible for county governments must at least once in every three months-

- (a) review any discretionary national intervention referred to in section 137 or any mandatory national intervention referred to in section 139, including-

- (i) progress with resolving the county's financial problems and its financial recovery; and
 - (ii) the effectiveness of any financial recovery plan; and
- (b) submit progress reports and a final report on the intervention to-
- (i) the county assembly;
 - (ii) the Cabinet Secretary responsible for county governments;
 - (iii) the Senate; and
 - (iv) organization of county governments.

(2) The Cabinet Secretary responsible for county governments may request the person who prepared the recovery plan, or the County Financial Recovery Service, to assist the Cabinet Secretary responsible for county governments in complying with subsection (1).

Termination
interventions

of 164. (1) A discretionary intervention referred to in section 137 must end-

- (a) if it is terminated in terms of article 190(5) of the Constitution; or
- (b) when-
 - (i) the county is able and willing to fulfill the executive obligation in terms of legislation or the Constitution that gave rise to the intervention; and
 - (ii) the financial problem that has been caused by or has caused the failure by the county government to comply with that obligation is resolved.

(2) A mandatory intervention referred to in section 139 must end when-

- (a) the crisis in the county's financial affairs has been resolved; and
- (b) the county's ability to meet its obligations to provide basic services or its financial commitments is secured.

(3) When a national, the Cabinet Secretary responsible for county

governments must notify-

- (a) the county;
- (b) the Cabinet member responsible for county governments;
- (c) the Cabinet member responsible for finance;
- (d) any creditors having pending litigation against the county government;
- (e) the senate; and
- (f) organization of county governments.

Access to information

165. If the national government intervenes in a municipality in accordance with article 190 of the constitution, the national government and its representatives shall have access to such information, records and documents of the county or of any county public entity under the sole or shared control of the county as may be necessary for the intervention including for identifying or resolving the financial problem of the county.

Debt relief and restructuring

Legal rights

166. (1) Except as expressly provided for in this Part, nothing in this Part limits or affects -

- (a) the rights of any creditor or other person having a claim against a county;
- (b) any person's access to ordinary legal process in accordance with the common law and relevant legislation; or
- (c) the rights of a county government or county public entity, or of the parties to a contract with a county government or county public entity, to alternative dispute resolution mechanisms, notice procedures and other remedies, processes or procedures.

Application for stay of proceedings

167. (1) If a county is unable to meet its financial commitments it may apply to the High Court for an order to stay, for a period not exceeding 90 days all legal proceedings, including the execution of legal process, by persons claiming money from the county government or a county public entity under the sole control of the county.

(2) Notice of an application in terms of subsection (1) must be

given to-

- (a) the Cabinet Secretary responsible for county governments;
- (b) the Cabinet Secretary responsible for finance;
- (c) organization of county governments; and
- (d) to the extent that they can reasonably be contacted, all persons to whom the county government or, county public entity owes an amount in excess of a prescribed amount, or if no amount is prescribed, in excess of 1 million shillings.

(3) An application in terms of subsection (1) may for the purposes of article 190 of the Constitution be regarded as an admission by the county government that it is unable to meet its financial commitments.

Application
extraordinary relief

for 168. (1) A county may apply to the High Court for an order-

- (a) to stay, for a period not exceeding 90 days at a time, all legal proceedings, including the execution of legal process, by persons claiming money from the county government;
- (b) to suspend the county's financial obligations to creditors, or any portion of those obligations until the county can meet those obligations; or
- (c) to terminate the county's financial obligations to creditors, and to settle claims in accordance with a distribution scheme referred to in section 155.

(2) The Court may make an order in terms of subsection (1) only if-

- (a) the Cabinet Secretary responsible for county governments has intervened in terms of section 139 and a financial recovery plan to restore the county government to financial health has been approved for the county;
- (b) the financial recovery plan is likely to fail without the protection of such an order;
- (c) section 154 has been complied with, in the case of an application for an order referred to in subsection (1)(b): and

- (d) section 155(1) has been complied with, in the case of an application for an order referred to in subsection (1)(c).

(3) Notice of an application in terms of subsection (1) must be given to-

- (a) all creditors to whom the county government owes an amount in excess of a prescribed amount. or if no amount is prescribed, in excess of Kshs 1 million, in so far as those creditors can reasonably be contacted;
- (b) the Cabinet Secretary responsible for county governments;
- (c) the Cabinet Secretary responsible for finance; and
- (d) organization of county governments workers.

Suspension of financial obligations

169. (1) Before issuing an order in terms of section 153(l)(b) for the suspension of a county's financial obligations to creditors, the court must be satisfied that-

- (a) the county cannot currently meet its financial obligations to creditors; and
- (b) all assets not reasonably necessary to sustain effective administration or to provide the minimum level of basic county services have been or are to be liquidated in accordance with the approved financial recovery plan for the benefit of meeting creditors' claims.

Termination of obligations

of 170. (1) Before issuing an order for the termination of a county's financial obligations to creditors in terms of section 153(1)(c), the court must be satisfied that-

- (a) the county cannot meet its financial obligations to its creditors and is not likely to be able to do so in the foreseeable future;
- (b) all assets not reasonably necessary to sustain effective administration or to provide the minimum level of basic county services have been liquidated in accordance with the approved financial recovery plan for the benefit of meeting creditors' claims; and
- (c) all employees have been discharged except those affordable in terms of reasonably projected

revenues as set out in the approved financial recovery plan.

(2) If the court issues an order referred to subsection (1), the Cabinet Secretary responsible for county governments must appoint a trustee to prepare a distribution scheme for the proportional settlement of all legitimate claims against the municipality as at the date of the order.

(3) The claims must be settled against the amount realised from the liquidation of assets referred to in subsection (1)(b).

(4) A distribution scheme must-

- (a) determine the amount available for distribution;
- (b) list all creditors with claims which qualify for the purposes of the distribution scheme, indicating which of those are secured and the manner in which they are secured; and
- (c) provide for the distribution of the amount available amongst creditors in the following order of preference-
 - (i) first preference must be given to the rights of secured creditors as to the began;
 - (ii) thereafter the preferences provided for in the Bankruptcy Act, read with the necessary changes as the context may require, must be applied; and
 - (iii) thereafter non-preferent claims must be settled in proportion to the amount of the different claims.

(5) A distribution scheme may not be implemented unless approved by the court.

Matters to be prescribed

171. (1) The Cabinet Secretary responsible for county governments, must by regulation in terms of this Act-

- (a) provide for an equitable process for the recognition of claims against a county government for the purposes of sharing in a distribution scheme, provided that rejection of any claim does not prevent a creditor from proving the claim in a court; and
- (b) provide for public access to a distribution scheme.

County Financial Recovery Service

- Establishment 172. (1) The County Financial Recovery Service is hereby established as an institution within the public service of the national government.
- (2) The County Financial Recovery Service forms part of, and functions within, the national department for County governments.
- Functions and powers 173. (1) The County Financial Recovery Service-
- (a) must perform the duties and may exercise the powers assigned to the Service in terms of this Act;
 - (b) may, on the request by the Cabinet Secretary responsible for county governments, prepare a financial recovery plan for a county government or, with the approval of the Cabinet Secretary responsible for finance, instruct any suitably qualified person to prepare the plan in accordance with the directions of the Service;
 - (c) may, on request by the the Cabinet Secretary responsible for county government, , monitor the implementation of any financial recovery plans that it has prepared, and may recommend such amendments and revisions as are appropriate;
 - (d) may on request by any county government that is experiencing financial problems, and in co-ordination with any other county government level or national level efforts, assist the county government to identify the causes of, and potential solutions for these financial problems;
 - (e) may, with the approval of the principal secretary of the national department for county government obtain the services of any financial expert to perform any specific work for the Service: and

- (f) may collect information on county financial problems and on best practices in resolving such problems.

Appointment of Head

174. (1) The Cabinet Secretary responsible for county governments must appoint a person as the Head of the Service, subject to subsection ----- of the legislation governing the national public service.

(2) A person appointed as the Head of the Service holds office in the National Department for County governments on terms and conditions set out in a written employment contract, which must include terms and conditions setting performance standards.

Responsibilities of Head

175. (1) The Head of the Service-

- (a) is responsible for the performance by the Service of its functions and the exercise of its powers; and
- (b) takes all decisions of the Service in the performance of its functions and the exercise of its powers, except those decisions of the Service taken in consequence of a delegation in terms of section 162.

(2) The Head of the Service performs the functions of office subject to the directions of the Principal Secretary of the National Department for County governments.

Staff

176. (1) The staff of the County Financial Recovery Service consists of-

- (a) the Head of the Service;
- (b) (b) persons in the service of, or contracted by, the National Department for County governments and designated by the Principal Secretary of the National Department for County governments for the work of the Service; and
- (c) (c) persons seconded from an organ of state or organisation to the Service by agreement between the Principal Secretary and that organ of state or organisation.

Delegation

177. (1) The Head of the Service may delegate, in writing, any of the powers or duties of the Service to a member of the staff of the Service.

(2) A delegation in terms of subsection (1)-

- (a) must be in writing;
- (b) is subject to the limitations or conditions which the Head of the Service may impose; and
- (c) does not divest the Head of the Service of the responsibility concerning the exercise of the delegated power or the performance of the delegated duty.

(3) The Head of the Service may confirm, vary or revoke any decision taken in consequence of a delegation in terms of subsection (1), provided that no such variation or revocation of a decision may detract from any rights that may have accrued as a result of the decision.

Part 14: FINANCIAL MISCONDUCT

Disciplinary proceedings

Financial misconduct by
County officials

179. (1) The accounting officer of a county commits an act of financial misconduct if that accounting officer deliberately or negligently-

- (a) contravenes a provision of this Act;
- (b) fails to comply with a duty imposed by a provision of this Act on the accounting officer of a county;
- (c) makes or permits, or instructs another official of the county to make, an unauthorised, irregular or fruitless and wasteful expenditure; or
- (d) provides incorrect or misleading information in any document which in terms of a requirement of this Act must be-
 - (i) submitted to the governor or the county assembly, or to the Auditor-General, the National Treasury or other organ of state; or
 - (ii) made public.

(2) The chief financial officer of a county commits an act of financial misconduct if that officer deliberately or negligently-

- (a) fails to carry out a duty delegated to that officer in terms of this Act;
- (b) contravenes or fails to comply with a condition of any delegation of a power or duty in terms of section 79 or

81(1)(e);

- (c) makes or permits, or instructs another official of the county to make, an
- (d) unauthorised, irregular or fruitless and wasteful expenditure; or
- (e) provides incorrect or misleading information to the accounting officer for the purposes of a document referred to in subsection (1)(d).

(3) A senior manager or other official of a county exercising financial management responsibilities and to whom a power or duty was delegated in terms of section 79, commits an act of financial misconduct if that senior manager or official deliberately or negligently-

- (a) fails to carry out the delegated duty;
- (b) contravenes or fails to comply with a condition of the delegated power or duty;
- (c) makes an unauthorised, irregular or fruitless and wasteful expenditure; or
- (d) provides incorrect or misleading information to the accounting officer for the purposes of a document referred to in subsection (1)(d).

(4) A county executive must-

- (a) investigate allegations of financial misconduct against the accounting officer, the chief financial officer, a senior manager or other official of the county unless those allegations are frivolous, vexatious, speculative or obviously unfounded; and
- (b) if the investigation warrants such a step, institute disciplinary proceedings against the accounting officer, chief financial officer or that senior manager or other official in accordance with systems and procedures referred to in this Act and the Devolution Act and Urban Areas and Cities Act.

Financial misconduct by officials of County entities

180. (1) The accounting officer of a county public entity commits an act of financial misconduct if that accounting officer deliberately or negligently-

- (a) contravenes a provision of this Act;
- (b) fails to comply with a duty imposed by a

provision of this Act on the accounting officer of a county public entity;

- (c) makes or permits, or instructs another official of the county public entity to make an irregular or fruitless and wasteful expenditure; or
- (d) provides incorrect or misleading information in any document which in terms of this Act must be-
 - (i) submitted to the entity's board of directors or parent county or to the Auditor-General; or
 - (ii) made public.

(2) A senior manager or other official of a county public entity exercising financial management responsibilities and to whom a power or duty was delegated in terms of section 106, commits an act of financial misconduct if that senior manager or official deliberately or negligently-

- (a) fails to carry out the delegated duty;
- (b) contravenes or fails to comply with a condition of the delegated power or duty;
- (c) makes an irregular or fruitless and wasteful expenditure; or
- (d) provides incorrect or misleading information to the accounting officer for the purposes of a document referred to in subsection (1)(d).

(3) the county executive must-

- (a) investigate allegations of financial misconduct against the accounting officer, a senior manager or other official of the entity unless those allegations are frivolous, vexatious, speculative or obviously unfounded; and
- (b) if the investigation warrants such a step, institute disciplinary proceedings against the accounting officer, senior manager or official in terms of the provisions of the Devolution Act and the Urban Areas and Cities Act.

Criminal proceedings

Offences

181. (1) The accounting officer of a county is guilty of an offence if that accounting officer-

- (a) deliberately or in a grossly negligent way
 - (i) contravenes or fails to comply with a provision of this Act;
 - (ii) fails to take reasonable steps to implement the county's supplychain management policy referred to in Part 10;
 - (iii) fails to take all reasonable steps to prevent unauthorised, irregular or fruitless and wasteful expenditure; or
 - (iv) fails to take all reasonable steps to prevent corruptive practices-
 - (aa) in the management of the county's assets or receipt of money: or
 - (ba) in the implementation of the county's supply chain management policy;
- (b) deliberately misleads or withholds information from the Auditor-General on any bank accounts of the county or on money received or spent by the county; or
- (c) deliberately provides false or misleading information in any document which in terms of a requirement of this Act must be -
 - (i) submitted to the Auditor-General, the National Treasury or any other organ of state; or
 - (ii) made public.

(2) The accounting officer of a county public entity is guilty of an offence if that accounting officer-

- (a) deliberately or in a grossly negligent way-
 - (i) contravenes or fails to comply with a provision of section 94(2)(h), 95(1), 96(2), 97(a) or 99(2)(a), (c) or (e);
 - (ii) fails to take all reasonable steps to prevent irregular or fruitless and wasteful expenditure; or
 - (iii) fails to take all reasonable steps to prevent corruptive practices in the management of the entity's assets, receipt of money or supply chain management system;
- (b) deliberately misleads or withholds information from the

Auditor-General or the entity's parent county government on any bank accounts of the county public entity or on money received or spent by the entity; or

- (c) deliberately provides false or misleading information in any document which in terms of a requirement of this Act must be-
 - (i) submitted to the entity's parent county government, the Auditor-General, the National Treasury or any other organ of state; or
 - (ii) made public.

(3) A senior manager or other official of a county or county public entity exercising financial management responsibilities and to whom a power or duty was delegated in terms of section 79 or 106, is guilty of an offence if that senior manager or official deliberately or in a grossly negligent way contravenes or fails to comply with a condition of the delegation.

(4) A county assembly member is guilty of an offence if that member-

- (a) deliberately influences or attempts to influence the accounting officer, the chief financial officer, a senior manager or any other official of the county to contravene a provision of this Act or to refrain from complying with a requirement of this Act;
- (b) interferes in the financial management responsibilities or functions assigned in terms of this Act to the accounting officer of the county or delegated to the chief financial officer of the county in terms of this Act;
- (c) interferes in the financial management responsibilities or functions assigned in terms of this Act to the accounting officer of a county public entity under the sole or shared control of the county; or
- (d) interferes in the management or operational activities of a county public entity under the sole or shared control of the county.

(5) A county assembly member, an official of a county or county public entity, a member of the board of directors of a county public entity or any other person is guilty of an offence if that person deliberately or in a grossly negligent way-

- (a) impedes an accounting officer from complying with a

provision of this Act;

- (b) gives incorrect, untrue or misleading information material to an investment decision relating to borrowing by a county or county public entity;
- (c) makes a withdrawal in contravention of section 11;
- (c) fails to comply with section 49;
- (d) contravenes a provision of this Act; or
- (e) provides false or misleading information for the purposes of any document which must in terms of a requirement of this Act be-
 - (i) submitted to the county assembly, governor or accounting officer of a county or to the Auditor-General or the National Treasury; or
 - (ii) made public.

Penalties

182. A person is liable on conviction of an offence in terms of section 173 to imprisonment for a period not exceeding five years or to a fine of Kenya shillings one million determined in terms of applicable legislation.

General

Regulations on financial misconduct procedures and criminal proceedings

183. (1) The cabinet secretary for devolution, acting in consultation with the county public service commission, may make regulations prescribing-

- (a) the manner, form and circumstances in which allegations and disciplinary and criminal charges of financial misconduct must be reported to the respective county executive, county assembly and the Auditor General, including-
 - (i) particulars of the alleged financial misconduct; and
 - (ii) steps taken in connection with such financial misconduct;
- (b) matters relating to internal investigations by counties and county public entities of allegations of financial misconduct;
- (c) criminal charges be laid against a person for financial misconduct;

- (d)) criteria for the composition and functioning of a disciplinary board which hears a charge of financial misconduct;
- (e) the circumstances in which the findings of a disciplinary board and any sanctions imposed by the board must be reported to the Auditor-General; and
- (f) any other matters to the extent necessary to enforce the provisions of this Act.

PART 15: MISCELLANEOUS

Limitation of liability

184. (1) No County government or any of its political structures, political office-bearers or officials, no county government entity or its board of directors or any of its directors or officials, and no other organ of state or person exercising a power or performing a function in terms of this Act, is liable in respect of any loss or damage resulting from the exercise of that power or the performance of that function in good faith.

(2) Without limiting liability in terms of the common law or other legislation, a County government may recover from a political office-bearer or official of the County government, and a County government entity may recover from a director or official of the entity, any loss or damage suffered by it because of the deliberate or negligent unlawful actions of that political office-bearer or official when performing a function of office.

Delays and exemptions

185. (1) The Minister may by notice in the Gazette-

- (a) delay the implementation of a provision of this Act for a transitional period not exceeding five years from the date when this section takes effect; or
- (b) where practicalities impede the strict application of a specific provision of this Act, exempt any County, urban area and cities or municipal entity from, or in respect of, such provision for a period and on conditions determined in the notice.

(2) A delay or exemption in terms of subsection (1) may-

- (a) apply to-

- (i) counties generally; or
 - (ii) cities and urban areas generally;
 - (iii) county public entities generally; or
- (b) be limited in its application to a particular-
- (i) county;
 - (ii) kind of cities or municipality, which may, for the purposes of this section, be defined either in relation to a category, type or budgetary size of municipality or in any other manner;
 - (iii) county public entity; or
 - (iv) category of county public entities.

Transitional provisions 186 (1) Anything done in terms of a provision repealed by section 179(1), which can be done in terms of a provision of this Act, must be regarded as having been done in terms of this Act.

Repeal and amendment of legislation 187.

MEMORANDUM OF OBJECTS AND REASONS

Dated the.....2011.

MUSALIA MUDAVADI,

Deputy Prime Minister and Minister for Local Government.