

Report SCG
11/5/2022

PARLIAMENT OF KENYA

CUS

Recommended for approval
for tabling.



10/05/2022 12TH PARLIAMENT - THE SENATE

SENATE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION

A REPORT ON CONSIDERATION OF THE CONTROLLER OF BUDGET

REGULATIONS, 2021

RT-Hon. Speaker
You may approve for
tabling.
10/05/22

The Senate,
Clerk's Chambers,
Parliament Buildings,
P.O. Box 41842-00100,
Nairobi.

PAPERS LAID	
DATE	MAY 10 2022
TABLED BY	SEN M. FAKI
COMMITTEE	DELEGATED LEGISLATION
CLERK AT THE TABLE	M. AMBARDI

May, 2022

DC-EG
Recommended & Forwarded For Approval
09/05/2022

TABLE OF CONTENTS

TABLE OF CONTENTS	i
PREFACE	iv
Establishment of the Committee	iv
Membership of the Committee	iv
The Senate Sessional Committee on Delegated Legislation is comprised of the following Senators:- ...	iv
Acknowledgement	ii
CHAPTER ONE	1
INTRODUCTION	1
1.0 BACKGROUND	1
1.1 LEGAL BASIS	1
1.2 OVERVIEW OF THE REGULATIONS	1
1.2.1 Objectives of the Regulations	1
1.2.2 Submission and Review of the National Government and county government, planning and budget documents	2
1.2.3 Procedure for approval of withdrawal from Public funds	3
1.2.4 Monitoring, Evaluation and Reporting on Budget Implementation.	4
1.2.5 Investigations	5
1.2.6 Dispute Resolution and Complaint Handling	5
CHAPTER TWO	6
STAKEHOLDER ENGAGEMENT	6
2.0 CONSULTATION WITH STAKEHOLDERS	6
2.1 COMMENTS BY STAKEHOLDERS	7
2.1.1 The Cabinet Secretary, National Treasury and Planning	7
2.1.2 Submissions from the Governor, Central Bank of Kenya	8
2.1.3 Submissions from the Commission on Revenue Allocation	8
2.1.4 Submissions from the Office of the Auditor General	8
2.1.5 Submissions from Institute of Certified Public Accountants of Kenya (ICPAK)	8
2.1.6 Submissions from the Intergovernmental Relations Technical Committee (IGTRC)	10
2.1.7 Submissions from the County Assemblies Forum(CAF)	10
2.1.8 Submissions from the Council of Governors(COG)	11
CHAPTER THREE	12

COMMITTEE OBSERVATIONS	12
3.0 Committee Observations	12
CHAPTER FOUR.....	13
COMMITTEE RECOMMENDATION	13

PREFACE

Honourable Speaker,

Establishment of the Committee

The Senate Sessional Committee on Delegated Legislation is established under standing order 221 of the Senate Standing Orders. The Committee is mandated to scrutinize statutory instruments laid before the House to ensure that they are consistent with the provisions of the Statutory Instruments Act, 2013.

Membership of the Committee

The Senate Sessional Committee on Delegated Legislation is comprised of the following Senators:-

Sen. Mwinyihaji Mohammed Faki, MP- *Chairperson*

Sen. Agnes Kavindu Muthama MP- *Vice Chairperson*

Sen. Samuel Poghio, EGH, MP

Sen. Farhiya Ali Haji, CPA, MP

Sen. Judith Pareno, MP

Sen. Mary Seneta, MP

Sen. Abshiro Halake, MP

Sen. Samson Onge'ri, MP

Sen. Anwar Loitiptip, MP

Honourable Speaker,

Executive Summary of the Report

The Controller of Budget Regulations, 2021 were published by the Controller of Budget, on 3rd December, 2021 pursuant to section 25 of the Controller of Budget Act.

The Regulations were tabled before the Senate by the Senate Deputy Majority Leader on 9th February, 2022 and subsequently committed to the Senate Sessional Committee on

Delegated Legislation. Pursuant to section 15(2) of the Statutory Instruments Act, the Committee is required to scrutinize the Regulations.

The Sessional Committee on Delegated Legislation considered the Regulations and received submissions from the National Treasury, the Central Bank of Kenya (CBK), the County Assembly Forum(CAF), the Council of Governors(COG), the Office of the Auditor General, the Intergovernmental Governmental Relations Technical Committee (IGTRC), the Commission on Revenue Allocation(CRA) and the Institute of Certified Public Accountants, Kenya(ICPAK).

Honourable Speaker,

Some of the key observations by the Committee on the Controller of Budget Regulations, 2021, were that Regulation 22(3) of the Regulations contravenes provisions of the Public Finance Management Act, 2012 and that the penalties proposed in the Regulations were not deterrent.

Honourable Speaker,

After consideration of the Controller of Budget Regulations 2021, pursuant to section 15 (1) of the Statutory Instruments Act and Standing Order 221 (4) (b), the Sessional Committee on Delegated Legislation recommends that the Senate resolves that the Controller of Budget Regulations, 2021 be annulled.

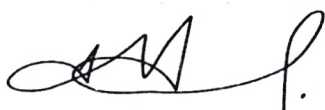
Acknowledgement

The Committee wishes to thank the Offices of the Speaker and the Clerk of the Senate for the support extended to it in the conduct of the public hearings and in fulfilling its mandate. Further, the Committee wishes to thank the stakeholders who made both written and oral submissions during the consideration of the Regulations.

Honourable Speaker,

It is now my duty, pursuant to section 15 (1) of the Statutory Instruments Act and standing order 221 (4) (b) of the Senate Standing Orders, to present the Report of the Sessional Committee on Delegated Legislation on the Controller of Budget Regulations, 2021.

I thank you, Honourable Speaker.



SEN. MWINYIHAJI MOHAMMED FAKI, MP
CHAIRPERSON,
SENATE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION
6TH MAY 2022

**ADOPTION OF THE REPORT OF THE SESSIONAL COMMITTEE ON THE
CONTROLLER OF BUDGET REGULATIONS, 2021**

**We, the undersigned Members of the Senate Sessional Committee on Delegated
Legislation do hereby adopt this Report at a virtual meeting held on 6th May, 2022 at
11.00 a.m.**

Sen. Mwinyihaji Mohammed Faki, MP - **Chairperson**

Sen. Agnes Kavindu Muthama MP - **Vice Chairperson**

Sen. Samuel Poghisio, EGH, MP

Sen. Farhiya Ali Haji, MP

Sen. Samson Ongeru, MP

Sen. Abshiro Halake, MP

Sen. Anwar Loitip, MP

Sen. Judith Pareno, MP

Sen. Mary Seneta, MP

DATED: 6TH MAY, 2022

CHAPTER ONE

INTRODUCTION

1.0 BACKGROUND

1. The Controller of Budget is charged with a broad mandate under the Constitution of Kenya and the Controller of Budget Act, 2016. In execution of this mandate, the Controller of Budget faces the following challenges-
 - (a) Incomplete reports from national and county governments entities
 - (b) Lack of standardization of documents required for request of withdrawal of funds
 - (c) Lack of procedures for handling complaints, dispute resolution and investigations
 - (d) Delay in receiving reports affecting the mandate of the Office of the Controller of budget to meet constitutional and statutory timelines.
2. It is on the basis of the above that the Controller of Budget published the Regulations to provide for the mechanisms to manage, guide and provide a uniform, efficient and effective procedure to ensure timely approvals of withdrawals, accurate and prompt reporting.

1.1 LEGAL BASIS

3. The Regulations are made pursuant to section 25 of the Controller of Budget Act

1.2 OVERVIEW OF THE REGULATIONS

1.2.1 Objectives of the Regulations.

4. The purpose of the Controller of Budget Regulations 2021 is to set out the procedure for –

- i. Authorization of withdrawal of funds from, the consolidated fund, the equalization fund, the County Revenue fund or any other public fund.
- ii. Enforcement of budgetary ceilings on national and county government expenditure.
- iii. Monitoring, evaluating, reporting and making recommendations to the national and county governments
- iv. Preparation and submission of quarterly reports and special reports.
- v. Publishing and publicizing information on budget implementation.
- vi. Conduct of investigations as provided under Article 252(1) (a) of the Constitution.
- vii. Conciliation, mediation and negotiations as provided Under Article 252(1) (b) of the constitution.

1.2.2 Submission and Review of the National Government and county government, planning and budget documents

5. Regulations 5 and 6 provide for the procedure for submission of requests to the controller of budget by the National and County Governments. The regulations propose that the National government and the county governments submit the following documents within fourteen days of approval or publication.
 - i. Medium Term Plan
 - ii. Budget Review and Outlook Paper
 - iii. Debt Management Strategy Paper
 - iv. Budget policy Statement (national government) and County fiscal strategy paper (county government)
 - v. Approved budget estimates or votes –on-account.
 - vi. Submitted budget estimates and appropriation bill in the case of vote on account.
 - vii. The appropriation Act.
 - viii. The equalization fund appropriation Act.

- ix. Presidential warrant (national), Governors warrant (county)
- x. Annual Cashflow plan
- xi. Names of authorized signatories for national exchequer accounts and equalization fund account, their specimen signatures and relevant mandate numbers.
- xii. Annual work plans
- xiii. The Division of Revenue Act
- xiv. Approved cash disbursement schedules for county governments
- xv. The County Allocation of Revenue Act other necessary documents listed in the regulations.

1.2.3 Procedure for approval of withdrawal from Public funds

- 6. Regulations 7 to 16 prescribe the procedure and format of approval for withdrawal of funds from a public fund. A request to the controller of budget by the National Treasury for approval of funds from the consolidated fund shall be made in a requisition form referred as Requisition Form A (annexed to the regulations) accompanied by;-national exchequer account balances and reconciled national exchequer ledgers, a record from Central Bank of Kenya of payments awaiting funding, a statement of revenue receipts into the Consolidated Fund and up to date national exchequer account statements.
- 7. The regulations also provide for the required supporting documents accompanying a withdrawal request for the purpose of development, recurrent expenditure, for payment of public debt and withdrawal from other funds other than the consolidated fund. The regulations also provide for the procedure in the case of a request for withdrawal of funds on vote on account.
- 8. The regulations stipulate that every request for approval for withdrawal of funds from the Consolidated Fund, the National Treasury shall ensure the request

submitted to the controller of Budget meet the criteria specified in the regulation for example the request should be in line with planning and budget documents and contain with regards to vote, programme, sub programme and project.

9. For the purpose of approval of the request by the Controller of Budget the regulations prescribe an approval form referred to as Form B which will be sent to the Central Bank and a copy to the National Treasury.
10. To prevent overdrawn of public funds the regulations provide that the National Treasury and the County Treasury shall give authority to the Controller of Budget to view the exchequer account balances and the Central Bank of Kenya shall grant the controller of Budget real-time viewer rights.

1.2.4 Monitoring, Evaluation and Reporting on Budget Implementation.

11. The regulations provide that on quarterly basis the controller of budget shall monitor, evaluate, report and make recommendations to Parliament, County Assembly, the National Treasury and County Treasury on compliance and measures to ensure compliance with budgetary ceilings. They stipulate that within one year of coming into force of the regulations, the Controller of Budget shall develop a monitoring, evaluation and reporting framework for purposes of carrying out its functions.
12. Further the regulations provide for the factors to be considered by the Controller of budget when undertaking monitoring, evaluation and reporting. The factors include; whether the budget estimates comply with the program based budgeting approach, whether the budget estimates comply with fiscal responsibility principles under the PFM, the reasonableness of revenue estimates, classification and composition between recurrent and development expenditure, linkage between policy, planning

and budgeting framework, compliance with statutory timelines for submission of budget documents among others.

1.2.5 Investigations

13. The regulations provide that the controller of budget may conduct investigations on his or her own motion or upon a complaint made by a member of the public on any matter on implementation of the budgets of the national and county governments agencies. The guiding principles for conducting the investigations as provided in the regulations include;-independence, objectivity, impartiality, fairness and integrity. The possible matters to be investigated may include;-a matter that raises serious material breach as provided for under section 94 of the Public Finance Management Act, 2012, noncompliance in budget implementation or relates to falsification of documents

1.2.6 Dispute Resolution and Complaint Handling

14. The regulations provide for procedure of handling dispute resolution by the Controller of Budget. The regulations provide that the Controller of Budget may resolve any matter relating to budget implementation, brought before him or her by conciliation, mediation or negotiations.

CHAPTER TWO

STAKEHOLDER ENGAGEMENT

2.0 CONSULTATION WITH STAKEHOLDERS

15. The Sessional Committee on Delegated Legislation received written submissions and held a meeting with stakeholders on 18th March, 2022. The Committee therefore considered the written and oral submissions from the following stakeholders:

- (1) The Cabinet Secretary for National Treasury ;
- (2) The Governor, Central Bank of Kenya ;
- (3) The Commission on Revenue Allocation;
- (4) Office of the Auditor General;
- (5) Institute of Certified Public Accountants of Kenya;
- (6) The Intergovernmental Technical Committee;
- (7) County Assemblies Forum;
- (8) Council of Governors.

16. During the physical meeting held by the stakeholders on 18th March, 2022 , the Controller of Budget was present and responded to issues raised by stakeholders. Documentation presented by the Controller of Budget during the meeting is at annex 9.

2.1 COMMENTS BY STAKEHOLDERS

The following is a summary of the submissions from stakeholders on the Regulations-

2.1.1 The Cabinet Secretary, National Treasury and Planning

17. The Cabinet Secretary Submitted that-

- (a) the Regulations had not fully captured the comments of the National Treasury received before publication of the Regulations
- (b) Regulations such as regulation 5(1r) included a number of administrative matters which could be addressed when need arose and hence no need to have this in the Regulations;
- (c) Some of the provisions within the regulations such as Regulations 5(1s)(3), are already contained in other statutes and the Constitution and as such are repetitive;
- (d) Regulation 22(3) on submission of quarterly reports to the controller by the 15th day after the end of each quarter contradicts section 83(3) and (5) of the PFM Act, 2012 which requires ministries, departments and agencies (MDAs) to submit the National Treasury and a copy to the controller of budget the quarterly report on the 15th day after the end of every quarter and the National Treasury to submit a consolidated quarterly report to parliament and a copy to the Controller of Budget by 45th day after the end of each quarter. However, in this case the PFM supersedes

18. While responding to issues raised by the National Treasury, the Controller of Budget indicated that the National Treasury had been involved during the drafting of the Regulations and correspondence had been forwarded to the CS, National Treasury to comment on the Regulations before publication. However, no response had been received from the National Treasury.

2.1.2 Submissions from the Governor, Central Bank of Kenya

19. The Governor, Central Bank of Kenya made his presentation to the committee via telephone and informed the Committee that the Controller of Budget had engaged the Central Bank since June, 2021 and various proposals made by the Central Bank had been incorporated in the Published Regulations.
20. The Governor however observed that the Regulations place a heavy reliance on exchange of paper to support authorization of withdrawal of funds. This is cumbersome, inefficient and expensive for counties. The CBK proposed digitization of the process.

2.1.3 Submissions from the Commission on Revenue Allocation

21. The Chairperson, Commission on Revenue Allocation submitted that the Regulations were clear and precise, however there were a few clauses within the Regulations which could be amended to make the Regulations better. The proposals made by the CRA are attached herein as annex 3.

2.1.4 Submissions from the Office of the Auditor General

22. The OAG supported the Regulations but proposed some proposals to strengthen the Regulations, key among which was the inclusion of pending bills as an issue which the controller of budget may resolve through mediation, conciliation and negotiation. The proposals made by the IGTRC are attached herein as annex 4.

2.1.5 Submissions from Institute of Certified Public Accountants of Kenya (ICPAK)

23. The Institute applauded the Controller of Budget for coming up with the Regulations that seek to give further guidance on how to comply with the Controller of Budget Act. However the Institute was of the view that there were a few clauses within the Regulations which could be amended to make the Regulations better. Some of the proposals-

- (a) Including professional bodies in the implementation of controller of budget findings and recommendations under Regulation 25

- (b) Including a framework to safeguard members of the public who lodge complaints on budget implementation
- (c) The prescribed form on how a complaint should be submitted as provided in the schedule to the regulations should be more detailed

The proposals made by the ICPAK are attached herein as annex 5.

2.1.6 Submissions from the Intergovernmental Relations Technical Committee (IGTRC)

24. IGTRC submitted among others, that-

- (a) Under Part V of the Regulations, on complaint handling, the CoB cannot be a judge in their own cause
- (b) The Regulations should have offered partnership opportunities between the CoB and the two levels of government to develop county focused public sensitization as formulation of budgets in this manner would afford the citizenry inclusivity

The proposals made by the IGTRC are attached herein as annex 6.

2.1.7 Submissions from the County Assemblies Forum(CAF)

25. CAF submitted that-

The Regulations would address the issues being faced by county assemblies in requisitioning funds through the CEC finance at the County Government as County Assemblies had been frustrated by the County Executive through alteration of the amounts of County Assembly's requisitions before going to the Controller of Budget. The requirement of withdrawing of funds authorized by Controller of Budget in 7 days or the failure to which the County treasury will be expected to resubmit requisition will go a long way in solving the issue.

26. The standard forms provided in the schedule and the provision of requisite list of documents required in withdrawing funds from the County Treasury will reduce the time consumed seeking authorization from the Controller of Budget thus increasing the efficiency of disbursement of funds to County Assemblies.

The proposals made by the CAF are attached herein as annex 7.

2.1.8 Submissions from the Council of Governors(COG)

The Council of Governors did not appear before the Committee but submitted a written document stating that agreed that they were consulted by CoB at every stage of the regulations and they have no objection to the Regulations. The letter submitted by COG is attached herein as annex 8.

CONSULTATIONS BEFORE MAKING THE STATUTORY INSTRUMENT

27. As per sections 5 and 5A of the Statutory Instruments Act, on proof and demonstration of sufficient public consultation, the Controller of Budget, in the explanatory memorandum indicated that a number of institutions had been consulted before publication of the Regulations. Evidence of the consultations in terms of letters, signatures and matrix highlighting how the controller of budget had dealt with each comment received was attached.

CHAPTER THREE

COMMITTEE OBSERVATIONS

3.0 Committee Observations

The Committee observed that-

1. Regulation 22(3) on submission of quarterly reports to the Controller of Budget by the 15th day after the end of each quarter contradicts section 83(3) and (5) of the Public Finance Management Act, 2012 which requires ministries, departments and agencies (MDAs) to submit to the National Treasury and a copy to the controller of budget the quarterly report on the 15th day after the end of every quarter and the National Treasury to submit a consolidated quarterly report to Parliament and a copy to the Controller of Budget by 45th day after the end of each quarter. The committee noted that while the timelines in the Regulations were in tandem with section 9 of the Controller of Budget Act, section 6 of the Public Finance Management Act, 2012, states that the PFM Act shall prevail in case of inconsistency with any other legislation in a number of matters including preparation and submission of budget estimates, including the time for doing so and raising of revenue and making of expenditures, which are activities in the implementation of the budget.
2. The Regulations do not address challenges currently being experienced such as pending bills. Regulations 8(2)(c)(iii) and 10 (2)(a)(iii) provide that an up to date schedule on pending bills and payment plan be provided by the national and county government during a request for approval for withdrawal of development expenditure, to enable the Controller of Budget track the payment of pending bills. The Committee observed that this was only a tracking mechanism and would not ensure actual settlement of pending bills before incurring new expenditure.

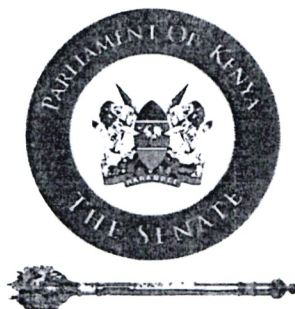
3. The penalties contained in the Regulations are not sufficient to deter non-compliance. Regulation 49 gives a blanket penalty by making reference to the Controller of Budget Act. The Committee noted that this was not sufficient deterrence, which would essentially jeopardize implementation of the Regulations.
4. The regulations are in line with Article 252(1) (a) of the Constitution which provides that an independent office holder may conduct investigations on its own initiative or on complaint made by a member of the public. However, the Committee noted that the investigative powers as contained in Part IV of the Regulations are likely to overlap with investigate powers of other government agencies such as the Ethics and Anti-Corruption Commission.

CHAPTER FOUR

COMMITTEE RECOMMENDATION

Based on the foregoing observations, and pursuant to section 15 (1) of the Statutory Instruments Act, 2013 and in accordance with standing order 221 (4) (b) of the Senate Standing Orders, the Senate Sessional Committee on Delegated Legislation recommends to the Senate that the Controller of Budget Regulations, 2021 be annulled.

ANNEXES



Please see attached in the appendix, the Controller of Budget Regulations, 2021 and submissions from:

1. **The National Treasury,**
2. **The Central Bank of Kenya (CBK),**
3. **The County Assembly Forum (CAF),**
4. **The Council of Governors (COG),**
5. **The Office of the Auditor General,**
6. **The Intergovernmental Governmental Relations Technical Committee (IGTRC),**
7. **The Commission on Revenue Allocation (CRA); and,**
8. **The Institute of Certified Public Accountants, Kenya (ICPAK).**



TWELFTH PARLIAMENT |SIXTH SESSION

MINUTES OF THE MEETING OF THE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION HELD ON FRIDAY, 18TH MARCH, 2022 AT THE SAROVA WHITESANDS BEACH RESORT AND SPA, MOMBASA AT 8.30 A.M.

PRESENT

- | | |
|---|-----------------------------------|
| 1. Sen. Mohamed Mwinyihaji Faki, MP | - Chairperson (<i>Chairing</i>) |
| 2. Sen. Agnes Kavindu Muthama, MP | - Vice Chairperson |
| 3. Sen. Poghiso Samuel Losuron, EGH, MP | - Member |
| 4. Sen. Farhiya Haji Ali, MP | - Member |
| 5. Sen. Judith Pareno, MP | - Member |
| 6. Sen. Mary Yiane Seneta, MP | - Member |

ABSENT WITH APOLOGIES

- | | |
|-------------------------------------|----------|
| 1. Sen. Prof. Samson Onger, EGH, MP | - Member |
| 2. Sen. Halake Abshiro, MP | - Member |
| 3. Sen. Anwar Loitip, MP | - Member |

SECRETARIAT

- | | |
|--------------------------|-------------------------------|
| 1. Mr. Boniface Kiambi | - Clerk Assistant - I |
| 2. Ms. Josephine Kusinyi | - Principal Legal Counsel - I |
| 3. Mr. Jonathan Lemurt | - Fiscal Analyst - I |
| 4. Mr. Joseph Tiyen | - Research Officer - II |
| 5. Ms. Winfred Ocholla | - Audio Officer - III |
| 6. Mr. Patrick Murindo | - Serjeant At Arms |
| 7. Ms. Agnes Muchoki | - Personal Secretary |
| 8. Mr. Adow Hassan | - Office Assistant |

MIN. NO. SEN/SCDL/023/2022:

PRELIMINARIES

The Chairperson called the meeting to order at 9:15 a.m. followed by a word of prayer led by Sen. Agnes Muthama, MP.

MIN. NO. SEN/SCDL/024/2022:

ADOPTION OF THE AGENDA

The Committee adopted the Agenda of the Sitting, as set out below, having been proposed by Sen. Judith Pareno, MP and seconded by Sen. Mary Seneta, MP :-

1. Prayer.
2. Adoption of the Agenda.
3. Consideration of the Controller of Budget Regulations, 2021 and Stakeholder Submissions.
4. Any Other Business.
5. Adjournment.

MIN. NO. SEN/SCDL/025/2022:

**CONSIDERATION OF ON THE
CONTROLLER OF THE BUDGET
(CoB) REGULATIONS, 2021**

STAKEHOLDER SUBMISSIONS

The following is a summary of the submissions from stakeholders on the Regulations:-

The Cabinet Secretary, National Treasury and Planning submitted that-

- a) the Regulations had not fully captured the comments of the National Treasury received before publication of the Regulations
- b) Regulations such as regulation 5(1r) included a number of administrative matters which could be addressed when need arose and hence no need to have this in the Regulations;
- c) Some of the provisions within the regulations such as Regulations 5(1s)(3), are already contained in other statutes and the Constitution and as such are repetitive;
- d) Regulation 22(3) on submission of quarterly reports to the controller by the 15th day after the end of each quarter contradicts section 83(3) and (5) of the PFM Act, 2012 which requires ministries, departments and agencies (MDAs) to submit the National Treasury and a copy to the controller of budget the quarterly report on the 15th day after the end of every quarter and the National Treasury to submit a consolidated quarterly report to parliament and a copy to the Controller of Budget by 45th day after the end of each quarter. However, in this case the PFM supersedes
- e) While responding to issues raised by the National Treasury, the Controller of Budget indicated that the National Treasury had been involved during the drafting of the Regulations and correspondence had been forwarded to the CS, National Treasury to comment on the Regulations before publication. However, no response had been received from the National Treasury.

Submissions from the Governor, Central Bank of Kenya

- a) The Governor, Central Bank of Kenya made his presentation to the committee via telephone and informed the Committee that the Controller of Budget had engaged the Central Bank since June, 2021 and various proposals made by the Central Bank had been incorporated in the Published Regulations.
- b) The Governor however observed that the Regulations place a heavy reliance on exchange of paper to support authorization of withdrawal of funds. This is

- c) The standard forms provided in the schedule and the provision of requisite list of documents required in withdrawing funds from the County Treasury will reduce the time consumed seeking authorization from the Controller of Budget thus increasing the efficiency of disbursement of funds to County Assemblies.

Submissions from the Council of Governors (COG)

The Council of Governors did not appear before the Committee but submitted a written document stating that agreed that they were consulted by CoB at every stage of the regulations and they have no objection to the Regulations.

MIN. NO. SEN/SCDL/026/2022:

**CONSIDERATION OF ON THE
CONTROLLER OF THE BUDGET
REGULATIONS, 2021**

COMMITTEE DELIBERATIONS

The Committee observed that:-

1. Regulation 22(3) on submission of quarterly reports to the Controller of Budget by the 15th day after the end of each quarter contradicts section 83(3) and (5) of the Public Finance Management Act, 2012 which requires ministries, departments and agencies (MDAs) to submit to the National Treasury and a copy to the controller of budget the quarterly report on the 15th day after the end of every quarter and the National Treasury to submit a consolidated quarterly report to Parliament and a copy to the Controller of Budget by 45th day after the end of each quarter. The committee noted that while the timelines in the Regulations were in tandem with section 9 of the Controller of Budget Act, section 6 of the Public Finance Management Act, 2012, states that the PFM Act shall prevail in case of inconsistency with any other legislation in a number of matters including preparation and submission of budget estimates, including the time for doing so and raising of revenue and making of expenditures, which are activities in the implementation of the budget.
2. The Regulations do not address challenges currently being experienced such as pending bills. Regulations 8(2)(c)(iii) and 10 (2)(a)(iii) provide that an up to date schedule on pending bills and payment plan be provided by the national and county government during a request for approval for withdrawal of development expenditure, to enable the Controller of Budget track the payment of pending bills. The Committee observed that this was only a tracking mechanism and would not ensure actual settlement of pending bills before incurring new expenditure.
3. The penalties contained in the Regulations are not sufficient to deter non-compliance. Regulation 49 gives a blanket penalty by making reference to the Controller of Budget Act. The Committee noted that this was not sufficient

cumbersome, inefficient and expensive for counties. The CBK proposed digitization of the process.

Submissions from the Commission on Revenue Allocation

The Chairperson, Commission on Revenue Allocation submitted that the Regulations were clear and precise; however there were a few clauses within the Regulations which could be amended to make the Regulations better.

Submissions from the Office of the Auditor General

The OAG supported the Regulations but proposed some proposals to strengthen the Regulations, key among which was the inclusion of pending bills as an issue which the controller of budget may resolve through mediation, conciliation and negotiation

Submissions from Institute of Certified Public Accountants of Kenya (ICPAK)

- a) The Institute applauded the Controller of Budget for coming up with the Regulations that seek to give further guidance on how to comply with the Controller of Budget Act.
- b) However the Institute was of the view that there were a few clauses within the Regulations which could be amended to make the Regulations better. Some of the proposals-
- c) Including professional bodies in the implementation of controller of budget findings and recommendations under Regulation 25
- d) Including a framework to safeguard members of the public who lodge complaints on budget implementation
- e) The prescribed form on how a complaint should be submitted as provided in the schedule to the regulations should be more detailed

Submissions from the Intergovernmental Relations Technical Committee (IGTRC)

- a) Under Part V of the Regulations, on complaint handling, the CoB cannot be a judge in their own cause.
- b) The Regulations should have offered partnership opportunities between the CoB and the two levels of government to develop county focused public sensitization as formulation of budgets in this manner would afford the citizenry inclusivity.

Submissions from the County Assemblies Forum (CAF)

- a) The Regulations would address the issues being faced by county assemblies in requisitioning funds through the CEC finance at the County Government as County Assemblies had been frustrated by the County Executive through alteration of the amounts of County Assembly's requisitions before going to the Controller of Budget.
- b) The requirement of withdrawing of funds authorized by Controller of Budget in 7 days or the failure to which the County treasury will be expected to resubmit requisition will go a long way in solving the issue.

deterrence, which would essentially jeopardize implementation of the Regulations.

4. The regulations are in line with Article 252(1) (a) of the Constitution which provides that an independent office holder may conduct investigations on its own initiative or on complaint made by a member of the public. However, the Committee noted that the investigative powers as contained in Part IV of the Regulations are likely to overlap with investigate powers of other government agencies such as the Ethics and Anti-Corruption Commission.

COMMITTEE RECOMMENDATION

Based on the foregoing observations, and pursuant to section 15 (1) of the Statutory Instruments Act, 2013 and in accordance with standing order 221 (4) (b) of the Senate Standing Orders, the Senate Sessional Committee on Delegated Legislation recommends to the Senate that the Controller of Budget Regulations, 2021 be annulled.

MIN. NO. SEN/SCDL/027/2022: ADJOURNMENT

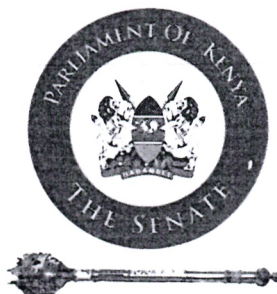
Having concluded the business as set out in the agenda, the meeting was adjourned at 4.20 p.m. The next meeting was to be on notice.



SIGNED:

DATE: 6TH MAY, 2022

SEN. MOHAMED MWINYIHAJI FAKI, MP
CHAIRPERSON,
SESSIONAL COMMITTEE ON DELEGATED LEGISLATION



TWELFTH PARLIAMENT |SIXTH SESSION

**MINUTES OF THE MEETING OF THE SESSIONAL COMMITTEE ON
DELEGATED LEGISLATION HELD ON MONDAY, 14TH MARCH, 2022 ON
THE ZOOM ONLINE MEETING PLATFORM AT 11:00 A.M.**

PRESENT

- | | |
|--|-----------------------------------|
| 1. Sen. Mohamed Mwinyihaji Faki, MP | - Chairperson (<i>Chairing</i>) |
| 2. Sen. Agnes Kavindu Muthama, MP | - Vice Chairperson |
| 3. Sen. Poghisio Samuel Losuron, EGH, MP | - Member |
| 4. Sen. Farhiya Haji Ali, MP | - Member |
| 5. Sen. Judith Pareno, MP | - Member |
| 6. Sen. Mary Yiane Seneta, MP | - Member |

ABSENT WITH APOLOGIES

- | | |
|-------------------------------------|----------|
| 1. Sen. Prof. Samson Onger, EGH, MP | - Member |
| 2. Sen. Halake Abshiro, MP | - Member |
| 3. Sen. Anwar Loitip, MP | - Member |

SECRETARIAT

- | | |
|--------------------------|-------------------------------|
| 1. Mr. Boniface Kiambi | - Clerk Assistant - I |
| 2. Ms. Josephine Kusinyi | - Principal Legal Counsel - I |
| 3. Mr. Jonathan Lemurt | - Fiscal Analyst - I |
| 4. Mr. Joseph Tiyan | - Research Officer - II |
| 5. Ms. Winfred Ocholla | - Audio Officer - III |

MIN. NO. SEN/SCDL/016/2022:

PRELIMINARIES

The Chairperson called the meeting to order at 11:15 a.m. followed by a word of prayer led by Sen. Agnes Muthama, MP.

MIN. NO. SEN/SCDL/017/2022:

ADOPTION OF THE AGENDA

The Committee adopted the Agenda of the Sitting, as set out below, having been proposed by Sen. Judith Pareno, MP and seconded by Sen. Mary Seneta, MP :-

1. Prayer.
2. Adoption of the Agenda.
3. Brief on the Controller of Budget Regulations, 2021 by the Parliamentary Budget Office.

4. Pre-publication Scrutiny of the National Health Insurance Fund (NHIF) Regulations, 2022.
5. Programme for a Consultative Workshop to consider Statutory Instruments before the Committee, scheduled for 17th to 19th March, 2022 in Mombasa County.
6. Report on the Pre-publication Scrutiny of the National Building Code, 2022.
7. Any Other Business.
8. Adjournment.

MIN. NO. SEN/SCDL/018/2022:

BRIEF ON THE CONTROLLER OF BUDGET REGULATIONS, 2021

The Committee was briefed that the Controller of Budget Regulations, 2021 were published by the Controller of Budget, on 3rd December, 2021 pursuant to section 25 of the Controller of Budget Act, 2016.

It was noted that the Regulations were tabled before the Senate by the Senate Deputy Majority Leader on 9th February, 2022 and subsequently committed to the Senate Sessional Committee on Delegated Legislation for scrutiny.

Recommendation

After deliberations, the Committee resolved to hold a Consultative Workshop to deliberate on the Regulations and to meet the stakeholders on 18th March, 2022, in Mombasa County.

MIN. NO. SEN/SCDL/019/2022:

PRE-PUBLICATION SCRUTINY OF THE NATIONAL HEALTH INSURANCE FUND (NHIF) REGULATIONS, 2022

The Committee was briefed on a request from the National Health Insurance Fund (NHIF) for a consultative engagement with the Committee, to undertake pre-publication scrutiny of draft Regulations developed subsequent to the assent and commencement of the National Health Insurance Fund (Amendment) Act, No. 1 of 2022.

Recommendation

After deliberations, the Committee resolved to hold a Consultative Workshop to meet with the National Health Insurance Fund (NHIF) and deliberate on the draft Regulations on 17th March, 2022, in Mombasa County.

MIN. NO. SEN/SCDL/020/2022:

PROGRAMME FOR A CONSULTATIVE WORKSHOP TO CONSIDER STATUTORY INSTRUMENTS BEFORE THE COMMITTEE, SCHEDULED FOR 18TH AND 19TH MARCH, 2022 IN MOMBASA COUNTY

The Committee considered and adopted the following Workshop Programme, to consider pending legislative business before the Committee from 16th to 20th March, 2022, in Mombasa County.

Day, Date and Time	Description of Activity	Responsibility
Wednesday, 16th March, 2022		
Departure from Nairobi to Mombasa		Committee Secretariat
Thursday, 17th March, 2022		
Session Chair: Sen. Farhiya Haji, MP.		
8.30 a.m. – 9.00 a.m.	Arrival registration and of participants.	Committee Secretariat
9.00 a.m. – 9.15 a.m.	Opening prayers and introduction of participants.	Sen. Abshiro Halake, MP
9.15 a.m. – 10.00 a.m.	Official Opening Remarks:	Sen. Mohamed Faki, MP Chairperson, The Senate Sessional Committee on Delegated Legislation. Dr. Peter Kamunyo, Chief Executive Officer, National Health Insurance Fund (NHIF). Representative from the Ministry of Health
10.00 a.m. – 10.30 a.m.	Health Break and Photo Session.	Committee Secretariat
Session Chair: Sen. Samuel Losuron Poghisio, EGH, MP		
10.30 a.m. – 11.30 a.m.	Pre-publication Scrutiny of the National Health Insurance Fund (NHIF) Regulations, 2022.	Dr. Peter Kamunyo, Chief Executive Officer, National Health Insurance Fund (NHIF)

	<i>(Session 1; Three draft Regulations)</i>	
11.30 a.m. – 12. 00 p.m.	Plenary	National Health Insurance Fund (NHIF) Officials
Session Chair: Sen. Abshiro Halake, MP.		
12. 00 p.m. – 1.00 p.m.	Pre-publication Scrutiny of the National Health Insurance Fund (NHIF) Regulations, 2022. <i>(Session 2; Two draft Regulations)</i>	Dr. Peter Kamunyo, Chief Executive Officer, National Health Insurance Fund (NHIF)
1.00 p.m. – 1.30 p.m.	Plenary	National Health Insurance Fund (NHIF) Officials
1.30 p.m. – 2.30 p.m.	Lunch Break	
2.30 p.m. – 3.30 p.m.	Committee In-House Meeting	Committee Secretariat
3.30 p.m. – 4.00 p.m.	Health Break and end of Day 2	
Friday, 18 th March, 2022		
Session Chair: Sen. Agnes Kavindu Muthama, MP.		
Vice Chairperson, the Senate Sessional Committee on Delegated Legislation		
8.30 a.m. – 9.00 a.m.	Arrival and registration of participants.	Committee Secretariat
9.00 a.m. – 9.15 a.m.	Opening prayers and introduction of participants.	Sen. Agnes Kavindu Muthama, MP, Vice Chairperson, the Senate Sessional Committee on Delegated Legislation.

9.15 a.m. – 10.00 a.m.	Opening Remarks:	Sen. Mohamed Faki, MP Chairperson, The Senate Sessional Committee on Delegated Legislation. Hon. (Amb.) Ukur Yatani, EGH, Cabinet Secretary, The National Treasury and Planning. Dr. Margaret Nyakang'o, CPA, Controller of Budget.
10.00 a.m. – 10.30 a.m.	Health Break and Photo Session.	Committee Secretariat
Session Chair: Sen. Samuel Losuron Poghizio, EGH, MP.		
10.30 a.m. – 10.45 a.m.	Overview of the Controller of Budget Regulations, 2021.	Dr. Margaret Nyakang'o, CPA, Controller of Budget.
10.45 a.m. – 12.30 p.m.	Stakeholder Engagements: <i>(25 minutes per presentation)</i>	1. The National Treasury and Planning 2. Central Bank of Kenya 3. Commission on Revenue Allocation 4. Council of Governors
12.30 p.m. – 1.00 p.m.	Plenary	Dr. Margaret Nyakang'o, CPA, Controller of Budget
1.00 p.m. – 2.00 p.m.	Lunch Break	
Session Chair: Sen. Farhiya Haji Ali, MP.		
2.00 p.m. – 3.50 p.m.	Stakeholder Engagements: <i>(25 minutes per presentation)</i>	5. County Assemblies Forum 6. Auditor - General 7. Institute of Certified Public Accountants of Kenya (ICPAK) 8. Intergovernmental Relations Technical Committee (IGRTC)

3.50 p.m. – 4.30 p.m.	Plenary	Dr. Margaret Nyakang'o, CPA, Controller of Budget.
4.30 p.m. – 4.45 p.m.	Health Break and end of Day 3	
Saturday, 19 th March, 2022		
Session Chair: Sen. Judith Pareno, MP.		
8.30 a.m. – 9.00 a.m.	Arrival and registration of participants.	Committee Secretariat
9.00 a.m. – 9.15 a.m.	Opening prayer and Introductions.	Sen. Agnes Kavindu Muthama, MP, Vice Chairperson, The Senate Sessional Committee on Delegated Legislation.
9.15 a.m. – 9.30 a.m.	Opening Remarks.	Sen. Mohamed Faki, MP, Chairperson, The Senate Sessional Committee on Delegated Legislation.
9.30 a.m. – 9.45 a.m.	Remarks by the management of the Ministry of Water, Sanitation and Irrigation.	Mr. James Macharia, EGH, Cabinet Secretary, Ministry of Water, Sanitation and Irrigation.
9.45 a.m. – 10.15 a.m.	Overview of the Designation of Basin Areas, 2021	Mohamed M. Shurie, Chief Executive Officer, Water Resources Authority.
Session Chair: Sen. (Prof.) Samson Onger, EGH, MP.		
10.15 a.m. - 11.00 a.m.	Stakeholder Engagement:	1. Council of Governors 2. County Assemblies Forum
11.00 a.m. – 11.30 a.m.	Plenary	Mohamed M. Shurie, Chief Executive Officer, Water Resources Authority.

11.30 a.m. – 11. 45 a.m.	Photo Session and Health Break.	Committee Secretariat
Session Chair: Sen. Mary Seneta, MP.		
11.45 a.m. – 12.00 p.m.	Remarks by the management of the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works.	Mr. James Macharia, EGH, Cabinet Secretary, Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works.
12.00 p.m. – 12.15 p.m.	Reconsideration of the Traffic (Driving Schools, Driving Instructors and Driving Licenses) Rules, 2020.	National Transport and Safety Authority (NTSA)
12.15 p.m. – 1.00 p.m	Stakeholder Engagement	Kenya Driving Schools Association
1.00 p.m. – 2.00 p.m.	Lunch Break	
Session Chair: Sen. Halake Abshiro, MP.		
2.00 p.m. - 3.00 p.m.	Plenary	National Transport and Safety Authority (NTSA)
3.00 p.m. - 4.30 p.m	Engagement with the County Assembly of Samburu - Select Committee on Delegated County Legislation.	Committee Chairpersons and Members of: 1. The Senate Sessional Committee on Delegated Legislation. 2. The County Assembly Select Committee Delegated County Legislation.
4.30 p.m. - 4.45 p.m.	Closing Remarks.	Chairperson, The County Assembly Select Committee Delegated County Legislation.

4.45 p.m. - 5.00 p.m.	Closing Ceremony.	Sen. Mohamed Faki, MP Chairperson, The Senate Sessional Committee on Delegated Legislation.
5. 00 p.m. – 5.15 p.m.	Health Break and end of Day 4	
Sunday, 20 th March, 2022		
Return to Nairobi		Committee Secretariat

MIN. NO. SEN/SCDL/021/2022:

**REPORT ON THE PRE-PUBLICATION
SCRUTINY OF THE NATIONAL
BUILDING CODE, 2022**

The Committee deferred the consideration of this agenda item.

MIN. NO. SEN/SCDL/022/2022:

ADJOURNMENT

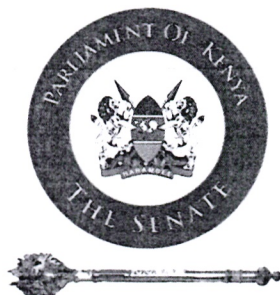
Having concluded the business as set out in the agenda, the meeting was adjourned at 12.15 p.m. The next meeting was to be on notice.



SIGNED:

DATE: 6TH MAY, 2022

**SEN. MOHAMED MWINYIHAJI FAKI, MP
CHAIRPERSON,
SESSIONAL COMMITTEE ON DELEGATED LEGISLATION**



TWELFTH PARLIAMENT | FIFTH SESSION

**MINUTES OF THE MEETING OF THE SESSIONAL COMMITTEE ON
DELEGATED LEGISLATION FOR ADOPTION OF THE REPORT ON THE
CONTROLLER OF BUDGET REGULATIONS, 2021, HELD ON FRIDAY, 6TH
MAY, 2022 ON THE ZOOM ONLINE MEETING PLATFORM AT 11:00 A.M.**

PRESENT

- | | |
|--------------------------------------|-----------------------------------|
| 1. Sen. Mwinyihaji Mohammed Faki, MP | - Chairperson (<i>Chairing</i>) |
| 2. Sen. Agnes Kavindu Muthama, MP | - Vice Chairperson |
| 3. Sen. Farhiya Haji Ali, MP | - Member |
| 4. Sen. Judith Pareno, MP | - Member |
| 5. Sen. Halake Abshiro, MP | - Member |

ABSENT WITH APOLOGIES

- | | |
|---|----------|
| 1. Sen. Poghiso Samuel Losuron, EGH, MP | - Member |
| 2. Sen. Prof. Samson Onger, EGH, MP | - Member |
| 3. Sen. Mary Yiane Seneta, MP | - Member |
| 4. Sen. Anwar Loiptip, MP | - Member |

SECRETARIAT

- | | |
|------------------------|-------------------------------|
| 1. Mr. Boniface Kiambi | - Clerk Assistant - I |
| 2. Ms. Josephine | - Principal Legal Counsel - I |
| 3. Mr. Joseph Tiyan | - Research Officer - II |
| 4. Ms. Winfred Ocholla | - Audio Officer - III |

MIN. NO. SEN/SCDL/034/2022:

PRELIMINARIES

The Chairperson called the meeting to order at 11:10 a.m. followed by a word of prayer led by Sen. Mwinyihaji Mohammed Faki, MP.

MIN. NO. SEN/SCDL/035/2022:**ADOPTION OF THE AGENDA**

The Committee adopted the agenda of the Sitting, as set out below, having been proposed by Sen. Judith Pareno, MP and seconded by Sen. Halake Abshiro, MP : -

1. Prayer.
2. Adoption of the Agenda.
3. Adoption of the Report on the Controller of Budget Regulations, 2021 before Tabling on Tuesday, 10th May, 2022.
4. Any Other Business.
5. Adjournment.

MIN. NO. SEN/SCDL/036/2022:**REPORT ON THE CONTROLLER OF BUDGET REGULATIONS, 2021**

After considering the Regulations, the Committee made the following observations:

1. Regulation 22(3) on submission of quarterly reports to the Controller of Budget by the 15th day after the end of each quarter contradicts section 83(3) and (5) of the Public Finance Management Act, 2012 which requires ministries, departments and agencies (MDAs) to submit to the National Treasury and a copy to the controller of budget the quarterly report on the 15th day after the end of every quarter and the National Treasury to submit a consolidated quarterly report to Parliament and a copy to the Controller of Budget by 45th day after the end of each quarter.
2. It was further noted that while the timelines in the Regulations were in tandem with section 9 of the Controller of Budget Act , section 6 of the Public Finance Management Act, 2012, states that the PFM Act shall prevail in case of inconsistency with any other legislation in a number of matters including preparation and submission of budget estimates, including the time for doing so and raising of revenue and making of expenditures, which are activities in the implementation of the budget.
3. The Regulations do not address challenges currently being experienced such as pending bills. Regulations 8(2)(c)(iii) and 10 (2)(a)(iii) provide that an up to date schedule on pending bills and payment plan be provided by the national and county government during a request for approval for withdrawal of development expenditure, to enable the Controller of Budget track the payment

of pending bills. The Committee observed that this was only a tracking mechanism and would not ensure actual settlement of pending bills before incurring new expenditure.

4. The penalties contained in the Regulations are not sufficient to deter non-compliance. Regulation 49 gives a blanket penalty by making reference to the Controller of Budget Act. The Committee noted that this was not sufficient deterrence, which would essentially jeopardize implementation of the Regulations.
5. The regulations are in line with Article 252(1) (a) of the Constitution which provides that an independent office holder may conduct investigations on its own initiative or on complaint made by a member of the public. However, the Committee noted that the investigative powers as contained in Part IV of the Regulations are likely to overlap with investigate powers of other government agencies such as the Ethics and Anti-Corruption Commission.

Committee Recommendation

Based on the foregoing observations, and pursuant to section 15 (1) of the Statutory Instruments Act, 2013 and in accordance with standing order 221 (4) (b) of the Senate Standing Orders, the Senate Sessional Committee on Delegated Legislation recommends to the Senate that the Controller of Budget Regulations, 2021 be annulled.

MIN. NO. SEN/SCDL/037/2022: ADJOURNMENT

Having concluded the business as set out in the agenda, the meeting was adjourned at 11.45 a.m. The next meeting would be on notice.



SIGNED:

DATE: 6TH MAY, 2022

**SEN. MOHAMED MWINYIHAJI FAKI, MP
CHAIRPERSON,
SESSIONAL COMMITTEE ON DELEGATED LEGISLATION**



REPUBLIC OF KENYA
THE NATIONAL TREASURY AND PLANNING

Telegraphic Address: 22021
FINANCE - NAIROBI
Fax No. 315770
Telephone: 2252200

THE NATIONAL TREASURY
P.O. Box 30007 - 00100
NAIROBI
KENYA

When replying please quote

Ref. No: RES 2121/21/01 (26)

January 31, 2022

Dr. Margaret Nyakang'o, CBS
Controller of Budget
Office of the Controller of Budget
Bima House
NAIROBI

Dear *Dr. Nyakang'o,*

RE: THE DRAFT CONTROLLER OF BUDGET REGULATIONS, 2021

We make reference to your letter Ref. No. COB/LA/REGS/VOL. 11 (5) dated 4th January, 2022 on the above subject matter.

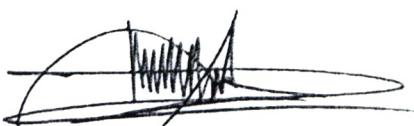
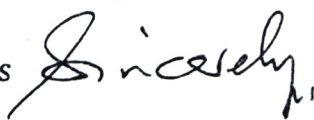
We have critically reviewed the letter and noted that the National Treasury's comments on the draft Controller of Budget Regulations, 2021 were not incorporated in the final document which you have indicated has been published and submitted to Parliament. In particular, please note the following:

- 1) Section 6(a) of the PFMA, 2012, state that the Act shall prevail in case of any other inconsistency between it and any other legislation on matters of budget preparation and submission. In this regard, all matters on budget preparation and submission should remain as stated in the PFMA, 2012 and subsequent Regulations and should therefore not be restated or reproduced in other Acts and Regulations as proposed by the Controller of Budget Regulations, 2021.

- 2) There is no requirement for the National Treasury to submit Planning documents to Controller of Budget such as Budget Policy Statement (BPS) and Budget Review and Outlook Paper (BROP) which are still subject to discussion in the National Assembly and the Senate. Matters touching on budget planning, approval and adoption are clearly covered in the public Finance Management Act, 2012 and attendant Regulations.
- 3) The only requirement is for the National Treasury to seek the views of Controller of Budget. In particular, Section 25(5) (c) of the PFMA, 2012 requires the National Treasury to seek and take into account the views of Controller of Budget before finalizing the BPS and submitting it to Cabinet and Parliament not later than 15th February each year.
- 4) Section 8 (a) of the Controller of Budget Act, 2016 requires that "for the purposes of enabling Controller of Budget to effectively oversee implementation of the Budget of the National Government, "the Cabinet Secretary/National Treasury shall at the time of submitting the Estimate to Parliament also submit a copy of the Estimates to the Controller of Budget. It is important to note that there are no legal requirements for submitting planning documents to the Controller of Budget.
- 5) The responsibility for monitoring, evaluation and reporting is assigned to the Cabinet Secretary responsible for matters of Planning as clearly spelt out in Para 136 (1) to (4) of PFM Regulations 2015. The Controller of Budget Regulations should be revised to eliminate areas of duplication in Para 19-21.

In this regard and due to the nature of the issues raised, the National Treasury wishes to reiterate the comments provided earlier vide letter Ref. No. Ref. RES 2121/21/01 dated 16th December, 2021 (**comments attached herewith**) on the draft Controller of Budget Regulations, 2021 for your further action.

Yours



HON. (AMB) UKUR K. YATANI, EGH

CABINET SECRETARY/NATIONAL TREASURY & PLANNING

Copy to: Hon. P. Kihara Kariuki, EGH
Attorney General
Office of the Attorney General
and Department of Justice
NAIROBI

Dr. Joseph Kinyua, EGH
Head of Public Service
Executive Office of the President
NAIROBI

Mr. Michael R. Sialai, CBS
Clerk of the National Assembly
Parliament House
NAIROBI

COMMENTS ON THE DRAFT CONTROLLER OF BUDGET REGULATIONS, 2021

- 1) Regulation 5(1) requires that within fourteen days, the National Treasury submits planning and budgeting documents to the Controller of Budget.

We however note that Section 8 (a) of the Controller of Budget Act, 2016 only requires the National Treasury to submit only a copy of the Estimates.

In addition, we note that Section 25(5) of the PFMA, 2012, requires the National Treasury to seek and take into account the views of Controller of Budget during the preparation of Budget Policy Statement.

We also note that, there is no legal requirement under the 2010 Constitution and the PFMA, 2012 that requires submission of BROP, BPS and DMSP to the Office of the Controller of Budget. These documents are accessible to all MDAs and stakeholders in the National Treasury website once approved. Similarly, annual work plans are prepared by Ministries, Departments and Agencies (MDAs) hence should be submitted by respective MDAs.

- 2) Regulation 5(r) requires the National Treasury to be providing reports on the adherence with advisories by the Controller of Budget on Budget Issues. *This is an administrative matter which can be addressed as and when the need arises rather than including it in the Regulations.*

- 3) Regulation 5(s) requires the National Treasury to provide documentary evidence of public participation undertaken in the development of the planning and budget documents. *In our view, Article 201 of the Constitution and PFMA, 2012 are very clear on the requirement of public participation on all the financial matters which the National Treasury has been committed in ensuring is done and we endeavor to consult citizens on all the Budget matters. It is the duty of the National Treasury to abide by the Constitution and PFMA, 2012. Consequently, the documentary*

evidence of public participation does not fall under the mandate of the Controller of Budget and hence the sub-regulation should be deleted.

- 4) *In view of this, we wish to propose amendments to the Regulation (5)(1) by deleting the sub-regulations 5(1) (a), 5(1) (b), 5(1) (c), 5(1) (d), 5(1) (l), 5(1) (r) and 5(1) (s).*
- 5) Regulation 5(3) requires that where a National Government entity revises its planning and budget documents in any given financial year, the Cabinet Secretary shall submit the documents to the Controller of Budget within fourteen days from the date of approval of revision. *In our view the above requested documents are provided for in Regulation 5(2) and hence 5(3) will be repetitive. In this regard, we wish to propose deletion of this Regulation. Further, Section 8 (a) of the Controller of Budget Act, 2016 and other PFM Laws do not envisage the National Treasury to submit planning documents to the Controller of Budget.*
- 6) Regulation 8(4)(a) requires that for every request for approval for withdrawal of funds from the Consolidated Fund, the National Treasury shall ensure the request submitted to the Controller of Budget is in line with the planning and budget documents. *The requirement for submission of planning documents should be deleted.*
- 7) Regulation 11(2) where a request for approval for withdrawal of funds under Supplementary Appropriation has been submitted, the Controller of Budget shall consider various factors. *We however wish to note that all the factors included in the Regulations are already provided in the Constitution and the PFMA, 2012 as the guiding principles in the preparation of the Supplementary Budgets. Therefore, Supplementary Budget is approved based on the legal guidelines as provided in the Constitution and the PFMA, 2012. In this regard, we propose deletion of this regulation since it is already covered in the Constitution and the PFMA, 2012.*

- 8) Regulations 17(1), 18 and 19 are repetitive and duplicative. *In view of this, we advise that these Regulations be merged to avoid duplication*
- 9) Regulation 20 provides that the Office of the Controller of Budget shall develop a monitoring and evaluation framework. *Given that the State Department for Planning is responsible for monitoring and evaluation, we suggest that this regulation should be deleted.*
- 10) Regulation 22(3) on "Submission of Quarterly reports to the Controller of Budget (OCOB): The OCOB is requesting the National Treasury to be submitting consolidated quarterly reports for the National Government by 15th day after the end of each quarter". *This Regulation contradicts Section 83 (3) and (5) of the PFMA, 2012, which requires Ministries, Departments and Agencies (MDAs) to submit to the National Treasury and a copy to the Controller of Budget the quarterly report on the 15th day after the end of every quarter; and the National Treasury to submit a consolidated quarterly reports to Parliament by 45th day after the end of each quarter to Parliament with a copy to Controller of Budget and Auditor General.*

We propose revision of the said regulation in line with the requirement of PFMA, 2012.

Governor

22 MAR 2022

BANKI
KUU YA
KENYA

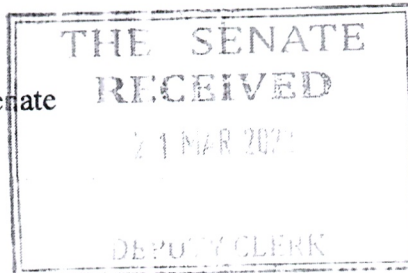


CENTRAL
BANK OF
KENYA

Mail: Selassie Avenue
P.O. Box 60010 - 00200 Nairobi, Kenya
Telephone: 2361003/24, Fax: 2716556

March 18, 2022

Mr. J. M. Nyegenye, CBS
Clerk of the Senate
Office of the Clerk of the Senate
Parliament Buildings
P.O. Box 41842-00100
NAIROBI



Dear Mr. Nyegenye,

CONSULTATIVE WORKSHOP OF THE SENATE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION TO CONSIDER THE CONTROLLER OF BUDGET REGULATIONS, 2021, TO BE HELD ON MARCH 18-19, 2022 IN MOMBASA COUNTY

Thank you for your letter dated March 3, 2022, inviting the Central Bank of Kenya (CBK) to a stakeholder consultative Workshop to deliberate on the Controller of Budget (CoB) Regulations, 2021 with the Senate Sessional Committee on Delegated Legislation.

I confirm that I engaged the Committee today morning by phone and made a presentation. As I informed the Committee, CBK has been involved in the stakeholder discussions on the Regulations since June 2021, and its various comments and proposals have been taken on board in the final draft.

However, CBK observes that the Regulations place heavy reliance on exchange of paper documentation between the various stakeholders (counties/MDAs/CoB) to support budget implementation and authorization for withdrawal of funds. Invariably therefore, it makes this process cumbersome, inefficient, and expensive especially for counties. If CoB were to adopt a secure, digitally-enabled system of transmission and exchange of these documents, it would make the process more efficient, convenient, cost effective to the MDAs, counties, CoB and CBK.

Accordingly, and as we informed the Committee, we would like to propose an amendment to **Regulation 55** as below, to recognize a process where exchange and transmission of documents that support budget implementation and authorization of withdrawal of funds is supported by digitally-/electronically-enabled channels.

"The Controller of Budget may digitize the processes of exchange and transmission of documents and operational procedures involved in budget implementation including authorization for withdrawal of funds and issue guidelines and directions to that effect"

② GAI-Delegated Leg. Session

Kindly Seal

22/03/22

Done ①

Kindly Seal

21/03/22

We trust that the Committee will find our proposal useful as it finalizes on the Regulations. We also take this opportunity to thank the Senate Committee and CoB for the commendable work they have done on the subject.

Sincerely,

A handwritten signature in dark ink, appearing to read 'Patrick Njoroge', with a stylized, cursive script.

Dr. Patrick Njoroge

cc: CPA Dr. Margaret Nyakang'o
Controller of Budget
BIMA House, 12th Floor
Harambee Avenue
P.O. Box 33616 00100
NAIROBI

REPUBLIC OF KENYA



COUNTY ASSEMBLIES' FORUM (CAF)

MEMORANDUM ON THE CONTROLLER OF BUDGET REGULATIONS 2021

TO: Mr. Jeremiah Nyegenye, CBS
Clerk of the Senate, Parliament of Kenya

FROM: County Assemblies Forum.

DATE: 18th March 2022.

SUBJECT: CAF Memorandum on the Controller of Budget Regulations, 2021.

1. Introduction

- 1.1. CAF appreciates the effort of the Office of the Controller of Budget for developing the Controller of Budget Regulations, 2021 to improve the efficacy and the efficiency of carrying out its mandate and further, appreciate the Senate Sessional Committee on Delegated Legislation for inviting us to contribute to these regulations. It is the Forum's belief that these regulations will solve the persistent budget implementation problems that are facing County Governments.

2. Background

- 2.1. The Controller of Budget Regulations, 2021 are being introduced pursuant to section 25 of the Controller of Budget Act, 2016 which stipulates: -
"That the Controller of Budget may make regulations generally, which shall be laid before Parliament, for better carrying out and giving effect to, any provision of this Act."
- 2.2. The objective of the draft regulations is to set out the procedure for authorization of withdrawal of funds; enforcement of budgetary ceilings; monitoring, evaluating, reporting and making recommendations to the national and county governments on measures to improve budget implementation; preparation and submission of quarterly reports and special reports; conduct of investigations and conciliation, mediation and negotiation. Further, the Draft regulations also provide for documentation to be provided to the Controller of Budget in the exercise of his or her powers and functions as well as the format for requisition and approval of withdrawal of funds.

3. General Comments

- 3.1. CAF takes the opportunity to appreciate the office of Controller of Budget for developing these regulations as they will address the issues being faced by county assemblies in requisitioning funds through the CEC finance at the County Government. County Assemblies have been frustrated by the County Executive through alteration of the amounts of County Assembly's requisitions before going to the Controller of Budget. There also been cases where the county executive has withheld the release of funds

to their respective county assembly even after the county assembly requisitioned the funds (*see Petition 17 of 2017: The County Assembly of Machakos v the Governor of Machakos and 5 others and Petition E002 of 2021 County Assemblies service Boards vs Governor Nyandarua County and CECM Finance and Controller of Budget*). The requirement of withdrawing of funds authorized by Controller of Budget in 7 days or the failure to which the County treasury will be expected to resubmit requisition will go a long way in solving this the aforementioned issue.

3.2. The standard forms provided in the schedule and the provision of requisite list of documents required in withdrawing funds from County Treasury will reduce the time consumed seeking authorization from the Controller of Budget thus increasing the efficiency of disbursement of funds to County Assemblies.

3.3. CAF recognizes these regulations will enable government institutions such as the national treasury and county treasuries to be more prudent, accountable and transparent in management of public finances.

3.4. CAF recognizes the lack of deterrence mechanisms in the Controller of Budget Act, 2016 to deal with government institutions that use inappropriate practices to withdraw public funds and do not use the funds in accordance to the budget's estimates provided. We implore senate to facilitate the necessary amendments to the Controller of Budget Act 2016 to enable the Office of Controller of Budget to ensure effective and efficient budget implementation across all government institutions.

Signature:

Date: 18th MARCH 2022

A handwritten signature in black ink, appearing to be 'Ndegwa Wahome'.

Hon. Ndegwa Wahome, MBS.

CAF Chairperson, CAF

THE MEMORANDUM ON THE CONTINUED OF BUDGET RECOMMENDATIONS

Section Recommended being amended	Recommended Amendment	Remarks
Regulations 23. The report submitted by an accounting officer for a county government entity or national government entity under regulation 22 shall include— (a) actual revenue receipts disaggregated by revenue streams including appropriation-in-aid; (b) report on payments made to the Consolidated Fund Services; (c) report on funds released and expenditure by programme, sub-programme and project against the budget estimates; (d) expenditures classified in economic classification as	No Amendment	Kindly provide a reporting format on this Regulation and further clarify what could constitute any other information as requested by the Controller of Budget, taking in account the comprehensive list provided under the regulation.

follows— (i) compensation to employees; (ii) use of goods and services; (iii) transfer to other levels of government; (iv) capital expenditure; and (v) development expenditure; (e) report on outstanding payments, overdue for over ninety days; (f) project implementation status report; (g) report on stalled projects and the work plan for completing the projects; (h) report on established funds by Parliament or a County Assembly; (i) projection of expected expenditure and revenue collection for the remainder of the financial year; (j) report on the receipts and expenditure of conditional or nonconditional grants; and (k) any other information that the Controller of Budget may require for reporting.		
--	--	--

Regulation 39 (3) Despite the provisions of sub-regulations (1) and (2), the Controller of Budget may, in his or her discretion, proceed to deal with a complaint in the public interest.	No Amendment	There is a need to clarify what the Controller of Budget means to deal with a complaint in the public interest with relation to Budget Implementation after a complaint has been withdrawn.
--	---------------------	--



COUNCIL OF GOVERNORS

Westlands Delta House 2nd Floor, Waiyaki Way.
P.O. BOX 40401-00100,
Nairobi.

Tel: (020) 2403314, 2403313
+254 718 242 203
E-mail: info@cog.go.ke

Our Ref: COG/6/10 Vol.10 (58)

9th March, 2022

Through: Excellency Governor

To: Mr. Mathew Buya Babwoya
Chairperson
CECM, Finance Planning & Economic Affairs Caucus
TANA RIVER COUNTY

CONSULTATIVE WORKSHOP OF THE SENATE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION TO CONSIDER THE CONTROLLER OF BUDGET REGULATIONS, 2021 TO BE HELD ON 18TH AND 19TH MARCH, 2022 IN MOMBASA COUNTY.

Reference is made to the letter from the Senate Ref: SEN/SCDL/CORR/2022/016 and dated 3rd March, 2022 on the above subject. *(a copy of the letter and regulations are herewith attached for your information and reference).*

The Council of Governors has been invited by the Senate Sessional Committee on delegated legislation to appear before the Committee and make submissions on **Friday, 18th March, 2022** in Mombasa County.

Noting that you participated in the development of the said regulations, we request you to participate in the aforementioned session on behalf of the Council. Of importance to note is that most of the proposed views have already been incorporated as per the attached letter from the Office of the Controller of Budget.

Our officers, Zipporah Muthama of zipporah.muthama@cog.go.ke /0722835626 and Steve Momanyi of stephen.momanyi@cog.go.ke /0706642219 will be available for further briefs.

We appreciate your leadership and continued support.

Mary Mwiti
Chief Executive Officer

OFFICE OF THE CONTROLLER OF BUDGET

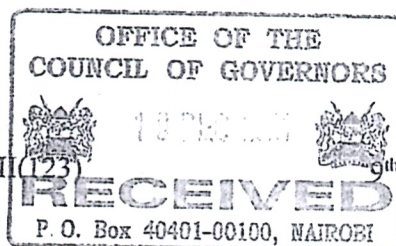


Tel: 020 2211068, 0738466721, 0709910000
Email: cob@cob.go.ke/info@cob.go.ke
Website: www.cob.go.ke



Bima House, 12th Floor
Harambee Avenue
P.O. Box 35616-00100
Nairobi Kenya

Ref. COB /COG/002/Vol. III (123)



9th December, 2021

Ms. Mary Mwiti
Chief Executive Officer
Council of Governors
P.O. Box 40401 – 00100
NAIROBI

Dear *Mary*

RE: SUBMISSION OF COMMENTS ON THE DRAFT CONTROLLER OF BUDGET REGULATIONS, (2021)

Reference is made to your letter Ref: COG/2/8 Vol.10 dated 20th September, 2021 on the captioned matter.

Please note that we took into consideration your proposals as follows:

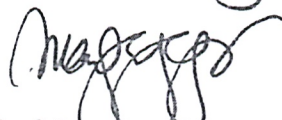
Regulation	Specific Provision in the regulation	Proposed Amendment	Action taken
Regulation 8 (5), 10(4), 11(3), 12(3) and 13(2) Request for approval of withdrawal of funds	The Controller of Budget may request additional information from a County Treasury/National Treasury/accounting officer of the fund for purposes of ensuring compliance before authorizing any withdrawal from a County Revenue	Deletion of Regulation 8(5),10(4),11(3),12(3) and 13(2)	Adopted

	Fund/Consolidated Fund/fund.		
Reg.13 Request for approval for withdrawal of funds from a public fund	13(4) Where the Controller of Budget declines to approve the request of withdrawal of funds, an accounting officer may resubmit the request upon addressing issues raised by the Controller of Budget	Amend to read as follows; Where the Controller of Budget in writing, within 7 days, declines to approve the request of withdrawal of funds, an accounting officer may resubmit the request upon addressing the issues raised by the Controller of Budget	Adopted
Reg.23 Content of the report	23(16) An accounting officer of a national government entity or a County government entity shall, not later than the 10 th day of each month submit a cumulative monthly financial and non-financial budgetary report for the preceding month to the Controller of Budget	Amend to read as follows: An accounting officer of a National government entity shall, not later than the 15 th day of each quarter submit a cumulative quarterly financial and non- financial budgetary report for the preceding quarter to the Controller of Budget	Regulation 23 is aimed at enabling the COB to prepare Budget Implementation Review Report(BIRR) within the Constitutional timelines. It is informed by and complies with Regulations 54 of the Public Finance Management (County Government) Regulations which requires the accounting Officers to

			submit monthly reports every 10th day of the month. Section 166 of the PFM refers to quarterly reporting which is not the subject of Regulation 23 of the Controller of Budget Regulations.
--	--	--	--

Thank you for your continued support.

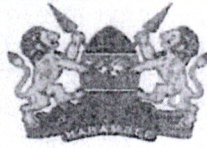
Yours *Sincerely,*



Dr. Margaret Nyakang'o
CONTROLLER OF BUDGET

REPUBLIC OF KENYA

Telegraphic Address
'Bunge', Nairobi
Telephone 2848000
Fax: 2243694
E-mail: csenate@parliament.go.ke



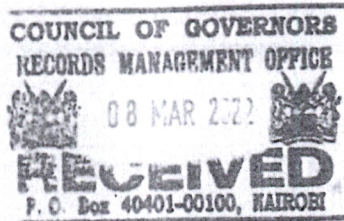
The Senate
Clerk's Chambers
Parliament Buildings
P. O. Box 41842 - 00100
NAIROBI, Kenya

PARLIAMENT
OFFICE OF THE CLERK OF THE SENATE

Ref. SEN/SCDL/CORR/2022/016

3rd March, 2022

Hon. Martin Wambora, EGH,
Chairperson,
Council of Governors,
Delta Towers, 2nd Floor,
P.O. Box 40401 - 00100,
NAIROBI.



Dear Sir,

RE: CONSULTATIVE WORKSHOP OF THE SENATE SESSIONAL COMMITTEE ON DELEGATED LEGISLATION TO CONSIDER THE CONTROLLER OF BUDGET REGULATIONS, 2021, TO BE HELD ON 18TH AND 19TH MARCH, 2022 IN MOMBASA COUNTY

The Senate Sessional Committee on Delegated Legislation is established under standing order 221(1) of the Senate Standing Orders and is mandated to scrutinize statutory instruments laid before the Senate.

The Controller of Budget Regulations, 2021 were tabled in the Senate on 9th February, 2022 and committed to the Sessional Committee on Delegated Legislation for scrutiny. At its Sitting held on 21st February, 2022, the Committee resolved to hold a consultative workshop to meet with stakeholders and to deliberate on the Regulations.

The purpose of this letter is to invite you to the Workshop to be held on 18th and 19th March, 2022 in Mombasa County, to make presentations as per the attached Programme. The Senate shall cater for the conferencing costs for the Workshop. We request that you cater for your travel expenses, accommodation and other incidentals.

Mr. Boniface Kiambi, Clerk Assistant (Phone number: 0722 - 370133, Email address: senatedelegatedke@gmail.com), is the Clerk to the Committee and responsible for all arrangements relating to this matter.

Yours

J. M. NYEGENYE, CBS,
CLERK OF THE SENATE.

Copy to: -

Ms. Mary Mwiti,
Chief Executive Officer,
Council of Governors,
Delta Towers, 2nd Floor,
P.O. Box 40401 - 00100,
NAIROBI.

PARLIAMENT OF KENYA



12TH PARLIAMENT - THE SENATE

**PROGRAMME FOR A CONSULTATIVE RETREAT TO CONSIDER
STATUTORY INSTRUMENTS BEFORE THE SENATE SESSIONAL
COMMITTEE ON DELEGATED LEGISLATION**

AND

**BENCHMARKING VISIT BY THE COUNTY ASSEMBLY OF SAMBURU
SELECT COMMITTEE ON DELEGATED COUNTY LEGISLATION**

17TH TO 20TH MARCH, 2022

**-----
MOMBASA COUNTY**

**The Senate,
Clerk's Chambers,
Parliament Buildings,
P.O. Box 41842-00100,
Nairobi.**

March 2022

**MANDATE OF THE SENATE SESSIONAL COMMITTEE ON
DELEGATED LEGISLATION**

The Senate Sessional Committee on Delegated Legislation is established under standing order 221(1) of the Senate Standing Orders and is mandated to scrutinize statutory instruments laid before the Senate.

PROGRAMME

Day, Date and Time	Description of Activity	Responsibility
Thursday, 17th March, 2022		
Travelling from Nairobi to Mombasa		Committee Secretariat
Friday, 18th March, 2022		
Session Chair: Sen. Agnes Kavindu Muthama, MP Vice Chairperson, the Senate Sessional Committee on Delegated Legislation		
8.30 a.m. – 9.00 a.m.	Arrival and registration of participants	Committee Secretariat
9.00 a.m. – 9.15 a.m.	Opening prayers and introduction of participants	Sen. Agnes Kavindu Muthama, MP, Vice Chairperson, the Senate Sessional Committee on Delegated Legislation
9.15 a.m. – 9.45 a.m.	Overview of the Mandate of the Senate Sessional Committee on Delegated Legislation	Ms. Josephine Kusinyi, Principal Legal Counsel, The Senate Sessional Committee on Delegated Legislation
9.45 a.m. – 10.30 a.m.	Official Opening Remarks	Sen. Mohamed Faki, MP Chairperson, The Senate Sessional Committee on Delegated Legislation

		Hon. (Amb.) Ukur Yatani, EGH, Cabinet Secretary, The National Treasury and Planning. Dr. Margaret Nyakang'o, CPA, Controller of Budget
10.30 a.m. – 11.00 a.m.	Health Break and Photo Session	Committee Secretariat
Session Chair: Sen. Samuel Losuron Poghiso, EGH, MP		
11.00 a.m. – 11.20 a.m.	Overview of the Controller of Budget Regulations, 2021	Dr. Margaret Nyakang'o, CPA, Controller of Budget
11.20 a.m. – 1.00 p.m.	Stakeholder Engagement <i>(25 minutes per presentation)</i>	1. The National Treasury and Planning 2. Central Bank of Kenya 3. Commission on Revenue Allocation 4. Council of Governors
1.00 p.m. – 2.00 p.m.	Lunch Break	
Session Chair: Sen. Farhiya Haji Ali, MP		
2.00 p.m. – 3.40 p.m.	Stakeholder Engagement	5. County Assemblies Forum 6. Auditor - General 7. Institute of Certified Public Accountants of Kenya (ICPAK) 8. Intergovernmental Relations Technical Committee (IGRTC)
3.40 p.m. – 4.40 p.m.	Plenary	Dr. Margaret Nyakang'o, CPA, Controller of Budget
4.40 p.m. – 5.00 p.m.	Health Break and end of Day 3	

Saturday, 19th March, 2022		
Session Chair: Sen. Mary Seneta, MP		
8.30 a.m. – 9.00 a.m.	Arrival and registration of participants	Committee Secretariat
9.00 a.m. – 9.15 a.m.	Opening prayer and introductions	Sen. Agnes Kavindu Muthama, MP, Vice Chairperson, The Senate Sessional Committee on Delegated Legislation
9.15 a.m. – 9.30 a.m.	Opening Remarks	Sen. Mohamed Faki, MP, Chairperson, The Senate Sessional Committee on Delegated Legislation
9.30 a.m. – 9.45 a.m.	Remarks by the management of the Ministry of Water, Sanitation and Irrigation.	Mrs. Sicily Kariuki, EGH Cabinet Secretary, Ministry of Water, Sanitation and Irrigation.
9.45 a.m. – 10.15 a.m.	Overview of the Designation of Basin Areas, 2021	Mohamed M. Shurie, Chief Executive Officer, Water Resources Authority.
10.15 a.m. - 11.00 a.m.	Stakeholder Engagement	1. Council of Governors 2. County Assemblies Forum
11.00 a.m. – 11.30 a.m.	Plenary	Mohamed M. Shurie, Chief Executive Officer, Water Resources Authority.
11.30 a.m. – 11.45 a.m.	Photo Session and Health Break	Committee Secretariat
Session Chair: Sen. Judith Pareno, MP		

11.45 a.m. – 12.00 p.m.	Remarks by the management of the Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works	Mr. James Macharia, EGH, Cabinet Secretary, Ministry of Transport, Infrastructure, Housing, Urban Development and Public Works
12.00 p.m. – 12.15 p.m.	Reconsideration of the Traffic (Driving Schools, Driving Instructors and Driving Licenses) Rules, 2020	National Transport and Safety Authority (NTSA)
12.15 p.m. – 1.00 p.m.	Stakeholder Engagement	Kenya Driving Schools Association
1.00 p.m. – 2.00 p.m.	Lunch Break	
Session Chair: Sen. Halake Abshiro, MP		
2.00 p.m. - 3.00 p.m.	Plenary	National Transport and Safety Authority (NTSA)
3.00 p.m. - 4.30 p.m.	Engagement with the County Assembly of Samburu - Select Committee on Delegated County Legislation	Committee Chairpersons and Members of: 1. The Senate Sessional Committee on Delegated Legislation 2. The County Assembly Select Committee Delegated County Legislation
4.30 p.m. - 4.45 p.m.	Closing Remarks	Chairperson, The County Assembly Select Committee Delegated County Legislation
4.45 p.m. - 5.00 p.m.	Closing Ceremony	Sen. Mohamed Faki; MP Chairperson, The Senate Sessional Committee on Delegated Legislation

4.45 p.m. – 5. 00 p.m.	Health Break and end of Day 4
Sunday, 20 th March, 2022	
Departure for Nairobi	Committee Secretariat

Rapporteurs

Ms. Josephine Kusinyi, Principal Legal Counsel
Mr. Joseph Tiyan, Research Officer

Programme Coordinator

Mr. Boniface Kiambi,
Clerk Assistant,
The Senate Sessional Committee on Delegated Legislation.
Email address: senatedelegatedke@gmail.com
Telephone number: 0722 - 370133

The Senate,
Clerk's Chambers,
Parliament Buildings,
P.O. Box 41842-00100,
Nairobi.

March 2022



THE CONTROLLER OF BUDGET ACT
(No. 26 of 2016)
THE CONTROLLER OF BUDGET REGULATIONS, 2021
AUDITOR-GENERAL'S PRESENTATION.

S/No.	REGULATION	COMMENTS	
1.	PART I- PRELIMINARY Regulation 2 (1) interpretation <i>-“budgetary Ceilings” has the meaning assigned to it under regulation 2 of the Public Finance Management (National Government) Regulations, 2015</i>	Inclusion of * and under regulation 2 of the Public Finance Management (County Government) Regulations, 2015	
	<i>‘County revenue fund Services’</i>	Inclusion and definition of county revenue fund services....”has the meaning assigned to	

		it under regulation 2 of the Public Finance Management (County Governments) Regulations, 2015	
	Vote-on-Account	Includeand the meaning assigned to it under regulation 2 of the Public Finance Management (County Government) Regulations	
2.	PART II- PROCEDURE FOR APPROVAL OF WITHDRAWAL FROM PUBLIC FUNDS Regulation 8(f); Request for approval of withdrawal of funds from the Consolidated Fund. <i>A request for approval for withdrawal of funds where there has been stoppage of funds under Article 225 (3) of the Constitution and section 97 of the Public Finance Management Act, 2012 shall be supported by.....</i>	Section 95 and Section 96 of the Public Finance Management Act (PFM Act), provide for stoppage of funds in National Government entities and County Governments respectively by the Cabinet Secretary. Section 97 outlines the procedure, hence proposing that reference be to Sections 95 and 96 of the Act as well as Article 225(3) of the Constitution.	
3.	Regulation 16(previous comments incorporated and now the National Treasury and County Treasury are now involved)	•	
4.	PART III- MONITORING, EVALUATION AND REPORTING ON BUDGET IMPLEMENTATION	Section 94 of Public Finance Management Act outlines additional indicators of serious or persistent material breach, i.e. Where a	

	Regulation 17 (2) *: Compliance and enforcement of budgetary ceilings. (Article 228 (4) of the Constitution of Kenya: Controller of budget shall oversee the implementation of budgets.....by authorising withdrawals from public funds... (In undertaking this mandate, material breaches, serious or persistent should be taken into consideration and should not be limited to matters budgetary ceilings).	State organ or public entity- (i) Has failed to make any payments as and when due; (ii) Has defaulted on financial obligations (iii) Had an operating deficit in excess of a percentage of revenue in the most recent financial year available as prescribed in the Regulations. (iv) Is more than sixty (60) days late in submitting its annual financial statements to the Auditor-General in accordance with this Act or any other legislation. (There are other issues as outlined above to be taken into consideration by Controller of Budget). Role of the Controller of Budget vis-à-vis that of the Cabinet secretary in Sections 95 and 96 of the Public Finance Management Act, above).	
5.	Regulation 20: Development of monitoring, evaluation and reporting framework.	(Responsibilities of accounting officers for national government entities, Parliament and the Judiciary) Section 68(4) of the Public Finance Management Act provides that;	

		Not later than three months after the National Assembly has adopted a report by a relevant Committee of the National Assembly in respect of a report submitted by the Controller of Budget under Article 228(6) of the Constitution, an accounting officer shall- (a) Prepare a report on actions taken by the entity to implement any recommendations made in the committee's report as adopted by the National Assembly; and (b) Submit the report to the National Assembly and in case of a national government entity, copy to the National Treasury and the Controller of Budget. Section 149 (3) (Responsibilities of accounting officers designated for county government entities) ..not later than three months after the county assembly has adopted a report by a committee of the county assembly with respect to a report submitted by the Controller of Budget under Article 228 (6) of the Constitution, an accounting officer shall, for each entity for which the officer is designated- (a) Prepare a report on actions taken by	
--	--	--	--

		the entity to implement any recommendations made in the committee's report as adopted by the county assembly; and (b) Submit the report to the county assembly with a copy to the County Treasury. Follow up and tracking of COB recommendations and its implementation in line PFM Act, as outlined above. How do they monitor? Process should be in the regulations •	
6.	Regulation 21 (b) and (m) speak to the same principles of Public Finance as contained in Article 201 of the Constitution.		
7.	Regulation 22; <i>Submission of Quarterly report to the Controller of Budget.</i> <i>..... in respect of the entity in a manner specified by the Controller</i>	Section 83 (2) of the Public Finance Management Act, provides.. - In preparing a quarterly report for a National government entity, the accounting officer shall ensure the report - (1) Is in a form that complies with the standards prescribed by the Public Sector Accounting Standards Board as provided in Section 83 (2) (b)	
8.	Regulation 22 (2)	Section 83 (3) & (4) of Public Finance Management Act and Section 166 (3) & (4),	

	Not later than 10 th day	respectively.. Provides that (3) not later than fifteen (15) days at the end of each quarter, the accounting officer shall submit the quarterly report to Cabinet secretary responsible for the entity and the National Treasury. 83(4) The Cabinet Secretary responsible for an entity shall forward a copy of the report to the Cabinet Secretary and the Controller of Budget.	
9.	Regulation 22 (3) Not later than the 15th day after the end of each quarter, the national treasury and county treasury shall consolidate the quarterly reports under sub-regulation 2 and submit them to the Controller of budget.	Section 83 (5) ...not later than forty five days after the end of each quarter, the National Treasury shall consolidate the quarterly reports and submit them to the Controller of Budget, Auditor-General and the Commission on Revenue allocation.	
10.	Regulation 23: Content of the Report.	Consider inclusion of the extent of implementation of previous CoB recommendations to accounting officer (align to section 68(4) on Responsibilities of accounting officers of). - Does COB have to wait for quarterly reports especially on incidences that CoB comes across that warrant immediate action.	

11.	PART IV- INVESTIGATIONS Regulation 27 (3); <i>Investigating Officers.</i>	- Cob may delegate investigative powers to members of staff. May also solicit assistance from other public entities e.g. with EACC and DCI - Propose to expunge section 27(4(a). (c)	
12.	Regulation 29 (2)(a); <i>Procedure for conducting investigations.</i> in this regulation, a matter to be investigated raises	- Earlier position on Regulation 17	
13.	Regulation 29(3): <i>Procedure for conducting investigations.</i>	- Need to inform the entity or person of the ongoing investigation. To enable give the consent alluded to in Regulation 30.	
14.	Regulation 32 (2) : <i>Conduct of investigation on stoppage of funds.</i>	- As read currently, Regulation (32) (2) occasions an instance of overlap of mandate on the powers of assessment by the Cabinet Secretary given under section 93 of the Public Finance Management Act. - Mandate should stop at investigations on serious or persistence material breach and as outlined in sub rule 3. - If during the investigation an economic crime is realized, there should be provision to forward the matter to investigative agency.	

15.	PART V- COMPLAINT HANDLING Regulation 35 (2); <i>Oral Complaints to be reduced in writing.</i>	<i>Proposing to include date of the complaint :</i> <i>A written complaint shall be in such manner as the Controller of Budget may determine and shall include-</i> <i>(a) The name and contact details of the complainant;</i> <i>(b) The particulars of the respondent; and</i> <i>(c) The substance of the complaint in sufficient detail to enable the Controller of Budget to act.</i>	
16.	PART VI- DISPUTE RESOLUTION Regulation 44: <i>Mediation, Conciliation and negotiation.</i> Regulation 45 (2)* (4)	Propose to include pending bills Indicate number of members on the panel constituted by the Controller of Budget in this sub regulation. (odd number) *editorial renumber from sub regulation 4,5,6 and 7	

CPA Nancy Gathungu, CBS
AUDITOR-GENERAL



SUBMISSIONS ON DRAFT CONTROLLER OF BUDGET REGULATIONS, 2021

BY

THE INTERGOVERNMENTAL RELATIONS TECHNICAL COMMITTEE

9th March 2022

S/NO	PROVISION	SUBMISSIONS BY IGRTC
1.	Part V of the Regulations provides for the jurisdiction of the COB in dispute resolution by stating that “the Controller of Budget may resolve any matter, relating to budget implementation, brought before him or her by conciliation, mediation or negotiation as provided under Article 252(1) (b) of the Constitution. (Regulation 32) Regulation 37 (1) provides that where, in the opinion of the COB, a complaint does not merit further consideration, he or she may discontinue further proceedings on the complaint, record his or her reasons and notify the complainant within 14 days. The Regulations further provide that the Controller of Budget shall inform the complainant of the right to appeal the decision. Regulation 38 (1) on the other hand provides that	The principles of natural justice comprise of the rule against bias (<i>nemo iudex in causa sua</i> – no one should be a judge in his own cause) and the right to a fair hearing (<i>audi alteram partem</i> – hear the other side). The rules of natural justice are minimum standards of fair decision-making imposed by the common law on persons or bodies who are under duty to ‘act judicially.’ In the provisions for dispute resolution under the Regulations, the COB violates the tenets of natural justice as the COB is expected to handle complaints both at the initial and review stage. In <i>Pastoli v Kabale District Local Government Council and others</i> (2008) 2 EA 300, the Court held that <i>an essential requirement for the performance of any judicial or quasi-judicial function is that the decision makers</i>

	where a complaint has been discontinued under regulation 37, the complainant may, in writing, apply to the Controller of Budget for a review of the decision, while Regulation 47 provides that in the determination of complaints and dispute resolution under these Regulations, the Controller of Budget shall have due regard to the principles of natural justice and shall not be bound by any legal or technical rules of evidence applicable to proceedings before a court of law.	<i>observe the principles of natural justice.</i> A decision is unfair if the decision maker deprives himself of the views of the person who will be affected by the decision. If indeed the principles of natural justice are violated in respect of any decision, it is indeed immaterial whether the same decision would have been arrived at in the absence of the departure from essential principle of justice. The decision must be declared to be no decision.
2.	The tasks that go into the budget formulation process include preparation and discussions with the various stakeholders; and approval of the County Integrated Development Plan (CIDP) (Section 126 of PFM Act, 2012), County Budget Review and Outlook Paper (CBROP) (Section 118 of PFM Act, 2012) and County Fiscal Strategy Paper (CFSP) (Section 117 of PFM Act 2012). While the Regulations advocate for a consultative budget making process through public participation,	An impediment to the quality of participation made by the citizenry is premised on two main issues: a) lack of access to information b) inability to understand the information availed. The Regulations should have offered opportunities of partnership and cooperation between the COB and the two levels of government as envisaged in Article 189 of the COK, to develop county focused public sensitization as formulation of budgets in this

	the Regulations should have leveraged on the opportunity to promote access to information through a comprehensive framework for addressing the unique needs of each county with regards to public sensitization. Article 35 of the Constitution which provides that the public has the right to access any information held by the state and that the State shall publish and publicize any important information affecting the nation. This is because the citizens hold a complimentary role with the COB and the two levels of government in the budget making and implementation process.	manner would afford the citizenry the comprehensiveness, credibility, transparency and inclusivity to attain the objectives of devolution.
3.		The Regulations must enhance the dissemination of the budgetary documents and the legal frameworks to all relevant stakeholders.
4.		The Regulations should promote the customization of the supplementary budget making processes to ensure all the stakeholders

		are involved.
--	--	---------------

COMMENTS ON THE DRAFT CONTROLLER OF BUDGET REGULATIONS,
2022.

INSTITUTION: COMMISSION ON REVENUE ALLOCATION **DATE:** 13TH March
2022

General Comments:

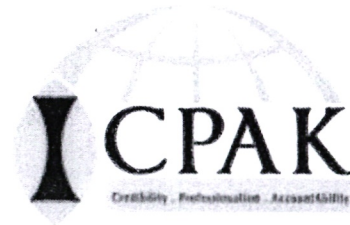
- a) The regulations generally are very clear and precise

S/No	Regulation No.	Provisions of the Regulations*	Rationale for Amendment Recommendation	Proposed Amendment**
1.	Regulation 3 PART I— PRELIMINARY	These Regulations shall apply to— (a) Parliament; (b) Judiciary; (c) a County Assembly; (d) the National Treasury; (e) a County Treasury; (f) a National Government entity; (g) a County Government entity; (h) Commissions and Independent offices; (i) state officers; (j) accounting officers; (k) receiver of revenue; (l) public officers; and (m) any other person performing any act or doing such thing that is provided for under these Regulations.	The Controller of budget approval is for all public offices that access public funds Risk of some funds left out.	Delete all the named institution and insert “These Regulations shall apply to all public offices that access public finances from the funds in Regulation 4(1)(a) Refer to the Constitution

2.	Regulations 10 Request for approval of withdrawal of funds from County Revenue Fund.	(3) For every request for approval for withdrawal of funds from the County Revenue Fund, the County Treasury shall ensure the request submitted to the Controller of Budget— (c) does not exceed budgetary ceilings.	What enforceability mechanisms in place for non-compliance?	Insert: (d) In the event that the County government does not comply to the ceilings, the COB shall only authorize any amount that exceeds the CRA ceilings.
3.	Regulation 11 Request for approval of withdrawal of funds under Article 223(1) of the Constitution.	(2) Where a request for approval for withdrawal of funds under supplementary appropriation has been submitted, the Controller of Budget shall consider the following factors—	Once an institution has obtained all clearances, the COB should approve withdrawal based on the law. There is no need for institutions to justify why they need supplementary appropriations to COB	Delete this provision
4.	Regulation 10(e)	Ensure public participation especially from CBEF	PFM section 137 requires consultation on budget with CBEF	Insert “Accompanied with a report certified from CBEF.
5.	Regulation 15 Validity of approvals by the Controller of Budget for withdrawal of funds.	15. (2) Upon expiry of the fourteen days, the National Treasury or a County Treasury shall resubmit the requisition for approval of withdrawal of funds in accordance with these Regulations.	What about other public funds?	Insert “ or any other public institution ” . (2) Upon expiry of the fourteen days, the National Treasury, County Treasury or any other Public institution shall resubmit the requisition for approval of withdrawal of funds in accordance with these Regulations.

6.	Regulation 21 Factors to consider when conducting monitoring, evaluation and reporting.	21. (1) When undertaking monitoring and evaluation, the Controller of Budget shall consider the following factors— a. information on geographical location of projects to monitor or ascertain equity in resource allocation across the country; b. compliance with statutory timelines for budget documents; c. actual expenditure against the budget estimates; d. any other factors that the Controller of Budget may consider e. necessary in executing this mandate.	COB should be more concerned with ex-ante requirements before budget approval and not ex-post, after the budget has been passed.	Delete all factors after budget approval
----	--	--	---	---

7.	Regulation 23 Content of the report.	23. The report submitted by an accounting officer for a county government entity or national government entity under regulation 22 shall include—	To avoid getting reports that are not factual, COB should generate the information directly from IFMIS	Delete
8.	Regulations 25 - 31 PART IV— INVESTIGATIONS	The investigative role of the COB should be limited to stoppage of funds in Article 225	Investigations should be left for the institutions e.g EACC, Auditor General,	Consider re-drafting to compliance to the law and government directives
9.	Regulations 49 Offences PART VI— MISCELLANEOUS PROVISIONS	A person who fails to comply with these Regulations commits an offence under section 16 of the Act.	The offence should constitute a fine or imprisonment	Insert “ which will attract a fine of or imprisonment up tomonths/years



Institute of Certified Public Accountants of Kenya

**SUBMISSION
ON
CONTROLLER OF BUDGET REGULATIONS, 2021**

© ICPAK

March 2022

1.0 BACKGROUND

The Institute of Certified Public Accountants of Kenya (ICPAK) is a statutory body of accountants established under the Accountants Act of 1978, and as repealed under the Accountants Act Number 15 of 2008, mandated to develop and regulate the Accountancy Profession in Kenya. It is also a member of the International Federation of Accountants (IFAC), the global umbrella body for the accountancy profession and Pan Africa Federation of Accountants (PAFA), the continental body of Accountants.

The institute applauds the effort by Government of Kenya for drafting Controller of Budget Regulations, 2021 which provides the 'how' of complying with the provisions of the Controller of Budget Act 26 of 2016. We particularly appreciate the direct reference to this Constitutional right in the purpose of the Regulations and the way it is referred to on several occasions in the Regulations. The Institute has reviewed the Controller of Budget Regulations, 2021 and developed a detailed submission on areas that require improvement as highlighted in the table below.

2.0 SUBMISSIONS ON THE CONTROLLER OF BUDGET REGULATIONS, 2021

The Institute has developed the following for specific consideration and adoption:

#	PROVISION IN THE REGULATIONS	ISSUE OF CONCERN	RECOMMENDATION (EXACT WORDING)	JUSTIFICATION
1.	Regulation 25 Power to investigate	The regulations have not included an employee of National Government or County Government in making complaints on implementation of budget.	Amend regulation 25 by inserting the words " <i>or an employee of national government or county government</i> " immediately after " <i>public</i> " to read: "The Controller of Budget may conduct investigations on his or her own motion or upon a complaint made by a member of the public <i>or an employee of national government or county government</i> on any matter on implementation of the budgets of the national and county governments."	This will ensure there is an inclusive environment for the employees.

#	PROVISION IN THE REGULATIONS	ISSUE OF CONCERN	RECOMMENDATION (EXACT WORDING)	JUSTIFICATION
2.	Regulation 25 Power to investigate	There is no framework to safeguard the investigation by Controller of the Budget for the public who volunteer information or lodge complaints about budget implementation steps.	Amend Regulation 25 by inserting a new paragraph 25(2) immediately after the first paragraph to read: "No employer may discharge, demote, suspend, threaten, harass, directly or indirectly, or in any other manner discriminate against, a whistleblower in the terms and conditions of employment because of any lawful act done by the whistleblower."	To safeguard the public interest, maintain confidentiality and prohibit retaliation against whistleblowers.
3.	Regulation 25 Power to investigate	Role of professional bodies in the implementation of controller of Budget findings and recommendations is paramount yet excluded.	Insert a new regulation 25(3) immediately after paragraph 2 to read: "The Controller of Budget shall give the professional bodies such as ICPAK the power to investigate on any matter on implementation of budget of the national and county government."	This will ensure adherence to professional ethical conduct.
4.	Regulation 32 Conduct of investigation on stoppage of fund	The Controller of Budget should liaise with various institutions when conducting investigations on stoppage of material breach.	Amend Regulation 32 by inserting the following new paragraphs immediately after the first paragraph to read: "Where the reason for stoppage of transfer of funds by the Cabinet Secretary meets the threshold for serious material breach, the Controller of Budget shall liaise with other investigation institutions such as the Ethics and Anti-corruption Commission (EACC), Directorate of Criminal Investigations (DCI) and Financial Reporting Centre (FRC). Further, where the investigation shows professional misconduct, the Controller of Budget shall liaise with the	This will specify actions in case of plunder of public resources or professional misconduct.

#	PROVISION IN THE REGULATIONS	ISSUE OF CONCERN	RECOMMENDATION (EXACT WORDING)	JUSTIFICATION												
			relevant professional bodies such as ICPAK for disciplinary actions."													
5.	Regulation 34 Register of Complaints	The Controller of Budget' register of complaints should be available to the public.	Amend regulation 34 by inserting a new paragraph immediately after the first paragraph to read: "The register of complaints should be available to the public within 21 days upon request. In availing the register, the Controller of budget shall ensure there is confidentiality and anonymity and ensure there is adherence to the Data Protection Act 2019"	For transparency purposes.												
6.	Regulation 35(2) Form of complaint	The details of the written form of a complaint are limiting. There is need for provision of a new schedule.	Amend the entire 35(2) by inserting paragraphs (d) and (e) to read: (d)History of the complaint (e) Period and reason of which it was reported	To give more details on the written form of complaint.												
7.	Regulation 35(2) Form of complaint	The form of a written complaint should provide detailed information. There is need for provision of a new schedule on this.	Insert a new schedule form B as follows: SCHEDULE FORM OF COMPLAINT <table border="1"><tr><td>Description term</td><td></td><td></td></tr><tr><td colspan="3">Name of person filing complaint: _____</td></tr><tr><td colspan="3">Date: _____</td></tr><tr><td colspan="3">Address: _____</td></tr></table>	Description term			Name of person filing complaint: _____			Date: _____			Address: _____			This will spell out in more detail how the written form of complaint will work in practice.
Description term																
Name of person filing complaint: _____																
Date: _____																
Address: _____																

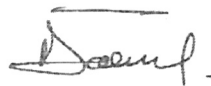
#	PROVISION IN THE REGULATIONS	ISSUE OF CONCERN	RECOMMENDATION (EXACT WORDING)	JUSTIFICATION
			Summary of the complaint: _____ History of the Complaint _____ Period and reason the complaint was reported: _____ If other individuals are affected by this complaint, please give their names: _____ (Complaint) _____ (Person Receiving Complaint): _____ Follow Up Response by Individual Receiving Complaint: _____	
8.	Regulation 51 Access information to	There is need for a popular version of the The Controller of Budget Reports. OCOB should avail the information on budget implementation matters in a language that can be understood by the members of the public.	Amend Regulation 51 by inserting the words "<i>in a simplified manner and in a format that can be accessed by all members of the public</i>" immediately after the words "<i>public</i>" to read: The Controller of Budget may avail a popular version of the information contained in his/her report to the public <i>in a simplified manner and in a format that can be accessed by all members of the public</i> through—	Most of the information provided by the Controller of Budget is usually complex and difficult for the members of public and persons living with disabilities to understand.
9	Regulation 54 Record management	The documents stated under Regulation 53 in should not be stored for longer than necessary.	Amend regulation 54 by inserting a new paragraph (2) immediately after the first paragraph to read: "The Controller of Budget shall maintain the records highlighted in regulation 54(1) for 7 years."	To align with the Companies Act and enhance storage limitation of data.

09/02/2022
SMZ

SPECIAL ISSUE

Kenya Gazette Supplement No. 226

1919



3rd December, 2021

(Legislative Supplement No. 101)

LEGAL NOTICE NO. 254

THE CONTROLLER OF BUDGET ACT

(No. 26 of 2016)

THE CONTROLLER OF BUDGET REGULATIONS, 2021

ARRANGEMENT OF REGULATIONS

PART I—PRELIMINARY

Regulation

1. Citation.
2. Interpretation
3. Application.
4. Objects of the Regulations.
5. Submission and review of the national government planning and budgeting documents.
6. Submission and review of county government planning and budgeting documents.

PART II—PROCEDURE FOR APPROVAL OF WITHDRAWAL FROM PUBLIC FUNDS

7. Authorization of withdrawal of funds.
8. Request for approval of withdrawal of funds from the Consolidated Fund.
9. Request for approval of withdrawal of funds from the Equalization Fund.
10. Request for approval of withdrawal of funds from the County Revenue Fund.
11. Request for approval of withdrawal of funds under Article 223(1) of the Constitution.
12. Request for approval of withdrawal of funds under section 135(1) of the Public Finance Management Act, 2012.
13. Request for approval of withdrawal of funds from a public fund.
14. Request for withdrawal of funds subsequent to transfer of power, functions or competencies between the two levels of Government.
15. Validity of approvals by Controller of Budget for withdrawal of funds.
16. Overdrawing of funds and real time viewer rights.

**PART III—MONITORING, EVALUATION AND REPORTING ON
BUDGET IMPLEMENTATION**

17. Compliance and enforcement of budgetary ceilings.
18. Advisory on compliance and enforcement of budgetary ceilings.
19. Monitoring, evaluation and reporting for improvement of budget implementation.
20. Development of monitoring, evaluation and reporting framework.
21. Factors to consider when conducting monitoring, evaluation and reporting.
22. Submission of quarterly reports to the Controller of Budget.
23. Content of the report.
24. Special reports.

PART IV—INVESTIGATIONS

25. Power to investigate.
26. Guiding principles of conducting investigations.
27. Investigating officers.
28. Impersonating investigator.
29. Procedure for conducting investigations.
30. Power to summon, enter and search.
31. Action upon investigation.
32. Conduct of investigation on stoppage of funds.

PART V—COMPLAINT HANDLING

33. Lodging of complaint.
34. Register of Complaints.
35. Oral complaint to be reduced to writing.
36. Screening of complaints.
37. Discontinuation of a complaint.
38. Review.
39. Withdrawal and lapse of complaint.
40. Joint consideration of complaint.
41. Action on complaint.
42. Failure to respond to summon.
43. Resolution of complaint.

PART VI – DISPUTE RESOLUTION

- 44. Mediation, conciliation and negotiation.
- 45. Procedure for mediation, conciliation or negotiation.
- 46. Service of process.
- 47. Principles of natural justice.

PART VII—MISCELLANEOUS PROVISIONS

- 48. Fees
- 49. Offences.
- 50. Certification of documents.
- 51. Access to information.
- 52. Issuance of circulars.
- 53. Management of information.
- 54. Record management.
- 55. Digitization.

SCHEDULE

THE CONTROLLER OF BUDGET ACT

(No. 26 of 2016)

IN EXERCISE of the powers conferred by section 25 of the Controller of Budget Act, the Controller of Budget makes the following Regulations—

THE CONTROLLER OF BUDGET REGULATIONS, 2021

PART I — PRELIMINARY

1. These Regulations may be cited as the Controller of Budget Regulations, 2021. Citation.
2. (1) In these Regulations, unless the context otherwise requires— Interpretation.
 - “Act” means the Controller of Budget Act, 2016; No. 26 of 2016.
 - “accounting officer” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012; No. 18 of 2012.
 - “any other public funds” has the meaning assigned to it under section 2 of the Act;
 - “budgetary ceilings” has the meaning assigned to it under regulation 2 of the Public Finance Management (National Government) Regulations, 2015; LN. No. 34 /2015
 - “Cabinet Secretary” has the meaning assigned to it under section 2 of the Act;
 - “consolidated fund services” has the meaning assigned to it under regulation 2 of the Public Finance Management (National Government) Regulations, 2015;
 - “Controller of Budget” has the meaning assigned to it under the Act;
 - “control ledger” means—
 - (a) the Consolidated Fund Control Ledger;
 - (b) the Equalization Fund Control Ledger;
 - (c) County Revenue Fund Control Ledger; and
 - (d) Control Ledger for any other public fund that show the vote, appropriated amounts, revenue receipts, and cumulative approved withdrawal amounts;
 - “County Executive Committee Member” means the County Executive Committee Member responsible for matters relating to finance;
 - “county exchequer account” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;
 - “county government entity” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;

“County Treasury” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;

“exchequer ledger” means a record of revenue receipts into and withdrawals from the exchequer account maintained by the National Treasury or a County Treasury;

“National Exchequer Account” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;

“national government entity” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;

“National Treasury” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;

“pending bills” means unsettled financial obligations by the national or county government entities at the close of financial year;

“Public Debt Management Office” means the Office established under section 62(1) of the Public Finance Management Act, 2012;

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

“publicise” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;

“publish” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;

“receiver of revenue” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012;

“vote” has the meaning assigned to it under section 2 of the Public Finance Management Act, 2012; and

“Vote-on-Account” has the meaning assigned to it under regulation 2 of the Public Finance Management Act (National Government) Regulations, 2015.

3. These Regulations shall apply to—

Application.

- (a) Parliament;
- (b) Judiciary;
- (c) a County Assembly;
- (d) the National Treasury;
- (e) a County Treasury;
- (f) a National Government entity;
- (g) a County Government entity;
- (h) Commissions and Independent offices;
- (i) state officers;
- (j) accounting officers;

- (k) receiver of revenue;
- (l) public officers; and
- (m) any other person performing any act or doing such thing that is provided for under these Regulations.

4. (1) The object of these Regulations is to set out the procedure for— Object of the Regulations.

- (a) authorization of withdrawal of funds from—
 - (i) the Consolidated Fund and its components;
 - (ii) the Equalization Fund;
 - (iii) a County Revenue Fund and its components; or
 - (iv) any other public fund.
- (b) enforcement of budgetary ceilings on national and county government expenditure;
- (c) monitoring, evaluating, reporting and making recommendations to the national and county governments on measures to improve budget implementation;
- (d) preparation and submission of quarterly reports and special reports;
- (e) publishing and publicizing information on budget implementation;
- (f) conduct of investigations as provided under Article 252(1) (a) of the Constitution; and
- (g) conciliation, mediation and negotiation as provided under Article 252(1) (b) of the Constitution.

(2) Notwithstanding the provisions of regulation 4(1), these Regulations also provide for—

- (a) documentation to be provided to the Controller of Budget in the exercise of his or her powers and functions; and
- (b) process for requisition and approval of withdrawal of funds from the funds listed under regulation 4(1).

5. (1) Within fourteen days of approval or publication, the National Treasury shall submit the following planning and budget documents to the Controller of Budget—

Submission and review of the national government planning and budgeting documents.

- (a) Medium Term Plan;
- (b) Budget Review and Outlook Paper;
- (c) Debt Management Strategy Paper;
- (d) Budget Policy Statement;

- (e) approved budget estimates or Vote-on-Account;
 - (f) submitted budget estimates and Appropriation Bill in case of a Vote-on-Account;
 - (g) the Appropriation Act;
 - (h) the Equalization Fund Appropriation Act;
 - (i) Presidential Warrant;
 - (j) Annual Cash Flow plan;
 - (k) names of authorized signatories for national exchequer account and Equalization Fund account, their specimen signatures and relevant mandate number;
 - (l) annual work plans;
 - (m) the Division of Revenue Act;
 - (n) approved Cash Disbursement Schedules for County Governments;
 - (o) the County Allocation of Revenue Act;
 - (p) evidence that the approved budget estimates or Vote-on-Account has been uploaded in the financial management system prescribed by the National Treasury;
 - (q) a report on unspent cash balances of the previous financial year in the Consolidated Fund and the accounts of national government entities;
 - (r) a report by the National Treasury on adherence with advisories by Controller of Budget on budget issues; and
 - (s) documentary evidence of public participation undertaken in the development of the planning and budget documents.
- (2) Where a supplementary budget is passed within a financial year, the National Treasury shall submit the following planning and budget documents to the Controller of Budget—
- (a) the relevant Supplementary Appropriation Act;
 - (b) Presidential Warrant;
 - (c) supplementary budget estimates approved by the National Assembly; and
 - (d) evidence that the approved supplementary budget estimates has been uploaded in the financial management system prescribed by the National Treasury.
- (3) Where a national government entity revises its planning and budget documents in any given financial year, the Cabinet Secretary shall submit the documents to the Controller of Budget within fourteen days from the date of approval of revision.
- (4) Upon receipt of the documents, the Controller of Budget shall review the documents to ensure compliance with these Regulations and may—

- (a) within fourteen days, make recommendations to the national government entity on measures to improve budget implementation and such recommendation shall be binding on the entity and its public officers; and
- (b) request for any other information that is required in ensuring compliance of the planning and budget documents with the provisions of the Constitution and any other written law.

(5) The Controller of Budget may use the documents submitted under this regulation to determine an approval of request for withdrawal of funds under Part II of these Regulations.

(6) Where there is the assumption of the Office of President by a President-elect, the Deputy President or the Speaker of the National Assembly under Article 146(2) of the Constitution, the Assumption of Office of President Committee shall submit a copy of the Committee's report to the Controller of Budget within seven days after submitting the report to Parliament.

6. (1) Within fourteen days of the approval or publication, a County Treasury shall submit the following documents to the Controller of Budget—

Submission and review of county government planning and budgeting documents.

- (a) County Integrated Development Plan;
- (b) Annual Development Plan;
- (c) annual work plan for conditional grants;
- (d) County Budget Review and Outlook Paper;
- (e) County Debt Management Strategy Paper;
- (f) County Fiscal Strategy Paper;
- (g) An Act of County Assembly or subsidiary legislation establishing a fund in accordance with the Public Finance Management Act, 2012;
- (h) submitted budget estimates and Appropriation Bill in case of a Vote-on-Account;
- (i) approved budget estimates or Vote-on-Account;
- (j) an Appropriation Act;
- (k) Governor's Warrant;
- (l) Annual Cash Flow plan;
- (m) refund statement for unspent cash for the previous financial year;
- (n) documentary evidence that public participation was undertaken in the development of the planning and budget documents including a report from the County Budget and Economic Forum as provided for under section 137 of the Public Finance Management Act, 2012;

- (o) evidence of budget estimates uploaded in the financial management system prescribed by the National Treasury; and
- (p) names of authorized signatories for county exchequer account, their specimen signatures and relevant mandate numbers.

(2) Where a supplementary budget is passed within a financial year, a County Treasury shall submit the following planning and budget documents to the Controller of Budget—

- (a) the relevant supplementary Appropriation Act;
- (b) Governor's Warrant;
- (c) supplementary budget estimates approved by a County Assembly; and
- (d) evidence that the approved supplementary budget estimates has been uploaded in the financial management system prescribed by the National Treasury.

(3) Where a county government entity revises its planning and budget documents in any given financial year, the County Treasury shall submit the revised documents to the Controller of Budget within fourteen days from the date of approval of revision.

(4) Upon receipt of the documents, the Controller of Budget shall review the documents to ensure compliance with these Regulations and may —

- (a) within fourteen days, make recommendations to a county government entity on measures to improve budget implementation and such recommendation shall be binding on the entity and its public officers; and
- (b) request for any other information that the Controller of Budget may require in ensuring compliance with the provisions of the Constitution and any other written law.

(5) The Controller of Budget may use the documents submitted under this regulation to determine an approval of request for withdrawal of funds under Part II of these Regulations.

(6) Where there is the assumption of the Office of Governor by a Governor-elect, the Deputy Governor or the Speaker of the County Assembly under Article 182(2) and (4) of the Constitution, the Assumption of Office of County Governor Committee shall submit a copy of the Committee's report to the Controller of Budget within seven days after submitting the report to the County Assembly.

PART II—PROCEDURE FOR APPROVAL OF WITHDRAWAL FROM PUBLIC FUNDS

7. Money shall not be withdrawn from—

Authorization of withdrawal of funds.

- (a) the Consolidated Fund and its components;
 - (b) the Equalization Fund;
 - (c) a County Revenue Fund and its components; or
 - (d) any other public fund,
- unless the Controller of Budget has approved the withdrawal.

8. (1) A request to the Controller of Budget by the National Treasury for approval for withdrawal of funds from the Consolidated Fund shall be made in Requisition Form A as prescribed under the Schedule, accompanied by—

Request for approval of withdrawal of funds from the Consolidated Fund.

- (a) up to date national exchequer account balance and reconciled national exchequer ledger;
- (b) a record from Central Bank of Kenya of payments awaiting funding;
- (c) a statement of revenue receipts into the Consolidated Fund; and
- (d) up to date national exchequer account statement.

(2) In addition to the documents listed in sub- regulation (1), where applicable—

- (a) a request for approval for withdrawal to the County Revenue Fund shall be supported by disbursement schedule and any other document in accordance with section 16 of the Act;
- (b) a request for approval for withdrawal to the Equalization Fund shall be supported by an Appropriation Act and an extract of the approved budget estimates;
- (c) a request for approval for withdrawal for development expenditure for a national government entity, shall be supported by—
 - (i) a schedule of development expenditure in line with the request;
 - (ii) up to date project implementation status report, whether ongoing or stalled projects, relating to the request;
 - (iii) up to date schedule of pending bills and payment plan;
 - (iv) bank statement reflecting the settled pending bills;
 - (v) vote book for development expenditure;
 - (vi) a bank statement of development operational account; and
 - (vii) an extract of the budget estimates approved by the National Assembly.

- (d) a request for approval for withdrawal for recurrent expenditure for a national government entity shall be supported by—
 - (i) a summary of the monthly payroll report from an integrated personnel and payroll database, for payment of salaries;
 - (ii) a schedule and analysis of salaries for staff to be paid outside an integrated personnel and payroll database and the reasons thereof;
 - (iii) a schedule of operations and maintenance expenditure, in compliance with the Standard Chart of Accounts, in line with the request;
 - (iv) analysis of operations and maintenance expenditure in a specified manner;
 - (v) up to date schedule of pending bills and payment plan;
 - (vi) bank statement reflecting the settled pending bills;
 - (vii) vote book for recurrent expenditure;
 - (viii) a bank statement of recurrent operational account;
 - (ix) an extract of the budget estimates approved by the National Assembly;
- (e) a request for approval for withdrawal of funds on Vote-on-Account, shall be supported by—
 - (i) communication from the Speaker of the National Assembly confirming the approval of the Vote-on-Account;
 - (ii) budget estimates submitted to the National Assembly by the Cabinet Secretary;
 - (iii) budget estimates approved by the National Assembly, if any;
 - (iv) exchequer ledgers showing not more than one-half ceiling of the budget estimates;
 - (v) evidence that not more than one-half of the budget estimates has been uploaded to the financial management system prescribed by the National Treasury; and
 - (vi) Appropriation Bill;
- (f) a request for approval for withdrawal of funds where there has been stoppage of funds under Article 225(3) of the Constitution and section 97 of the Public Finance Management Act, 2012 shall be supported by—
 - (i) an assessment by the Cabinet Secretary of the national government entity's financial state; or

- (ii) in case of a county government, a recovery plan in accordance with section 99 of the Public Finance Management Act, 2012, provided that for subsequent requests for approval for withdrawal of funds, a county government shall submit a status of implementation of the recovery plan.

(3) In addition to the documents listed in sub-regulation (1), and for the purpose of Consolidated Fund Services, a request for approval of withdrawal —

- (a) into the Judiciary Fund, Parliamentary Fund and any other public funds established under section 24(4) of the Public Finance Management Act, 2012, shall be supported by—
 - (i) published legislation establishing the Fund in accordance with the Public Finance Management Act, 2012, and relevant subsidiary legislation;
 - (ii) an extract of the budget estimates approved by the National Assembly; and
 - (iii) an extract of the approved annual work plan;
- (b) for payment of domestic debt, shall be supported by—
 - (i) a schedule stating redemption amount, interest, bank charges, if any, and any other fees and expenses relating to the borrowing;
 - (ii) Central Bank of Kenya cash call ups;
 - (iii) an up to date schedule of repayments;
 - (iv) analysis of debt level in relation with set ceilings as provided for in section 15 of the Public Finance Management Act, 2012; and
 - (v) monthly overdraft schedule for the overdraft facility;
- (c) for payment of external debt, shall be supported by—
 - (i) a loan agreement stipulating the terms and conditions;
 - (ii) a schedule of the loan agreement stating principal payment and interest, bank charges, commitment fee, penalties, if any, and any other fees and expenses relating to the loan;
 - (iii) an up to date schedule of repayments;
 - (iv) analysis of debt level in relation with set ceilings as provided in section 15 of the Public Finance Management Act, 2012;
 - (v) a legal opinion from the Office of the Attorney General; and
 - (vi) demand note or invoice for settlement of the principal amount or loan interest, where applicable;

- (d) for payment of remuneration of constitutional office holders, shall be supported by a monthly payment schedule of constitutional office holders being remunerated;
- (e) for subscription to an international organization, shall be supported by an invoice from the international organization;
- (f) for payment of pension shall be supported by schedule of pensioners for monthly and lump-sum payment.

(4) For every request for approval for withdrawal of funds from the Consolidated Fund, the National Treasury shall ensure the request submitted to the Controller of Budget—

- (a) is in line with the planning and budget documents;
- (b) contains information by —
 - (i) vote;
 - (ii) programme and sub-programme; and
 - (iii) project; and
- (c) does not exceed budgetary ceilings.

(5) Where the Controller of Budget is not satisfied that the request for withdrawal of funds complies with the law, he or she shall decline to approve the requisition and give reasons thereof within seven days.

(6) Where the Controller of Budget declines to approve the request for withdrawal of funds, the National Treasury shall submit a fresh requisition upon addressing the issues raised by the Controller of Budget.

(7) Where the Controller of Budget is satisfied that the request complies with the law, he or she shall approve the request for withdrawal of funds and submit the approval, in Form B prescribed in the Schedule, to the Central Bank of Kenya and a copy to the National Treasury.

9. A request to the Controller of Budget by the National Treasury for approval for withdrawal of funds from the Equalization Fund shall be made in Requisition Form A as prescribed in the Schedule, accompanied by—

- (a) an up to date Equalization Fund bank statement; and
- (b) an extract of approved annual work plan.

Request for approval for withdrawal of funds from the Equalization Fund.

10. (1) A request to the Controller of Budget by a County Treasury for approval for withdrawal of funds from the County Revenue Fund shall be made in Requisition Form A as prescribed in the Schedule, accompanied by—

Request for approval of withdrawal of funds from the County Revenue Fund.

- (a) up to date county exchequer account balance and reconciled exchequer ledger;
- (b) a record from Central Bank of Kenya of payments awaiting funding;
- (c) a statement of revenue receipts into the County Revenue Fund; and
- (d) up to date county exchequer account statement.

(2) In addition to the documents listed in sub- regulation (1), where applicable—

- (a) a request for approval for withdrawal of funds for development expenditure, shall be supported by—
 - (i) a schedule of development expenditure in line with the request;
 - (ii) up to date project implementation status report generated from approved project management government system;
 - (iii) up to date schedule of pending bills and payment plan;
 - (iv) bank statements reflecting the settled pending bills;
 - (v) vote book for development expenditure;
 - (vi) bank statement of development operational account; and
 - (vii) an extract of the budget estimates approved by a County Assembly relating to the request.
- (b) a request for approval for withdrawal of funds for recurrent expenditure shall be supported by—
 - (i) a summary of the monthly payroll report from an integrated personnel and payroll database, for payment for salaries;
 - (ii) a schedule and analysis of salaries for staff paid outside an integrated personnel and payroll database and the reasons thereof;
 - (iii) a schedule of operations and maintenance expenditure, in compliance with the Standard Chart of accounts, in line with the request;
 - (iv) analysis of the operations and maintenance expenditure in a specified manner;
 - (v) up to date schedule of pending bills and payment plans;

- (vi) bank statement reflecting the settled pending bills;
 - (vii) vote book for recurrent expenditure;
 - (viii) a bank statement of recurrent operational account; and
 - (ix) an extract of the budget estimates approved by a County Assembly relating to the request.
- (c) a request for approval for withdrawal of funds into public funds established under section 110 or 116 of the Public Finance Management Act, 2012, shall be supported by—
- (i) an extract of the budget estimates approved by a County Assembly;
 - (ii) expenditure report on utilization of the previous release;
 - (iii) quarterly financial reports for the Funds; and
 - (iv) an extract of approved annual work plan showing how the funds being requested shall be applied
- (d) a request for approval for withdrawal of funds for conditional grants shall be supported by—
- (i) an agreement or agreements setting out the conditions of the grant;
 - (ii) a county exchequer statement confirming receipt of the conditional grant;
 - (iii) a bank statement for the Special Purpose Account;
 - (iv) an extract of the budget estimates, if any, approved by the County Assembly;
 - (v) expenditure report on utilization of the previous release; and
 - (vi) an extract of approved annual work plan showing how the funds being requested shall be applied.
- (e) a request for approval for withdrawal of funds under Vote-on-Account shall be accompanied by—
- (i) communication from the Speaker of a County Assembly confirming the approval of the Vote on Account;
 - (ii) budget estimates submitted to a County Assembly by the County Executive Committee Member;
 - (iii) budget estimates approved by a County Assembly, if any;
 - (iv) County Exchequer Ledgers showing not more than one-half ceiling of the budget estimates;
 - (v) evidence that not more than one-half of the budget estimates has been uploaded to the financial management system prescribed by the National Treasury; and

(vi) Appropriation Bill.

(3) For every request for approval for withdrawal of funds from the County Revenue Fund, the County Treasury shall ensure the request submitted to the Controller of Budget—

- (a) is in line with the planning and budget documents;
- (b) contains information by—
 - (i) vote;
 - (ii) programme and sub-programme; and
 - (iii) project.
- (c) does not exceed budgetary ceilings.

(4) Where the Controller of Budget is not satisfied that the request for withdrawal of funds complies with the law, he or she shall decline to approve the request and give reasons thereof within seven days.

(5) Where the Controller of Budget declines to approve the request of withdrawal of funds, a County Treasury may submit a fresh requisition upon addressing the issues raised by the Controller of Budget.

(6) Where the Controller of Budget is satisfied that the request complies with the law, he or she shall approve the request for withdrawal of funds and submit the approval, in Form B prescribed in the Schedule, to the Central Bank of Kenya and a copy to the County Treasury.

11. (1) A request to the Controller of Budget by the National Treasury for approval for withdrawal of funds where the national government needs to spend money that has not been appropriated as envisaged under Article 223(1) of the Constitution shall be made in Requisition Form A as prescribed in the Schedule, supported by the following for justification of expenditure—

Request for approval of withdrawal of funds under Article 223(1) of the Constitution.

- (a) the request from the national government entity, together with reasons indicating that the amount appropriated is insufficient or a need has arisen for expenditure for a purpose for which no amount had been appropriated;
 - (b) proposed source of funding for the additional expenditure;
 - (c) an approval issued by the Cabinet Secretary for expenditure together with the justification for approval; and
 - (d) national exchequer account balances and reconciled exchequer ledgers.
- (2) Where a request for approval for withdrawal of funds under supplementary appropriation has been submitted, the Controller of Budget shall consider the following factors—
- (a) the reason for the request was unforeseen and unavoidable in circumstances where no budget provision was made;

- (b) the need was unavoidable in circumstances where there is an existing budgetary provision which however is inadequate:

Provided that the expenditure, although known when finalising the estimates of the original budget, could not be accommodated within allocations and tariff adjustments and price increases;

- (c) the historical trend of utilization of funds under supplementary appropriation under Article 223 by the respective national government entity;
- (d) that in any particular financial year, the national government may not spend more than ten per cent of the sum appropriated by Parliament for that financial year unless, in special circumstances, Parliament has approved a higher percentage; and
- (e) any other factors as may be relevant in the circumstance.

(3) Where the Controller of Budget is not satisfied that the request for approval for withdrawal of funds complies with the law, he or she may decline to approve the requisition and give reasons thereof within seven days.

(4) Where the Controller of Budget declines to approve the request of withdrawal of funds, the National Treasury may resubmit the request upon addressing the issues raised by the Controller of Budget.

(5) Where the Controller of Budget is satisfied that the request complies with the law, he or she shall approve the request for withdrawal of funds and submit the approval, in Form B as prescribed in the Schedule, to the Central Bank of Kenya and a copy to the National Treasury.

12. (1) A request to the Controller of Budget by a County Treasury for withdrawal of funds where a county government needs to spend money that has not been appropriated by a county appropriation Act as envisaged under section 135(1) of the Public Finance Management Act, 2012 shall be made in Requisition Form A as prescribed in the Schedule, supported by the following for justification of expenditure—

Request for approval of withdrawal of funds under section 135(1) of the Public Finance Management Act, 2012.

- (a) the request from the county government entity, together with reasons indicating that the amount appropriated is insufficient or a need has arisen for expenditure which no amount had been appropriated;
- (b) proposed source of funding for the additional expenditure;
- (c) approval issued by the County Executive Committee Member for expenditure together with the justification for approval; and
- (d) county exchequer account balances and reconciled exchequer ledgers.

(2) Where a request for approval for withdrawal of funds under Supplementary Appropriation has been submitted, the Controller of Budget shall consider the following factors—

- (a) the reason for the request was unforeseen and unavoidable in circumstances where no budget provision was made;
- (b) the need was unavoidable in circumstances where there is an existing budgetary provision which however is inadequate:

Provided that the expenditure, although known when finalising the estimates of the original budget, could not be accommodated within allocations and tariff adjustments and price increases.

- (c) the historical trend of utilization of funds under section 135 of the Public Finance Management Act, 2012 by the respective county government entity;
- (d) that in any particular financial year, a county government may not spend more than ten per cent of the sum appropriated by a County Assembly for that financial year unless, in special circumstances, the County Assembly has approved a higher percentage; and
- (e) any other factors as may be relevant in the circumstance.

(3) Where the Controller of Budget is not satisfied that the request for approval of withdrawal of funds complies with the law, he or she may decline to approve the request and give reasons thereof within seven days.

(4) Where the Controller of Budget declines to approve the request of withdrawal of funds, a County Treasury may resubmit the request upon addressing the issues raised by the Controller of Budget.

(5) Where the Controller of Budget is satisfied that the request complies with the law, he or she shall approve the request for withdrawal of funds and submit the approval, in Form B prescribed in the Schedule, to the Central Bank of Kenya and a copy to the respective County Treasury.

13. (1) For every request for approval for withdrawal of funds from a public fund which an Act of Parliament or an Act of a County Assembly requires approval of the Controller of Budget shall be made in Requisition Form A as prescribed in the Schedule supported by the following for justification of expenditure—

- (a) an Act of Parliament, an Act of County Assembly or statutory instrument establishing the Fund;
- (b) fund account balance and reconciled ledger of the fund;
- (c) a record from Central Bank of Kenya of payment pending approval;
- (d) up to date fund account statements;
- (e) authorized signatories for the fund account and their specimen signatures; and

Request for approval for withdrawal of funds from a public fund.

- (f) an extract of approved annual workplan.

(2) Where the Controller of Budget is not satisfied that the request for approval of withdrawal of funds complies with the law, he or she may decline to approve the request and give reasons thereof within seven days.

(3) Where the Controller of Budget declines to approve the request of withdrawal of funds, an accounting officer may resubmit the request upon addressing the issues raised by the Controller of Budget.

(4) Where the Controller of Budget is satisfied that the request complies with the law, he or she shall approve the request for withdrawal of funds and submit the approval, in Form B prescribed in the Schedule, to the Central Bank of Kenya and a copy to the accounting officer.

14. (1) A request for approval for withdrawal of funds subsequent to transfer of power, functions or competencies between the two levels of government shall be made in Form A as prescribed in the Schedule and shall be supported by—

Request for withdrawal of funds subsequent to transfer of power, functions or competencies between the two levels of Government.

- (a) an Agreement on transfer or delegation of powers, functions or competencies duly executed by an authorized officer;
- (b) a publication of the Agreement in the Kenya Gazette;
- (c) a copy of the notification to the National Assembly of the decision to transfer a national government power, function or competency;
- (d) an extract of approved budget estimates for both levels of government relating to the transferred function;
- (e) a copy of the notification to a county assembly of the decision to transfer the county government power, function or competency; and
- (f) any other document that the Controller of Budget may deem appropriate.

15. (1) The approval for withdrawal of funds issued by the Controller of Budget shall be valid for seven days.

Validity of approvals by the Controller of Budget for withdrawal of funds.

(2) Upon expiry of the seven days, the National Treasury or a County Treasury shall resubmit the requisition for approval of withdrawal of funds in accordance with these Regulations.

16. In order to ensure that the Consolidated Fund, Equalization Fund, County Revenue Fund and any other public funds are not overdrawn, the National Treasury and a County Treasury shall give authority to the Central Bank of Kenya to grant the Controller of Budget real-time viewer rights of the national exchequer Account, a county exchequer account and an account for any other public fund.

Overdrawing of funds and real time viewer rights

PART III—MONITORING, EVALUATION AND REPORTING ON
BUDGET IMPLEMENTATION

17. (1) The Controller of Budget shall monitor, evaluate, and make recommendations to Parliament, a County Assembly, the National Treasury and a County Treasury on compliance and measures to ensure compliance with budgetary ceilings.

Compliance and enforcement of budgetary ceilings.

(2) Where a national government entity or county government entity fails to comply with the budgetary ceilings, the Controller of Budget may—

- (a) decline to approve a request for withdrawal of funds giving reasons thereof; or
- (b) make a recommendation to the National Treasury for stoppage of funds.

18. The Controller of Budget may issue an advisory on compliance and enforcement of budgetary ceilings with recommendations to—

Advisory on compliance and enforcement of budgetary ceilings.

- (a) Parliament;
- (b) the National Treasury;
- (c) a County Treasury;
- (d) a County Assembly;
- (e) Auditor General;
- (f) Salaries and Remuneration Commission;
- (g) Commission on Revenue Allocation; or
- (h) any other relevant institution.

19. The Controller of Budget shall monitor, evaluate, and make recommendations on measures to improve budget implementation for—

Monitoring, evaluation and reporting for improvement of budget implementation.

- (a) Parliament;
- (b) Judiciary;
- (c) County Assemblies;
- (d) Commissions and Independent Offices;
- (e) National Government entities; and
- (f) County Governments entities.

20. Within one year of commencement of these Regulations, the Controller of Budget shall develop a monitoring and evaluation framework for purposes of carrying out the functions and powers under the Act and these Regulations.

Development of monitoring, evaluation and reporting framework.