

Approved for tabling

Bnt  
SNA  
28/2/19

REPUBLIC OF KENYA



PARLIAMENT  
OF KENYA  
LIBRARY

NATIONAL ASSEMBLY

TWELFTH PARLIAMENT – THIRD SESSION

THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

REPORT ON THE CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT  
(AMENDMENT) BILL, 2017

CLERKS CHAMBERS  
DIRECTORATE OF COMMITTEE SERVICES  
PARLIAMENT BUILDINGS  
NAIROBI

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 28 FEB 2019	DATE: FEBRUARY, 2019 Thursday
TABLED BY:	Hon. Joseph Lind Chair, Finance & National Planning
CLERK AT TABLE:	Moses Lemu

## TABLE OF CONTENTS

ABBREVIATIONS .....	3
CHAIRPERSON'S FOREWORD.....	4
EXECUTIVE SUMMARY .....	5
1.0 ESTABLISHMENT AND MANDATE OF THE COMMITTEE .....	6
1.1 COMMITTEE MEMBERSHIP.....	7
1.3 COMMITTEE SECRETARIAT.....	7
2.0 CONSIDERATION OF THE BILL .....	8
2.1 BACKGROUND INFORMATION .....	8
2.2 CLAUSE BY CLAUSE ANALYSIS .....	8
3.0 SUBMISSION BY THE STAKE HOLDERS.....	14
3.1 INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA (ICPAK).....	14
3.2 SOCIETY OF CLERKS AT THE TABLE IN KENYAN LEGISLATURES (SOCAT) .....	21
3.3 COUNTY ASSEMBLIES FORUM (CAF).....	30
3.4 COUNCIL OF GOVERNORS (COG).....	32
3.5 THE NATIONAL TREASURY .....	39
4.0 PROPOSED COMMITTEE AMENDMENTS .....	48

## ABBREVIATIONS

CAF	-	County Assembly Forum
CASA	-	County Assembly Services Act
CBK	-	Central Bank of Kenya
CEC	-	County Executive Committee Member
CFSP	-	County Fiscal Strategy Paper
COG	-	Council of Governors
IBEC	-	Intergovernmental Budget and Economic Councils
ICPAK	-	Institute of Certified Public Accountants of Kenya
MDA	-	Ministries, Departments and Agencies
NT	-	National Treasury
PFMA	-	Public Finance Management Act
SOCAT	-	Society of Clerks at the Table in Kenyan Legislatures
TSA	-	Treasury Single Account

## **CHAIRPERSON'S FOREWORD**

This report contains the Committee's proceedings on the consideration of the Public Finance Management (Amendment) Bill, 2017, which was read a first time on 14<sup>th</sup> February, 2018 pursuant to Standing Order 127. In processing the Bill, the Committee invited comments from the public by placing advertisements in the Daily Nation and Standard Newspapers on 19<sup>th</sup> February, 2018 pursuant to Article 118 of the Constitution. A total of six (6) institutions submitted memoranda for consideration by the Committee in a stakeholder's conference held at the Boma Hotel between 15<sup>th</sup> and 18<sup>th</sup> March, 2018 and another stakeholders' forum held at Flamingo Beach Resort and Spa between 22<sup>nd</sup> and 25<sup>th</sup> March, 2018 in which the Cabinet Secretary for the National Treasury was in attendance to provide his comments on the Bill. The Committee has since adopted the stakeholders' amendments for introduction into the Bill during the Committee Stage of the Bill. In considering the Bill, the Committee noted that the Bill seeks to amend the Public Finance Management Act (No. 18 of 2012) so as to ensure smooth implementation of the Act.

The Committee is grateful to the Offices of the Speaker and the Clerk of the National Assembly for the logistical and technical support accorded to it during its sittings. The Committee wishes to thank the National Treasury and the stakeholders for their participation in scrutinizing the Bill.

Finally, I wish to express my appreciation to the Honorable Members of the Committee who made useful contributions towards the preparation and production of this report.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to provisions of Standing Order 199 (6), it is my pleasant privilege and honour to present to this House the Report of the Committee on its consideration of the Public Finance Management (Amendment) Bill, 2017.

**THE HON. JOSEPH LIMO, MP**

**CHAIRPERSON, DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING**

## **EXECUTIVE SUMMARY**

The Public Finance Management (Amendment) Bill, 2017 was published on 29<sup>th</sup> December, 2017 and read a first time on 14<sup>th</sup> February, 2018 and thereafter committed to the Departmental Committee on Finance and National Planning for consideration pursuant to Standing Order 127. The Public Finance Management (Amendment) Bill, 2017 seeks to amend the Public Finance Management Act (No. 18 of 2012) so as to ensure smooth implementation of the Act.

In processing the Bill, the Committee invited comments from the public by placing advertisements in the Daily Nation and Standard newspapers on Monday 19<sup>th</sup> February, 2018 pursuant to Article 118 of the Constitution. By the time the Committee was conducting a stakeholder's conference at the Boma Hotel between 15<sup>th</sup> and 18<sup>th</sup> March 2018 and at the Flamingo Beach Hotel and Spa, Mombasa between 22<sup>nd</sup> and 25<sup>th</sup> March, 2018, six (6) organizations had submitted their memoranda for consideration by the Committee. All their proposals were first discussed with the stakeholders and comments made by the Cabinet Secretary for the National Treasury. The following entities appeared during the stakeholders' conference:

1. Institute of Certified Public Accountants of Kenya (ICPAK);
2. Society of Clerks at the Table in Kenyan Legislations (SOCAT);
3. County Assembly Forum;
4. Council of Governors;
5. Institute of Public Finance; and
6. The National Treasury.

## 1.0 ESTABLISHMENT AND MANDATE OF THE COMMITTEE

The Departmental Committee on Finance & National Planning is one of the fifteen Departmental Committees of the National Assembly established under *Standing Order 216* whose mandates pursuant to the *Standing Order 216 (5)* are as follows:

- a) To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;
- b) To study the programme and policy objectives of Ministries and departments and the effectiveness of their implementation;
- c) To study and review all the legislation referred to it;**
- d) To study, access and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;
- e) To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;
- f) To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No.204 (Committee on appointments);
- (fa) To examine treaties, agreements and conventions;
- g) To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
- h) To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
- i) To examine any questions raised by Members on a matter within its mandate.

In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider, Public finance, Monetary policies, Public debt, Financial institutions (excluding those in securities exchange), Investment and divestiture policies, Pricing policies, Banking, Insurance, Population revenue policies including taxation and National planning and development.

In executing its mandate, the Committee oversees the following government Ministries;

- i. The National Treasury
- ii. Ministry of Devolution and Planning
- iii. Office of the Controller of Budget
- iv. Salaries and Remuneration Commission
- v. Commission on Revenue Allocation

## 1.1 COMMITTEE MEMBERSHIP

The Committee on Finance and National Planning was constituted by the House in December, 2017 and comprises of the following Members:-

1. The Hon. Joseph K. Limo, MP – **Chairperson**
2. The Hon. Isaac W. Ndirangu – **Vice-Chairperson**
3. The Hon. Jimmy O. Angwenyi, MGH, MP
4. The Hon. Christopher Omulele, MP
5. The Hon. Dr. Enoch Kibunguchy, MP
6. The Hon. Shakeel Shabbir Ahmed, CBS, MP
7. The Hon. Abdul Rahim Dawood, MP
8. The Hon. Daniel E. Nanok, MP
9. The Hon. Andrew A. Okuome, MP
10. The Hon. David M. Mboni, MP
11. The Hon. Francis K. Kimani, MP
12. The Hon. Joseph M. Oyula, MP
13. The Hon. Joshua C. Kandie, MP
14. The Hon. Lydia H. Mizighi, MP
15. The Hon. Mohamed A. Mohamed, MP
16. The Hon. Purity W. Ngirici, MP
17. The Hon. Samuel Atandi, MP
18. The Hon. Stanley M. Muthama, MP
19. The Hon. Edith Nyenze, MP

## 1.3 COMMITTEE SECRETARIAT

1. Ms. Leah W. Mwaura                   - **First Clerk Assistant/Lead Clerk**
2. Ms. Jennifer Ndeto                   - **Principal Legal Counsel**
3. Ms. Lauren Wesonga                 - **Third Clerk Assistant**
4. Mr. Josephat Motonu                 - **Fiscal Analyst III**
5. Mr. Chelang'a Maiyo                 - **Research & Policy Analyst III**
6. Mr. John Njoro                       - **Serjeant-At-Arms**

## **2.0 CONSIDERATION OF THE BILL**

### **2.1 BACKGROUND INFORMATION**

The Public Finance Management (Amendment) Bill, 2017, was published on 29<sup>th</sup> December, 2017 and read a First Time on 14<sup>th</sup> February, 2018 and thereafter committed to the Departmental Committee on Finance and National Planning for consideration pursuant to Standing Order 127.

In processing the Bill, the Committee invited comments from the stakeholders pursuant to Article 118 of the Constitution. Six institutions responded by sending their memoranda to the Committee for consideration. The Committee held a stakeholders' Conferences at Boma Hotel between 15<sup>th</sup> and 18<sup>th</sup> March, 2018 and at the Flamingo Beach Hotel and Spa, Mombasa between 22<sup>nd</sup> and 25<sup>th</sup> March, 2018 to consider stakeholders' memoranda pursuant to Article 118 of the Constitution.

### **2.2 CLAUSE BY CLAUSE ANALYSIS**

**Clause 1** - sets out the short title.

**Clause 2** - proposes to amend section 2 of the Bill so as to clarify the definitions of "national government entity", "short term borrowing" and "Treasury Single Account".

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

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

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

- Clause 6** - proposes to amend section 13 of the Act since the Cabinet Secretary cannot delegate a duty under his or her watch to himself or herself.
- Clause 7** - proposes to amend section 15 of the Act so as to restrict the provisions of this section to the National Government. The section is further amended so as to clarify that it is only external borrowing that is limited to capital projects.
- Clause 8** - proposes to amend section 17(7) to ensure that the provision is in line with the provisions of section 127 of the Act.
- Clause 9** - proposes to amend section 24 of the Act so as to provide for the role of the National Treasury in specifying the accounting procedures and systems and the role of the Auditor-General in auditing the accounts before submission to Parliament.
- Clause 10** - proposes to amend section 35 of the Act so as to mirror what is provided for under section 125(1)(c) of the Act.
- Clause 11** - proposes to amend section 38 of the Act so as to apply the provision of the section to the entire Article 202 of the Constitution.
- Clause 12** - proposes to amend section 39 of the Act so as to mirror the language used in Article 222(1) of the Constitution to avoid any contradiction.
- Clause 13** - proposes to amend section 46 of the Act to ensure that the exchequer issues are reported per programme and project for effective monitoring and evaluation.
- Clause 14** - proposes to amend section 52(2) of the Act to provide for delegation of powers to execute loan documents by the Cabinet Secretary to the accounting officers and other officers.
- Clause 15** - proposes to amend section 66 of the Act so as to include monitoring of non-financial performance.
- Clause 16** of the Bill proposes to amend section 68 of the Act so as to clarify that the Cabinet Secretary for the relevant entity is the one being referred to and not the Cabinet Secretary for finance.
- Clause 17** of the Bill proposes to amend section 77 of the Act so as to align it with the wording of Article 210 of the Constitution.
- Clause 18** of the Bill proposes to amend section 78 of the Act so as to recognize and include other collectors of revenue.
- Clause 19** of the Bill proposes to amend section 82 of the Act so as to restrict the power to grant waivers or variations only to the Cabinet Secretary.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

**Clause 44** of the Bill proposes to amend section 133 of the Act for proper reference.

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

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

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

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

**Clause 49** of the Bill proposes to amend section 143(2) of the Act to provide for delegation of powers to execute loan documents by the County Executive Committee Member to the accounting officers and other officers.

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

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

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

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

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

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

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

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

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

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

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

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

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

**Clause 63** of the Bill proposes to amend section 185 of the Act so as to be consistent with the provisions of the section and the Act. Furthermore, it proposes to amend the section to reflect the provisions of section 89(4) and also to recognize the role of the County Executive Committee Member in overseeing county public finances.

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

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

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

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

**Clause 68** of the Bill proposes to amend the Second Schedule of the Act for avoidance of doubt.

Please delete the repeated words "of the bill"

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

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

**Statement that the Bill concerns county governments**

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

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

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

### **3.0 SUBMISSION BY THE STAKE HOLDERS**

Following the call for memoranda from the public the Committee received memoranda from six organizations. All their proposals were deliberated on and considered by the Committee. Below are the views of the stakeholders:

#### **3.1 INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA (ICPAK)**

ICPAK made the following submission:-

##### **Clause 3, s.5**

Clause 3 (a) should add "and Senate "instead of "and Parliament", reason being that it is the mandate of the Senate to oversee the functions of the County's and not the National Assembly.

##### **Justification**

Article 96 of the Constitution grants the Senate mandate to represent the counties, and protect the interests of the counties and their governments.

**Committee's position on the proposal: Committee rejected this proposal since both Houses of Parliament should be involved because this may entail transfer of liabilities from one level of government to the other.**

##### **Clause 8, s.17**

Amend 8(b) to read "by inserting the following new subsection immediately after subsection (7)—"(8) six months prior to a general election, no procurement shall be carried out by the national and county governments, or their respective entities, in respect of their respective development votes unless with the approval of the National Treasury".

##### **Justification**

To curb against pilferage of public resources during an election year

**Committee's position on the proposal: The proposal was rejected since the proposal would shut down Government operations. Other measures of curbing pilferage should be considered since the stoppage of procurement may not fully cure pilferage.**

**Clause 9, s.24**

Recommend the provision be retained as per the Act as the amendment impacts negatively on the principle of separation of power. This erodes the independence of the Parliamentary Service Commission. The National Treasury shouldn't prescribe standard operating procedures for PSC.

**Justification**

To uphold the principles of separation of powers for the three arms of Government.

**Committee's position on the proposal: The Committee agreed with the proposal to retain the provision as per the Act since the amendment interferes with the independence of Parliamentary Service Commission.**

**Clause 10, s.35**

Retain as per parent Act section 35(1)(j). It is ideal to report quarterly (three months) or consistency and not four as indicated in the amendment

**Justification**

The current best practices is quarterly reporting (three months)

**Committee's position on the proposal: The Committee agreed with the proposal to retain the provision as per the Act as reports should be submitted four times a year and not three times. This is consistent with best practices.**

**Clause 12, s.39**

Retain 39(1)(j) as per the Act

The issue on "not assented to" of a Bill does not arise. Article 115 (6) of the Constitution provides that in if the President does not assent to a Bill or refer it back within 21 days, the Bill shall be taken to have been assented to on the expiry of that period.

**Justification**

The issue on “not assented to” of a Bill does not arise. Article 115 (6) of the Constitution provides that in if the President does not assent to a Bill or refer it back within the prescribed period, the Bill shall be taken to have been assented to on the expiry of that period.

**Committee’s position on the proposal: The Committee rejected the proposal as the amendment is consistent with the Constitution where the National Assembly may authorize withdrawals of funds. This is in line with Article 222 of the Constitution. The amendment as proposed in the Bill has been lifted from Article 222 of the Constitution.**

#### **Clause 14, s.52**

Amend section 52 by deleting subsection (2).

1. The PFM Act has mandated the Cabinet Secretary to authorize execution of loan agreements.
2. Any designation should happen within the confines of PFM Act. Therefore, no other legislations (as indicated in this amendment) should authorize execution of this responsibility.

#### **Justification**

To be consistent with the letter and spirit of Public Finance management reforms. Execution of loans is the sole prerogative of the Cabinet Secretary.

**Committee’s position on the proposal: The Committee rejected the proposal by ICPAK since the amendment is intended to enable the CS to exercise discretion to execute loan documents to other accounting officers.**

#### **Clause 17, s. 77**

The Institute supports this amendment. However, there’s need for a National Policy/Guidelines on tax waivers and variations. At the moment, this has been left at the discretion of the Cabinet Secretary-National Government, and Governors at the County Level.

#### **Clause 18, s.78**

ICPAK proposes that the amendment be deleted so as to have the provision as per the Principal Act. This is because Clause 18 of the Bill proposes to have many other revenue collectors besides KRA. These "others" should be agents of KRA and not the National Government. Having many revenue collectors may not be for the good of the Country's revenue collection. Besides, the proposed

amendment creates a loophole which can be misused to affect revenue collection/generation. Revenue being a sensitive matter.

**Committee's position on the proposal:**

The Committee rejected the proposal by ICPAK by supporting what is contained in the Bill as it recognizes other collectors e.g KAA, CAK and many others who are agents of KRA. The Committee however proposed amendment to the Clause as contained in the Committee's proposed amendments. The amendment is intended to renumber the Section 78 and also introduce other agents in revenue collection.

**Clause 25, s.96**

ICPAK proposed amendment to Section 96 so as to mirror provisions of Sec. 95 of the Principal Act.

This notwithstanding, there is need to interrogate the provision to stop disbursement on account of acts of omission and commission to the detriment of service delivery.

The proposed amendment touching on material breach of obligations by county governments is not in tandem with the treatment for similar breaches by national government entities as provided for under Sec. 95 of the principal Act. Sec. 96 of the Principal Act should be amended to align the provisions thereon with those of Sec. 95. The spirit need should cut across the National and County Governments .

**Justification**

The accounting officers should be personally held liable for the misstatements in accordance with Article 226(5) of the constitution.

**Committee's position on the proposal:** The Committee rejected the proposal since the provisions of Sections 95 and 96 have fundamentally different objectives.

**Clause 27, s.98**

ICPAK propose that the provision be retained as per the principal Act as "Material" and "Serious" in accounting terminology are synonymous.

**Committee's position on the proposal:** The Committee rejected the proposal by ICPAK since the amendment as proposed by the Bill was intended to align Section 98 with the Constitution to ensure consistency.

**Clause 29, Section 105 (2)**

ICPAK proposed that the amendment as proposed in the Bill be further reviewed as follows:

“Any other officer within the county designated by the County Treasury.”

The amendment empowers the County Treasury to appoint even outsiders to exercise a specified power, on its behalf. The original provision had locked the nomination to officers under county treasury.

**Committee’s position on the proposal: The Committee rejected the modification since it was normal practice to designate other public officers to act on behalf for mobilization of funds through borrowing**

**Clause 32, Section 112**

ICPAK was proposing the deletion of the proposed amendment as it amounted to duplication.

**Committee’s position on the proposal:**

**The Committee rejected the proposed deletion by ICPAK since the provision was intended to further clarify the unforeseen circumstances where the Executive Committee Member is allowed to make payment from the Emergency Fund.**

**Clause 34, s. 117**

Retain as in the principal Act.

The constitution established a structure in which policy directions are set at the National Government, BPS being one of the policies. Counties must prepare budget priorities in tandem with the national policy guide. This was made possible by the staggered due dates which allowed counties to align their budget priorities to the national priorities. This amendment takes away the possibility of alignment since it requires the presentation of the documents on the same day.

**Committee’s position on the proposal: The Committee rejected the proposal by ICPAK to retain the provision as per the Principal Act. The**

## **Clause 46, Section 137**

ICPAK was proposing that the Clause 46 be further amended as follows :-

Section 137(2)(a)

The County Executive Committee Member responsible for matters related to Finance shall be the Chairperson”;

The

1. Add subsection 137(2)(d)

In constituting the Forum, the County Government shall ensure that among the professionals, one is certified members in good standing of a professional body in accounting or finance recognized by law in Kenya

### **Justification**

Some of the County Budget Economic Forums have been non-functional or ineffective due to the fact that they are chaired by Governors who are busy and thus unable to convene meetings. This should be amended to have CBEFs convened by the County Executive Committee Member of Finance. Budgeting requires input by professionals knowledgeable in matters finance and accounting.

### **Committee’s position on the proposal:**

Committee rejected the proposed amendment by ICPAK since the Governor is in a position to delegate to the CEC (F) hence no need for specifying that in the law. A Governor may choose to organize his/ her Government in any manner as long as it increases efficiency.

## **Clause 49, s.143: Persons who are authorized to execute loan documents at county government level**

ICPAK was proposing that Clause 43 be amended by deleting the proposed 143(2) of the Principal Act.

### **Justification**

The PFM Act has mandated the County Executive Committee member for finance to authorize execution of loan agreements at the County level. Any designation should happen within the confines of the PFM Act. Therefore, no other legislations (as indicated in this amendment) should authorize

execution of this responsibility. The amendment is inconsistent with the letter and spirit of Public Finance management reforms.

**Committee's position on the proposal:**

Committee rejected the proposed amendment by ICPAK because the amendment as per the Bill is meant to allow the authority to execute loan documents. Besides CEC Finance has the overall responsibility. Again, similar situation prevails in the National Government where CS National Treasury has the overall responsibility for any loan to be executed.

**Clause 52, s.155**

Amend 155(5) by deleting "internal" to read,

"A county government entity shall establish an audit committee whose composition and functions are to be prescribed by the regulations".

**Justification**

This should be amended to ensure that the audit committee looks at both internal control and external audit. Subsection 5 narrows the mandate of the committee to internal audit issues and therefore these should be amended to ensure that the Committee also looks at both internal and external issues.

**Committee's position on the proposal:**

The Committee rejected the amendment as proposed by ICPAK since audit is mainly internal and meant to check the internal systems and areas of improvement.

**Clause 65, s.187: Establishment of Intergovernmental Budget and Economic Council**

ICPAK proposed as follows:-

Amend 187(1) by inserting a new paragraph after (h) "(i) The Institute of Certified Public Accountants of Kenya".

**Justification:**

They propose an additional amendment to include the Institute as a member of the Intergovernmental Budget and Economic Council. Since the main purpose of the Council is to provide consultation on

matters relating to budgeting, the economy and financial management, it makes sense to incorporate the Institute by virtue of its expertise and mandate on public finance and accountability as stipulated by the Accountants Act 2008. The Institute by virtue of its expertise and mandate on public finance and accountability as stipulated by the Accountants Act 2008 will add value to the Council.

**Committee's position on the proposal:**

The Committee rejected the proposal ICPAK since IBEC is a forum for national and county governments and not for non-public sector institutions.

**3.2 SOCIETY OF CLERKS AT THE TABLE IN KENYAN LEGISLATURES (SOCAT)**

SOCATT made their proposals as follows; THAT:-

**Clause 3, s.5**

Section 5(1) be retained as in the Principal Act

**Justification**

- i. The process of creation and dissolution of such organs should be fully domiciled within the individual County Governments with no interference from national government actors like Parliament.
- ii. County Government Entities are defined as either department, agency, authority or other body of the County Government.
- iii. These are administrative and functional units that the respective County Governments use to ensure service delivery.

**Committee's position on the proposal:** Committee rejected this proposal since both Houses of Parliament should be involved because this may entail transfer of liabilities from one level of government to the other.

**Further Amendment by SOCATT**

The Principal Act is amended by inserting the following new Section immediately after Section 5

**5A.** (i) Subject to Article 201 of the Constitution and the provisions of this Act, each county assembly shall establish an office responsible for budget, finance and economic analysis.

(ii) The county assembly office created under subsection (i) shall exist as an office in the County Assembly Service and shall consist of persons appointed on merit by virtue of their experience in finance, economics and public policy matters.

(iii) The county assembly budget office created under subsection (i) shall—

- a) provide professional services in respect of budget, finance and economic information to the offices of the County Assembly;
- b) prepare reports on budgetary projections and economic forecasts and make proposals to the committees of the county assembly responsible for budgetary matters;
- c) prepare analyses of specific issues, including financial risks posed by the National and County government policies and activities to guide the county assembly;
- d) consider budget proposals and economic trends and make recommendations to the relevant committee of the county assembly with respect to those proposals and trends;
- e) establish and foster relationships with the National and County Treasury and other national and international organisations, with an interest in budgetary and socio-economic matters as it considers appropriate for the efficient and effective performance of its functions;
- f) subject to Article 35 of the Constitution, ensure that all reports and other documents produced by the assembly office are prepared, published and publicised not later than fourteen days after production; and
- g) report to the relevant committees of the county assembly on any bill that is submitted to the county assembly and has an economic and fiscal impact, making reference to the fiscal responsibility principles and to the fiscal objectives set out in the relevant Budget Policy Statement; and
- h) propose, where necessary, alternative fiscal framework in respect of any financial year.

(2) In carrying out its functions under subsection (i), the county assembly office shall observe the principles of public finance under Article 201 of the Constitution.

(3) The Parliamentary Budget Office shall be required to assist and build the capacity of County Assemblies to analyse any documents under this Act and any Regulations on matters Public Finance.

## **Justification**

The County Fiscal Strategy Papers are documents unique to counties and are part of the retinue of information that exist at the County level. Revenue allocation done by Parliament has very little to do with the CFSPs and therefore the Parliamentary Budget Office would be stretching its mandate if they are allowed to also scrutinise these documents for the County Assemblies. They would be engaging in a work fishing expedition if they started over-interacting with the documents. Instead, this should be done at the various County Assemblies by requiring that County Assemblies establish an office within the County Assembly Service responsible for budget, finance and economic matters.

The National Government and its structures should be concerned with building capacity of County Governments and County Assemblies to perform their functions instead of taking away those functions and performing them. It is noted that the roles and functions of County Assemblies with regard to budget preparation, approval and monitoring mirror those that are undertaken at the National Parliament. To safeguard the work of officers undertaking this onus task at the National Parliament, there is legally established Parliamentary Budget Office with adequate expertise and experience to enable Members make informed decisions.

### **Committee's position on the proposal:**

Committee agreed with the proposal to establish County Budget Offices to ensure that the County Assemblies are well equipped to scrutinize the budget documents and all other matters on micro and macro economic analysis within the county. This is similar to the National Government where there is Parliamentary Budget Office which in this case will be mandated to build capacity to County Assemblies. However, there is need to relook at the functions given to the County Budget Offices and also the nomenclature of the office.

### **Clause 4, s.8: Responsibilities of the Senate Budget Committee in Public Finance matters.**

The provision should be amended to provide that with respect to Counties the approval be given by relevant County Treasuries in line with guidelines developed by the National Treasury.

### **Justification:**

The proposed amendment is a timely reprieve that aims to safeguard public funds from the lingering hands of those who may wish to take advantage of general elections to siphon public money.

However, County Governments are autonomous structures capable of making decisions on when and how to spend money allocated to them. The National Treasury exists to provide guidance and advice on public finance management.

The work of approving development expenditures to be undertaken during that period should be done by County Treasuries.

**Committee's position on the proposal:**

Proposed amendment dropped since it was unclear.

**Clause 31, s.109(4): Establishment of a County Revenue Fund for each county government**

Clause 31 be amended to insert Clause 31A that will be read:-

The Principal Act is amended by inserting the following new section immediately after **Section 109 (6)**–

**109 7A.** (a) The County Treasury shall submit all requisitions to the controller of Budget as soon as is practically possible, but not later than forty-eight hours upon receiving the request from respective entities.

(b) The accounting officer when requisitioning for exchequer releases for the county assembly shall submit a copy of the requisition to the controller of budget and the controller of budget shall only release the funds upon satisfying themselves that the requisition submitted by the County treasury and that by the County Assembly are in conformity.

(c) The County Executive Committee (CEC) Member for finance shall not withhold or refuse to submit requisition for a County Assembly to the Controller of budget on behalf of the County Assembly

(d) The CEC commits an offence under the Act for withholding or refusing to submit requisition on behalf of the County Assembly to the Controller of Budget.

**Justification**

This amendment will ensure that once funds are requisitioned by the County Assembly through the county treasury, there are no delays in forwarding the requisition to the COB as has been the Case.

**Committee's position on the proposal**

The Committee rejected the proposed amendment since cash release is subject to availability and other factors such as other urgent demands and hence matter of releases cannot be addressed as suggested by SOCAT.

**Clause 33, s.116**

Clause 33 be amended by inserting 33A

- (i) to provide for the establishment of the County Assembly Fund.
- (ii) provide that section 34 of the County Assembly Services Act is deleted

**Committee's position on the proposal:**

There is a fund already established under the County Assembly Service Act hence the proposed amendment is not necessary.

The Principal Act is amended by inserting the following new clause immediately after section 116–

**116A.** (i) Pursuant to Section 34 of the County Assembly Services Act, there is established a fund to be known as the County Assembly Fund.

(ii) The Secretary to the County Assembly Service Board shall, on the directions of the Board, open and operate such bank accounts as may be necessary for the purposes of the County Assembly Fund.

(iii) Notwithstanding any other provisions of this Act, where a fund is established under any other law for the purpose of a county assembly, the County Assembly Service Board shall–

- a) establish procedures and systems for proper and effective management of the monies and property of the Fund;
- b) establish accounting procedures and systems for the Board to properly account for the monies and property;
- c) superintend the expenditure of the monies of the Fund to ensure that the monies are properly accounted for;
- d) prepare and submit accounts for each financial year in accordance with the written law relating to audit for audit by the Auditor-General; and
- e) ensure that the accounts prepared under paragraph (d) comply with the provisions of this Act.

## **Justification**

The PFMA is superior to CASA and this amendment avoids duplication.

### **Committee's position on the proposal:**

There is a fund already established under the County Assembly Service Act hence the proposed amendment is not necessary.

### **Clause 35, s.119: Banking arrangements for county government and its entities**

Introduce a subsection that provides that the Treasury Single Accounts shall not apply to the County Assemblies

### **Committee's position on the proposal:**

The proposed amendment by SOCAT was rejected since the Treasury Single Account will not affect in any way the operations of the county assemblies. Furthermore, this similar situation prevails with the national government entities where all departments, agencies including Parliament operate a single treasury account established at the Central Bank.

(c) By inserting the following new subsection immediately after subsection **119 (6)** –

(7) The provisions of the Treasury Single Account under this Section shall not apply to a county assembly.

## **Justification**

The County Assembly receives funds under the County Allocation of Revenue Act, therefore the funds allocated to County Assemblies need not go through the same executive account to avoid mix ups and unintended mismanagement of funds.

### **Committee's position on the proposal:**

The proposed amendment by SOCAT was rejected since the Treasury Single Account will not affect in any way the operations of the county assemblies. Furthermore, this similar situation prevails with the national government entities where all departments, agencies including Parliament operate a single treasury account established at the Central Bank.

### **Clause 39, s.127: County government to prepare cash flow projections**

The Clause 39 be amended to insert a new clause (39B) 2A by inserting the following new subsection immediately after subsection **127 (1)** –

(2) (a) The Controller of Budget shall only release funds to a County Assembly based on the projections in subsection (ii) and the funds allocated under the County Allocation of Revenue Act.

**Justification**

This will ensure that County Assembly releases are not subject to other conditions introduced by COB other than the cash flow projections and allocation based on the County Allocation of Revenue Act. Recently the Controller of Budget has introduced extraneous requirements including the Voucher, imprest warrant, bank vouchers for exchequer releases.

**Committee's position on the proposal:**

The Committee rejected the proposal by SOCAT due to the fact that the Controller of Budget is exercising her mandate as per the constitution in terms of controlling and ensuring all conditions have been met as per the budget approved. She is also allowed to also place other conditions as long as they are meant to streamline expenditure control and avoid pilferage.

**Clause 40, s.128a County Executive Committee Member for Finance to manage budget process at county government level.**

The provisions should be maintained as in the Principal Act.

**Justification**

The amendment will limit the timelines available for Sectors to finalize their issues and include the same in the annual development plan which the law requires to be submitted by 30th September.

**Committee's position on the proposal:**

The Committee rejected the proposal by SOCAT due to the fact that the proposed amendment is meant to provide sufficient time to incorporate any measures contained in the Budget Circular issued by the National Treasury. Hence the need to increase the timelines from 15<sup>th</sup> August to 30<sup>th</sup> September.

**Clause 41, s.129: County Executive Committee Member to submit budget estimates and other documents to County Executive Committee for approval.**

The provision be retained as in the Principal Act

The County budget making process is robust with the formulation of the County Fiscal Strategy Papers (CFSPs) being an exhaustive and all-inclusive end of product of County planning. The CFSP provides the overall resource envelope projections and Sector expenditure ceilings for the next financial year. Sectors including the County Assembly must live within the ceilings proposed by the County Executive Committee and approved by the County Assembly in the CFSP.

It is noteworthy that the provisions of Article 176 of the Constitution of Kenya provides that the County Government consists of the County Executive and the County Assembly. These two are separate arms of the County Government. To safeguard the principle of separation of powers and financial autonomy of County Assemblies, the provision that budget estimates of the County Assemblies be approved by the County Executive should be shelved.

The proposed amendment also contradicts the provisions of **Section 129** (3) and (4) which explicitly provides that the Clerk to the County Assembly shall prepare estimates and table the same in the County Assembly without any reference to the County Executive save for requirement to submit to the County Executive Committee Member for Finance for his comments.

### **Justification**

Retention of the provision in the Act will allow for the independence of the Assemblies by allowing the County Assembly Service Boards to be the final body/authority regarding the County Assembly budget. This amendment will expose the county assembly to another level of control by the Executive yet the Assemblies already have ceilings

### **Committee's position on the proposal**

Committee accepted the proposal from SOCAT since it will protect the independence of the assemblies.

### **Clause 45, s.136: Appropriation of money for county government purpose to lapse if unspent**

Insert 136A (a) any money unspent can be re-budgeted without affecting the ceiling for both assembly and executive. To clear pending bills without affecting the current budget

d) By inserting the following new subsection immediately after subsection (3) –

(4) An appropriation that has not been spent at the end of the financial year for the year which it was appropriated can be budgeted in the next financial year and such sum shall not affect the ceilings issued in respect to that financial year.

### **Justification**

It will allow assemblies to use the funds unspent at the end of any Financial Year as a balance carried forward since the said balances were part of the ceilings and pending bills hence avoiding the use of current financial year ceilings to offset previously accrued bills.

### **Committee's position on the proposal**

The Committee rejected the proposal by SOCAT since it goes against principles of public finances where any money that has been unspent by the end of the financial year is expected to be repaid to the county exchequer account and a refund statement prepared for submission to the Controller of Budget. It is noteworthy that the Bill proposes to introduce timelines within which the balances declared shall be surrendered.

### **Clause 65, s.187: Establishment of IBEC**

The provisions of Section 187 (d) of the Principal Act be amended by inserting the following new paragraphs in subsection (i) immediately after paragraph (h) –

- (i) a representative of a body acting on behalf of County Assemblies appointed by the body.
- (ii) a representative of Clerks of County Assembly nominated by Clerks of County Assemblies.

### **Justification**

The Council does not contain any representation from the County Assemblies making it too slip sided on the County Executive.

### **Committee's position on the proposal**

The Committee rejected the proposal by SOCAT since IBEC is comprised of the executive arm of both levels of government and hence introduction of the county assembly representatives undermines the principal of separation of power as the assemblies are expected to oversight the activities of the

executive. Parliament is also not represented in IBEC hence improper to include county assembly representatives.

### **3.3 COUNTY ASSEMBLIES FORUM (CAF)**

County Assemblies proposed the following amendments:-

#### **Clause 3, s.5: Declaration of entities as county government entities**

Retain section 5(1) as per the act

#### **Justification**

Proposal to add “Parliament” as one of the bodies to approve formation of county corporations will be unconstitutional as this clearly falls within the purview of county governments hence approval by the county assembly is enough.

The Constitution provides circumstances Parliament and in particular Senate can be involved in county affairs.

**Committee’s position on the proposal:** Committee rejected this proposal since both Houses of Parliament should be involved because this may entail transfer of liabilities from one level of government to the other.

#### **Clause 41, s.129: County Executive Committee member to submit budget estimates and other documents to county executive committee for approval**

Retain provision as per the Act.

#### **Justification**

- i. The County Executive and County assemblies are separate entities; hence separation of powers will be eroded with the proposal. As it will expose the county assembly to the control of the county executive.
- ii. It is the duty of the Clerk of the County assembly to prepare estimates of the assembly to be approved by the county assembly service board and submit the same to the county assembly as is in section 129(3) and (4) of the Act.
- iii. The County assembly budget must be within the ceilings proposed by the county executive as provided by CFSP.

**Committee's position on the proposal:**

The proposal by the CAF is contradictory. The intention of the proposed amendment in the Bill is to provide that independence to the county assemblies.

**Clause 42, s.131: County assemblies to consider budgets**

CAF stated that the said provision and the amendment should be deleted to allow county assemblies discharge their constitutional mandate of approving the budget without limitations. Article 185 of the Constitution mandates the assembly to approve county budgets.

The problems experienced by county governments departments during the exchequer releases has neither been addressed by the section or regulations

The County Executive has been holding the county assembly at hostage by denying allocations from the county treasury.

The section should be amended to provide that or alternatively regulations made to provide for -

- (i) County budget must be implemented as approved in the relevant appropriation act
- (ii) Requirement for the county executive member in charge of the County treasury to table a schedule providing for monthly exchequer issues to the various organs of the county government which shall be the basis for release of funds.
- (iii)The schedule to be submitted to the assembly for approval within 14 days of enactment of the Appropriation Act.
- (iv)A copy of the schedule to be submitted to the Controller of budget and the National Treasury within 14 days of approval.

**Committee's position on the proposal:**

The proposed amendment does not in any way interfere with the role of the county assemblies. In addition the issue of exchequer release does not fall within this section hence their proposal is misplaced. The section deals with the approval of county budget estimates which is the sole mandate of the county assemblies.

**Clause 45, s.136: Appropriation of money for county government purpose to lapse if unspent**

CAF proposed that the section should be amended further to provide that “provided any money unspent can be re-budgeted without affecting the ceiling of a particular organ of the county government to clear pending bills without affecting current budgets”.

### **Justification**

- i. The amendment affects functions and operations of counties as most of the times funds are released late into the financial year making it impossible for an entity to spend that amount.
- ii. Returning the funds without a provision for re-budgeting of the same will affect the operations of the county organs as they may not be able to clear pending bills.
- iii. County government organs should be allowed to use the funds unspent at the end of the financial year as balance carried forward since the said balances were part of the ceilings and have been appropriated to pending bills.

### **Committee’s position on the proposal**

The Committee rejected the proposal by CAF since it goes against principles of public finances where any money that has been unspent by the end of the financial year is expected to be repaid to the county exchequer account and a refund statement prepared for submission to the Controller of Budget. It is noteworthy that the Bill proposes to introduce timelines within which the balances declared shall be surrendered.

### **3.4 COUNCIL OF GOVERNORS (COG)**

The Council of Governors submitted the following amendments:-

#### **Clause 3, Section 5: Declaration of entities as county government entities**

COG objected to amendment to section 5(1) and wanted the provision to be maintained as per the Act.

### **Justification**

1. The role of Parliament in the process must be explicitly provided for
2. County corporations are county government’s functions and once the approval has been done by the assembly there is no need for parliament’s approval.

**Committee’s position on the proposal:** Committee rejected this proposal since both Houses of Parliament should be involved because this may entail transfer of liabilities from one level of government to the other.

**Clause 4, Section 8: Responsibilities of the Senate Budget Committee in Public Finance matters.**

Objected to amendment to section 8(1) and want the provision to be maintained as per the Act.

**Justification**

It is not a constitutional mandate of a Senate Committee to monitor adherence of the Public Finance principles by the Counties. Article 96 of the Constitution is very clear on the role of Senate as a whole.

With regards to County finances, the county assemblies are constitutionally provided with the mandate to provide oversight to Counties. The extent of the Senates oversight role should be re-examined.

**Committee's position on the proposal:**

The proposal by COG seems to misunderstand the role of the Senate in over sighting the county governments as provided by the Constitution and espoused further by the ruling of High Court in where the Court ruled that the Senate can summon Governors over the use of public resources for their respective counties.

Further amendment

**Clause 5, Section 10: Responsibilities of the Parliamentary Budget Office**

They proposed a deletion and substitution of the proposed new paragraph (i) in Clause 5(a)(ii) as follows-

(i)review monitoring and evaluation reports of government programmes and projects with a view to inform the legislative budget and economic analysis.

**Justification**

The PBO has no capacity to undertake monitoring and evaluation. As such, it should be limited to reviewing monitoring and evaluation reports.

They object to the proposed paragraph (k)

**Justification**

The proposal in its entirety will infringe on county operations. The Council envisages a situation where the office will be demanding these documents are not needed for the division of revenue between the two levels of government. The division of revenue is already guided by Article 203 of the Constitution and not through the Fiscal Strategy papers.

**Committee’s position on the proposal:**

The proposal by COG was rejected since the role of PBO has been mandated to review the budget documents to be able to offer capacity to county assemblies.

**Clause 12, Section 39: National Assembly to consider budget estimates**

COG proposed that the provision on section 39(7) to be maintained as is in the parent act.

**Justification**

It is important that the Appropriation Act is assented to before the national assembly authorizes any withdrawals so as to ensure transparency and integrity of the process.

**Committee’s position on the proposal:**

The proposed amendment is per what is in the Constitution and hence the amendment as contained in the Bill is merely conforming to the requirements of Article 222.

**Clause 19, Section 82(4): Annual reporting by receivers of revenue**

COG proposes that section 82(4) be maintained as per the parent Act.

**Justification**

When the words “ by the receiver or collector are deleted in the section the provision loses its meaning.

**Clause 30, Section 107(2)**

They accepted the proposed amendment to section 107(2)

**Clause 31, s.109(4)**

They accepted the proposed amendment to section 109(4) on the basis that currently all 47 County Revenue Fund accounts are opened at the Central Bank. This is to allow for efficient management of the County resources.

**Clause 32, s.112**

They accepted the proposed amendment to section 112(3)

### **Justification**

The proposal is meant to promote pay out of the emergency fund to enable the affected persons to return to their original status.

### **Clause 33, s.116**

They accepted the proposed amendment to section 116(1) as this is to emphasize that these are county funds.

They rejected the amendment to section 116(7) and want the provision to be maintained as it is in the parent Act.

### **Justification**

Submission of audited financial statements to the Auditor General three months after the end of the financial year might not be feasible from the experience. The Council proposes for the retention of the current provision.

### **Committee's position on the proposal:**

The Committee rejected this proposal since the requirement for submission of audited financial statement is a standard requirement hence any administrator of public funds must be in a position to present the same to the county assemblies. The CEC Finance must ensure that this is done in good time before submission to the county assemblies.

### **Clause 34, s.117**

They propose that the provisions of section 117(1) and (6) to be maintained as per the parent Act.

### **Justification**

Any amendment to one budgetary calendar date affects the entire budgeting process. Furthermore, the fiscal strategy paper is meant to be aligned to the Budget Policy Statement submitted to Parliament by the National Treasury on 15<sup>th</sup> February every year. This will therefore create conflict between the two documents.

The budgeting calendar for County governments should be reviewed wholesomely because it mirrors the budgeting calendar for the MDAs. 30 days is a lot of time for approval of the document by the

assemblies. The County assemblies have adequate staff that enables them fast-track the documents in good time.

### **Clause 35, s.119 Banking arrangements for county government entities**

They propose that the provisions of section 119(4) to be maintained as per the parent Act.

#### **Justification**

1. Currently there are no guidelines with regards to accessibility of overdrafts but even if they were there, the overdrafts are accessed through the Central Bank and there is no role of the National Treasury in this process.
2. The National Treasury should be publicizing reports of the national MDAs and not Counties with regards to this process.

#### **Committee position on the proposal:**

The amendment was rejected since the National Treasury has the overall responsibility in matters finance

### **Clause 36**

The insertion of the new section is agreed to with amendments to read as follows:

**119A(1)** the following shall be considered by the County Treasury in granting approval to a county government entity to open and operate a county government bank account.

(b) for avoidance of doubt, all county government bank accounts shall be opened at the Central Bank of Kenya except for imprest bank accounts for petty cash which shall be opened at a bank designated by the County Treasury

#### **Justification**

The proposal to have a government controlled bank as the bank that counties should deposit imprest, one wonders which government is being referred to in this context. The national government does not provide for such a directive to the MDAs. This is like a directive to the Counties.

**Committee's position on the proposal:**

The COG seems to have misunderstood the proposed amendment as just like all national government entities, county governments will be required to operate an exchequer account with national treasury except for imprest bank accounts for petty cash which shall be opened at a government controlled or a cooperative owned bank designated by the county treasury. The purpose of these is to avoid opening bank accounts in banks with the danger of collapsing. A good example being Chase and Imperial Banks.

**Clause 38, Section 126: County government to prepare development plan**

COG accepted the amendment.

**Justification**

It is important to provide timelines for the County Assemblies to deliberate on the County annual development plans. The Act as it is currently does not provide for this.

**Clause 39, Section 127: County government to prepare cash flow projections**

COG propose to maintain the provisions of section 127(1) as per the parent Act.

**Justification**

The budgeting framework should only be reviewed to cater for transition period.

**Committee's position on the proposal:**

The Committee rejected this proposal as the alteration of timelines allows for sufficient time to prepare the county estimates.

**Clause 40, Section 128: County executive Committee Member for Finance to manage budget process at county government level**

They propose to maintain the provision of section 128(2) as per the parent Act.

**Justification**

Budgeting should only be amended to incorporate the transition phase after every general election. As it is, the budgeting calendar mirrors the National government budgeting process in the review of the counties' budgeting calendar.

**Committee's position on the proposal:**

The Committee rejected the proposal by COG due to the fact that the proposed amendment is meant to provide sufficient time to incorporate any measures contained in the Budget Circular issued by the National Treasury. Hence the need to increase the timelines from 15<sup>th</sup> August to 30<sup>th</sup> September.

**Clause 42, s.131**

They accepted the proposed insertion of a new subsection (5). On the basis that here must be a ceiling as how much the County Assembly can adjust the budget estimates of the County. Without a ceiling, we may find that no county budget will ever be approved in time and in the right manner.

They object to the insertion of the new subsection (7). The **COG** questioned why the National Treasury requires an amendment to the Act to demand County Budgets. The National Treasury is not responsible for the implementation of County Budgets and has no role in the implementation of County Budgets. County Governments are already required to publish and publicize their budgets, the National Treasury should be able to access those budgets in the publicized forums rather than to make it mandatory through a legislation.

**Committee position on the proposal:**

The proposal by COG was rejected since the National Treasury has the overall responsibility in matters finance hence no harm in legislating on the requirement for CEC Finance to submit a copy of the budget estimates to the National Treasury.

**Clause 45, s.136**

COG accepted the amendment as it ensures that the refund process is fast tracked.

**Clause 53, s.159**

COG accepted the amendment as it seeks to include the variation component.

**Clause 55, s.165**

COG accepted the amendment to section 165(4) the three months is to coincide with the submission of the statements to the other oversight institutions.

**Clause 58, s.176**

COG accepted the amendment to section 176(2). The proposal is to protect the financing of urban areas.

**Clause 59, s.178: Conditions in which urban areas or cities may receive grants**

They propose that the provision in section 178(7) be maintained as it is in the parent Act.

**Justification**

The grant or donation is directly being implemented by the Counties on the counties functions. There is or reason as to why the National Treasury should authorize Counties to allow a donor to audit such donations and grants. This authority should come from the Counties themselves.

**Committee position on the proposal:**

The Committee rejected the proposal by the COG since in as much as counties are independent, the national government retains the overall responsibility on grants and as such it is necessary for his authority to be sought to allow a donor of a grant to audit such funds on the basis of its own financial procedures. The amendment ass proposed in the Bill is proper.

**3.5 THE NATIONAL TREASURY**

The National Treasury proposed the following amendments:

**Clause 2**

Section 2 of the principal Act is amended by inserting the following new paragraph:

*The "Consolidated Fund" shall mean all money raised or received by or on behalf of the national government in accordance with Article 206(1) of the Constitution.*

**Justification**

The Consolidated Fund is not defined. There is need to define the Consolidated Fund and the scope therefore.

Section 2 of the Principal Act is amended by inserting the following new paragraph:

*The "County Revenue Fund" shall mean all money raised or received by or on behalf of the County Government in accordance with Article 207(1) of the Constitution.*

**Justification**

The County Revenue Fund is not defined. There is need to define the County Revenue Fund and the scope therefore.

Section 2 of the Principal Act is amended by deleting the definition of “public money” and replacing therefor with the following:

*“Public money means:*

- a) All money that comes into possession of, or is distributed by a national or county government entity and money raised by a private body where it is doing so under statutory authority; and*
- b) Money held by national or county government entities in trust for third parties and any money that can generate liability for the government.”*

#### **Justification**

The amendment is intended to include public money held by county government entities in the definition of public money. This was inadvertently omitted in the published PFMA.

Section 2 of the Principal Act is amended by deleting definition for National Exchequer Account and replacing therefor with the following:

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

#### **Justification**

The definition needs to be aligned with the proposed amendments in Section 17(2).

#### **Clause 8**

The National Treasury does not support this amendment because it is intended to restrict procurement relating to development votes three months prior to an election. It is not a good practice to curtail procurement since this would have a negative impact on economic development. Since there are control institution mechanisms established in law to check abuse of office, there is no need of freezing employment due to an impending election.

#### **Clause 11**

The Ministry did not support this amendment because the section applies to paragraph (2) of Article 202 of the Constitution and not paragraph (1) of Article 202 of the Constitution. They therefore recommend

that the amendment be dropped since national government budget estimates do not include the equitable share.

### **Clause 13**

The National Treasury did not support it because exchequer issues are usually not by programmes and projects but by Votes (Recurrent and Development) as appropriated by Parliament or by County Governments as per CARA. What Parliament should require the CS/NT to provide is a breakdown of expenditures by programmes and projects and not exchequer releases.

### **Section 17(2)**

That Section 17 be amended in subsection (2) by deleting it and replacing therefor with the following paragraph:

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

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

### **Justification**

1. It is necessary to expand the accounts of the Consolidated Fund to provide for Kenya shillings or foreign denominated currency. The account or accounts should be kept at the Central Bank of Kenya.
2. The foreign currency Exchequer accounts shall hold funds received by the National Treasury in foreign currencies hence reduce exchange losses.
3. All the National Exchequer Accounts shall be subject to CoB’s approval in accordance with Article 206(1) of the Constitution and Clause 17(4) of the PFM Act.

That Section 17 be amended in subsection (3) by deleting it and replacing therefor with the following new paragraph:

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

#### **Justification**

To require that no National Exchequer Account shall be overdrawn at any time, whether Kenya Shillings account or foreign denominated account.

That Section 17 be amended in subsection (4) by deleting it and replacing therefor with the following paragraph:

*“(4) Where a withdrawal from the Consolidated Fund is authorized under the Constitution or an Act of Parliament for the appropriation of money, the National Treasury shall make requisition for the withdrawal and submit it to the Controller of Budget for approval, which request shall be made manually or electronically through a designated form prescribed by the Cabinet Secretary, provided that inter-account transfers within the Consolidated Fund Accounts shall not require Controller of Budget’s approval.”*

#### **Justification**

1. This amendment is made to facilitate progressive automation of the requests made of authority from the Controller of Budget on the withdrawals from the National Exchequer Account to be automated and embrace use of technology in our Public Finance management transactions.
2. The amendment provides flexibility for the National Treasury to make inter-account transfers especially funding the National Exchequer Account from other Consolidated Fund accounts.

That Section 17 be amended in subsection (5) by deleting it and replacing therefor the following new paragraph:

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

## **Justification**

To provide for more than one bank account and require CBK to release funds based on approval from the Controller of Budget and the National Treasury instructions. In addition, this is also to clarify that the approval or written instructions may be manual or electronic to allow progressive use of technology.

## **Section 28**

Section 28 of the Principal Act is amended by inserting the following new subsections immediately after subsection (1):

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

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

*(1C) For the avoidance of doubt, no expenditure shall be paid out of a bank account designated as a Revenue Collection Account except as otherwise authorized by law except as otherwise authorized by the Cabinet Secretary in concurrence with the Controller of Budget.*

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

## **Justification**

Section 28 of the PFMA should be amended to mirror the amended Section 119 of the PFMA. The Cabinet Secretary should be allowed to authorize payments from Revenue Collection accounts in cases where receipts are made in error or belong to third parties or relate to Treasury Bills.

Section 28 of the Principal act is amended in subsection (2) and (3) by inserting the word “system” immediately after the words “Treasury Single Account” so as to read as follows:

*“(2) The National Treasury shall establish a Treasury Single Account system into which all revenues received by national government entities shall be deposited and from which all payments of money to or on behalf of national government entities shall be made.*

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

### **Justification**

This amendment harmonizes the Section with the definition of the TSA in the Preliminary section and clarifies that the TSA is a system of accounts and not ONE Account.

Section 28 of the principal Act is amended by inserting the following new subsection (2A) immediately after subsection (2):

*“(2A) The Treasury Single Account system shall include the Consolidated Funds Accounts as referred to in Section 17(2), State Departments, Commissions and Independent Offices Accounts and any other Account designated by the Cabinet Secretary.”*

### **Justification**

The amendment clarifies the scope of the TSA; it includes both inflow (Consolidated Fund Accounts) and outflow accounts (MDAs account). The scope can progressively be increased to include SAGAs and other government entities.

### **Section 34**

The National Treasury did not support this amendment because County Governments are supposed to align their CFSPs with the national plans/policies which are expounded in the BPS. If the CFSPs are to be submitted by 15<sup>th</sup> February then there will be no time allowed for such alignment to take place.

### **Section 35**

The National Treasury did not support this amendment because the Cabinet Secretary is required to submit to Parliament every four months a report on all loans made to the national government, national government entities and county governments. Besides, it has been agreed following inter-governmental

consultations that county governments will not go directly to the CBK for overdraft, instead the National Treasury shall fast track disbursements for county governments that have urgent financing needs.

### **Section 119**

Section 119 of the PFMA is amended:

(a) by inserting the following new subsections immediately after subsection (1):

*(1A) A County Treasury may authorize a county government entity, including a county assembly to open and operate bank accounts only at the CBK except:*

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

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

*(1C) Money paid into a bank account designated as County Revenue Collection Account shall be promptly credited into the County Exchequer Account and shall be used and accounted for in accordance with Article 2017 of the Constitution and Section 109 of the Act.*

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

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

## **Justification**

County governments have established revenue collection bank accounts in some commercial banks into which local revenue is paid. Reports however, indicate that county governments are utilizing the revenue collected to make payments before sweeping the funds into the County Revenue Fund. By doing so the county governments are bypassing the office of the Controller of Budget. This goes against the intention of Article 2017 of the Constitution, Section 109 of the PFMA and National Treasury Circular No. 14 of 9<sup>th</sup> September, 2015.

They therefore propose further amendments to Section 119 of the PFMA to require County Governments to designate bank accounts opened for collecting money raised or received by or on behalf of the county government as County Receipts Accounts and to bar charging of any expenses to such accounts, except bank account operational expenses and expenses relating to mobilization of a loan.

In addition, they also noted that county governments are opening bank accounts in commercial banks for purposes of holding deposits (usually transferred from the County Revenue Fund) contrary to the intention of the law. To put a stop to this we have proposed to amend the PFMA to restrict the opening of bank accounts for three purposes: (i) for purposes of an imprest; (ii) for purposes of revenue collection; and (iii) to operationalize a county public fund established under Section 116 of the PFMA.

Section 119 of the principal Act is amended in subsection (2) and (3) inserting the word “system” immediately after the words “Treasury Single Account” so as to read as follows:

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

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

## **Justification**

This amendment harmonizes the Section with the definition of the TSA in the preliminary section and clarifies that the TSA is a system of accounts and not ONE Account.

#### **Section 164 (4)**

Section 164 of the principal Act is amended in paragraph (b) of subsection (4) by inserting the words “the National Treasury” immediately after the words “County Treasury” so as to read as follows:

*(4) Within three months after the end of each financial year, the accounting officer for an entity shall-*  
*(b) deliver a copy of the statements to the relevant County Treasury, the National Treasury, the Controller of Budget and the Commission on Relevant Allocation.*

#### **Justification**

The inclusion of National Treasury as a recipient of a copy of financial statements is to facilitate the National Treasury to provide technical support to county government entities in terms of review and feedback of the financial statements in time for the preparation of county treasury financial statements.

The current situation is that the National Treasury does not get copy of the county government entities financial statements. This was an oversight at the preparation of the PFM Act 2012.

#### **Section 187(1)**

Section 187 of the principal Act is amended in subsection (1) by inserting the following new paragraph (i) after paragraph (h):

*“(i) chairmen of the Committees of the Council of Governors.”*

#### **Justification**

To include the chairmen of the Council of Governors committees as substantive members of IBEC (as per the resolution of IBEC meeting of 11<sup>th</sup> August 2015).

## **4.0 PROPOSED COMMITTEE AMENDMENTS**

### **CLAUSE 2**

**THAT**, clause 2 of the Bill be amended by—

(a) inserting the following new paragraphs immediately after paragraph (a)—

(aa) deleting the definition of “National Exchequer Account” and substituting therefor the following new definition—

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

### **JUSTIFICATION**

**This is to align the definition with the proposed amendments in Section 17(2) of the Act.**

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

“public money” includes—

- (a) all money that comes into possession of, or is distributed by, a national or county government entity and money raised by a private body where it is doing so under statutory authority; and
- (b) money held by national or county government entities in trust for third parties and any money that can generate liability for the Government;

(b) inserting the following new paragraph immediately after paragraph (c)—

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

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

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

### **JUSTIFICATION**

**There is need to define the Consolidated Fund and County Revenue Fund and the scope therefore.**

### **NEW CLAUSE 5A**

**THAT**, the Bill be amended by inserting the following new clause immediately after clause 5—

**5A.**The principal Act is amended by inserting the following new section immediately after section 10—

**10A.** (1) Subject to Article 201 of the Constitution and the provisions of this Act, each county assembly shall establish a county assembly budget office responsible for budget, finance and economic analysis.

(2) A county assembly budget office shall exist as an office in the County Assembly Service and shall consist of persons appointed on merit by virtue of their experience in finance, economics and public policy matters.

(3) A county assembly budget office created under subsection (1) shall—

- (a) provide professional services in respect of budget, finance and economic information to the offices of the County Assembly;
- (b) prepare reports on county budgetary projections and make proposals to the committees of the county assembly responsible for budgetary matters;
- (c) prepare analyses of specific issues, including financial risks posed by the National and County Government policies and activities to guide the county assembly;
- (d) consider county budget proposals and economic trends and make recommendations to the relevant committee of the County Assembly with respect to those proposals and trends;
- (e) establish and foster relationships with the National and County Treasury and other county treasuries, with an interest in budgetary and socio-economic matters as it considers appropriate for the efficient and effective performance of its functions;
- (f) subject to Article 35 of the Constitution, ensure that all reports and other documents produced by the assembly office are prepared, published and publicised not later than fourteen days after production;
- (g) report to the relevant committees of the county assembly on any Bill that is

submitted to the county assembly and has an economic and fiscal impact, making reference to the fiscal responsibility principles and to the fiscal objectives set out in the relevant County Budget Policy Statement; and

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

(4) In carrying out its functions under subsection (3), the county assembly office shall observe the principles of public finance under Article 201 of the Constitution.

(5) The Parliamentary Budget Office shall be required to assist and build the capacity of County Assemblies to analyse any documents under this Act and any Regulations on matters Public Finance.

## **JUSTIFICATION**

**The amendment seeks to introduce a county budget office.**

## **CLAUSE 8**

**THAT**, clause 8 of the Bill be amended by—

(a) deleting paragraph (b) and substituting therefor the following new paragraph—

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

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

(a) include the National Exchequer Accounts, Revenue Collection Accounts, Receipts into Domestic Debt Accounts, Overdraft Account, Special Project Deposit Accounts and any other accounts designated by the Cabinet Secretary;

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

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

## **JUSTIFICATION**

**The amendment seeks to encompass all types of accounts being referred to.**

(b) inserting the following new paragraphs immediately after paragraph (b)—

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

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

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

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

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

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

## **JUSTIFICATION**

**The amendment seeks to introduce electronic requisition of withdrawal of funds.**

## **CLAUSE 9**

THAT, clause 9 of the Bill be amended by deleting paragraph (a).

## **JUSTIFICATION**

**The Parliamentary Service Commission is an independent commission.**

## **NEW CLAUSE 9A**

THAT, the Bill be amended by inserting the following new clause immediately after clause 9—

**9A.** Section 25 of the principal Act be amended—

(a) in subsection (2) by deleting the expression “15<sup>th</sup>” and substituting therefor the expression “1<sup>st</sup>”;  
and

- (b) in subsection (7) by deleting the words “fourteen days” and substituting therefor the words “thirty days”.

#### **JUSTIFICATION**

**To give Parliament sufficient time to consider the Budget Policy Statement.**

**9B.** Section 28 of the principal Act be amended by inserting—

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

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

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

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

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

#### **JUSTIFICATION**

**To ensure accountability.**

- (b) the word “system” immediately after the words “Treasury Single Account” appearing in subsection (2);

- (c) the word “system” immediately after the words “Treasury Single Account” appearing in subsection (2); and

#### **JUSTIFICATION**

**This is to clarify that the Treasury Single Account is a system of accounts and not a single account.**

#### **CLAUSE 10**

**THAT**, the Bill be amended by deleting clause 10.

#### **JUSTIFICATION**

**The National Treasury should be providing quarterly reports as has been the practice.**

**CLAUSE 13**

**THAT**, the Bill be amended by deleting clause 13.

**JUSTIFICATION**

**The National Treasury should take responsibility because they fund the projects.**

**CLAUSE 18**

**THAT**, Section 78 of the principal Act is amended by—

(a) renumbering section 78 as 78(1);

(b) inserting the following new subsection immediately after subsection (1)—

(2) Notwithstanding subsection (1), the Kenya Revenue Authority may delegate its revenue collection responsibility to other agents.

**JUSTIFICATION**

**To increase efficiency in revenue collection.**

**CLAUSE 35**

**THAT**, clause 35 of the Bill be amended—

(a) by deleting paragraph (a) and substituting therefor the following new paragraph—

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

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

(b) inserting the following new paragraphs immediately after paragraph (a) —

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

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

(ab) by deleting subsection (3) and substituting therefor the following subsection—

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

## CLAUSE 36

THAT, the Bill be amended by deleting clause 36 and substituting therefor the following new clause—

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

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

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

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

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

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

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

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

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

## CLAUSE 41

THAT, the Bill be amended by deleting clause 41 and substituting therefor the following new clause—

41. Section 129 of the principal act is amended—

- (a) deleting subsection (1)

## JUSTIFICATION

**The amendment will expose the County Assembly to another level of control by the executive yet the assemblies already have ceilings.**

(b) in subsection (3) by inserting the words “by 30th March each year” immediately after the words “member for finance.”

**JUSTIFICATION**

**Introduction of timelines for the submission of budget estimates to the Assembly.**

**CLAUSE 42**

**THAT**, clause 42(c) of the Bill be amended in the proposed new subsection (7) by inserting the words “Controller of Budget and the Senate” immediately after the words “National Treasury.”

**JUSTIFICATION**

**This is to inform the Controller of Budget and the Senate about the budget estimates approved by each County Assembly.**

**NEW CLAUSE 12**

**THAT** the Bill be amended by inserting the following new clauses immediately after clause 12-

**12A.** Section 39 of the Principal Act is amended by deleting the words “except the Finance Bill” appearing immediately after the words “relevant Bills”.

**12B.** The principal Act is amended by inserting the following new section immediately after section 39-

**39A.** (1) Not later than seven days after the estimates of revenue and expenditure are submitted to the National Assembly, the Cabinet Secretary shall submit to National Assembly the Finance Bill, setting out the revenue raising measures for the National Government.

(2) Following submission of the Finance Bill by the Cabinet Secretary, the relevant committee of the National Assembly shall introduce the Bill in the National Assembly, together with the report of the Committee on the Bill.

(3) The National Assembly shall consider and pass the Finance Bill, with or without amendments, in time for it to be assented to by 30<sup>th</sup> June each year.

(4) Any recommendations made by the relevant committee of the National Assembly or adopted by the National Assembly on revenue matters shall-

- (a) ensure that the total amount of revenue raised is consistent with the approved fiscal framework and the Division of Revenue Act;
- (b) take into account the principles of equity, certainty and ease of collection;
- (c) consider the impact of the proposed changes on the composition of the tax revenue with reference to direct and indirect taxes;

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

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

(f) take into account the recommendations of the Cabinet Secretary as provided under Article 114 of the Constitution; and

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

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

## **JUSTIFICATION**

- 1. This is to ensure that the Budget is prepared in accordance with the available resources.**
- 2. To ensure that the government collects revenue at the beginning of the Financial Year since the Appropriations Bill will be signed together with the Finance Bill.**

## **NEW CLAUSE 42A**

**THAT**, the Bill be amended by inserting the following new clause immediately after clause 42—

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

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

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

## **NEW CLAUSE 54**

**THAT**, the Bill be amended by inserting the following new clause immediately after clause 54—

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

## **JUSTIFICATION**

**To inform the National Treasury.**

**CLAUSE 65**

**THAT**, the Bill be amended by deleting clause 65 and substituting therefor the following new clause—

**65.** Section 187 of the principal Act is amended—

(a) in subsection (1) by inserting the following new paragraph immediately after paragraph (h)—

(i) chairpersons of the Committees of the Council of Governors; and

(b) by deleting subsection (3).

**JUSTIFICATION**

**This is to include chairpersons of the Council of Governors Committees as substantive members of IBEC (as per the resolution of IBEC meeting of 11<sup>th</sup> August, 2015).**

SIGNED.......... DATE..........

**THE HON. JOSEPH LIMO, MP**

**CHAIRPERSON**

**DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING**



REPUBLIC OF KENYA



NATIONAL ASSEMBLY

DEPARTMENTAL COMMITTEE ON FINANCE & NATIONAL PLANNING  
ADOPTION SCHEDULE FOR THE REPORT ON THE CONSIDERATION OF THE PUBLIC  
FINANCE MANAGEMENT (AMENDMENT) BILL, 2017

DATE: 19<sup>TH</sup> FEBRUARY, 2019

NAME	SIGNATURE
1. HON. JOSEPH K. LIMO, MP – CHAIRMAN	
2. HON. ISAAC W. NDIRANGU – VICE-CHAIRMAN	
3. HON. JIMMY O. ANGWENYI, MGH, MP	
4. HON. CHRISTOPHER OMULELE, MP	
5. HON. ENOCH KIBUNGUCHY, MP	
6. HON. SHAKEEL SHABBIR AHMED, CBS, MP	
7. HON. ABDUL RAHIM DAWOOD, MP	
8. HON. DANIEL E. NANOK, MP	
9. HON. ANDREW A. OKUOME, MP	
10. HON. DAVID M. MBONI, MP	
11. HON. KURIA KIMANI, MP	
12. HON. JOSEPH M. OYULA, MP	
13. HON. JOSHUA KANDIE, MP	
14. HON. LYDIA H. MIZIGHI, MP	
15. HON. MOHAMED ALI, MP	
16. HON. PURITY NGIRICI, MP	
17. HON. SAMUEL ATANDI, MP	
18. HON. STANLEY M. MUTHAMA, MP	
19. HON. EDITH NYENZE, MP	

**MINUTES OF THE 4<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON TUESDAY, 19<sup>TH</sup> FEBRUARY, 2019 ON 4<sup>TH</sup> FLOOR, CONTINENTAL HOUSE AT 10.00 AM**

---

**PRESENT**

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MGH, MP
4. Hon. Christopher Omulele, MP
5. Hon. Abdul Rahim Dawood, MP
6. Hon. Daniel E. Nanok, MP
7. Hon. Joseph M. Oyula, MP
8. Hon. Edith Nyenze, MP
9. Hon. David M. Mboni, MP
10. Hon. Joshua C. Kandie, MP
11. Hon. Samuel Atandi, MP
12. Hon. Francis K. Kimani, MP
13. Hon. Lydia H. Mizighi, MP
14. Hon. Andrew A. Okuome, MP
15. Hon. Purity Ngirici, MP

**APOLOGIES**

1. Hon. Shakeel Shabbir Ahmed, CBS, MP

**ABSENT**

1. Hon. Dr. Enoch Kibunguchy, MP
2. Hon. Mohamed A. Mohamed, MP
3. Hon. Stanley M. Muthama, MP

**INATTENDANCE - SECRETARIAT**

- |                        |   |                                   |
|------------------------|---|-----------------------------------|
| 1. Ms. Leah Mwaura     | - | Senior Clerk Assistant/Lead Clerk |
| 2. Ms. Jennifer Ndeto  | - | Principal Legal Counsel           |
| 3. Ms. Laureen Wesonga | - | Third Clerk Assistant             |
| 4. Mr. Josephat Motonu | - | Fiscal Analyst I                  |
| 5. Mr. Chelang'a Maiyo | - | Research and Policy Analyst III   |
| 6. Mr. Robert Rop      | - | Audio Officer                     |
| 7. Mr. Samuel Sunkuli  | - | Intern, Research                  |

## **AGENDA**

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair
4. Confirmation of Minutes
5. Matters Arising
6. **Meeting to:-**
  - i. **Consider the following issues with Kenya Revenue Authority**
    - a. **The general revenue performance to date and strategies put in place to ensure the revenue targets are met;**
    - b. **The actual revenue capacity that the Authority is able to collect for the current Financial Year;**
    - c. **Update on the Integrated Customs Management System;**
    - d. **Any legislative intervention that the Authority may require in order to improve the revenue to GDP ratio; and**
    - e. **Update on the 7<sup>th</sup> Corporate Plan (2019-2021) and its strategic objectives.**
  - ii. **Adopt the report on the consideration of the PFM (Amendment) Bill, 2017**
  - iii. **Be briefed on the 2019/2020 Budget Policy Statement by the Parliamentary Budget Office**
7. Adjournment/ Date of the next meeting

### **MIN.NO.NA/F&NP/2019/016: PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON**

The meeting was called to order at 10.25 am with prayer from the Chairperson. The Chairperson then welcomed the meeting to deliberate on the day's agenda.

### **MIN.NO.NA/F&NP/2019/017: CONFIRMATION OF MINUTES**

Agenda deferred

### **MIN.NO.NA/F&NP/2019/018: MEETING WITH THE KENYA REVENUE AUTHORITY**

The Chairperson informed the meeting that the Committee had received a letter from the Kenya Revenue Authority requesting the Committee to reschedule the meeting to 12<sup>th</sup> March, 2019 subject to the availability of the Members since the Commissioner General was out of the country. The Committee assented to their request to reschedule the meeting to 12<sup>th</sup> March, 2019.

### **MIN.NO.NA/F&NP/2019/019: BRIEFING ON THE BUDGET POLICY STATEMENT BY THE PARLIAMENTARY BUDGET OFFICE**

The Committee was briefed by the Parliamentary Budget Office as follows, That –

- (i) The Budget policy Statement projects the total revenue in 2019/20 at KSh. 2,080.9 billion (18.3% of the GDP) comprising of KSh. 1,877.2 billion of Ordinary Revenue and KSh. 203 billion in A-i-A.

- (ii) The overall revenue is projected to rise to KSh. 2,718.0 billion in the medium term. It has been proposed that this will be achieved through the on-going measures on tax policy as well as enhancement of tax administration and compliance.
- (iii) The key programmes and objectives including proposed ceilings for the FY 2019/20 for MDAs under the Committee's purview are as follows:-

<b>Vote</b>	<b>Programme</b>	<b>Objective</b>	<b>Proposed Allocation (KSh. Millions)</b>
The National Treasury	General Administration, Planning and Support Services-Treasury	To enhance institutional and human resource capacity for quality delivery of services	KSh. 107,609
	Public Financial Management	To increase the reliability, stability and soundness of the financial sector	
	Economic and Financial Policy Formulation and Management	To ensure stable macroeconomic environment	
	Market Competition	To promote and sustain competition.	
State Dep. for Planning & Statistics	Economic policy and national planning	To strengthen the linkage between planning, policy formulation and budgeting at all levels of government.	KSh. 52,752
	National Statistical Information Services	to enhance evidence based decision making for socioeconomic development	
	Monitoring and Evaluation Systems	To improve tracking of implementation of development policies, strategies, and programmes and projects	
	Integrated Regional Development	To promote equitable and sustainable basin based development and land utilization	
	General Administration, Planning and Support Services – Planning	To enhance efficient and effective service delivery in programmes implementation	
State Dept.	Devolution support	To effective implementation of the	KSh. 9,189

for Devolution	services	devolved system of government	
	Management of Intergovernmental Relations	To ensure harmonious intergovernmental relations at national and county levels	
	Management of Intergovernmental Relations	To ensure harmonious intergovernmental relations at national and county levels	
	General Administration, Planning and Support Services-Devolution	To provide efficient administrative services that would ensure effective execution of technical mandates of the state department.	
Commission on Revenue Allocation	Inter government revenue and financial matters	To ensure equitable vertical and horizontal sharing of resources; promote good financial management; enhance revenue collection by both levels of government governments; and narrow marginalization gap	KSh. 438
Salaries and Remuneration Commission	Salaries and Benefits Management in the Public Service	To ensure a dynamic and harmonized competitive remuneration structure in the public service that rewards productivity, attract and retains required skills; is transparent and also fiscally sustainable	KSh. 630
Controller of Budget	Control and Management of Public finances.	To promote prudent public financial management by authorizing withdrawals from Public Funds and reporting on budget implementation to National and County Governments to Parliament	KSh. 723

### National Treasury

(iv) The National Treasury intends to implement five (5) programmes. NT made a request of KSh. 174.3 billion during the Sector Working Groups. However, the BPS 2019 proposed a ceiling of KSh. 108.1 billion occasioning a resource gap of KSh. 66.7 billion. The biggest gap is on General Administration, Planning and Support Services whose recurrent resource gap is about KSh. 45.6 billion.

(v) There are three (3) stalled projects under the National Treasury as follows:-

- a. The upgrading and integration of pension's management whose software and hardware budget is said to have been moved to the Ministry of Information and Communication Technology. Total expenditure by June, 2018 was KSh. 170 million whereas the total project cost KSh. 1.09 billion.
  - b. Installation of security system at Treasury, Bima and Herufi House. The project is to be implemented in phases and so far, KSh. 315.95 million has been utilized out of the total project cost of KSh. 984 million. The project is meant to be completed end of June, 2020.
  - c. Infrastructure finance and Public Private Partnership. Out of the total project cost of KSh. 9.097 billion, only KSh. 2.287 billion has been spent. It is reported that the new arrangement on the project was signed when the budget process had already been completed.
- (vi) The government has committed substantial amount of resources towards the leasing of vehicles for the government security agencies. There is need for a comprehensive audit to ascertain how the programme compares in relation to purchasing of vehicles.
- (vii) The implementation of projects under the Public Private Partnerships arrangements seems to be at slow pace. Therefore, there is need to expedite the operations under this framework to ensure most capital projects are implemented under this arrangement in order to remove them from the government balance sheet, thus ease the pressure on borrowing for their financing.

#### **State Department of Planning**

- (viii) During the Sector Working Groups, the State Department of Planning requested KSh. 59 billion but the BPS 2019 has proposed to allocate KSh. 52.8 billion which leaves KSh. 6 million as a resource gap. This is even at the time of carrying out Kenya Population and Housing Census.
- (ix) The State Department for Planning plans to establish the County Planning Offices. This is a key policy decision that needs to be scrutinized considering the Fourth Schedule with regard to the planning and statistics functions at both levels and there is also need for collaboration so as to eliminate duplication.
- (x) The planned drafting of the Monitoring and Evaluation Bill together with the pending process of approving the attendant policy may require to be expedited so as to facilitate effective monitoring and evaluation of the government policies, projects and programmes. This will go a long way in institutionalizing the professional process of following up of implementation to aid effectual oversight by the legislature.
- (xi) The State Department for Planning will be funding the Vision 2030 secretariat and the Monitoring and Evaluation Department within the Ministry which is principally tasked with the responsibility of developing indicators and conducting monitoring and

evaluation of all government projects and programmes. There is also the Delivery Unit at the Presidency and also the Project Implementation Unit established in the National Treasury. These are four efforts geared towards achieving the same thing and there needs to a policy direction as to the funding of these endeavours.

### **State Department for Devolution**

- (xii) The State Department for Devolution has a resource requirement of had been of KSh. 11.4 billion to implement the three (3) programmes. The BPS has proposed Kshs. 9.2 billion leaving a gap of Kshs. 2.2 billion. The most affected programme is management of intergovernmental relations by about KSh. 1.1 billion shortfall. However, this may be closed by reprioritization in the face of resource constraints.
- (xiii) The core function of the State Department for Devolution has been training and capacity building counties for the last six (6) years of implementing devolution. This period is enough time and hence the capacity building should be down-scaled substantially in order to channel resources to other more deserving programmes.

### **Office of the Controller of Budget**

- (xiv) The BPS 2019 has proposed to allocate the Office of the Controller of Budget KSh. 723 million out of the requirement of KSh. 751 million. The Commission on Revenue Allocation will therefore have a resource gap of KSh. 110 million. This gap may need to be interrogated to ascertain whether there are key deliverables that may be compromised or they will still be achieved through prioritization and budget rationalization.
- (xv) The Office of Controller of Budget intends to conduct monitoring and evaluation of projects in 47 counties and conduct research on budget implementation in addition to the usual functions of approving exchequer releases and budget implementation reporting.
- (xvi) The Salaries and Remuneration Commission plans to issue Collective Bargaining Agreement advisories as well as Remuneration and Benefits advisories and circulars having completed the salary structure for state officers, carrying out compliance audits in 344 counties and MDAs, conducting quarterly wage bill forecasts and drafting remuneration and benefits Bill.
- (xvii) The Commission on Revenue Allocation intends to produce one marginalization master plan in 2019/20, annual recommendation of recurrent ceiling, inducting of County Budget and Economic Forum, one framework for financing urban areas and cities, a recommendation for sharing of natural resources revenue and a recommendation of sharing of revenue between the National and County Governments.

## **Members' Deliberations**

1. The Committee observed that the time allocated for the consideration of the BPS was inadequate for proper scrutiny of the policy document. The Committee therefore resolved to include an amendment to the PFM (Amendment) Bill, 2017.
2. The Committee noted that the reported Revenue Enhancement Initiatives (REIs) had not yet been presented for scrutiny and discussed to ascertain their feasibility and efficacy.
3. The meeting noted with concern that the revenue had underperformed for some time resulting in increased borrowing.
4. The meeting noted that there is a low uptake of PPP funded projects despite the fact that it is a good way of funding projects. The National Treasury should explain to the Committee the successes and challenges of PPP and efforts they have put in place to ensure PPPs framework is adopted.
5. On the leasing of vehicles of security vehicles, the meeting noted that it was important for the National Treasury to provide an analysis of how the programme compares in relation to purchasing of vehicles.
6. The meeting further noted that it is important for COB to start analysing and reporting on the quarterly achievement of targets and key performance indicators. This will facilitate effective oversight by the legislature.
7. Regarding the wage bill, the meeting noted that the country's wage bill had doubled since the establishment of the SRC. It is therefore important for SRC to explain why this was happening contrary to why the Commission was established.

### **MIN.NO.NA/F&NP/2019/020: ADOPTION OF THE REPORT ON THE CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2017**

The Committee adopted the report on the consideration of the Public Finance Management (Amendment) Bill, 2017 with the following amendments:-

#### **CLAUSE 2**

**THAT**, clause 2 of the Bill be amended by—

(a) inserting the following new paragraphs immediately after paragraph (a)—

(aa) deleting the definition of “National Exchequer Account” and substituting therefor the following new definition—

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

## **JUSTIFICATION**

**This is to align the definition with the proposed amendments in Section 17(2) of the Act.**

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

“public money” includes—

- (a) all money that comes into possession of, or is distributed by, a national or county government entity and money raised by a private body where it is doing so under statutory authority; and
- (b) money held by national or county government entities in trust for third parties and any money that can generate liability for the Government;

(b) inserting the following new paragraph immediately after paragraph (c)—

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

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

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

## **JUSTIFICATION**

**There is need to define the Consolidated Fund and County Revenue Fund and the scope therefore.**

### **NEW CLAUSE 5A**

**THAT**, the Bill be amended by inserting the following new clause immediately after clause 5—

**5A**The principal Act is amended by inserting the following new section immediately after section 10—

**10A.** (1) Subject to Article 201 of the Constitution and the provisions of this Act, each county assembly shall establish a county assembly budget office responsible for budget, finance and economic analysis.

(2) A county assembly budget office shall exist as an office in the County Assembly Service and shall consist of persons appointed on merit by virtue of their experience in finance, economics and public policy matters.

(3) A county assembly budget office created under subsection (1) shall—

- (a) provide professional services in respect of budget, finance and economic information to the offices of the County Assembly;
- (b) prepare reports on county budgetary projections and make proposals to the committees of the county assembly responsible for budgetary matters;
- (c) prepare analyses of specific issues, including financial risks posed by the National and County Government policies and activities to guide the county assembly;
- (d) consider county budget proposals and economic trends and make recommendations to the relevant committee of the County Assembly with respect to those proposals and trends;
- (e) establish and foster relationships with the National and County Treasury and other county treasuries, with an interest in budgetary and socio-economic matters as it considers appropriate for the efficient and effective performance of its functions;
- (f) subject to Article 35 of the Constitution, ensure that all reports and other documents produced by the assembly office are prepared, published and publicised not later than fourteen days after production;
- (g) report to the relevant committees of the county assembly on any Bill that is submitted to the county assembly and has an economic and fiscal impact, making reference to the fiscal responsibility principles and to the fiscal objectives set out in the relevant County Budget Policy Statement; and
- (h) propose, where necessary, alternative

fiscal framework in respect of any financial year.

(4) In carrying out its functions under subsection (3), the county assembly office shall observe the principles of public finance under Article 201 of the Constitution.

(5) The Parliamentary Budget Office shall be required to assist and build the capacity of County Assemblies to analyse any documents under this Act and any Regulations on matters Public Finance.

## CLAUSE 8

**THAT**, clause 8 of the Bill be amended by—

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

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

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

- (b) inserting the following new paragraphs immediately after paragraph (b)—

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

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

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

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

made manually or electronically through a designated form prescribed by the Cabinet Secretary, provided that inter-account transfers within the Consolidated Fund Accounts shall require the Controller of Budget's approval.

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

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

## **CLAUSE 9**

THAT, clause 9 of the Bill be amended by deleting paragraph (a).

## **JUSTIFICATION**

**The Parliamentary Service Commission is an independent commission**

## **NEW CLAUSE 9A**

THAT, the Bill be amended by inserting the following new clause immediately after clause 9—

**9A.** Section 25 of the principal Act be amended—

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

## **JUSTIFICATION**

**To give Parliament sufficient time to consider the Budget Policy Statement.**

**9B.** Section 28 of the principal Act be amended by inserting—

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

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

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

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

#### **JUSTIFICATION**

**To ensure accountability.**

(b) the word “system” immediately after the words “Treasury Single Account” appearing in subsection (2);

(c) the word “system” immediately after the words “Treasury Single Account” appearing in subsection (2); and

#### **JUSTIFICATION**

**This is to clarify that the Treasury Single Account is a system of accounts and not a single account.**

#### **CLAUSE 10**

**THAT**, the Bill be amended by deleting clause 10.

#### **JUSTIFICATION**

**The National Treasury should be providing quarterly reports as has been the practice.**

#### **CLAUSE 13**

**THAT**, the Bill be amended by deleting clause 13.

#### **JUSTIFICATION**

**The National Treasury should take responsibility because they fund the projects.**

#### **CLAUSE 18**

**THAT**, Section 78 of the principal Act is amended by—

- (a) renumbering section 78 as 78(1);
- (b) inserting the following new subsection immediately after subsection (1)—
  - (2) Notwithstanding subsection (1), the Kenya Revenue Authority may delegate its revenue collection responsibility to other agents.

## **JUSTIFICATION**

**To increase efficiency in revenue collection.**

### **CLAUSE 35**

**THAT**, clause 35 of the Bill be amended—

- (a) by deleting paragraph (a) and substituting therefor the following new paragraph—
  - (a) by deleting subsection (2) and substituting therefor the following subsection—
    - (2) Each County Treasury shall establish a Treasury Single Account system at the Central Bank of Kenya through which payments of money to and by the various county government entities are to be made.
- (b) inserting the following new paragraphs immediately after paragraph (a) —
  - (aa) by inserting the following new subsection immediately after subsection (2)—
    - (2A) The County Treasury Single Account system shall include the County Revenue Fund accounts referred to in section 109(2), county department accounts and any other account designated by the County Treasury.
  - (ab) by deleting subsection (3) and substituting therefor the following subsection—
    - (3) The Treasury Single Account system shall not be operated in any manner that prejudices any entity to which funds have been disbursed.

### **CLAUSE 36**

**THAT**, the Bill be amended by deleting clause 36 and substituting therefor the following new clause—

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

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

- (a) an imprest bank account which may be opened in a commercial bank account to facilitate the day to day operation of offices, provided the balance for the account shall not exceed a limit set by the Cabinet Secretary;
- (b) a revenue collection account to facilitate receipt and transfer of revenue to the relevant County Revenue Fund;

- (c) a bank account relating to a county public fund established pursuant to section 116 to facilitate administration of the fund; and
- (d) any other bank account authorized by the Cabinet Secretary to be opened in a commercial bank.

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

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

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

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

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

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

#### **CLAUSE 41**

**THAT**, the Bill be amended by deleting clause 41 and substituting therefor the following new clause—

**41.** Section 129 of the principal act is amended—

- (a) deleting subsection (1)

#### **JUSTIFICATION**

**The amendment will expose the County Assembly to another level of control by the executive yet the assemblies already have ceilings.**

- (b) in subsection (3) by inserting the words “by 30th March each year” immediately after the words “member for finance.”

#### **JUSTIFICATION**

**Introduction of timelines for the submission of budget estimates to the Assembly.**

#### **CLAUSE 42**

**THAT**, clause 42(c) of the Bill be amended in the proposed new subsection (7) by inserting the words “Controller of Budget and the Senate” immediately after the words “National Treasury.”

#### **JUSTIFICATION**

**This is to inform the Controller of Budget and the Senate about the budget estimates approved by each County Assembly.**

**NEW CLAUSE 12**

**THAT** the Bill be amended by inserting the following new clauses immediately after clause 12-

**12A.** Section 39 of the Principal Act is amended by deleting the words “except the Finance Bill” appearing immediately after the words “relevant Bills”.

**12B.** The principal Act is amended by inserting the following new section immediately after section 39-

**39A.** (1) Not later than seven days after the estimates of revenue and expenditure are submitted to the National Assembly, the Cabinet Secretary shall submit to National Assembly the Finance Bill, setting out the revenue raising measures for the National Government.

(2) Following submission of the Finance Bill by the Cabinet Secretary, the relevant committee of the National Assembly shall introduce the Bill in the National Assembly, together with the report of the Committee on the Bill.

(3) The National Assembly shall consider and pass the Finance Bill, with or without amendments, in time for it to be assented to by 30<sup>th</sup> June each year.

(4) Any recommendations made by the relevant committee of the National Assembly or adopted by the National Assembly on revenue matters shall-

- (a) ensure that the total amount of revenue raised is consistent with the approved fiscal framework and the Division of Revenue Act;
- (b) take into account the principles of equity, certainty and ease of collection;
- (c) consider the impact of the proposed changes on the composition of the tax revenue with reference to direct and indirect taxes;
- (d) consider domestic, regional and international tax trends;
- (e) consider the impact on development, investment, employment and economic growth;
- (f) take into account the recommendations of the Cabinet Secretary as provided under Article 114 of the Constitution; and
- (g) take into account the taxation and other tariff arrangements and obligations that Kenya has ratified, including taxation and tariff arrangements under the East African Community Treaty.

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

#### **JUSTIFICATION**

- 1. This is to ensure that the Budget is prepared in accordance with the available resources.**
- 2. To ensure that the government collects revenue at the beginning of the Financial Year since the Appropriations Bill will be signed together with the Finance Bill.**

#### **NEW CLAUSE 42A**

**THAT**, the Bill be amended by inserting the following new clause immediately after clause 42—

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

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

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

#### **NEW CLAUSE 54**

**THAT**, the Bill be amended by inserting the following new clause immediately after clause 54—

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

#### **JUSTIFICATION**

**To inform the National Treasury.**

#### **CLAUSE 65**

**THAT**, the Bill be amended by deleting clause 65 and substituting therefor the following new clause—

**65.** Section 187 of the principal Act is amended—

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

**JUSTIFICATION**

**This is to include chairmen of the Council of Governors Committees as substantive members of IBEC (as per the resolution of IBEC meeting of 11<sup>th</sup> August, 2015).**

**MIN.NO.NA/F&NP/2019/021: ANY OTHER MEETING**

1. The Secretariat was directed to request the Kenya Revenue Authority to provide an data on the ethnicity of their management since there are allegations that most of the people in their management are from one community.
2. The Secretariat was tasked to prepare a brief on the Medium Term Debt Management Strategies.

**MIN.NO.NA/F&NP/2019/022: ADJOURNMENT/ DATE OF THE NEXT MEETING**

There being no other business to deliberate on, the meeting was adjourned at 1.45 p.m. The next meeting will be held on Wednesday, 20<sup>th</sup> February, 2019.

**HON. JOSEPH K. LIMO, MP**

**(CHAIRPERSON)**

SIGNED .....  ..... DATE 28/2/2019 .....

**MINUTES OF THE 32<sup>ND</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
FINANCE AND NATIONAL PLANNING HELD ON MONDAY, 21<sup>ST</sup> MAY, 2018 IN  
THE 2<sup>ND</sup> FLOOR, CONTINENTAL HOUSE AT 2.30PM**

---

**PRESENT**

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MP
4. Hon. Abdul Rahim Dawood, MP
5. Hon. Daniel E. Nanok, MP
6. Hon. Andrew A. Okuome, MP
7. Hon. David M. Mboni, MP
8. Hon. Lydia H. Mizighi, MP
9. Hon. Stanley M. Muthama, MP

**APOLOGY**

1. Hon. Alfred Sambu, MP
2. Hon. Dr. Enoch Kibunguchy, MP
3. Hon. Shakeel Shabbir Ahmed, MP
4. Hon. Joseph M. Oyula, MP
5. Hon. Francis K. Kimani, MP
6. Hon. Joshua C. Kandie, MP
7. Hon. Mohamed A. Mohamed, MP
8. Hon. Purity W. Ngirici, MP
9. Hon. Samuel Atandi, MP

**INATTENDANCE**

**SECRETARIAT**

- |                         |   |                                  |
|-------------------------|---|----------------------------------|
| 1. Ms. Leah Mwaura      | – | First Clerk Assistant/Lead Clerk |
| 2. Ms. Laureen Wesonga  | – | Third Clerk Assistant            |
| 3. Ms. Lynette Otieno   | – | Legal Counsel                    |
| 4. Mr. Abdirahman Gorod | – | Fiscal Analyst                   |
| 5. Mr. Chelang'a Maiyo  | – | Research and Policy Analyst      |
| 6. Mr. Collins Mahamba  | – | Audio Officer                    |

**Agenda**

1. Prayers
2. Preliminaries/Introductions

3. Communication from the Chair
4. Bills
5. Petitions
6. Papers
7. Personal statement (**Members Only**)
8. Confirmation of Minutes
9. Matters Arising
10. **Meeting to deliberate on the Committee's amendments to the Public Finance Management (Amendment) Bill, 2017**
11. Adjournment

**MIN.NO.164/DC-F/2018:PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON**

The meeting was called to order at 2:55 p.m with prayer from the Hon. Andrew Okuome, MP. The Chairperson then welcomed the meeting to deliberate on the day's agenda.

**MIN.NO.165/DC-F/2018: CONFIRMATION OF MINUTES**

Agenda deferred

**MIN.NO.166/DC-F/2018: MEETING TO DELIBERATE ON THE COMMITTEE'S AMENDMENTS TO THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2017**

The meeting agreed on the following amendments to the Public Finance Management (Amendment) Bill, 2017

**CLAUSE 37**

Agreed to

**CLAUSE 38**

Agreed to

**CLAUSE 39**

Agreed to

**CLAUSE 40**

Agreed to

**CLAUSE 41**

**THAT**, the Bill be amended by deleting clause 41 and substituting therefor the following new clause—

**41.** Section 129 of the principal act is amended—

(a) in subsection (1) by deleting the words “excluding the county assembly” appearing in paragraph (a);

(b) in subsection (3) by inserting the words “by 30th March each year” immediately after the words “member for finance.”

#### **CLAUSE 42**

**THAT**, clause 42(c) of the Bill be amended in the proposed new subsection (7) by inserting the words “and the Senate” immediately after the words “National Treasury.”

#### **NEW CLAUSE 42A**

**THAT**, the Bill be amended by inserting the following new clause immediately after clause 42—

**54A.** The principal Act is amended by inserting the following new section immediately after section 131—

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

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

#### **CLAUSE 43**

Agreed to

#### **CLAUSE 44**

Agreed to

#### **CLAUSE 45**

Agreed to

#### **CLAUSE 46**

Agreed to

#### **CLAUSE 47**

Agreed to

#### **CLAUSE 48**

Agreed to

**CLAUSE 49**

Agreed to

**CLAUSE 50**

Agreed to

**CLAUSE 51**

Agreed to

**CLAUSE 52**

Agreed to

**CLAUSE 53**

Agreed to

**NEW CLAUSE 54**

**THAT**, the Bill be amended by inserting the following new clause immediately after clause 54—

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

**CLAUSE 55**

Agreed to

**CLAUSE 56**

Agreed to

**CLAUSE 57**

Agreed to

**CLAUSE 58**

Agreed to

**CLAUSE 59**

Agreed to

**CLAUSE 60**

Agreed to

**CLAUSE 61**

Agreed to

**CLAUSE 62**

Agreed to

**CLAUSE 63**

Agreed to

**CLAUSE 64**

Agreed to

**CLAUSE 65**

**THAT**, the Bill be amended by deleting clause 65 and substituting therefor the following new clause—

**65.** Section 187 of the principal Act is amended—

(a) in subsection (1) by inserting the following new paragraph immediately after paragraph (h)—

(i) chairpersons of the Committees of the Council of Governors; and

(b) by deleting subsection (3).

**CLAUSE 66**

Agreed to

**CLAUSE 67**

Agreed to

**CLAUSE 68**


Agreed to

**MIN.NO.167/DC-F/2018: ANY OTHER BUSINESS**

The Chairperson informed the meeting that the Committee had several Petitions that had been referred to the Committee which were yet to be considered. The Secretariat was directed to prepare a brief on each of the Petitions.

**MIN.NO.168/DC-F/2018: ADJOURNMENT**

There being no other business to deliberate on, the meeting was adjourned at 1.30pm. The next meeting will be held on 22<sup>nd</sup> May, 2018 at 10.00am.

 21/6/2018

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

SIGNED .....DATE.....

2. Members unanimously agreed to support the CGRSB and the amendments contained in the report. The Committee also unanimously agreed to also table the CPSB with a proposal to have the Bill withdrawn to allow the CGRSB to proceed to the remaining processes.

**MIN.NO.188/DC-F/2018: CONSIDERATION AND ADOPTION THE REPORT ON THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2017**

The meeting deliberated and agreed that clause 10A(3) should be deleted and a New Clause 131B inserted to provide for the establishment of the County Fiscal Bureau.


The rest of the clauses were put on hold to be deliberated on in another sitting.

**MIN.NO.189/DC-F/2018: ADJOURNMENT**

The meeting was adjourned at 2.05 pm. The next meeting will be held on 7<sup>th</sup> June, 2018 at 10.00 am.

**HON. JOSEPH K. LIMO, MP**

**(CHAIRPERSON)**

SIGNED .....  ..... DATE 28.06.2018 .....

**MINUTES OF THE 31<sup>ST</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON  
FINANCE AND NATIONAL PLANNING HELD ON THURSDAY, 17<sup>TH</sup> MAY, 2018 IN  
4<sup>TH</sup> FLOOR, CONTINENTAL HOUSE AT 11.00AM**

---

**PRESENT**

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MP
4. Hon. Shakeel Shabbir Ahmed, MP
5. Hon. Abdul Rahim Dawood, MP
6. Hon. Andrew A. Okuome, MP
7. Hon. Joseph M. Oyula, MP
8. Hon. Samuel Atandi, MP

**APOLOGY**

1. Hon. Alfred Sambu, MP
2. Hon. Dr. Enoch Kibunguchy, MP
3. Hon. Daniel E. Nanok, MP
4. Hon. David M. Mboni, MP
5. Hon. Francis K. Kimani, MP
6. Hon. Joshua C. Kandie, MP
7. Hon. Lydia H. Mizighi, MP
8. Hon. Mohamed A. Mohamed, MP
9. Hon. Purity W. Ngirici, MP
10. Hon. Stanley M. Muthama, MP

**INATTENDANCE**

**SECRETARIAT**

- |                         |   |                                  |
|-------------------------|---|----------------------------------|
| 1. Ms. Leah Mwaura      | - | First Clerk Assistant/Lead Clerk |
| 2. Ms. Laureen Wesonga  | - | Third Clerk Assistant            |
| 3. Ms. Lynette Otieno   | - | Legal Counsel                    |
| 4. Mr. Abdirahman Gorod | - | Fiscal Analyst                   |
| 5. Mr. Joshua Lenambeti | - | Serjeant-At-Arms                 |
| 6. Mr. Collins Mahamba  | - | Audio Officer                    |

## Agenda

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair
4. Bills
5. Petitions
6. Papers
7. Personal statement (**Members Only**)
8. Confirmation of Minutes
9. Matters Arising
10. **Meeting to deliberate on the Committee's amendments to the Public Finance Management (Amendment) Bill, 2017**
11. Adjournment

### **MIN.NO.160/DC-F/2018:PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON**

The meeting was called to order at 11:50 p.m with prayer from the Chairperson. The Chairperson then welcomed the meeting to deliberate on the day's agenda.

### **MIN.NO.161/DC-F/2018: CONFIRMATION OF MINUTES**

Agenda deferred

### **MIN.NO.162/DC-F/2018: MEETING TO DELIBERATE ON THE COMMITTEE'S AMENDMENTS TO THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2017**

The meeting deliberated on the additional amendments by the National Treasury and agreed as follows:-

#### **CLAUSE 1**

Agreed to

#### **CLAUSE 2**

**THAT**, clause 2 of the Bill be amended by—

(a) inserting the following new paragraphs immediately after paragraph (a)—

(aa) deleting the definition of "National Exchequer Account" and substituting therefor the following new definition—

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

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

“public money” includes—

- (a) all money that comes into possession of, or is distributed by, a national or county government entity and money raised by a private body where it is doing so under statutory authority; and
- (b) money held by national or county government entities in trust for third parties and any money that can generate liability for the Government;

(b) inserting the following new paragraph immediately after paragraph (c)—

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

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

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

### **CLAUSE 3**

Agreed to

### **CLAUSE 4**

Agreed to

### **NEW CLAUSE 5A**

**THAT**, the Bill be amended by inserting the following new clause immediately after clause 5—

**5A.**The principal Act is amended by inserting the following new section immediately after section 10—

**10A.** (1) Subject to Article 201 of the Constitution and the provisions of this Act, each county assembly shall establish a county assembly budget office responsible for budget, finance and economic analysis.

(2) A county assembly budget office shall exist as an office in the County Assembly Service and shall consist of persons appointed on merit by virtue of their experience in finance, economics and public policy matters.

(3) A county assembly budget office created under subsection (1) shall—

- (a) provide professional services in respect of budget, finance and economic information

to the offices of the County Assembly;

- (b) prepare reports on county budgetary projections and make proposals to the committees of the county assembly responsible for budgetary matters;
- (c) prepare analyses of specific issues, including financial risks posed by the National and County Government policies and activities to guide the county assembly;
- (d) consider county budget proposals and economic trends and make recommendations to the relevant committee of the County Assembly with respect to those proposals and trends;
- (e) establish and foster relationships with the National and County Treasury and other county treasuries, with an interest in budgetary and socio-economic matters as it considers appropriate for the efficient and effective performance of its functions;
- (f) subject to Article 35 of the Constitution, ensure that all reports and other documents produced by the assembly office are prepared, published and publicised not later than fourteen days after production;
- (g) report to the relevant committees of the county assembly on any Bill that is submitted to the county assembly and has an economic and fiscal impact, making reference to the fiscal responsibility principles and to the fiscal objectives set out in the relevant County Budget Policy Statement; and
- (h) propose, where necessary, alternative fiscal framework in respect of any financial year.

(4) In carrying out its functions under subsection (3), the county assembly office shall observe the principles of public finance under Article 201 of the Constitution.

(5) The Parliamentary Budget Office shall be required to assist and build the capacity of County Assemblies to analyse any documents under this Act and any Regulations on matters Public Finance.

**CLAUSE 6**

Agreed to

**CLAUSE 7**

Agreed to

**CLAUSE 8**

**THAT**, clause 8 of the Bill be amended by—

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

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

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

- (b) inserting the following new paragraphs immediately after paragraph (b)—

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

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

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

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

Consolidated Fund Accounts shall require the Controller of Budget's approval.

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

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

## **CLAUSE 9**

**THAT**, clause 9 of the Bill be amended by deleting paragraph (a).

## **NEW CLAUSE 9A**

**THAT**, the Bill be amended by inserting the following new clause immediately after clause 9—

**9A.** Section 25 of the principal Act be amended—

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

**9B.** Section 28 of the principal Act be amended by inserting—

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

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

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

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

(1D) Each financial year, an Accounting Officer of a national government entity shall prepare and submit to the National Treasury a record of a national government

entity shall prepare and submit to the National Treasury a record of all bank accounts operated by that entity during the year, with a copy to the Controller of Budget and the Auditor General.

- (b) the word “system” immediately after the words “Treasury Single Account” appearing in subsection (2);
- (c) the word “system” immediately after the words “Treasury Single Account” appearing in subsection (2); and

**CLAUSE 10**

**THAT**, the Bill be amended by deleting clause 10.

**CLAUSE 11**

**THAT**, the Bill be amended by deleting clause 11.

**CLAUSE 12**

Agreed to

**CLAUSE 13**

**THAT**, the Bill be amended by deleting clause 13.

**CLAUSE 14**

Agreed to

**CLAUSE 15**

Agreed to

**CLAUSE 16**

Agreed to

**CLAUSE 17**

Agreed to

**CLAUSE 18**

**THAT**, the Bill be amended by deleting clause 18 and substituting therefor the following new clause—

- (d) inserting the following new subsection immediately after subsection (2)—
  - (2A) The Treasury Single Account system shall include the Consolidated Fund Accounts under section 17(2), including accounts of State Departments.

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

(a) renumbering section 78 as 78(1);

(b) inserting the following new subsection immediately after subsection (1)—

(2) Notwithstanding subsection (1), the Kenya Revenue Authority may delegate its revenue collection responsibility to other agents.

**CLAUSE 19**

Agreed to

**CLAUSE 20**

Agreed to

**CLAUSE 21**

Agreed to

**CLAUSE 22**

Agreed to

**CLAUSE 23**

Agreed to

**CLAUSE 24**

Agreed to

**CLAUSE 25**

Agreed to

**CLAUSE 26**

Agreed to

**CLAUSE 27**

Agreed to

**CLAUSE 28**

Agreed to

**CLAUSE 29**

Agreed to

**CLAUSE 30**

Agreed to

**CLAUSE 31**

Agreed to

**CLAUSE 32**

Agreed to

**CLAUSE 33**

Agreed to

**CLAUSE 34**

Agreed to

**CLAUSE 35**

**THAT**, clause 35 of the Bill be amended—

(a) by deleting paragraph (a) and substituting therefor the following new paragraph—

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

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

(b) inserting the following new paragraphs immediately after paragraph (a) —

(aa) by inserting the following new subsection immediately after subsection (2)—  
(2A)The County Treasury Single Account system shall include the County Revenue Fund accounts referred to in section 109(2), county department accounts and any other account designated by the County Treasury.

(ab)by deleting subsection (3) and substituting therefor the following subsection—

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

**CLAUSE 36**

**THAT**, the Bill be amended by deleting clause 36 and substituting therefor the following new clause—

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

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

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

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

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

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

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

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


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

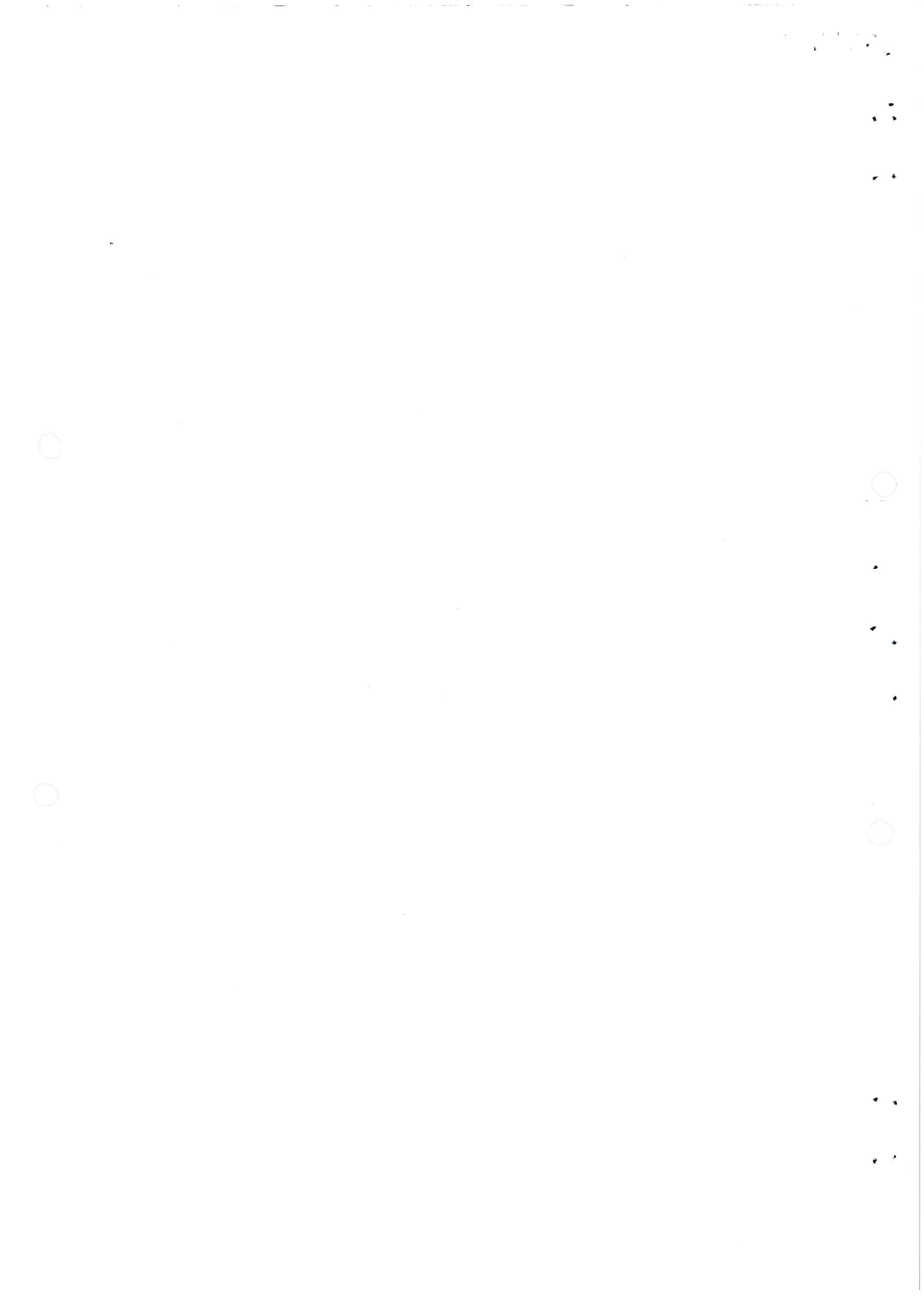
**MIN.NO.163/DC-F/2018: ADJOURNMENT**

There being no other business to deliberate on, the meeting was adjourned at 1.30pm. The next meeting will be at 3.30pm.

HON. JOSEPH K. LIMO, MP

(CHAIRPERSON)

SIGNED .....  ..... DATE 21/6/2018 .....



**MINUTES OF THE 15<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON WEDNESDAY, 28<sup>TH</sup> MARCH, 2018 IN COMMITTEE ROOM 7, MAIN PARLIAMENT BUILDING AT 3.30PM**

---

**PRESENT**

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Jimmy O. Angwenyi, MP
4. Hon. Daniel E. Nanok, MP
5. Hon. Andrew A. Okuome, MP
6. Hon. Joseph M. Oyula, MP
7. Hon. Joshua C. Kandie, MP
8. Hon. Samuel Atandi, MP
9. Hon. David M. Mboni, MP
10. Hon. Lydia H. Mizighi, MP
11. Hon. Purity W. Ngirici, MP
12. Hon. Mohamed A. Mohamed, MP
13. Hon. Stanley M. Muthama, MP

**APOLOGY**

1. Hon. Alfred Sambu, MP
2. Hon. Dr. Enoch Kibunguchy, MP
3. Hon. Shakeel Shabbir Ahmed, MP
4. Hon. Abdul Rahim Dawood, MP
5. Hon. Francis K. Kimani, MP

**INATTENDANCE**

**SECRETARIAT**

- |                         |   |                                   |
|-------------------------|---|-----------------------------------|
| 1. Mr. Robert Nyaga     | - | Deputy Director, PBO              |
| 2. Ms. Leah Mwaura      | - | First Clerk Assistant/ Lead Clerk |
| 3. Ms. Laureen Wesonga  | - | Third Clerk Assistant             |
| 4. Mr. Josephat Motonu  | - | Fiscal Analyst II                 |
| 5. Ms. Lynette Otieno   | - | Legal Counsel II                  |
| 6. Mr. Joshua Lenambeti | - | Serjeant-At-Arms                  |
| 7. Mr. Collins Mahamba  | - | Audio Officer                     |

**THE NATIONAL TREASURY**

- |                          |   |                                     |
|--------------------------|---|-------------------------------------|
| 1. Hon. Nelson Gaichuhie | - | CAS National Treasury               |
| 2. Mr. Benard Ndungu     | - | Director General, National Treasury |
| 3. Eng. Stanley Kamau    | - | Director, PPP Unit                  |
| 4. Mr. Eric Korir        | - | Ag. Director, PPP Unit              |

5. Mr. Albert Mwenda	–	Ag. Director, National Treasury
6. Mr. Ronor Tuimising	–	Legal Expert, PPP Unit
7. Ms. Felister Munyua	–	County Advisor, PPP Unit
8. Mr. Brian Cheruiyot	–	Economist

## **Agenda**

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair
4. Bills
5. Petitions
6. Papers
7. Personal statement (**Members Only**)
8. Confirmation of Minutes
9. Matters Arising
10. **Meeting with the National Treasury to consider Treasury's amendments to the following Bills:-**
  - i. **The Public Private Partnerships (Amendment) Bill, 2017**
  - ii. **The Public Finance Management (Amendment) Bill, 2017**
11. Adjournment

### **MIN.NO.075/DC-F/2018:PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON**

The meeting was called to order at 04:00 p.m with prayer from the Hon. Isaac Ndirangu, MP. The Chairperson then welcomed the officers from the Parliamentary Budget Office to present their comments on the proposed amendments by the National Treasury.

### **MIN.NO.076/DC-F/2018: CONFIRMATION OF MINUTES**

Agenda deferred.

### **MIN.NO.077/DC-F/2018: COMMENTS BY THE PARLIAMENTARY BUDGET OFFICE ON THE PROPOSED AMENDMENTS BY THE NATIONAL TREASURY**

The Parliamentary Budget Office made the following presentation to the meeting; That:-

1. The proposed amendment in Section 2 of the Principal Act amends the definition of short term borrowing to specify that it is only the Central Bank of Kenya that will be allowed to issue overdrafts and not other banks. This is meant to curtail the practice of national government and most county governments which borrow from commercial banks for short term cash flow management leading to unchecked exposure to interest rate risks.
2. Inclusion of Parliament in the establishment of county entities (clause 3) – currently, Parliament is not involved whenever a county government establishes a county government entity. The approval process involves the CEC and the County Assembly. Therefore the amendment to include Parliament

will ensure that there are proper checks and balances in the establishment of public entities at counties.

3. Amendment of Section 10 of the Principal Act on the work and functions of PBO (clause 5) – there are three main issues covered here. First is the actualization of the smooth implementation of Article 114 of the Constitution on processing of “money Bills” in line with the already established best practice. The second aspect relates to additional functions of PBO which are: to undertake monitoring and evaluation of government programmes and projects to inform legislative economic analysis, production of the Budget Options paper to guide the legislature in scrutinizing the Budget Policy Statement and analysis of the County Fiscal Strategy Papers to inform respective Committees of Parliament with regard to broad policy goals and strategic objectives overarching the budget in the county government. The third issue relates to providing a framework of access to information that is requisite in conducting various analyses in the performance of the statutory functions.
4. Curtailing procurement of development vote three (3) months to a general election (clause 8) – the proposed amendment restricts any procurement of capital vote for the national and county government and their respective entities within three months prior to a general election unless there is authorization by the National Treasury. This is to control development commitment for both levels of government during the transition period, thereby managing any attendant risk that may occur during that period.
5. Changing quarterly reporting to 3 reports annually (clause 10) – currently, the National Treasury releases Quarterly Economic and Budgetary Review. The proposed amendment implies that documents will be released thrice a year as opposed to four times. However, the controller of budget reports on budget implementation on a quarterly basis and it is imperative for retention of the current status where the reporting is done at the same time. This will ensure harmonization and comparison of the information published by these two institutions to ensure consistency.
6. Gazettement of Exchequer issues by programmes and projects (clause 13) – this amendment provides for the monthly publication of the Exchequer releases to be done at the level of programmes and projects. This will improve transparency and accountability in the utilization of public resources by budget implementing agencies, ultimately facilitating effective oversight by the legislature.
7. Accounting officer to monitor both financial and non-financial performance (clause 15) – the proposed amendment provides for the respective accounting officers in various government entities to not only monitor the financial performance of their entities but also go further and monitor non-financial performance. This will guarantee value for money in the provision of public services.

8. Introduction of a possibility of other collectors of revenue other than KRA (clause 18) – the proposed amendment indicate that there could be other collectors of revenue in addition to the Kenya Revenue Authority. Perhaps, the focus is the collection of various earmarked revenues but the utilization of economies of scale may be realized when the already established revenue agency will be engaged because of the established structures and competencies.
9. The respective Cabinet Secretaries to oversight government-linked corporations (clause 21 – 22) – this amendment provides for the responsible Cabinet Secretaries to oversight the government-linked corporations under their purview and report annually to the National Assembly 4 months upon the closure of the fiscal year on change in shareholding during the reporting period, loans and guarantees, profit or loss, revenue received by the national government from the government-linked corporation and assessment of financial and non-financial performance. This is likely to safeguard government interest and investment in government-linked corporation in addition to state corporations.
10. Restricting the County Revenue Fund to the Central Bank of Kenya (clause 31) – the amendment specifies that the County Exchequer Account which holds the County Revenue Fund to be domiciled in the Central Bank of Kenya and not at other banks. This will, among other measures, facilitate the operationalization of the Treasury Single Account.
11. Elaboration of what constitutes a county emergency (clause 32) – the definition of what constitutes an emergency at the county government level so as to qualify to benefit from withdrawal of funds from the county emergency Fund has been detailed for avoidance of doubt and ensure there is enhanced clarity across the counties.
12. Changing timelines for the County Fiscal Strategy Paper (CFSP) (clause 34) – the timeline for the submission of the CFSP to the County Assemblies is proposed to be changed from 28<sup>th</sup> February every year to 15<sup>th</sup> of February and the period of its consideration, upon submission, has been proposed to be increased from 14 to 30 days. This will grant the County Assemblies sufficient time to scrutinize this key budget document. However, Section 117 (2) requires alignment of the CFSP objectives to the ones of the Budget Policy Statement (BPS) whose deadline for submission to parliament is 14<sup>th</sup> February.
13. Publication of county governments' monthly overdrafts in the National Treasury website (clause 35 (b)) – the proposed amendment shall require the National Treasury to publish and publicize, in their website, the monthly overdrafts by the county governments on the 5<sup>th</sup> day of every month. This is

anticipated to improve transparency and accountability in the management of public resources at the county level and encourage prudence.

14. The banking arrangements by the county governments (clause 36) – the Public Finance Management (County Regulations), 2017 provided an elaborate mechanisms on banking arrangements by the county governments including opening County Exchequer Account only in the Central Bank of Kenya. Imprest account for petty cash may be opened at other banks with prior authorization by the CEC (M) for Finance. This is what is being proposed for elevation into the Principal Act.
15. Timelines for County Budget Circular and Annual Development Plan (clause 38 & 40) - timelines for release of County Budget Circular and submission of the Annual Development Plan are being proposed to be changed to 15<sup>th</sup> and 30<sup>th</sup> September, from 30<sup>th</sup> August and 1<sup>st</sup> September respectively, and the ADP shall be approved within one month upon submission.
16. Cash flow projections to be submitted at the same time as the Estimates (clause 39) – the timeline for submission of cash flow projections for the county government has been harmonized with the submission of the estimates. However, the one for the national government is not provided since Section 29 of the Principal Act provides for the National Treasury to establish framework for the cash flow management.
17. Changes in the Estimates limited at 10% of the CFSP ceiling for votes and submission of approved estimates to the National Treasury (clause 42) – the amendment seeks to limit the extent to which the County Assemblies can amend the Estimates to be not more than 10% of the approved ceilings in the CFSP. Also, that the Estimates, once approved, shall be submitted to the National within 14 days. First, the PFM (County Regulations) caps the extent of changes at only 1% of the CFSP ceiling. These are contradictory measures and they seem to curtail the County Assemblies in the performance of their constitutional mandate especially on the budget process.
18. Involvement of the respective CECs in the oversight of county government-linked corporation (clause 61 -63) – this is to safeguard the county government interest and investment in the county government-linked corporations.

**The rest of the clauses are meant to clear minor errors, provide clarifications as well as harmonization within the various Sections of the Principal Act, as presented hereunder.**

19. Clause 4 proposes to amend Section 8 of the Principal Act on the responsibilities of the Senate Committee to clarify that it oversees the County Government on adherence to public finance and fiscal responsibility principles and not the Senate.
20. Clause 6 amends Section 13 on the powers of the National Treasury to clarify that the CS for Treasury gives powers to facilitate the national government, financial system and not just system and also it provides that the Treasury may designate any other person to perform its responsibilities.
21. Clause 7 amends Section 15 of the Act on the enforcement of the fiscal responsibility principles to clarify that the CS will only enforce the 30% allocation to development and debt levels at national government since the CEC Member for finance enforces at the county level.
22. Clause 9 amends Section 24 of the Act on the PSC Fund to provide that the accounting procedures and systems to be used to account for property and monies will be specified by the National Treasury as opposed to the Commission establishing them.
23. Clause 11 amends Section 38 of the Act, on submission of budget documents to the National Assembly, to clear a typographical error. However, the proposed amendment does not fully address the error and may need to be amended.
24. Clause 12 amends Section 39(7) of the Act to harmonize the provisions of Vote on Account with Article 222 of the Constitution.
25. Clause 14 proposes to amend Section 52 of the Act on the authority to execute loan documents to clarify that it is the Cabinet Secretary to authorize such execution.
26. Clause 16 amends Section 68(3) of the Act on the responsibilities of an accounting officer to clarify that the responsibility of the legal and prudent utilization of resources lies with the respective Cabinet Secretary and not the Cabinet Secretary for the National Treasury.
27. Clause 17 amends Section 77 on tax waivers and variations to insert an omission which is the words “vary” and “variations”.
28. Clause 19 amends Section 84 clear an error on reporting of tax waivers and variations and clarify that such are not granted by the receiver or collector of revenue but the Cabinet Secretary.
29. Clause 20 amends Section 87 to replace reference of “government-linked company” to “government-linked corporation” which is the correct one.

30. Clause 23 amends harmonizes the proposed amendments in clause 21 – 22 on the involvement of the respective Cabinet Secretaries in the oversight of government-linked corporations.
31. Clause 24 proposes an amendment that is already been done. May be deleted.
32. Clauses 25 – 28 amend the Sections of the Act on stoppage of funds for clarity.
33. Clause 29 amends Section 105 on the powers of the County Treasury to provide for delegation of responsibilities to any other person.
34. Clause 30 amends Section 107 on fiscal responsibility principles to clear a typo and clarify that the reference is to county government borrowing and not just government borrowing.
35. Clause 33 amends Section 116 on county public funds to clarify that the correct reference is to county public fund and not just fund. Also, to provide for submission of audited statement of accounts and not just statement of accounts of the fund.
36. Clause 37 amends Section 125 under the stages in the county government budget process to clear a repetition on the planning requirement.
37. Clause 41 amends Section 129 (1) on the approval of budget documents by the CEC by including the budget for the assembly. However, this clause may be deleted in order to harmonize with 129 (3) and (4).
38. Clauses 43, 44, 46 and 48 are meant to clear minor typos where the word “county” is erroneously missing.
39. Clause 45 provides for timeline for remitting unspent appropriation to the CRF to be within 14 days.
40. Clause 49 clears a minor typo by replacing “and” with “or”.
41. Clause 50 amends Section 144 to replace “delegate” with “person” which is a correct reference in the issuance of county government securities.
42. Clauses 51 – 58 clear minor typographical errors and clean-ups for clarity.
43. Clause 55 increases the period of reporting tax waivers and variations to county assemblies from 2 months to 3 months.

44. Clause 59 provides for the CS to authorize audit of usage of grants.
45. Clause 60 harmonizes the Urban Areas and Cities with budget accountability mechanisms and timelines of the other state organs.
46. Clauses 61 – 64 amend Sections 183 to 185 of the Principal Act in order to provide for the respective County Executive Committee Members to oversight the county government-linked corporations under their purview and report annually to the County Assembly. This is likely to safeguard the county government interest and investment.
47. Clause 65 is proposing to amend Section 187 of the Act to remove term limits for the representation in the Intergovernmental Budget and Economic Council (IBEC). This is because the representation is on institutions and not personalities.
48. Clause 66 proposes to amend Section 193 of the Principal Act which provides for the Public Sector Accounting Standards Board (PSASB) to provide for its accountability to the Cabinet Secretary on public financial matters.
49. Clause 67 amends Section 197 which provides for sanctions in the Act arising out of financial misconduct. It proposes the inclusion of county governments in the provisions of offenses which is currently not covered.
50. Clause 68 proposes amendment to the Second Schedule of the Principal Act which provides for savings and transitional provisions to provide the correct referencing to the National Government Guarantees Loans Act.

**MIN.NO.078/DC-F/2018: MEETING WITH THE NATIONAL TREASURY TO CONSIDER THEIR AMENDMENTS TO THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2017**

The Chairperson called for introduction of those present before inviting the National Treasury to present their submission to the Committee. The National Treasury proposed the following amendments; That:-

**Clause 2**

Section 2 of the principal Act is amended by inserting the following new paragraph:

The “Consolidated Fund” shall mean all money raised or received by or on behalf of the national government in accordance with Article 206(1) of the Constitution.

**Justification**

The Consolidated Fund is not defined. There is need to define the Consolidated Fund and the scope therefore.

Section 2 of the Principal Act is amended by inserting the following new paragraph:

The "County Revenue Fund" shall mean all money raised or received by or on behalf of the County Government in accordance with Article 207(1) of the Constitution.

**Justification**

The County Revenue Fund is not defined. There is need to define the County Revenue Fund and the scope therefore.

Section 2 of the Principal Act is amended by deleting the definition of "public money" and replacing therefor with the following:

"Public money means:

- a) All money that comes into possession of, or is distributed by a national or county government entity and money raised by a private body where it is doing so under statutory authority; and
- b) Money held by national or county government entities in trust for third parties and any money that can generate liability for the government."

**Justification**

The amendment is intended to include public money held by county government entities in the definition of public money. This was inadvertently omitted in the published PFMA.

Section 2 of the Principal Act is amended by deleting definition for National Exchequer Account and replacing therefor with the following:

"National Exchequer Account or Accounts" means the National Exchequer Account or Accounts referred to in section 17

**Justification**

The definition needs to be aligned with the proposed amendments in Section 17(2).

**Clause 8**

The National Treasury does not support this amendment because it is intended to restrict procurement relating to development votes three months prior to an election. It is not a good practice to curtail

procurement since this would have a negative impact on economic development. Since there are control institution mechanisms established in law to check abuse of office, there is no need of freezing employment due to an impending election.

#### **Clause 11**

The Ministry did not support this amendment because the section applies to paragraph (2) of Article 202 of the Constitution and not paragraph (1) of Article 202 of the Constitution. They therefore recommend that the amendment be dropped since national government budget estimates do not include the equitable share.

#### **Clause 13**

The National Treasury did not support it because exchequer issues are usually not by programmes and projects but by Votes (Recurrent and Development) as appropriated by Parliament or by County Governments as per CARA. What Parliament should require the CS/NT to provide is a breakdown of expenditures by programmes and projects and not exchequer releases.

#### **Section 17(2)**

That Section 17 be amended in subsection (2) by deleting it and replacing therefor with the following paragraph:

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

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

#### **Justification**

1. It is necessary to expand the accounts of the Consolidated Fund to provide for Kenya shillings or foreign denominated currency. The account or accounts should be kept at the Central Bank of Kenya.
2. The foreign currency Exchequer accounts shall hold funds received by the National Treasury in foreign currencies hence reduce exchange losses.

3. All the National Exchequer Accounts shall be subject to CoB's approval in accordance with Article 206(1) of the Constitution and Clause 17(4) of the PFM Act.

That Section 17 be amended in subsection (3) by deleting it and replacing therefor with the following new paragraph:

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

**Justification**

To require that no National Exchequer Account shall be overdrawn at any time, whether Kenya Shillings account or foreign denominated account.

That Section 17 be amended in subsection (4) by deleting it and replacing therefor with the following paragraph:

“(4) Where a withdrawal from the Consolidated Fund is authorized under the Constitution or an Act of Parliament for the appropriation of money, the National Treasury shall make requisition for the withdrawal and submit it to the Controller of Budget for approval, which request shall be made manually or electronically through a designated form prescribed by the Cabinet Secretary, provided that inter-account transfers within the Consolidated Fund Accounts shall not require Controller of Budget's approval.”

**Justification**

1. This amendment is made to facilitate progressive automation of the requests made of authority from the Controller of Budget on the withdrawals from the National Exchequer Account to be automated and embrace use of technology in our Public Finance management transactions.
2. The amendment provides flexibility for the National Treasury to make inter-account transfers especially funding the National Exchequer Account from other Consolidated Fund accounts.

That Section 17 be amended in subsection (5) by deleting it and replacing therefor the following new paragraph:

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

**Justification**

To provide for more than one bank account and require CBK to release funds based on approval from the Controller of Budget and the National Treasury instructions. In addition, this also to clarify that the approval or written instructions may be manual or electronic to allow progressive use of technology.

## **Section 28**

Section 28 of the Principal Act is amended by inserting the following new subsections immediately after subsection (1):

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

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

(1C) For the avoidance of doubt, no expenditure shall be paid out of a bank account designated as a Revenue Collection Account except as otherwise authorized by law except as otherwise authorized by the Cabinet Secretary in concurrence with the Controller of Budget.

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

## **Justification**

Section 28 of the PFMA should be amended to mirror the amended Section 119 of the PFMA. The Cabinet Secretary should be allowed to authorize payments from Revenue Collection accounts in cases where receipts are made in error or belong to third parties or relate to Treasury Bills.

Section 28 of the Principal act is amended in subsection (2) and (3) by inserting the word “system” immediately after the words “Treasury Single Account” so as to read as follows:

“(2) The National Treasury shall establish a Treasury Single Account system into which all revenues received by national government entities shall be deposited and from which all payments of money to or on behalf of national government entities shall be made.

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

#### **Justification**

This amendment harmonizes the Section with the definition of the TSA in the Preliminary section and clarifies that the TSA is a system of accounts and not ONE Account.

Section 28 of the principal Act is amended by inserting the following new subsection (2A) immediately after subsection (2):

“(2A) The Treasury Single Account system shall include the Consolidated Funds Accounts as referred to in Section 17(2), State Departments, Commissions and Independent Offices Accounts and any other Account designated by the Cabinet Secretary.”

#### **Justification**

The amendment clarifies the scope of the TSA; it includes both inflow (Consolidated Fund Accounts) and outflow accounts (MDAs account). The scope can progressively increased to include SAGAs and other government entities.

#### **Section 34**

The National Treasury did not support this amendment because County Governments are supposed to align their CFSPs with the national plans/policies which are expounded in the BPS. If the CFSPs are to be submitted by 15<sup>th</sup> February then there will be no time allowed for such alignment to take place.

#### **Section 35**

The National Treasury did not support this amendment because the Cabinet Secretary is required to submit to Parliament every four months a report on all loans made to the national government, national government entities and county governments. Besides, it has been agreed following intergovernmental consultations that county governments will not go directly to the CBK for overdraft, instead the National Treasury shall fast track disbursements for county governments that have urgent financing needs.

#### **Section 119**

Section 119 of the PFMA is amended:

(a) by inserting the following new subsections immediately after subsection (1):

(1A) a County Treasury may authorize a county government entity, including a county assembly to open and operate bank accounts only at the CBK except:

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

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

(1C) Money paid into a bank account designated as County Revenue Collection Account shall be promptly credited into the County Exchequer Account and shall be used and accounted for in accordance with Article 2017 of the Constitution and Section 109 of the Act.

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

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

### **Justification**

County governments have established revenue collection bank accounts in some commercial banks into which local revenue is paid. Reports however, indicate that county governments are utilizing the revenue collected to make payments before sweeping the funds into the County Revenue Fund. By doing so the county governments are bypassing the office of the Controller of Budget. This goes against the intention of Article 2017 of the Constitution, Section 109 of the PFMA and National Treasury Circular No. 14 of 9<sup>th</sup> September, 2015.

They therefore propose further amendments to Section 119 of the PFMA to require County Governments to designate bank accounts opened for collecting money raised or received by or on behalf of the county

government as County Receipts Accounts and to bar charging of any expenses to such accounts, except bank account operational expenses and expenses relating to mobilization of a loan.

In addition, they also noted that county governments are opening bank accounts in commercial banks for purposes of holding deposits (usually transferred from the County Revenue Fund) contrary to the intention of the law. To put a stop to this we have proposed to amend the PFMA to restrict the opening of bank accounts for three purposes: (i) for purposes of an imprest; (ii) for purposes of revenue collection; and (iii) to operationalize a county public fund established under Section 116 of the PFMA.

Section 119 of the principal Act is amended in subsection (2) and (3) inserting the word “system” immediately after the words “Treasury Single Account” so as to read as follows:

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

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

#### **Justification**

This amendment harmonizes the Section with the definition of the TSA in the preliminary section and clarifies that the TSA is a system of accounts and not ONE Account.

#### **Section 164 (4)**

Section 164 of the principal Act is amended in paragraph (b) of subsection (4) by inserting the words “the National Treasury” immediately after the words “County Treasury” so as to read as follows:

(4) Within three months after the end of each financial year, the accounting officer for an entity shall-

(b) deliver a copy of the statements to the relevant County Treasury, the National Treasury, the Controller of Budget and the Commission on Relevant Allocation.

#### **Justification**

The inclusion of National Treasury as a recipient of a copy of financial statements is to facilitate the National Treasury to provide technical support to county government entities in terms of review and feedback of the financial statements in time for the preparation of county treasury financial statements.

The current situation is that the National Treasury does not get copy of the county government entities financial statements. This was an oversight at the preparation of the PFM Act 2012.

### **Section 187(1)**

Section 187 of the principal Act is amended in subsection (1) by inserting the following new paragraph (i) after paragraph (h):

“(i) chairmen of the Committees of the Council of Governors.”

### **Justification**

To include the chairmen of the Council of Governors committees as substantive members of IBEC (as per the resolution of IBEC meeting of 11<sup>th</sup> August 2015).

### **MIN.NO.079/DC-F/2018: MEETING WITH THE NATIONAL TREASURY TO CONSIDER THEIR ADDITIONAL AMENDMENTS TO THE PUBLIC PRIVATE PARTNERSHIPS (AMENDMENT) BILL, 2017**

The Chairperson welcomed the National Treasury to present their submission to the Committee. The National Treasury proposed the following amendments; That:-

#### **Section 2**

Section 2 of the Public Private Partnerships Act is amended by deleting the definition of the term “Committee”.

#### **Justification**

This section provides for the definition of the PPP Committee which is no longer relevant at the Committee is being removed.

#### **Section 4, 5 and 6**

The Public Private Partnerships Act is amended by deleting sections 4,5 and 6.

#### **Justification**

These sections refer to the establishment of the PPP Committee, its terms and conditions of service and vacation of office by a member of the committee. As the Committee is proposed to be removed, these sections need to be deleted in total as they refer to the establishment and operations of the Committee.

#### **Section 7**

The Public Private Partnerships Act is amended by deleting section 7 and substituting therefor a new section 7 as follows: -

7. The functions of the Cabinet Secretary shall be:

- (a) formulate policy guidelines on public private partnerships;
- (b) ensure that all projects are consistent with the national priorities specified in the relevant policy on public private partnerships;
- (c) approve project lists submitted to it in under section 24;

(d) formulate or approve standards, guidelines and procedures for awarding contracts and standardized, bid documents;

(e) review the legal, institutional and regulatory framework of public private partnerships;

(f) ensure approval of, and fiscal accountability in the management of financial and any other form of support granted by the Government in the implementation of projects under this Act.

#### **Justification**

As the Committee will no longer be in existence, its functions under section 7 are being allocated to the CS/National Treasury (those that are policy in nature) and the PPP Unit (those that are technical in nature).

#### **Section 8, 9 and 10**

The Public Private Partnerships Act is amended by deleting sections 8, 9 and 10.

#### **Justification**

These sections referred to the powers of the Committee, creation of sub-committees and how the Committee should conduct its business. As the Committee is now being done away with, there is no need for these sections under the Act. The provisions in section 8, which relate to the powers of the Committee have been distributed to the CS/National Treasury and the PPP Unit to ensure there is no gap in the implementation of PPP processes and the oversight role that was previously being played by the PPP Committee.

#### **Section 14**

Section 14 of the Public Private Partnerships Act is amended-

(a) In subsection (1) by deleting items (a) and (b);

(b) In section 2-

(i) By deleting item (h),

(ii) In item (k) by deleting the word "Committee" and substituting therefor the words "Cabinet Secretary",

(iii) In item (l) by deleting the word "Committee" and substituting therefor the words "Cabinet Secretary",

(iv) In item (q) by deleting the word "Committee" and substituting therefor the words "Cabinet Secretary",

(v) Inserting new items immediately after item (q) as follows-

(r) approve project proposals submitted by Contracting Authorities,

(s) ensure that each project agreement is consistent with the provisions of this Act,

(t) examine and approve the feasibility study conducted by a contracting authority under this Act,

(u) ensure the efficient implementation of any project agreement entered into by contracting authorities, and

(v) require any information from any party to a project on any matter relating to a public private partnership.

#### **Justification**

Section 14 dealt with the functions of the Unit. Given the fact that the Committee is being deleted and its technical functions are being allocated/transferred to the PPP Unit, there is need to expand the current function of the Unit under section 14 of the Act.

Moreover, the word Committee in this section has also been replaced with Cabinet Secretary.

#### **Section 17**

Section 17 of the Public Private Partnerships Act is amended in subsection (1) by deleting paragraph (j) and substituting therefor a new paragraph (j) as follows-

(j) prepare projects in accordance with the guidelines and standards issued by the Cabinet Secretary under this Act

#### **Justification**

The amendment in this section is to replace the word committee with Cabinet Secretary, as the Committee is to be removed.

#### **Section 27**

The Public Private Partnerships Act is amended by deleting section 27 and substituting therefor a new section 27 as follows-

27. The Cabinet Secretary may, where he considers it necessary to support a project and in order to reduce premiums factored for political risks, issue a guarantee, undertaking or binding letters of comfort in relation to a project.

#### **Justification**

Similar to section 17 above, the amendment to this section seeks to delete the word Committee and replace it with Cabinet Secretary.

#### **Section 28**

Section 28 of the Public Private Partnerships Act is amended by deleting subsection (3) and substituting therefor a new subsection (3) as follows-

(3) The Cabinet Secretary may impose a success fee on a transaction to be paid by a successful bidder in accordance with the tender documents

#### **Justification**

This amendment seeks to delete the word Committee and replace it with Cabinet Secretary as the Committee is to be removed.

### **Section 30**

Section 30 of the Public Private Partnerships Act is amended by deleting the word “Committee” and substituting therefor the word “Cabinet Secretary.”

#### **Justification**

This amendment seeks to delete the word Committee and replace it with Cabinet Secretary as the Committee is to be removed.

### **Section 31**

Section 31 of the Public Private Partnerships Act is amended in subsection (3) by deleting the word “Committee” and substituting therefor the word “Unit”.

#### **Justification**

This amendment seeks to delete the word Committee and replace it with the PPP Unit as the Committee is to be removed. The approval of a project proposal is a technical activity that is best undertaken at the PPP Unit level.

### **Section 33**

Section 33 of the Public Private Partnerships Act is amended in subsection (1) by deleting the word “Committee” and substituting therefor the word “Unit”.

#### **Justification**

This amendment seeks to delete the word Committee and replace it with the PPP Unit as the Committee is to be removed.

PPP Feasibility Studies are technical in nature and it is more suitable to have these approved by the PPP Unit as opposed to the Cabinet Secretary, who primarily deals with policy matters.

### **Section 37**

Section 37 of the Public Private Partnerships Act is amended in subsection (1) by deleting the words “upon approval by the Committee”.

#### **Justification**

This amendment is necessary as the Committee is to be removed from the PPP process.

### **Section 45**

Section 45 of the Public Private Partnerships Act is amended by deleting subsection (1) and substituting therefor a new subsection (1) as follows-

- (1) A contracting authority may, hold a competitive dialogue with each bidder to define the technical or financial aspects of the project in the manner prescribed under this Act.

#### **Justification**

This section previously required the approval of the PPP Committee prior to the Contracting Authority engaging in Competitive Dialogue. The amendment is therefore necessary to delete reference to the PPP C. Under the new provision, a Contracting Authority can engage in Competitive Dialogue, based on the projects need, without seeking approval.

#### **Section 48**

Section 48 of the Public Private Partnerships Act is amended by deleting subsection (4).

#### **Justification**

This section referred to the role of the Committee in PPP evaluations and should be done away with.

#### **Section 52**

Section 52 of the Public Private Partnerships Act is amended in subsection (1) by deleting the words “with the approval of the Committee” appearing in the preamble.

#### **Justification**

As the Committee is no longer there, there is need to delete reference to any approvals required from the Committee.

#### **Section 54**

The Public Private Partnerships Act is amended by deleting section 54 and substituting therefor a new section 54 as follows-

- (1) The Unit shall submit the project report, the financial risk assessment report submitted to it under section 53 and its recommendations to the Cabinet Secretary for consideration and approval.
- (2) For County projects, the project report, the financial risk assessment report shall be submitted to the Contracting Authority together with its recommendations for consideration and approval.
- (3) After the approval under subsection (1) and (2) above, the Contracting Authority shall execute the Project Agreement.

#### **Justification**

This section provided that the Committee needed to approve the financial risk assessment report, prior to submission of the Project Agreement to Cabinet for approval to execute. As the Committee is no longer there, there is need to amend this section to remove any reference to the Committee.

#### **Section 56 and 57**

The Public Private Partnerships Act is amended by deleting sections 56 and 57.

#### **Justification**

These sections referred to the approval of a Project Agreement to execution. As the Committee is no longer there, their role in this process needs to be deleted. Further, the need to seek Cabinet approval prior to contract execution has in practice led to delays of 6 months or more and has been an unnecessary administrative delay. As the Cabinet Secretary now has overseeing powers over the PPP process, he will inform the Cabinet of the signed contracts and advise on the value for money and affordability of the same.

### **Section 58**

The Public Private Partnerships Act is amended by deleting section 58 and substituting therefor a new section 58 as follows-

- (1) A contracting authority may, at any time, terminate procurement proceedings without entering into a contract.
- (2) The bidders of a tender that is cancelled under this section shall not be entitled to compensation for the cancellation of the tender.

### **Justification**

Before a tender was cancelled, the Contracting Authority needed to seek the permission of the PPP Committee. With the removal of the Committee, there is need to amend this section.

### **Section 61**

Section 61 of the Public Private Partnerships Act is amended in subsection (2) by-

- (i) deleting item (b) and substituting therefor a new item (b) as follows-
  - (b) "Submit the proposal to the Unit for consideration and approval".
- (ii) deleting item (c)

### **Justification**

Reference to the PPP Committee in the approval of Privately Initiated Investment proposals (PIIPs) should be deleted not that there is no Committee.

### **Section 63**

Section 63 of the Public Private Partnerships Act is amended by deleting subsection (3) and substituting therefor a new subsection (3) as follows-

- (3) The parties to the project agreement may agree to resolve disputes arising under the project agreement through arbitration, or any other non-judicial means of dispute resolution agreed upon in the agreement as specified in paragraph 18 of the Third Schedule.

### **Justification**

Reference to the PPP Committee in the approval of Privately Initiated Investment proposals (PIIPs) should be deleted not that there is no Committee.

### **Section 64**

The Public Private Partnerships Act is amended by deleting section 64 and substituting therefor a new section 64 as follows-

- (1) A party who intends to make material amendment or variation to a project agreement in relation to the term and conditions specified therein, the outputs of a project or any waivers specified in the agreement:
  - (a) For national level projects shall apply for, and obtain the approval of the Cabinet Secretary;
  - (b) For county projects, require the concurrence of the Cabinet Secretary, where the relevant project is supported by a letter of comfort or such risk mitigation instruments from the national government
- (2) The Cabinet Secretary shall issue thresholds on what can be deemed material amendments.
- (3) The approval of the Cabinet Secretary under subsection (2) shall be in writing.

#### **Justification**

A Contracting Authority was required to seek the Committee's approval prior to amending any signed project agreement. With the removal of the Committee, this section needs to be amended to reflect the change.

#### **Section 65**

Section 65 of the Public Private Partnerships Act is amended in subsection (5) by deleting the word "Committee" and substituting therefor the word "Unit".

#### **Justification**

The Committee was charged with overseeing the implementation of PPP projects under the PPP Act. With the removal of the Committee, this function has been transferred to the PPP Unit.

#### **Section 71**

Section 71 of the Public Private Partnerships Act is amended-

- (i) In subsection (1) by deleting item (d),
- (ii) By deleting subsection (2)

#### **Justification**

This section deals with the regulations that the Cabinet Secretary may prescribe under the Act. With the removal of the Committee, there is need to delete any reference to then in this section.

#### **Schedule 1**

The Public Private Partnerships Act is amended by deleting the First Schedule.

#### **Justification**

This schedule referred to the conduct of business of the PPP Committee and should be deleted now that the PPP Committee is to be removed.

#### **COMMITTEE DELIBERATIONS**

The meeting deliberated and agreed that they will consult the Speaker on whether they can take up the National Treasury's additional amendments to the Public Private Partnerships (Amendment) Bill, 2017. Regarding public participation on the additional amendments, it was agreed that since the Bill concerns counties it will be considered by the Senate and hence public participation will take place at that point.

**MIN.NO.080/DC-F/2018: ANY OTHER BUSINESS**

The Chairperson informed the meeting that The Statute Law (Miscellaneous Amendments)(No. 3) Bill, 2017 would go for third reading the following day. Members were requested to be present in the House to defend the Committee's amendments.

**MIN.NO.081/DC-F/2018: ADJOURNMENT**

There being no other business to deliberate on, the meeting was adjourned at 19.35pm. The next meeting will be held on Thursday, 29<sup>th</sup> March 2018 at 11.00am.

**HON. JOSEPH K. LIMO, MP**

**(CHAIRPERSON)**

for  **SIGNED** ..... **DATE** 12<sup>th</sup> April 2018

Handwritten marks and symbols at the top right corner.

Small handwritten mark on the left side.

Small circular handwritten mark on the right side.

Small handwritten marks on the right side.

Small handwritten mark on the left side.

Small circular handwritten mark on the right side.

Small handwritten marks at the bottom right corner.

**MINUTES OF THE 4<sup>TH</sup> SITTING OF THE STAKEHOLDER FORUM TO CONSIDER MEMORANDUM ON THE COUNTY PENSION SCHEME BILL, 2017 AND THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2017 BY THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON 17<sup>TH</sup> MARCH, 2018 AT THE BOMA HOTEL, NAIROBI AT 2.00PM**

---

**PRESENT**

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP - **Vice Chairperson**
3. Hon. Daniel E. Nanok, MP
4. Hon. Andrew A. Okuome, MP
5. Hon. David M. Mboni, MP
6. Hon. Francis K. Kimani, MP
7. Hon. Joseph M. Oyula, MP
8. Hon. Samuel Atandi, MP

**ABSENT WITH APOLOGY**

1. Hon. Jimmy O. Angwenyi, MP
2. Hon. Alfred Sambu, MP
3. Hon. Enoch Kibunguchy, MP
4. Hon. Shakeel Shabbir Ahmed, MP
5. Hon. Abdul Rahim Dawood, MP
6. Hon. Joshua C. Kandie, MP
7. Hon. Lydia H. Mizighi, MP
8. Hon. Mohamed A. Mohamed, MP
9. Hon. Purity W. Ngirici, MP
10. Hon. Stanley M. Muthama, MP

**INATTENDANCE**

**SECRETARIAT**

- |                        |   |                                   |
|------------------------|---|-----------------------------------|
| 1. Mr. Robert Nyaga    | - | Deputy Director, PBO              |
| 2. Ms. Leah Mwaura     | - | First Clerk Assistant/ Lead Clerk |
| 3. Ms. Laureen Wesonga | - | Third Clerk Assistant             |
| 4. Mr. Josephat Motonu | - | Fiscal Analyst I                  |
| 5. Ms. Lynette Otieno  | - | Legal Counsel II                  |
| 6. Mr. Chelang'a Maiyo | - | Research and Policy Analyst III   |
| 7. Ms. Beatrice Auma   | - | DCS Office                        |
| 8. Mr. Collins Mahamba | - | Audio Officer                     |
| 9. Mr. John Njoro      | - | Sergeant-At-Arms                  |

10. Mr. Stephen Omunzi – Office Assistant

**INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA**

1. CPA. Fred Riaga – Chief Manager
2. CPA. Dr. Onyancha Ondimu

**MIN.NO.021/DC-F/2018:PRELIMINARY/COMMUNICATION FROM THE CHAIRPERSON**

The meeting was called to order at 02:15p.m with prayer from Hon. Andrew A. Okuome, MP. The Chairperson called for introduction of those present before welcoming the Institute of Certified Public Accountants of Kenya (ICPAK) to make their submission.

**MIN.NO.022/DC-F/2018: CONFIRMATION OF MINUTES**

Agenda deferred

**MIN.NO.023/DC-F/2018: INSTITUTE OF CERTIFIED PUBLIC ACCOUNTANTS OF KENYA**

ICPAK made the following submission; That:-

**Clause 3, s.5**

Clause 3 (a) should add "and Senate "instead of "and Parliament", reason being that it is the mandate of the Senate to oversee the functions of the County's and not the National Assembly.

**Justification**

Article 96 of the Constitution grants the Senate mandate to represent the counties, and protect the interests of the counties and their governments.

**Clause 8, s.17**

Propose amendment to six months, Amend 8(b) to read "by inserting the following new subsection immediately after subsection (7)— "(8) six months prior to a general election, no procurement shall be carried out by the national and county governments, or their respective entities, in respect of their respective development votes unless with the approval of the National Treasury".

**Justification**

To curb against pilferage of public resources during an election year

**Clause 9, s.24**

Recommend the provision be retained as per the Act as the amendment impacts negatively on the principle of separation of power. This erodes the independence of the Parliamentary Service Commission). The National Treasury shouldn't prescribe standard operating procedures for PSC.

**Justification**

To uphold the principles of separation of powers for the three arms of Government.

**Clause 10, s.35**

Retain as per parent Act section 35(1)(j) It's ideal to report quarterly(three months) or consistency and not four as indicated in the amendment

**Justification**

The current best practices is quarterly reporting (three months)

**Clause 12, s.39**

Retain 39(1)(j) as per the Act

The issue on "not assented to" of a Bill does not arise. Article 115 of the Constitution that in If the President does not assent to a Bill or refer it back within 21 days, the Bill shall be taken to have been assented to on the expiry of that period.

**Justification**

The issue on "not assented to" of a Bill does not arise. Article 115 of the Constitution that in If the President does not assent to a Bill or refer it back within 21 days, the Bill shall be taken to have been assented to on the expiry of that period.

**Clause 14, s.52**

Amend section 52 by deleting subsection (2).

1. The PFM Act has mandated the Cabinet Secretary to authorize execution of loan agreements.
2. Any designation should happen within the confines of PFM Act. Therefore, no other legislations (as indicated in this amendment) should authorize execution of this responsibility.

**Justification**

To be consistent with the letter and spirit of Public Finance management reforms. Execution of loans is the sole prerogative of the Cabinet Secretary.

**Clause 17, s. 77**

The Institute supports this amendment. However, there's need for a National Policy/Guidelines on tax waivers and variations. At the moment, this has been left at the discretion of the Cabinet Secretary- National Government, and Governors at the County Level.

### **Justification**

There is need for an overarching framework on tax waivers and variations.

### **Clause 18, s.78**

Retain as is in the Principal Act.

1. Clause 18 proposes to have many other revenue collectors besides KRA. These "others" should be agents of KRA and not the National Government. Having many revenue collectors may not be for the good of the Country's revenue collection.
2. Besides, the proposed amendment creates a loophole which can be misused to affect revenue collection/generation. Revenue being a sensitive matter, there's need to retain as is in the Principal Act.

### **Clause 25, s.96**

Amend Sec. 96 to mirror provisions of Sec. 95 of the principal Act.

This notwithstanding, there is need to interrogate the provision to stop disbursement on account of acts of omission and commission to the detriment of service delivery.

The proposed amendment touching on material breach of obligations by county governments is not in tandem with the treatment for similar breaches by national government entities as provided for under Sec. 95 of the principal Act. Sec. 96 of the Principal Act should be amended to align the provisions thereon with those of Sec. 95. The spirit need should cut across the National and County.

### **Justification**

The accounting officers should be personally held liable for the misstatements in accordance with Article 226(5) of the constitution.

### **Clause 27, s.98**

Retain as is in the principal Act as "Material" and "Serious" in accounting terminology are synonymous.

### **Clause 29, s.105(2)**

Review the amendment as follows:

“Any other officer within the county designated by the County Treasury.”

The amendment empowers the County Treasury to appoint even outsiders to exercise a specified power, on its behalf.

The original provision had locked the nomination to officers under county treasury.

**Clause 32, s.112**

Delete the proposed amendment as it amounts to duplication.

Provided for under section 112 (2)b. Further the provision is misplaced given that 112 (3) focuses on the circumstances of an event and not the fund.

**Justification**

To avoid duplication

**Clause 34, s. 117**

Retain as in the principal Act.

The constitution established a structure in which policy directions are set at the National Government, BPS being one of the policies. Counties must prepare budget priorities in tandem with the national policy guide. This was made possible by the staggered due dates which allowed counties to align their budget priorities to the national priorities. This amendment takes away the possibility of alignment since it requires the presentation of the documents on the same day.

**Clause 46, s.137**

1. Amend section 137(2)(a)

“The County Executive Committee Member responsible for matters related to Finance shall be the chairperson”;

2. Add subsection 137(2)(d)

“In constituting the Forum, the County Government shall ensure that among the professionals, one is are certified members in good standing of a professional body in accounting or finance recognized by law in Kenya

3. Some of the CBEFs have been non-functional or ineffective due to the fact that they are chaired by Governors who are fairly busy and thus unable to convene meetings. This should be amended to have CBEFs convened by the County Executive Committee Member of Finance.

**Justification**

Budgeting requires input by professionals knowledgeable in matters finance and accounting.

### **Clause 49, s.143**

Amend Section 143 of the Principal Act by deleting 143(2).

The PFM Act has mandated the County Executive Committee member for finance to authorize execution of loan agreements at the County level. Any designation should happen within the confines of the PFM Act. Therefore, no other legislations (as indicated in this amendment) should authorize execution of this responsibility.

### **Justification**

To be in consistence with the letter and spirit of Public Finance management reforms.

### **Clause 52, s.155**

Amend 155(5) by deleting “internal” to read,

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

Subsection 5 narrows the mandate of the committee to internal audit issue.

### **Justification**

This should be amended to ensure that the audit committee looks at both internal control and external audit.

### **Clause 65, s.187**

Amend 187(1) by inserting a new paragraph after (h) (i) The Institute of Certified Public Accountants of Kenya.

They propose an additional amendment to include the Institute as a member of the Intergovernmental Budget and Economic Council. Since the main purpose of the Council is to provide consultation on matters relating to budgeting, the economy and financial management it makes sense to incorporate the Institute by virtue of its expertise and mandate on public finance and accountability as stipulated by the Accountants Act 2008.

The Institute by virtue of its expertise and mandate on public finance and accountability as stipulated by the Accountants Act 2008 will add value to the Council.

### **Members' Deliberation**

1. ICPAK was tasked to carry out a research on jurisdictions similar to Kenya whose revenues (National and County Government) are collected by one institution.

2. The meeting noted that it was important for counties to be encouraged to generate more revenue as opposed to waiting for funding from the National Government. This could be done by allocating more money to counties that generate more revenue to act as an incentive.
3. ICPAK dropped their amendment to clause 49(143).

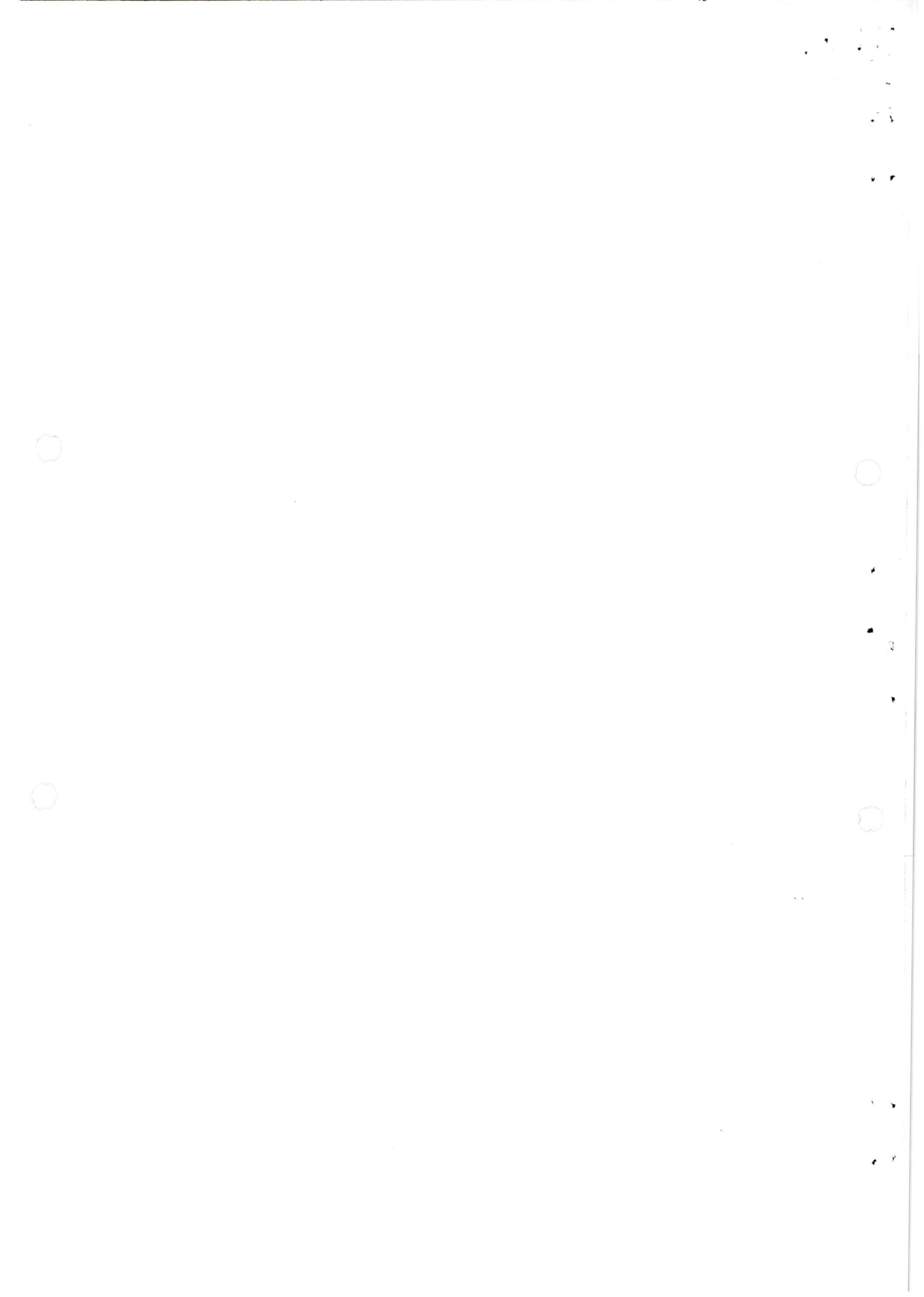
**MIN.NO.024/DC-F/2018: ADJOURNMENT**

There being no other business to deliberate on, the meeting was adjourned at 4.30 pm. The next meeting will be held on notice.

**HON. JOSEPH K. LIMO, MP**

**(CHAIRPERSON)**

SIGNED..........DATE.....20/3/2018.....



**MINUTES OF THE 3<sup>RD</sup> SITTING OF THE STAKEHOLDER FORUM TO CONSIDER MEMORANDUM ON THE COUNTY PENSION SCHEME BILL, 2017 AND THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2017 BY THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON 17<sup>TH</sup> MARCH, 2018 AT THE BOMA HOTEL, NAIROBI AT 9.00AM**

---

**PRESENT**

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Daniel E. Nanok, MP
4. Hon. Andrew A. Okuome, MP
5. Hon. David M. Mboni, MP
6. Hon. Francis K. Kimani, MP
7. Hon. Joseph M. Oyula, MP
8. Hon. Samuel Atandi, MP

**ABSENT WITH APOLOGY**

1. Hon. Jimmy O. Angwenyi, MP
2. Hon. Alfred Sambu, MP
3. Hon. Enoch Kibunguchy, MP
4. Hon. Shakeel Shabbir Ahmed, MP
5. Hon. Abdul Rahim Dawood, MP
6. Hon. Joshua C. Kandie, MP
7. Hon. Lydia H. Mizighi, MP
8. Hon. Mohamed A. Mohamed, MP
9. Hon. Purity W. Ngirici, MP
10. Hon. Stanley M. Muthama, MP

**INATTENDANCE**

**SECRETARIAT**

- |                        |   |                                   |
|------------------------|---|-----------------------------------|
| 1. Mr. Robert Nyaga    | - | Deputy Director, PBO              |
| 2. Ms. Leah Mwaura     | - | First Clerk Assistant/ Lead Clerk |
| 3. Ms. Laureen Wesonga | - | Third Clerk Assistant             |
| 4. Mr. Josephat Motonu | - | Fiscal Analyst I                  |
| 5. Ms. Lynette Otieno  | - | Legal Counsel II                  |
| 6. Mr. Chelang'a Maiyo | - | Research and Policy Analyst III   |
| 7. Ms. Beatrice Auma   | - | DCS Office                        |
| 8. Mr. Collins Mahamba | - | Audio Officer                     |

- |                        |   |                  |
|------------------------|---|------------------|
| 9. Mr. John Njoro      | - | Sergeant-At-Arms |
| 10. Mr. Stephen Omunzi | - | Office Assistant |

**COUNTY ASSEMBLY FORUM (CAF)**

- |                        |   |                      |
|------------------------|---|----------------------|
| 1. Hon. Joseph Kaberia | - | Speaker, Meru County |
| 2. Ms. Regina Mutheu   | - | Legislative Officer  |

**SOCIETY OF CLERKS AT THE TABLE IN KENYAN LEGISLATURES**

- |                        |   |                           |
|------------------------|---|---------------------------|
| 1. Mr. J.K. Arithi     | - | Clerk, Meru Assembly      |
| 2. Mr. Daniel Konyango | - | Clerk, Kajiado Assembly   |
| 3. Mr. Edward Libendi  | - | Clerk, Makueni Assembly   |
| 4. Isaac Kitur         | - | Clerk, Bomet Assembly     |
| 5. Ms. Edith Imunde    | - | Executive Director, SOCAT |
| 6. Ms. Lucy Akoritsa   | - | Program Officer, SOCAT    |
| 7. Mr. Anthony Mugambi | - | Personal Assistant, SOCAT |

**MIN.NO.017/DC-F/2018:PRELIMINARY/COMMUNICATION FROM THE CHAIRPERSON**

The meeting was called to order at 09:25a.m with prayer from Hon. David M. Mboni, MP. The Chairperson took the meeting through the day's program before calling for introduction of those present. He then welcomed the County Assemblies Forum and the Society of Clerks at the Table in Kenyan Legislatures to make their submission.

**MIN.NO.018/DC-F/2018: CONFIRMATION OF MINUTES**

Agenda deferred

**MIN.NO.019/DC-F/2018: COUNTY ASSEMBLIES FORUM AND THE SOCIETY OF CLERKS AT THE TABLE IN KENYAN LEGISLATURES**  
CAF made the following submission; That:-

**Clause 3, s.5**

Section 5(1) be retained as per the act

**Justification**

Proposal to add "Parliament" as one of the bodies to approve formation of county corporations will be unconstitutional as this clearly falls within the purview of county governments hence approval by the county assembly is enough.

The Constitution provides circumstances parliament and in particular Senate can be involved in county affairs.

**Clause 41, s.129**

Retain provision as per the Act.

**Justification**

- i. The County Executive and County assemblies are separate entities; hence separation of powers will be eroded with the proposal. As it will expose the county assembly to the control of the county executive.
- ii. It is the duty of the Clerk of the County assembly to prepare estimates of the assembly to be approved by the county assembly service board and submit the same to the county assembly as is in section 129(3) and (4) of the Act.
- iii. The County assembly budget must be within the ceilings proposed by the county executive as provided by CFSP.

**Clause 42, s.131**

The said provision and the amendment should be deleted to allow county assemblies discharge their constitutional mandate of approving the budget without limitations. Article 185 of the Constitution mandates the assembly to approve county budgets.

The problems experienced by county governments departments during the exchequer releases has neither been addressed by the section or regulations

The County Executive has been holding the county assembly at hostage by denying allocations from the county treasury.

The section should be amended to provide that or alternatively regulations made to provide for -

- (i) County budget must be implemented as approved in the relevant appropriation act
- (ii) Requirement for the county executive member in charge of the County treasury to table a schedule providing for monthly exchequer issues to the various organs of the county government which shall be the basis for release of funds.
- (iii) The schedule to be submitted to the assembly for approval within 14 days of enactment of the Appropriation Act.
- (iv) A copy of the schedule to be submitted to the Controller of budget and the National Treasury within 14 days of approval.

**Clause 45, s.136**

The section should be amended further to provide that provided any money unspent can be re-budgeted without affecting the ceiling of a particular organ of the county government to clear pending bills without affecting current budgets.

### Justification

- i. The amendment affects functions and operations of counties as most of the times funds are released late into the financial year making it impossible for an entity to spend that amount.
- ii. Returning the funds without a provision for re-budgeting of the same will affect the operations of the county organs as they may not be able to clear pending bills.
- iii. County government organs should be allowed to use the funds unspent at the end of the financial year as balance carried forward since the said balances were part of the ceilings and have been appropriated to pending bills.

SOCAT submitted as follows; That:-

### Clause 3, s.5

Section 5(1) be retained as in the Principal Act

### Justification

- i. The process of creation and dissolution of such organs should be fully domiciled within the individual County Governments with no interference from national government actors like Parliament.
- ii. County Government Entities are defined as either department, agency, authority or other body of the County Government.
- iii. These are administrative and functional units that the respective County Governments use to ensure service delivery.

The Principal Act is amended by inserting the following new Section immediately after Section 5

**5A.** (i) Subject to Article 201 of the Constitution and the provisions of this Act, each county assembly shall establish an officer responsible for budget, finance and economic analysis.

(ii) The county assembly office created under subsection (i) shall exist as an office in the County Assembly Service and shall consist of persons appointed on merit by virtue of their experience in finance, economics and public policy matters.

(iii) The county assembly budget office created under subsection (i) shall—

- a) provide professional services in respect of budget, finance and economic information to the offices of the County Assembly;
- b) prepare reports on budgetary projections and economic forecasts and make proposals to the committees of the county assembly responsible for budgetary matters;

- c) prepare analyses of specific issues, including financial risks posed by the National and County government policies and activities to guide the county assembly;
- d) consider budget proposals and economic trends and make recommendations to the relevant committee of the county assembly with respect to those proposals and trends;
- e) establish and foster relationships with the National and County Treasury and other national and international organisations, with an interest in budgetary and socio-economic matters as it considers appropriate for the efficient and effective performance of its functions;
- f) subject to Article 35 of the Constitution, ensure that all reports and other documents produced by the assembly office are prepared, published and publicised not later than fourteen days after production; and
- g) report to the relevant committees of the county assembly on any bill that is submitted to the county assembly and has an economic and fiscal impact, making reference to the fiscal responsibility principles and to the fiscal objectives set out in the relevant Budget Policy Statement; and
- h) propose, where necessary, alternative fiscal framework in respect of any financial year.

(2) In carrying out its functions under subsection (i), the county assembly office shall observe the principles of public finance under Article 201 of the Constitution.

(3) The Parliamentary Budget Office shall be required to assist and build the capacity of County Assemblies to analyse any documents under this Act and any Regulations on matters Public Finance.

### Justification

The County Fiscal Strategy Papers are documents unique to counties and are part of a treasure of information that exist at the County level. Revenue allocation done by Parliament has very little to do with the CFSPs and therefore the Parliamentary Budget Office would be engaging in a work fishing expedition if they started over-interacting with the documents.

This should be done at the various County Assemblies by requiring that County Assemblies establish an office within the County Assembly Service responsible for budget, finance and economic matters.

The National Government and its structures should be concerned with building capacity of County Governments and County Assemblies to perform their functions instead of taking away those functions and performing them.

It is noted that the roles and functions of County Assemblies with regard to budget preparation, approval and monitoring mirror those that are undertaken at the National Parliament. To safeguard the work of officers undertaking this on a task at the National Parliament,

there is legally established Parliamentary Budget Office  
with adequate expertise and experience to enable Members make informed decisions.

**Clause 4, s.8**

The provisions should be amended to provide that with respect to Counties the approval be given by relevant County Treasuries in line with guidelines developed by the National Treasury.

The proposed amendment is a timely reprieve that aims to safeguard public funds from the lingering hands of those whomay wish to take advantage of general election to siphon public money.

However, County Governments are autonomous structures capable of making decisions on when and how to spend money allocated to them. The National Treasury exist to provide guidance and advice on public finance management.

The work of approving development expenditure to be undertaken during that period should be done by County Treasuries.

**Clause 31, s.109(4)**

Clause 31 be amended to insert Clause 31(2) that will be read

The Principal Act is amended by inserting the following new section immediately after **Section 109 (6)**–

- 109 7A.** (a) The County Treasury shall submit all requisitions to the controller of Budget as soon as is practically possible, but no later than forty eight hours upon receiving the request from respective entities.
- (b) The accounting officer when requisitioning for exchequer releases for the county assembly shall submit a copy of the requisition to the controller of budget and the controller of budget shall only release the funds upon satisfying themselves that the requisition submitted by the County treasury and that by the County Assembly are in conformity.
- (c) The County Executive Committee (CEC) Member for finance shall not withhold or refuse to submit requisition for a County Assembly to the Controller of budget on behalf of the County Assembly
- (d) The CEC commits an offence under the Act for withholding or refusing to the submit requisition on behalf of the County Assembly to the Controller of Budget.

**Justification**

This amendment will ensure that once funds are requisitioned by the County Assembly through the county treasury, there are no delays in forwarding the requisition to the COB as has been the Case.

**Clause 33, s.116**

Clause 33 be amended to insert 33A

(i) to provide for the establishment of the County Assembly Fund.

(ii) provide that section 34 of the County Assembly Services Act is deleted

The Principal Act is amended by inserting the following new clause immediately after section 116–

**116A.** (i) Pursuant to Section 34 of the County Assembly Services Act, there is established a fund to be known as the County Assembly Fund.

(ii) The Secretary to the County Assembly service Board shall, on the directions of the Board, open and operate such bank accounts as may be necessary for the purposes of the County Assembly Fund.

(iii) Notwithstanding any other provisions of this Act, where a fund is established under any other law for the purpose of a county assembly, the County Assembly Service Board shall–

- a) establish procedures and systems for proper and effective management of the monies and property of the Fund;
- b) establish accounting procedures and systems for the Board to properly account for the monies and property;
- c) superintend the expenditure of the monies of the Fund to ensure that the monies are properly accounted for;
- d) prepare and submit accounts for each financial year in accordance with the written law relating to audit for audit by the Auditor-General; and
- e) ensure that the accounts prepared under paragraph (d) comply with the provisions of this Act.

#### **Justification**

The Public Finance Management Act is superior to County Assembly Service Act and this amendment avoids duplication.

#### **Clause 35, s.119**

Introduce a subsection that provides that the Treasury Single Accounts shall not apply to the County Assemblies

(c) By inserting the following new subsection immediately after subsection **119 (6)** –

(7) The provisions of the Treasury Single Account under this Section shall not apply to a county assembly.

#### **Justification**

The County Assembly receives funds under the County Allocation Revenue Act therefore the funds allocated to County Assemblies need not go through the same executive account to avoid mix ups and unintended mismanagement of funds.

**Clause 39, s.127**

The Clause 39 be amended to insert a new clause (39B) 2A By inserting the following new subsection immediately after subsection 127 (1) –

(2) (a) The Controller of Budget shall only release funds to a County Assembly based on the projections in subsection (ii) and the funds allocated under the County Allocation of Revenue Act.

**Justification**

This will ensure that County Assembly releases are not subject to other conditions introduced by COB other than the cash flow projections and allocation based on the County Allocation of Revenue Act. Recently the controller of budget has introduced extraneous requirements including the Voucher, imprest warrant, bank vouchers for exchequer releases.

**Clause 40, s.128a**

The provision should be maintained as in the Principal Act.

**Justification**

The amendment will limit the timelines available for Sectors to finalize their issues and include the same in the annual development plan which the law requires to be submitted by 30th September.

**Clause 41, s.129**

The provision be retained as in the Principal Act

The County budget making process is robust with the formulation of the County Fiscal Strategy Papers (CFSPs) being an exhaustive and all-inclusive end product of County planning. The CFSP provides the overall resource envelope projections and Sector expenditure ceilings for the next financial year. Sectors including the County Assembly must live within the ceilings proposed by the County Executive Committee and approved by the County Assembly in the CFSP.

It is noteworthy that the provisions of Article 176 of the Constitution of Kenya provide that the County Government consist of the County Executive and the County Assembly. These two are separate arms of the County Government. To safeguard the principle of separation of powers and financial autonomy of County Assemblies, the provision that budget estimates of the County Assemblies be approved by the County Executive should be shelved.

The proposed amendment also contradicts the provisions of **Section 129** (3) and (4) which explicitly provide that the Clerk to the County Assembly shall prepare estimates and table the same in the County Assembly without any reference to the County Executive save for requirement to submit to the County Executive Committee Member for Finance for his comments.

### **Justification**

Retention of the provision in the Act will allow for the independence of the Assemblies by allowing the County Assembly Service Boards to be the final body/authority regarding the County Assembly budget. This amendment will expose the county assembly to another level of control by the Executive yet the Assemblies already have ceilings

### **Clause 45, s.136**

Insert 136A (a) any money unspent can be re-budgeted without affecting the ceiling for both assembly and executive. To clear pending bills without affecting the current budget

d) By inserting the following new subsection immediately after subsection (3) –

(4) An appropriation that has not been spent at the end of the financial year for the year which it was appropriated can be budgeted in the next financial year and such sum shall not affect the ceilings issued in respect to that financial year.

### **Justification**

It will allow assemblies to use the funds unspent at the end of any Financial Year as a balance carried forward since the said balances were part of the ceilings and pending bills hence avoiding the use of current financial year ceilings to offset previously accrued bills.

### **Clause 65, s.187**

The provisions of **Section 187 (d)** of the Principal Act be amended by inserting the following new paragraphs in subsection (i) immediately after paragraph (h) –

- (ii) a representative of a body acting on behalf of County Assemblies appointed by the body.
- (iii) a representative of Clerks of County Assembly nominated by Clerks of County Assemblies.

### **Justification**

The Council does not contain any representation from the County Assemblies making it too lopsided on the County Executive.

### **Members' Deliberation**

1. After deliberations, SOCAT withdrew their amendment on clause 4(8)
2. Both institutions were in support of the Bill.

**MIN.NO.020/DC-F/2018: ADJOURNMENT**

There being no other business to deliberate on, the meeting was adjourned at 12.30 pm. The next meeting will be held at 02.00 pm.

**HON. JOSEPH K. LIMO, MP**

**(CHAIRPERSON)**

SIGNED..........DATE.....*22/12/2018*.....

**MINUTES OF THE 10<sup>TH</sup> SITTING OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING HELD ON THURSDAY, 13<sup>TH</sup> MARCH, 2018 IN THE COMMITTEE ROOM 2<sup>ND</sup> FLOOR, CONTINENTAL HOUSE AT 9.00AM**

**PRESENT**

1. Hon. Joseph K. Limo, MP - **Chairperson**
2. Hon. Isaac W. Ndirangu, MP- **Vice Chairperson**
3. Hon. Shakeel Shabbir Ahmed, MP
4. Hon. Abdul Rahim Dawood, MP
5. Hon. Enoch Kibunguchy, MP
6. Hon. Daniel E. Nanok, MP
7. Hon. Andrew A. Okuome, MP
8. Hon. Joseph M. Oyula, MP
9. Hon. Mohamed A. Mohamed, MP
10. Hon. Lydia H. Mizighi, MP

**APOLOGY**

1. Hon. Jimmy O. Angwenyi, MP
2. Hon. Alfred Sambu, MP
3. Hon. Samuel Atandi, MP
4. Hon. Stanley M. Muthama, MP
5. Hon. Purity W. Ngirici, MP
6. Hon. David M. Mboni, MP
7. Hon. Francis K. Kimani, MP
8. Hon. Joshua C. Kandie, MP

**INATTENDANCE**

**SECRETARIAT**

- |                        |                                     |
|------------------------|-------------------------------------|
| 1. Mr. Robert Nyaga    | - Deputy Director, PBO              |
| 2. Ms. Leah Mwaura     | - First Clerk Assistant/ Lead Clerk |
| 3. Mr. Josephat Motonu | - Fiscal Analyst I                  |
| 4. Ms. Lynette Otieno  | - Legal Counsel II                  |
| 5. Mr. Chelang'a Maiyo | - Policy and Research Analyst       |
| 6. Mr. John Njoro      | - Sergeant-At-Arms                  |
| 7. Mr. Collins Mahamba | - Audio Officer                     |

**NATIONAL TREASURY – PPP UNIT**

1. Eng. Stanley Kamau – Director

2. Dr. Rono Trimising – Legal Expert
3. Ms. Felister Munyua – County PPP Advisor
4. Mr. Wycliffe Ondieki – Monitoring and Evaluation Specialist
5. Ms. Adah Olando – Executive Assistant

## **Agenda**

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chair
4. Bills
5. Petitions
6. Papers
7. Personal statement (**Members Only**)
8. Confirmation of Minutes
9. Matters Arising
10. **Meeting with the Public Private Partnership Committee to consider matters relating to Public Private Partnership programmes and the Public Private Partnership (Amendment) Bill, 2017 ; and Consideration of the Public Finance Management (Amendment) Bill, 2017**
11. Adjournment

### **MIN.NO.050/DC-F/2018:PRELIMINARIES/COMMUNICATION FROM THE CHAIRPERSON**

The meeting was called to order at 9:30 a.m with prayer from the Chairperson. He then proceeded to request Members and the invited officials to introduce themselves.

The Chairperson noted that the meeting was expecting the attendance of the Principal Secretary National Treasury, as the Chairperson of the Public Private Partnership Committee. However, the Principal Secretary was not present in the meeting and no formal communication had been done. Members expressed displeasure in the manner with which the CS and the PS Treasury had on several occasions failed to attend Committee meeting and further failing to formerly communicate of their inability to honour Committee's invitations. The Committee directed that a letter be done to the PS to register displeasure. The Committee therefore resolved that the meeting with the PPP officials be suspended owing to the above reason.

### **MIN.NO.051/DC-F/2018: CONFIRMATION OF MINUTES**

Minutes of the 9<sup>th</sup> sitting were adopted as true records of the proceedings having been proposed and seconded by Hon. Waihenya Ndirangu, MP and Hon. Joseph Oyula, M.P respectively.

**MIN.NO.052/DC-F/2018:MATTERS ARISING**

**Under Min. 048/DC-F/2018: Consideration of the Public Private Partnerships (Amendment) Bill, 2017** – The Committee noted that the Institute of Social Accountability had submitted memoranda in relations to the Public Private Partnerships (Amendment) Bill, 2017. The Committee therefore noted the need to invite them for a meeting to discuss the Bill and the concerns raised by them. The meeting was scheduled for Thursday 22<sup>nd</sup> March, 2018. Thereafter, the Committee would consider the report on the Bill and table it to the House.

**MIN.NO.053/DC-F/2018: CONSIDERATION OF THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2017**

The Committee was taken through the Bill as follows: - That:-

- (i) The Public Finance (Amendment) Bill, 2017 proposes to amend various Sections of the Principal Act in order to ensure its smooth implementation. The Public Finance Management (PFM) Act was enacted in July 2012 and had hitherto been amended twice i.e the Act Number 34 of 2013 and Act Number 6 of 2014. There were also some amendments which were effected through the Finance Act, 2017.
- (ii) The journey of this proposed amendment begun in 2015 when the Public Finance Management (Amendment) Bill, 2015 was introduced in the National Assembly. It was scrutinized and amended before it was eventually passed by the House in 2017. Subsequently, it was sent to the Senate for concurrence, and this was hampered by the expiry of the term of the 11<sup>th</sup> Parliament.
- (iii) Clause 2 of the proposed amendment in Section 2 of the Principal Act amends the definition of short term borrowing to specify that it is only the Central Bank of Kenya that would be allowed to issue overdrafts and not other banks. This is meant to curtail the practice of national government and most county governments which borrow from commercial banks for short term cash flow management leading to unchecked exposure to interest rate risks.
- (iv) Clause 3 of the Bill deals with the Inclusion of Parliament in the establishment of county entities. As currently, Parliament is not involved whenever a county government establishes a county government entity. The approval process involves the CEC and the County Assembly. Therefore the amendment to include Parliament is ensuring there are proper checks and balances in the establishment of public entities at counties.
- (v) The amendment of Section 10 of the Principal Act on the work and functions of PBO (clause 5) – there are three main issues covered here. First is the actualization of the smooth implementation Article 114 of the Constitution on processing of “money Bills” in line with the already establish best practice. The second aspect relates to additional functions of PBO which are: to undertake monitoring and evaluation of government programmes and projects to inform legislative economic analysis, production of the Budget Options paper to guide the legislature in scrutinizing the Budget Policy Statement and analysis of the County Fiscal Strategy Papers to inform respective Committees of Parliament with regard to broad policy goals and strategic objectives overarching the budget in the county government. The third issue relates to providing a framework of

- access to information that is requisite in the conducting various analyses in the performance of the statutory functions.
- (vi) Clause 8 of the proposed amendment restricts any procurement of capital vote for the national and county government and their respective entities within three months prior to a general election unless there is authorization by the National Treasury. This is to control development commitment for both levels of government during the transition period, thereby managing any attendant risk that may occur during that period.
  - (vii) Clause 10 of the Bills was dealing with the changing quarterly reporting to 3 reports annually As currently contained in the Principal Act, the National Treasury releases Quarterly Economic and Budgetary Review. The proposed amendment implies that document will be released thrice a year as opposed to four times. However, the controller of budget reports on budget implementation on a quarterly basis and it is imperative for retention of the current status where the reporting is done at the same time. This will ensure harmonization and comparison of the information published by these two institutions to ensure consistency.
  - (viii) Clause 13 of the proposed amendment was providing for the monthly publication of the Exchequer releases which is to be done at the level of programmes and projects. This will improve transparency and accountability in the utilization of public resources by budget implementing agencies, ultimately facilitating effective oversight by the legislature.
  - (ix) Clause 15 of the proposed amendment provides for the respective accounting officers in various government entities to not only monitor the financial performance of their entities but also go further and monitor non-financial performance. This will guarantee value for money in the provision of public services.
  - (x) Clause 18 of the proposed amendment indicate that there could be other collectors of revenue in addition to the Kenya Revenue Authority. Perhaps, the focus is the collection of various earmarked revenues but the utilization of economies of scale may be realized when the already established revenue agency will be engaged because of the established structures and competencies.
  - (xi) Clause 21 – 22 of the Bill provide for the responsible Cabinet Secretaries to oversee the government-linked corporations under their purview and report annually to the National Assembly 4 months upon the closure of the fiscal year on change in shareholding during the reporting period, loans and guarantees, profit or loss, revenue received by the national government from the government-linked corporation and assessment of financial and non-financial performance. This is likely to safeguard government interest and investment in government-linked corporation in addition to state corporations.
  - (xii) Clause 31 of the Bill was intending to restrict the County Revenue Fund to the Central Bank of Kenya. The amendment specifies that the County Exchequer Account which holds the County Revenue Fund to be domiciled in the Central Bank of Kenya and not at other banks. This will, among other measures, facilitate the operationalization of the Treasury Single Account.

**Members' resolution- The Committee Members supported this amendment.**

- (xiii) Clause 32 of the Bill was intending to elaborate what constitutes a county emergency at the county government level so as to qualify what is to benefit from withdrawal of funds from the county emergency Fund. This is for avoidance of doubt and ensure there is enhanced clarity across the counties.
- (xiv) Clause 34 of the Bill relates to changing timelines for the County Fiscal Strategy Paper (CFSP) (clause 34). The timeline for the submission of the CFSP to the County Assemblies is proposed to be changed from 28<sup>th</sup> February every year to 15<sup>th</sup> of February and the period of its consideration, upon submission, has been proposed to be increased from 14 to 30 days. This will grant the County Assemblies sufficient time to scrutinize this key budget document. However, Section 117 (2) requires alignment of the CFSP objectives to the ones of the Budget Policy Statement (BPS) whose deadline for submission to parliament is 14<sup>th</sup> February.
- (xv) Clause 35 (b) of the Bill proposes to ensure that there is publication of county governments' monthly overdrafts in the National Treasury website. The proposed amendment shall require the National Treasury to publish and publicize, in their website, the monthly overdrafts by the county governments on the 5<sup>th</sup> day of every month. This is anticipated to improve transparency and accountability in the management of public resources at the county level and encourage prudence.
- (xvi) Clause 36 of the Bill relates to the banking arrangements by the county governments. The Public Finance Management (County Regulations), 2017 provided an elaborate mechanisms on banking arrangements by the county governments including opening County Exchequer Account only in the Central Bank of Kenya. Imprest account for petty cash may be opened at other banks with prior authorization by the CEC (M) for Finance. This is what is being proposed for elevation into the Principal Act.
- (xvii) Clause 38 & 40 of the Bill relates to timelines for release of County Budget Circular and submission of the Annual Development Plan are being proposed to be changed to 15<sup>th</sup> and 30<sup>th</sup> September, from 30<sup>th</sup> August and 1<sup>st</sup> September respectively, and the ADP shall be approved within one month upon submission.
- (xviii) Clause 39 of the Bill relates to cash flow projections to be submitted at the same time as the Estimates. The timeline for submission of cash flow projections for the county government has been harmonized with the submission of the estimates. However, the one for the national government is not provided since Section 29 of the Principal Act provides for the National Treasury to establish framework for the cash flow management.
- (xix) Clause 42 of the Bill seeks to limit the extent to which the County Assemblies can amend the Estimates to be not more than 10% of the approved ceilings in the CFSP. Further, that the Estimates, once approved, shall be submitted to the National Treasury within 14 days. First, the PFM (County Regulations) caps the extent of changes at only 1% of the CFSP ceiling. These are contradictory measures and they seem to curtail the County Assemblies in the performance of their constitutional mandate especially on the budget process.

(xx) Clauses 61 to 63 of the Bill relates to the Involvement of the respective CECs in the oversight of county government-linked corporation. This is to safeguard the county government interest and investment in the county government-linked corporations.

**MIN.NO.054/DC-F/2018: ADOPTION OF THE REPORT AND THE COMMITTEE'S AMENDMENTS ON THE STATUTE LAW (MISCELLANEOUS AMENDMENTS) BILL, 2017**

The Committee was taken through the Statute Law (Miscellaneous Amendments) Bill, 2017 and adopted the following amendments for presentation during the Committee Stage.

**SCHEDULE**

(1) THAT the Schedule to the Bill be amended in—

- (a) the proposed amendments to the Pensions Act, Cap. 189 by deleting the proposed amendments to section 5(3); and
- (b) the proposed amendments to the Salaries and Remuneration Commission Act, No. 10 of 2011 by deleting—
  - (i) the proposed amendment to section 4(3);
  - (ii) the proposed amendment to section 7;
  - (iii) the proposed amendment to section 7(10); and
  - (iv) the proposed amendment to section 7(11).

**MIN.NO.055/DC-F/2018: ADJOURNMENT**

There being no other business to deliberate on, the meeting was adjourned at 12.45 pm. The next meeting will be held on Thursday, 15<sup>th</sup> March 2018.

**HON. JOSEPH K. LIMO, MP**

**(CHAIRPERSON)**

SIGNED .....<sup>For</sup>  .....DATE.....<sup>12<sup>th</sup> April 2018</sup> .....