



LAWS OF KENYA

**COUNTY GOVERNMENTS PUBLIC
FINANCE MANAGEMENT Transition ACT**

No. 8 of 2013

Published by the National Council for Law Reporting
with the Authority of the Attorney-General

www.kenyalaw.org

NO. 8 OF 2013

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NO. 8 OF 2013

COUNTY GOVERNMENTS PUBLIC
FINANCE MANAGEMENT TRANSITION ACT

[Date of assent: 14th January, 2013.]

[Date of commencement: 25th January, 2013.]

An Act of Parliament to provide for, pursuant to section 15 of the Sixth Schedule of the Constitution, a framework for establishment and functions of Transition County Treasuries; the transition county budget process; transition revenue raising measures and expenditures for county governments; responsibilities of transition county accounting officers and receivers of revenue and for connected purposes

[Act No. 8 of 2013.]

PART I – PRELIMINARY

1. Short title

This Act shall be cited as the County Governments Public Finance Management Transition Act, 2013.

2. Interpretation

(1) In this Act, unless the context otherwise requires—

“**accounting officer**” means the Transition County Accounting Officer as provided for under section 10 of this Act;

“**Cabinet Secretary**” has the meaning assigned to it in section 2 of the Public Finance Management Act (Cap. 412C);

“**County Executive Committee member for Finance**” has the meaning assigned to it in section 2 of the Public Finance Management Act (Cap. 412C);

“**decentralized units**” has the meaning assigned to it under section 48 of the County Governments Act (Cap. 265);

“**establishment**” in the case of the County Assembly means the swearing in of the members of the County Assembly and the Governor after the declaration of final results of the first elections under the Constitution and in the case of the County Treasury upon the appointment of the County Executive member responsible for Finance and the Officers provided in section 103 of the Public Finance Management Act (Cap. 412C);

“**National Treasury**” has the meaning assigned to it in section 2 of the Public Finance Management Act (Cap. 412C);

“**receiver of revenue**” has the meaning assigned to it in section 2 of the Public Finance Management Act (Cap. 412C);

“**Transition Authority**” has the meaning assigned to it in section 2 of the Transition to Devolved Government Act (Cap. 265A);

“**Transition period**” refers to the period between the date of commencement of this Act and the date when the respective County Treasuries are established and in any case not later than the 30th September, 2013; and

“**Treasury Single Account**” has the meaning assigned to it in section 2 of the Public Finance Management Act (Cap. 412C).

(2) Despite subsection (1), until after the first elections under the Constitution, references in this Act—

- (a) to “Cabinet Secretary” and “State Department” shall be construed to mean “Minister” and “Ministry”, respectively; and
- (b) to the expression “clerk” shall be construed to mean—
 - (i) the manager of a city or municipal manager; or
 - (ii) an administrator of a town.

3. Object and purpose of this Act

The object and purpose of this Act is to provide for—

- (a) the establishment and composition of Transition County Treasuries;
- (b) the responsibilities of Transition County Treasuries;
- (c) designation and responsibilities of the Transition County Accounting Officers;
- (d) designation of receivers and collectors of revenue and their responsibilities;
- (e) the transition budget process;
- (f) budgeting for counties, urban areas and cities and the continuation of revenue raising measures; and
- (g) deployment of officers before the first elections under the Constitution and the secondment of officers after the establishment of county governments.

PART II – ESTABLISHMENT, COMPOSITION, ADMINISTRATION AND FUNCTIONS OF TRANSITION COUNTY TREASURIES

4. Establishment of Transition County Treasuries

There is established, a Transition County Treasury for each county under the name “(county name)Transition County Treasury”.

5. Composition of Transition County Treasuries

(1) Each Transition County Treasury shall comprise of the following officers and divisions—

- (a) the Transition Principal Officer responsible for all public finance management matters;
- (b) the Transition Head of the County Finance Department responsible for accounting and procurement;
- (c) the Transition Head of the Economic Affairs Department who shall be responsible for the economic analysis and budgeting;
- (d) the Transition Head of internal audit; and
- (e) staff deployed or seconded to the Transition County Treasury.

(2) The Transition Principal Officer shall be the head of the Transition County Treasury.

6. Identification and secondment of officers

(1) Not later than the 15th January 2013, the National Treasury, or any other relevant State Department shall, upon request by the Transition Authority, identify the officers provided for in section 5 for deployment to the respective Transition County Treasuries.

(2) Upon the establishment of the county government, the Officers deployed under this section shall be deemed to be seconded to the county government.

(3) In the process of deployment, the Transition Authority shall, through a transparent process, vet the officers for suitability and ensure that merit, regional, ethnic and gender balance are observed.

7. Reporting by Transition Principal Officer

(1) The Transition Principal Officer shall report and be accountable to—

- (a) the Transition Authority on all public finance management matters, before the county government is established; and
- (b) the County Executive Member responsible for Finance after the establishment of the County Treasury.

(2) Upon establishment of county government, the head of internal audit shall report to the Governor subject to the regulations made under the Public Finance Management Act (Cap. 412C).

8. General responsibilities of Transition County Treasuries

(1) Each Transition County Treasury shall monitor, evaluate and oversee the management of county public finances and economic affairs of the county until such time that County Treasury is established.

(2) Despite the generality of subsection (1), each Transition County Treasury shall, during the transition period—

- (a) ensure that the financial management system developed by the National Treasury under section 12 of the Public Finance Management

- (b) co-ordinate the county planning activities;
- (c) co-ordinate the implementation of the budget at the county level in accordance with budget approved by Parliament and county assembly;
- (d) mobilise resources for funding the budgetary requirements of that county;
- (e) act as the custodian of an inventory of the respective county government assets except as may be provided by the Constitution or other legislation;
- (f) ensure compliance at the county level with accounting standards prescribed from time to time by the National Treasury or the Public Sector Accounting Standards Board established under section 192 of the Public Finance Management Act (Cap. 412C) as the case may be;
- (g) ensure proper management and control of, and accounting for, the finances at the county government in order to promote efficient, effective and prudent use of the county's budgetary resources;
- (h) maintain proper accounts and other records in respect of the County Revenue Fund, the County Emergencies Fund and other public funds at the county government;
- (i) monitor the respective county government entities to ensure that they comply with this Act and the Public Finance Management Act (Cap. 412C), and manage the funds effectively, efficiently, prudently and transparently and, in particular, properly account for the expenditure of those funds;
- (j) assist county government entities in developing their capacity for efficient, effective, prudent and transparent financial management;
- (k) in accordance with the Constitution, this Act and the Public Finance Management Act, 2012 provide the National Treasury with such information as it may require to carry out its responsibilities;
- (l) issue circulars with respect to financial matters relating to the county government entities;
- (m) advise county government entities, the respective County Executive Committee and the county assembly on economic and financial matters;
- (n) advise on the strengthening of financial and fiscal relations between the national government and county governments in performing their functions;
- (o) prepare reports for submission to Parliament and the County Assembly as the case may be;
- (p) present such reports as may be required by the Commission for the Implementation of the Constitution to enable it perform its activities under Section 15(d) of the Sixth Schedule of the Constitution;

- (q) present such reports as may be required by the Commission on Revenue Allocation and the Controller of Budget to enable them perform their functions under the Constitution and any legislation and;
- (r) perform any other function for the purposes of the implementation of this Act and the Public Finance Management Act, 2012 or any other Act, in relation to the county government.

9. Additional responsibilities of the Transition County Treasuries

In addition to the functions and responsibilities of each Transition County Treasury provided in section 8, each Transition County Treasury shall—

- (a) arrange for the County Revenue Fund to be kept in the Central Bank of Kenya or a bank approved by the Transition Chief Officer in an account to be known as the “(county name)Transition County Exchequer Account”;
- (b) authorise the opening and operating of bank accounts for the respective county government and its entities for use upon the establishment of the county government and before the establishment of the County Treasury;
- (c) as soon as practicable, in consultation with the National Treasury and the Transition Authority, facilitate the establishment of Treasury Single Account at the Central Bank of Kenya or a bank approved by the Transition County Treasury through which payments of money to and by the various county government entities shall be made;
- (d) ensure the Treasury Single Account is operated in a manner that does not prejudice any entity to which funds have been disbursed;
- (e) keep complete and current records of all bank accounts for which it is responsible under this Act, the Public Finance Management Act, (Cap. 412C) or any other legislation; and
- (f) ensure that all procurement of goods, works, services and disposal of assets required for the purposes of the county government or a county government entity is carried out in accordance with Articles 201 (d) and 227 of the Constitution, the Public Procurement and Disposal Act, 2005 (Cap. 412A) and any other law relating to procurement.

10. Accounting officer.

The Transition Principal Officer shall be the accounting officer of a Transition County Treasury.

11. Functions and responsibilities of accounting officers

(1) The functions and responsibilities of an accounting officer shall be the functions and responsibilities of accounting officers in county governments as set out in the Public Finance Management Act (Cap. 412C).

(2) An accounting officer may reallocate funds appropriated by Parliament but only in accordance with the Public Finance Management Act, (Cap. 412C) and only if—

- (a) provisions made in the budget item are available and are unlikely to be used; and
- (b) the total of all reallocations made does not exceed ten percent of the total expenditure approved by Parliament.

12. Bank accounts

(1) An accounting officer shall not authorise a bank account for a county government to be overdrawn.

(2) An accounting officer who authorises the bank account of a county government to be overdrawn shall be liable for the total amount withdrawn and the full cost of the overdrawn amount.

PART III – PREPARATION AND APPROVAL OF TRANSITION COUNTY GOVERNMENT BUDGETS

13. Preparation of Transition County Allocation of Revenue Bill

The National Treasury shall prepare a Transition County Allocation of Revenue Bill which shall be submitted to Parliament for approval.

14. Preparation of county budget estimates and related Bills

(1) Upon the determination and gazettelement of the transfer of functions to a county government pursuant to section 23(1) of the Transition to Devolved Government Act (Cap. 265A), and the determination of the cost of those functions, the Transition Authority shall facilitate the preparation of budget estimates for county governments for the period between March to June, 2013, which shall include the cost of functions, administration costs and remuneration for both the county executive and county assembly members and submit them to the Cabinet Secretary.

(2) The Cabinet Secretary shall submit to Parliament the county budget estimates, the Transition County Allocation of Revenue Bill, the Transition County Appropriation Bill and other documents supporting the budget in sufficient time to allow for approval before the first election under the Constitution.

(3) In preparing the county budget estimates and the Bills referred to under subsection (2), the Cabinet Secretary shall take into account the provisions of Articles 187 and 203 of the Constitution.

15. Approval of County Budget estimates and related Bills

Parliament shall consider the county budget estimates, the Transition County Allocation of Revenue Bill, and the Transition County Appropriations Bill in section 14 with a view to approving them, with or without amendments.

16. Withdrawal of funds from County Revenue Funds

(1) The Transition County Appropriation Act shall provide the legislative authority to the Controller of Budget for the withdrawal of funds from the

County Revenue Funds in accordance with Article 207(4)(a) of the Constitution until the county assembly passes the County Appropriation Bill.

(2) In the event that the Transition County Appropriation Bill is not assented to or is not likely to be assented to before the establishment of the county governments, the Controller of Budget may, upon the establishment of the county governments, authorize the withdrawal of money from the Consolidated Fund to the County Revenue Fund and from the County Revenue Funds for appropriation by the county governments which monies shall not be more than fifty percent of the total amount provided for under the Appropriation Bill published and tabled in Parliament.

17. Form of publication of budget estimates

The Cabinet Secretary shall take all reasonably practicable steps to ensure that the budget estimates are prepared and published in a form that is clear and easily understood and readily accessible to members of the public.

18. Designation of Transition County Principal Officer as receiver and collector of revenue

Until the establishment of the County Treasury for a county, the Chairperson of the Transition Authority shall, in writing, designate the Transition County Principal Officer of the respective county government to be responsible for receiving, collecting and accounting for county government revenue.

19. Functions and responsibilities of receivers of revenue

A Transition County Receiver of Revenue shall have such powers as provided for a receiver of county revenue in the Public Finance Management Act (Cap. 412C).

20. Reporting by Transition County Receivers of Revenue

A Transition County Receiver of Revenue shall—

- (a) before the establishment of the respective county governments, be responsible to the Transition Authority for ensuring that the revenue for which the receiver is responsible is collected or recovered, and is accounted for; and
- (b) after the establishment of the respective county governments, after the first elections under the Constitution, be responsible to the Governor for ensuring that the revenue for which the receiver is responsible is collected or recovered, and is accounted for.

21. Appointment of Transition Collector of Revenue

Before the establishment of the respective county governments, the Transition Authority in consultation with the Cabinet Secretary may authorise the Kenya Revenue Authority or appoint a collection agent to be a collector of county government revenue for the purposes of this Act on such terms and conditions as may be agreed in writing.

22. Continuation of revenue raising measures

Until the new budgets of the decentralized units have been approved by the relevant county assemblies as provided in the Public Finance Management Act, 2012, the revenue raising measures approved by the Minister for Local Government under the Local Government Act (Cap. 265), shall continue in force for the 2012/2013 financial year.

23. Charges and rates

For avoidance of doubt, until a new law relating to imposition of rates and charges is enacted, county governments, urban areas and cities may, with necessary modifications, continue to impose rates and charges under the law for the time being in force in relation thereto.

24. Preparation of estimates

For the purposes of preparing the county budget, the existing Local Authorities, at the commencement of this Act, shall prepare their estimates of revenue and expenditure for the 2013/2014 financial year and submit the estimates to the respective Transition County Treasury with copies to the Commission on Revenue Allocation and to the Controller of Budget by the end of February, 2013.

25. Submission of estimates for approval

Not later than the 30th April, 2013, the Governor, or before they are sworn, the Transition County Principal Officer, shall submit the budget estimates of the County to the county assembly for approval.

26. Budgets to comply with the Public Finance Management Act, 2012

The Transition County Treasury or the County Treasury shall ensure that the budgets of the respective counties are done in accordance with the Public Finance Management Act (Cap. 412C).

27. Clerks to be designated as transition collectors of revenue

For purposes of implementing the budgets of an urban area or city, the Governor, or in his or her absence, the County Transition Principal Officer, shall designate the clerk of an urban area or city to incur expenditures and to be the collector of revenue for that urban area or city.

28. Opening and closing of bank accounts

(1) Despite section 9(b) of this Act, the bank account of any urban area or city in existence at the commencement of this Act shall continue to operate until the establishment of the respective county governments and thereafter the account shall be closed save for purposes of reconciliation and the Transition Principal Officer shall ensure that reconciliation is carried out within three months upon closure of the accounts.

(2) Despite subsection (2), the Transition Principal Officer may authorise any such account to remain open for such period not exceeding three months for the sole purpose of completing on-going transactions.

29. Powers of the Cabinet Secretary to make regulations

The Cabinet Secretary may, in consultation with the Transition Authority, make regulations to give effect generally in the implementation of this Act.

30. Existing regulations in force

(1) On the commencement of this Act, any regulations, directions or instructions in force under the Public Finance Management Act (Cap. 412C), shall apply under this Act, with the necessary alterations so as to be applicable to county governments, their entities and officers.

(2) In addition to provisions under subsection (1), the Government Financial Regulations and Procedures, 1989 shall remain in force under this Act with the necessary alterations in application to county governments, their entities and officers until the Regulations made under the Public Finance Management Act (Cap. 412C) come into force.

31. Repeal of this Act

This Act shall stand repealed with effect from the 30th September, 2013.
