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SCHEDULE

CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

**THE PUBLIC DEBT MANAGEMENT
AUTHORITY BILL, 2020**

A Bill for

**AN ACT of Parliament to establish the Public Debt
Management Authority and for connected
purposes**

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Public Debt
Management Authority Act, 2020.

Short title.

2. In this Act, unless the context otherwise requires—

Interpretation.

“Authority” means the Public Debt Management
Authority established under section 4;

“Board” means the Board established under section 7;

“Borrowing” means the procedures for the creation of
financial liabilities by conclusion of agreements, issuance
of government securities and entering into supplier’s credit
agreements;

“Cabinet Secretary” means the Cabinet Secretary for
the National Treasury;

“government guarantee” means an express
undertaking by the Government to guarantee fulfilment of
obligations for which the guarantee is issued but does not
include letters of intent or letters of support; and

“public debt” includes domestic and external public
debts.

3. In fulfilling its mandate, the Authority shall be
guided by the following objectives —

Objectives of the
Authority.

- (a) that the national government’s financing needs and
its payment obligations are met at the lowest
possible cost over the medium to long term with a
prudent degree of risk;
- (b) the development of a domestic public debt market;
- (c) the development of market institutions for
Government debt securities; and

- (d) the equitable sharing of the benefits and costs of public debt between the current and future generations.

**PART II – ESTABLISHMENT, FUNCTIONS AND
POWERS OF THE PUBLIC DEBT MANAGEMENT
AUTHORITY**

4. (1) There is established the Public Debt Management Authority.

Establishment of the Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and disposing of movable and immovable property;
- (c) borrowing money or making investments;
- (d) entering into contracts; and
- (e) doing or performing all other things or acts necessary for the proper performance of its functions under this Act, which may lawfully be done or performed by a body corporate.

5. The functions of the Authority shall include –

Functions of the Authority.

- (a) implementing the government's public debt management policy of minimising its financing cost over the long term taking account of risk;
- (b) formulate policies, strategies and procedures to be employed by the Authority in achieving its objectives;
- (c) review the economic and social impact of domestic and external debt management strategies;
- (d) facilitating debt rescheduling and restructuring to comply with the government's public debt management policy;
- (e) maintaining a register of all loans advanced to the national government, county governments and their entities including loans guaranteed by the national government;

- (f) preparing and updating a rolling annual and medium term public debt management strategy which shall include a public debt sustainability analysis;
- (g) preparing and implementing the national government's borrowing plan and servicing of outstanding public debts;
- (h) on an agency basis, issue government public debt securities on behalf of the national and county governments;
- (i) monitoring and evaluating public debt related transactions to ensure that they are within the guidelines and risk parameters of the public debt management strategy;
- (j) processing the issuance of loan guarantees including assessment and management of risks in national government securities;
- (k) transact in derivative financial instruments in accordance with best international practices benchmarked to the public debt management offices of other governments that are internationally respected for their practice;
- (l) participating in negotiations with creditors and advising the Cabinet Secretary on all borrowings;
- (m) tracking and recovery of any payments including interest and other costs incurred by the national government with regard to the honouring of outstanding guarantees;
- (n) processing borrowing requests from public agencies and county governments;
- (o) preparing forecasts of the national government's public debt servicing and disbursements as part of the Authority's annual budget;
- (p) keeping in safe custody the records of all loan contracts and public debt instruments;
- (q) compiling, verifying and reporting on all national government domestic debt arrears and designing a strategy for the settlement of the arrears;

- (r) maintaining an inventory and facilitating the payment of share capital subscriptions to international financial institutions;
- (s) ensuring that the disbursements of loan proceeds prepared by the national government are in accordance with the agreed disbursement schedule;
- (t) prepare the necessary securitisation whenever it is deemed expedient that outstanding arrears shall be settled by securitisation;
- (u) establish and maintain relationships with international and local financial institutions and investors in government public debts;
- (v) establishing a financial merit system to enable counties with good financial management systems to qualify for borrowing including issuance of domestic bonds; and
- (w) do all such other things as are incidental to the foregoing functions.

6. The Authority shall have all the powers necessary for the proper performance of its functions under this Act and in particular, but without prejudice to the generality of the foregoing, the Authority shall have the power to—

Powers of the Authority.

- (a) manage, control and administer the assets of the Authority in such a manner and for such purposes as best promotes the purpose for which the Authority was established;
- (b) open such bank accounts for its funds as may be necessary;
- (c) determine the provisions to be made for capital and recurrent expenditure and for the reserves of the Authority;
- (d) subject to approval of the Cabinet Secretary invest any of the Authority's funds not immediately required for the purposes of this Act, as it may determine;
- (e) receive gifts, grants, donations or endowments made to the Authority and make disbursements therefrom;

- (f) enter into association with such other bodies or organisations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the purposes for which the Authority is established; and
- (g) undertake any activity necessary for the fulfillment of any of its functions.

7. (1) The management of the Authority shall vest in a Board which shall comprise of the following members—

Board of the Authority.

- (a) a chairperson nominated by the President and approved by Parliament;
- (b) the Cabinet Secretary for the National Treasury;
- (c) the Attorney-General;
- (d) the Governor of the Central Bank of Kenya;
- (e) the Chief Executive Officer of the Capital Markets Authority or a representative designated in writing;
- (f) the Chief Executive Officer of the Nairobi Securities Exchange or a representative designated in writing;
- (g) the Chief Executive Officer of the Kenya Institute for Public Policy and Research or a representative designated in writing;
- (h) one person nominated by the following institutions—
 - (i) the Institute of Certified Public Accountants of Kenya;
 - (ii) the Kenya Bankers Association;
 - (iii) the Kenya Private Sector Alliance;
 - (iv) the Law Society of Kenya; and
- (j) the Director-General who shall be an *ex-officio* member.

(2) A person shall qualify for appointment as the Chairperson if that person—

- (a) is a citizen of Kenya;

- (b) has a minimum of a Bachelor's degree in economics or law; and
- (c) has not less than fifteen years' experience at senior management level.

(3) The members of the Board shall elect a Vice-Chairperson from among the members under subsection (1) (h).

8. (1) A member of the Board, other than an *ex-officio* member, shall cease to be a member of the Board if such person—

Vacation of office.

- (a) is unable to perform the functions of the office by reason of mental or physical infirmity;
- (b) is adjudged bankrupt;
- (c) is convicted of a criminal offence and sentenced to a term of imprisonment of not less than six months;
- (d) is absent from three consecutive meetings of the Board without good cause;
- (e) resigns in writing by a notice addressed to the Cabinet Secretary;
- (f) dies; or
- (g) is removed in accordance with the provisions of the Constitution.

(2) The Board shall be properly constituted notwithstanding a vacancy in its membership.

9. The Chairperson and members appointed under section 8 (1) (h) shall hold office for a term of three years renewable for one further term only.

Term of office.

10. (1) The Board shall conduct its affairs in accordance with the provisions of the Schedule, but subject thereto, the Board may regulate its own procedure.

Conduct of business and affairs of the Board.

11. (1) The Board may establish such committees as may be necessary for the effective carrying out of its functions under this Act.

Committees of the Board.

(2) The membership of the committees shall be drawn from the Board.

12. (1) At the request of a County Treasury, the Authority shall assist the county government in its debt management and borrowing.

Relationship with county treasuries in debt management.

(2) At the request of the Authority, the County Treasury shall supply the Public Debt Management Office with any information that shall enable it to execute its mandate efficiently.

13. The members of the Board shall be paid such remuneration, allowances and disbursements for expenses as may be approved by the Cabinet Secretary in consultation with the Salaries and Remuneration Commission.

Remuneration.

14. (1) There shall be a Director-General of the Authority appointed by the President upon the recommendation of the Board.

Director – General.

(2) The Board shall conduct a competitive recruitment process before recommending a person for appointment as the Director-General.

15. (1) A person shall qualify for appointment as the Director –General if that person –

Qualification of the Director-General.

- (a) is a citizen of Kenya;
- (b) has a minimum of a Bachelor’s degree in economics; and
- (c) has not less than ten years’ experience at senior management level.

(2) The Director-General shall hold office on such terms and conditions of employment as the Board may determine.

16. The Director-General shall be responsible for the–

Functions of the Director-General.

- (a) day-to-day operations of the Authority;
- (b) administration, organisation and control of the staff of the Authority;
- (c) management of funds, property and affairs of the Authority;
- (d) implementation of the policies and programmes of the Authority;

- (e) development of an operations plan for achieving the Authority's objectives; and
- (f) performance of any other duty necessary for the implementation of this Act as may be assigned to the Director-General by the Board.

17. (1) The Board may remove the Director-General from office in accordance with the terms and conditions of service on grounds of—

Removal of the Director-General.

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct or misbehaviour;
- (c) incompetence or neglect of duty; or
- (d) any other ground that would justify the removal from office under the terms and conditions of service.

(2) Before removal under subsection (1), the Director-General shall be—

- (a) informed in writing of the reasons for the intended removal; and
- (b) given an opportunity to put in a defence against the allegations.

18. (1) There shall be a Registrar of the national loans, guarantees and government securities.

Registrar.

(2) The Registrar who shall be competitively recruited and appointed by the Board.

(3) The Registrar shall establish and maintain separate registers for loans, guarantees and securities in which shall be recorded details of all loans, guarantees and securities issued by or on behalf of the national government.

(4) Loans, guarantees and securities issued by or on behalf of the national government shall be published in the *Gazette* and publicised.

(5) An entry in the Register relating to a national government loan, guarantee or security is evidence of the existence of the same, unless the contrary is proved.

(6) The holder of a national government loan, guarantee or security recorded in the Register may in writing, request the Registrar to amend the entry relating to the loan, guarantee or security.

(7) If a request under subsection (6) is in accordance with guidelines given by the Cabinet Secretary for the purposes of this subsection, the Registrar shall, in accordance with the request, amend the entry in the Register.

(8) The Registrar shall provide the holder of a national government loan, guarantee or security with a consolidated statement in writing, showing all entries in the register relating to the loan, guarantee or security—

- (a) as soon as practicable after the loan, guarantee or security is issued;
- (b) at least once during each year the loan, guarantee or security is held; and
- (c) immediately after the loan, guarantee or security is redeemed.

(9) On receiving a written request from the holder of a national government loan, guarantee or security, the Registrar shall provide the holder with a statement showing all entries in the Register relating to the loan, guarantee or security.

19. The Board may appoint such officers, agents and staff as are necessary for the proper and efficient discharge of the functions of the Authority under this Act, upon such terms and conditions of service as the Board may determine in consultation with the Salaries and Remuneration Commission.

Staff.

20. The Board may engage the services of such experts in respect of any of its functions in which the experts have special competence.

Experts.

21. (1) The common seal of the Authority shall be kept in the custody of the Director-General or of such other person as the Board may direct, and shall not be used except on the order of the Board.

Common Seal.

(2) The affixing of the common seal of the Authority shall be authenticated by the signature of the Chairperson and the Director-General.

(3) The Board shall in the absence of either the Chairperson or the Director-General, in any particular

matter, nominate one member of the Board to authenticate the seal of the Authority on behalf of either the Chairperson or the Director-General.

(4) The common seal of the Authority when affixed to a document and duly authenticated, shall be judicially and officially noticed, and unless the contrary is proved, any necessary order or authorization by the Authority under this section shall be presumed to have been duly given.

22. (1) No matter done by a member of the Board or by any officer, member of staff, or agent of the Authority shall, if the matter or thing is done *bona fide* for the purpose of executing the functions, powers or duties of the Authority under this Act, render the member, officer, employee or agent or any person acting on their directions personally liable in an action, claim or demand whatsoever.

Protection from personal liability.

(2) Any expenses incurred by any person in any suit or prosecution brought against him or her in any court, in respect of any act which is done or purported to be done by him or her under the direction of the Board, shall, if the court holds that such act was done *bona fide*, be paid out of the funds of the Authority, unless such expenses are recovered by him or her in such suit or prosecution.

23. The provisions of section 22 shall not relieve the Authority of the liability to pay compensation or damages to any person for any injury to him or her, his or her property or any of his or her interests caused by the exercise of any power conferred by this Act or any other written law or by the failure, wholly or partially, of any works.

Liability for damages.

PART III—FINANCIAL PROVISIONS

24. The Funds of the Authority shall consist of—

Funds of the Authority.

- (a) such moneys as may be appropriated by the National Assembly for the purposes of the Authority;
- (b) gifts, grants, donations or endowments as may be given to the Authority;
- (c) monies that may accrue to or vest in the Authority in the course of the exercise of its functions under this Act;

- (d) fees for services rendered by the Authority; and
- (e) monies from any other lawful source provided for the Authority.

25. The financial year of the Authority shall be the period of twelve months ending on the thirtieth of June in each year.

Financial year.

26. At least three months before the commencement of each financial year, the Board shall cause to be prepared estimates of revenue and expenditure of the Authority for that year.

Annual estimates.

27. (1) The Board shall cause to be kept proper books and records of accounts of the income, expenditure, assets and liabilities of the Authority.

Accounts and Audit.

(2) Within the period of three months after the end of each financial year, the Board shall submit to the Auditor-General, the accounts of the Authority in respect of that year together with—

- (a) a statement of income and expenditure during the year; and
- (b) a balance sheet of the Authority on the last day of that year.

(3) The accounts of the Authority shall be audited and reported upon in accordance with the provisions of the Public Audit Act.

No. 34 of 2015.

28. (1) The Board shall submit to the Cabinet Secretary not later than the thirty first day of December a report of the Authority's activities during the year.

Submission of report to the Cabinet Secretary.

(2) The report under subsection (1) shall include the latest audited accounts and the report of the Auditor General on the latest audited accounts.

PART IV – RESPONSIBILITIES OF THE CABINET SECRETARY, AUTHORITY AND NATIONAL GOVERNMENT WITH RESPECT TO LOANS AND GUARANTEES

29. (1) Subject to provisions of this Act, the Cabinet Secretary may, with the concurrence of the Authority, on behalf of the national government, raise a loan only if the loan and the terms and conditions for the loan are set out in writing and in accordance with—

Authority for borrowing by the national government.

- (a) the fiscal responsibility principles and the financial objectives set out in the most recent Budget Policy Statement; and
- (b) the debt management strategy of the national government over the medium term.

(2) A loan may be raised either within Kenya or from outside Kenya.

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

Obligations and restrictions on national government guaranteeing and borrowing.

(2) The national government may borrow money in accordance with this Act or any other legislation and shall not exceed a limit set by Parliament.

(3) The national government may borrow money only for the budget as approved by Parliament and the allocations for loans approved by Parliament.

(4) The guarantee of debt shall be done in terms of criteria agreed with the Authority and Intergovernmental Budget and Economic Council and prescribed in regulations approved by Parliament.

(5) Parliament shall provide for thresholds for the borrowing entitlements of the national government and county governments and their entities.

(6) A public debt incurred by the national government is a charge on the Consolidated Fund, unless the Cabinet Secretary determines, by regulations approved by Parliament, that all or part of the public debt is a charge on another public fund established by the national government or any of its entities.

(7) The Cabinet Secretary shall ensure that the proceeds of any loan raised under this Act are—

- (a) paid into the Consolidated Fund;
- (b) paid into any other public fund established by the national government or any of its entities as the Cabinet Secretary may determine in accordance with regulations approved by Parliament;

- (c) disbursed directly to the suppliers where the loan is a government to government loan and is raised for the purpose of financing goods and services provided by a supplier outside Kenya; or
- (d) in the case of an external loan or external government security, applied, in part, to pay at closing, pre-negotiated expenses associated solely and exhaustively with the borrowing, including but not limited to, the fees, commissions and expenses of lenders, financial arrangers, managers and book runners, fiscal agents, trustees, paying agents, exchange and information agents, syndicate agents, counsel, clearing systems, listing agents, and stock exchanges, rating agencies and other expenses of a similar nature arising from the external loan or external government security.

(8) The Cabinet Secretary may in consultation with the Authority, by regulations approved by Parliament, establish such sinking fund or funds for the redemption of loans raised under this Act by the national government.

(9) The Cabinet Secretary may, subject to Article 227 of the Constitution and in accordance with national legislation on Public Procurement and Asset Disposal—

- (a) appoint advisers, agents and underwriters for the purpose of raising loans and issuing, managing or redeeming national government securities; and
- (b) enter into agreements with the advisers, agents and underwriters appointed under paragraph (a) on the role to be undertaken by them and the remuneration to be paid to them.

(10) Any expenses incurred in connection with borrowing by the national government or the issue of national government securities is a charge—

- (a) on the Consolidated Fund; or
- (b) on such other public fund established by the national government or any of its entities as the Cabinet Secretary may determine by regulations approved by Parliament.

(11) The costs, interests and principal payments made by the national government concerning loans to each level

of government shall be passed on by the national government to the relevant level of government.

(12) A copy of the details of the expenses and costs referred to under subsections (10) and (11) shall be submitted to the Controller of Budget and to Parliament, at the end of each quarter.

31. (1) A national government entity may borrow in accordance with this Act or any other Act of Parliament.

Borrowing by national government entities.

(2) A national government entity shall obtain the approval of the Cabinet Secretary and the Authority for its intended program of borrowing, refinancing and repayment of loans—

- (a) over the medium term; and
- (b) for the forthcoming financial year, prior to the beginning of that financial year.

(3) A national government entity shall also obtain the approval of the Cabinet Secretary and the Authority before making any changes to its program of borrowing, refinancing and repayment during a financial year.

(4) The national government is not liable to contribute towards payment of any debt or liability of a national government entity, unless the national government has guaranteed the debt or liability.

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

Persons authorized to execute loan documents at national government level.

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

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

33. (1) The national government may issue national government securities, whether for money that it has borrowed or for any other purpose, only in circumstances expressly authorised by this Act.

Issuance of securities by national government.

(2) The Cabinet Secretary may with the concurrence of the Authority issue national government securities on behalf of the national government for money borrowed by the national government in accordance with criteria prescribed by regulations approved by Parliament for the purpose of this subsection.

(3) Any national government securities issued by the Cabinet Secretary under this section shall be within the borrowing limits set out by the National Assembly under section 30(2).

(4) The authority of the Cabinet Secretary to borrow money includes the authority to borrow money by issuing national government securities.

(5) National government securities may be issued in one or more series and in accordance with prescribed regulations.

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

(7) The Cabinet Secretary shall ensure that every national government security issued under this section is given in the name of the Republic of Kenya.

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

- (a) the Cabinet Secretary;
- (b) a delegate appointed by the Cabinet Secretary; or
- (c) a borrowing agent appointed for the purposes of this Act.

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

(10) The Cabinet Secretary may authorise in writing the issue of a duplicate national government security to replace a national government security that is lost, damaged, or destroyed, but only if the Cabinet Secretary is satisfied that the loss, damage or destruction has occurred.

(11) Subject to any other legislation, secondary trading of national government securities shall be carried out only in such manner as may be prescribed by regulations made for that purpose and for purposes of this subsection “secondary trading” means any activity leading to a change in the ownership of a national government security before its redemption date.

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

(13) If the proceeds of a national government security have not been collected by, or cannot be paid to, the holder of the security because the whereabouts of the holder or, if the holder has died, the whereabouts of the holder’s personal representatives, are unknown, the Cabinet Secretary shall arrange for the National Treasury to credit the amount of money due to the holder to an interest free account for the holder’s benefit.

(14) If, after six years from the redemption date of a national government security, the proceeds of the security have not been collected by, or paid to, the holder or the holder’s personal representatives, the Cabinet Secretary shall return the uncollected amount to the National Exchequer Account to form part of the Consolidated Fund in accordance with regulations.

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

(16) The Cabinet Secretary shall publish and publicise annually all payments made in terms of subsection (13).

34. (1) Notwithstanding the provisions of section 32 of this Act, the national government may issue external government securities, for money borrowed or for any other purpose, only in circumstances expressly authorised by this Act.

Issuance of external securities by national government.

(2) The Cabinet Secretary may with the concurrence of the Authority raise an external loan or issue external government securities, authorized by this Act, on behalf of the national government for money borrowed by the national government in such manner as the Cabinet Secretary may determine.

(3) Any external loans or external government securities issued by the Cabinet Secretary under this section shall be within the borrowing limits set by Parliament under section 30(2) of this Act.

(4) The authority of the Cabinet Secretary to borrow money includes the authority to borrow money by raising external loans or issuing external government securities.

(5) The Cabinet Secretary shall ensure that every external loan or external government security issued under this section is given in the name of the Republic of Kenya.

(6) An external loan or external government security may be executed on behalf of the national government only by—

- (a) the Cabinet Secretary;
- (b) a delegate appointed by the Cabinet Secretary, in writing; or
- (c) a borrowing agent appointed in accordance with section 30(9) of this Act.

(7) For the purposes of subsection (6), it shall be sufficient if the signature of a person who is required to execute an external government security under this section is reproduced on the security.

(8) External government securities shall be registered and may be recorded and traded in accordance with the terms and conditions of the external government security.

(9) Claims against the borrower or issuer by holders of external loans or external government securities for payment shall be prescribed and become void if the claims are not made within six (6) years from the redemption date in the case of principal and five years from the due date in the case of interest or any other amount.

(10) In the case of external government securities, a duplicate external government security may be issued in accordance with the terms and conditions applicable to the external government security to replace an external government security that is lost, damaged or destroyed.

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

Exemption from
stamp duty

36. (1) The national government may enter into derivative transactions, either directly or indirectly through an intermediary, but only within the framework and limits of the Budget Policy Statement and in a manner prescribed by regulations.

Power of national government to enter into derivative transactions

(2) The Cabinet Secretary may with the concurrence of the Authority, on behalf of the national government, in exceptional circumstances enter into a derivative transaction if it appears to that Cabinet Secretary to be in the public interest to do so and the transaction does not result in commitment that is beyond what is contained in the Budget Policy Statement.

(3) The Cabinet Secretary may enter into a derivative transaction on such terms and conditions, within the scope prescribed by the regulations approved by the National Assembly.

(4) Money required to be paid by the national government under a derivative transaction entered into under this section shall be a charge—

(a) on the Consolidated Fund; or

(b) on some other public fund established for the purpose of making such payments, if the Cabinet Secretary determines so.

(5) Any expense incurred in connection with a derivative transaction entered into by the national government or by the Cabinet Secretary on behalf of the national government shall be a charge on the Consolidated Fund and no further appropriation than this section shall be required.

(6) Derivative transactions entered into in terms of this section shall be published and publicised.

37. (1) The national government is authorised to lend money but only in accordance with terms and conditions prescribed by the regulations approved by Parliament.

Power of national government to lend money

(2) A national government entity may lend money only if authorised to do so by an Act of Parliament and in accordance with terms and conditions prescribed in regulations.

(3) The Cabinet Secretary may, in relation to any money sent by the national government under this section—

- (a) accept money payable under the loan in any currency considered appropriate by the Cabinet Secretary in consultation with the Central Bank of Kenya; and
- (b) agree at any time to revise upwards any security given in respect of that loan.

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

- (a) from an appropriation for development expenditure; or
- (b) from some other authority approved by Parliament for the purpose for which the loan is made.

(5) The Cabinet Secretary shall ensure that a security given in respect of a loan under this section is given in the name of the national government.

(6) The Cabinet Secretary may, on behalf of the national government, carry out any of the responsibilities and exercise any of the powers of the national government with respect to securing a loan granted by the national government.

38. (1) Subject to subsection (2), the Cabinet Secretary may with the concurrence of the Authority, guarantee a loan of a county government or any other borrower on behalf of the national government and that loan shall be approved by Parliament.

Power of Cabinet Secretary to guarantee loans.

(2) The Cabinet Secretary shall not guarantee a loan under subsection (1) unless—

- (a) the loan is for a capital project;
- (b) the borrower is capable of repaying the loan, and paying any interest or other amount payable in respect of it;
- (c) in the case of a private borrower, there is sufficient security for the loan;
- (d) the financial position of the borrower over the medium term is likely to be satisfactory;

- (e) the terms of the guarantee comply with the fiscal responsibility principles and financial objectives of the national government;
 - (f) where Parliament has passed a resolution setting a limit for the purposes of this section—
 - (i) the amount guaranteed does not exceed that limit; or
 - (ii) if it exceeds that limit, the draft guarantee document has been approved by resolution of both Houses of Parliament;
 - (g) the Cabinet Secretary takes into account the equity between the national government's interests and the county government's interests so as to ensure fairness;
 - (h) the borrower complies with any conditions imposed by the Cabinet Secretary in accordance with the regulations;
 - (i) the Cabinet Secretary has taken into account the recommendation of the Intergovernmental Budget and Economic Council and the Authority in respect of any guarantee to a county government; and
 - (j) the loan is made in accordance with provisions of this Act and any regulations made thereunder.
- (3) Parliament may approve a draft loan guarantee document as provided by subsection (2)(f)(ii) only if satisfied that—
- (a) the guarantee is in the public interest;
 - (b) the borrower's financial position is strong enough to enable the borrower to repay the loan proposed to be guaranteed and to pay interest or other amounts payable in respect of the loan; and
 - (c) the loan is geared towards stimulating economic growth in a county government.
- (4) To enable Parliament to decide whether or not to approve a draft loan guarantee document as provided by subsection (3), the Cabinet Secretary shall prepare and submit to each House of Parliament a paper that—

- (a) gives details of the loan that is proposed to be guaranteed, including the amount of the loan, the terms of repayment, and the details of the interest or any other amount payable under the loan;
- (b) specifies the national government's total contingent liability under guarantees given under this section; and
- (c) specifies any other information that the Cabinet Secretary considers relevant.

39. Not later than fourteen days after the guarantee is entered into, the Cabinet Secretary shall submit to Parliament and publish a statement—

Cabinet Secretary to submit a statement on loan guarantee to Parliament.

- (a) stating that a guarantee is entered into; and
- (b) containing details of—
 - (i) the guarantee, including the name and other particulars of the borrower whose loan is guaranteed;
 - (ii) the duration and nature of the guarantee;
 - (iii) a risk assessment in respect of the guarantee; and
 - (iv) any other information prescribed by regulations for the purposes of this subsection.

40. (1) Subject to subsection (2), money payable on a guarantee is a charge on, and is payable out of, the Consolidated Fund without further appropriation than this section.

Money payable in respect of a guarantee to be a charge on the Consolidated Fund

(2) Money payable on a guarantee shall be paid only if the payment has been authorised by the Controller of Budget.

(3) Where money is paid out of the Consolidated Fund on a guarantee, the Cabinet Secretary shall submit a report to Parliament giving details of the payment.

(4) The Cabinet Secretary shall include in the report made under subsection (3)—

- (a) details of the guarantee;

- (b) the circumstances giving rise to the payment;
- (c) reasons why the borrower failed to pay; and
- (d) such further information as the Cabinet Secretary may consider relevant.

41. (1) Money paid by the Cabinet Secretary on a guarantee, including any expenses incurred by the Cabinet Secretary in respect of the guarantee, shall—

Recovery of amounts paid on a guarantee

- (a) be a debt due to the national government from the borrower whose loan was guaranteed; and
- (b) be recoverable from the borrower as a debt due to the national government by—
 - (i) proceedings brought in a court of competent jurisdiction; or
 - (ii) withholding a transfer of money in terms of Article 225 of the Constitution, if the borrower receives appropriations.

(2) Where Cabinet considers that the debt is more likely to be recovered if the borrower is allowed to pay the debt over a period of time, the Cabinet Secretary may enter into an agreement with the borrower to pay the debt over that period and at such intervals, and subject to such terms and conditions, as may be specified in the agreement.

(3) The Cabinet Secretary shall not impose terms and conditions in an agreement under subsection (2) which are inconsistent with the terms and conditions specified in the guarantee document.

(4) Where the Cabinet Secretary enters into an agreement under subsection (2), no proceedings under subsection (1)(b) shall be taken unless the borrower defaults under the agreement.

(5) The Cabinet Secretary shall ensure that any money received or recovered from a borrower in respect of money paid under a guarantee entered into under this section is paid into the Consolidated Fund.

42. The Authority shall in consultation with the Central Bank of Kenya and the National Treasury—

Consultation with the Central Bank of Kenya and National Treasury.

- (a) determine any other form of securities that may be created, issued or floated to achieve the domestic public debt management objectives of the National Government; and
- (b) review and advise on the maintenance of statutory limits for all categories of loans or public debt instruments at levels compatible with economic activities required for sustainable growth and development.

43. (1) The Authority shall determine—

Authority's role in domestic borrowing.

- (a) the amounts and timings for the issuance of National Government short-term and medium-term securities in the Kenyan money market;
- (b) the repayment or roll-over of existing or maturing issues;
- (c) the appointment of underwriters to the issues specified under paragraph (a);
- (d) the floatation of National Government long-term securities to raise appropriate funds in the capital market;
- (e) the payment of interest, maintenance of a register of holders and redemption of securities at maturity; and
- (f) the creation and management of sinking funds to provide for the redemption of securities at maturity.

(2) The Authority for the purpose of achieving the objectives specified in this Section, may maintain accounts with the Central Bank of Kenya as may be deemed necessary.

PART V – RESPONSIBILITIES OF THE COUNTY GOVERNMENT AND AUTHORITY WITH RESPECT TO LOANS AND GUARANTEES

44. (1) A County Executive Committee member for finance may with the concurrence of the Authority, on behalf of the county government, raise a loan for that Government's purposes, only if the loan and the terms and

Authority for borrowing by county governments.

conditions for the loan are set out in writing and are in accordance with—

- (a) Article 212 of the Constitution;
- (b) sections 38 and 46 of this Act;
- (c) the fiscal responsibility principles and the financial objectives of the county government set out in its most recent County Fiscal Strategy Paper; and
- (d) the debt management strategy of the county government over the medium term.

(2) A loan may be raised either within Kenya or outside Kenya.

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

Obligations and restrictions with respect to county government borrowing.

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

(3) A county government may borrow money in accordance with section 38, and only for purposes that are prescribed by regulations made under this subsection.

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

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

(6) A County Executive Committee member for finance may establish such sinking fund or funds for the redemption of loans raised under this Act for the purposes

of the county government or any of its entities as the County Executive Committee member for finance considers necessary.

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

- (a) appoint advisers, agents and underwriters for the purposes of raising loans; and
- (b) enter into agreements with those advisers, agents and underwriters as to the role to be undertaken by them and the remuneration to be paid to them.

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

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

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

46. (1) The County Assembly may authorise short term borrowing by county government entities for cash management purposes only.

Borrowing by county government entities.

(2) Any borrowing under subsection (1) may not exceed five percent of the most recent audited revenues of the entity.

(3) A county government entity that has any such borrowing shall ensure that the money borrowed is repaid within a year from the date on which it was borrowed.

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

Persons who are authorised to execute loan documents at county government level.

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

- (a) the accounting officer responsible for the entity; and
- (b) any other specified office holder authorised by legislation to execute such documents on behalf of an entity.

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

County Government may issue securities only if authorised by this Act.

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

(3) Subject to the provisions of section 45 of this Act, the authority of the County Executive Committee member for finance to borrow money includes the authority to borrow money by issuing county government securities in accordance with the regulations.

(4) Any county government securities issued by the County Executive Member for finance under this section shall be within the borrowing limits set out by the county assembly under section 45(2) of this Act.

(5) A county government securities—

- (a) may be issued in one or more series; and
- (b) may be issued in accordance with loan agreements entered into in accordance with regulations developed by the County Executive Committee member for finance in consultation with the Authority and approved by the County Assembly.

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

borrowed, the amendment shall be approved by the county assembly.

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

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

- (a) the County Executive Committee member for finance;
- (b) a delegate appointed by the County Executive Committee member for finance; or
- (c) a borrowing agent appointed for that purpose under this Act.

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

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

- (a) may authorise the principal, or any interest payable in respect of the principal, to be paid at a place in Kenya or elsewhere different from the place otherwise provided; and
- (b) may revoke such an authorisation and substitute thereof.

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

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

(13) Subject to this Act or any other legislation, secondary trading of county government securities may be

carried out only in such manner as may be prescribed by regulations made for the purposes of this subsection and in accordance with the provisions of this Act.

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

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

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

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

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

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

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

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

County
government
authorised to lend
money

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

- (a) accept, in consultation with the Central Bank of Kenya, all money payable under the loan in any currency the County Executive Committee member for finance considers appropriate; and
- (b) agree at any time to the variation of any security given in respect of the loan.
- (3) Money loaned under this section is payable only—
 - (a) from an appropriation for development expenditures; or
 - (b) from some other authority approved by the county assembly for the purpose for which the loan is made.

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

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

50. (1) Regulations approved by Parliament shall prescribe financial relations with respect to joint infrastructure investments undertaken by counties and any joint infrastructure investments undertaken by counties shall be done in terms of those regulations.

County government joint infrastructure investment

(2) The Intergovernmental Budget and Economic Council in consultation with the Authority may agree on regulations with guidelines for county government joint infrastructure investments.

PART VI—MISCELLANEOUS PROVISIONS

51. (1) The Authority shall formulate a medium public debt management strategy on a rolling basis which shall be approved by Parliament.

Public Debt Management Strategy.

(2) The medium public debt management strategy shall be based on the objectives of the Authority and shall take into account—

- (a) the macroeconomic framework;
- (b) the future borrowing requirements of the Government;
- (c) the market conditions; and
- (d) any other fact that is relevant in the development of the strategy.

(3) The medium public debt management strategy shall include proposed guidelines and targets for acceptable risks in the public debt portfolio and measures to promote the development of the domestic market.

(4) All national and county governments borrowing and public debt management activities shall be undertaken in accordance with the approved public debt management strategy.

52. (1) The Authority shall furnish Parliament with a report on government public debt management activities, guarantees and lending on the thirtieth of September and thirty first March every year.

Bi-annual Report.

(2) The annual report shall include—

- (a) information on the public debt management strategy and its rationale and how the strategy has been implemented over the course of the six months;
- (b) information on the public debt management activities in achieving the public debt management objectives;
- (c) a list of all outstanding borrowing by national government and county governments;
- (d) a list of all outstanding lending including classification of loans according to the probability of default; and
- (e) a list of all guarantees issued by the Government including a classification of guarantees according to their probability of being called.

53. (1) The Cabinet Secretary may in consultation with the Board, make regulations for the better carrying into effect the functions of the Act.

Regulations.

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

- (a) regulations for obtaining external loans by the national government or its entities;
- (b) regulations on guarantees for external loans by a county government and its entities; and
- (c) regulations on the approval process by the Cabinet Secretary in lending to public entities.

(3) For the purpose of Article 94(6) of the Constitution—

- (a) the purpose and objective of the delegation under this section is to enable the Cabinet Secretary to make rules to provide for the better carrying into effect the provisions of this Act;
- (b) the authority of the Cabinet Secretary to make regulations under this Act shall be limited to bringing into effect the provisions of this Act and fulfilment of the objectives specified under this section;
- (c) the principles and standards applicable to the rules made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013.

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No. 23 of 2013

54. The Authority shall be independent in carrying out its functions and shall not be subject to the direction or control of any person or Authority.

Independence of the Authority.

PART VII—REPEAL AND SAVING

55. Section 45 (c) of the Central Bank of Kenya Act is repealed.

Repeal of section 45 (c) of Cap. 491.

56. Section 49 of the Public Finance Management Act, 2012 is repealed.

Repeal of section 49 of No. 18 of 2012.

57. Section 50 of the Public Finance Management Act, 2012 is repealed.

Repeal of section 50 of No. 18 of 2012.

58. Section 51 of the Public Finance Management Act, 2012 is repealed.

Repeal of section 51 of No. 18 of 2012.

59. Section 52 of the Public Finance Management Act, 2012 is repealed.

Repeal of section 52 of No. 18 of 2012.

60. Section 53 of the Public Finance Management Act, 2012 is repealed.	Repeal of section 53 of No. 18 of 2012.
61. Section 53A of the Public Finance Management Act, 2012 is repealed.	Repeal of section 53A of No. 18 of 2012.
62. Section 54 of the Public Finance Management Act, 2012 is repealed.	Repeal of section 54 of No. 18 of 2012.
63. Section 55 of the Public Finance Management Act, 2012 is repealed.	Repeal of section 55 of No. 18 of 2012.
64. Section 56 of the Public Finance Management Act, 2012 is repealed.	Repeal of section 56 of No. 18 of 2012.
65. Section 57 of the Public Finance Management Act, 2012 is repealed.	Repeal of section 57 of No. 18 of 2012.
66. Section 58 of the Public Finance Management Act, 2012 is repealed.	Repeal of section 58 of No. 18 of 2012.
67. Section 59 of the Public Finance Management Act, 2012 is repealed.	Repeal of section 59 of No. 18 of 2012.
68. Section 60 of the Public Finance Management Act, 2012 is repealed.	Repeal of section 60 of No. 18 of 2012.
69. Section 61 of the Public Finance Management Act, 2012 is repealed.	Repeal of section 61 of No. 18 of 2012.
70. Section 62 of the Public Finance Management Act, 2012 is repealed.	Repeal of section 62 of No. 18 of 2012.
71. Section 63 of the Public Finance Management Act, 2012 is repealed.	Repeal of section 63 No. 18 of 2012.
72. Section 64 of the Public Finance Management Act is repealed.	Repeal of section 64 of No. 18 of 2012.
73. Section 65 of the Public Finance Management Act, 2012 is repealed.	Repeal of section 65 of No. 18 of 2012.
74. Section 140 of the Public Finance Management Act, 2012 is repealed.	Repeal of section 140 of No. 18 of 2012.
75. Section 141 of the Public Finance Management Act, 2012 is repealed.	Repeal of section 141 of No. 18 of 2012.
76. Section 142 of the Public Finance Management Act, 2012 is repealed.	Repeal of section 142 of No. 18 of 2012.

- 77.** Section 143 of the Public Finance Management Act, 2012 is repealed. Repeal of section 143 of No. 18 of 2012.
- 78.** Section 144 of the Public Finance Management Act, 2012 is repealed. Repeal of section 144 of No. 18 of 2012.
- 79.** Section 145 of the Public Finance Management Act, 2012 is repealed. Repeal of section 145 of No. 18 of 2012.
- 80.** Section 146 of the Public Finance Management Act, 2012 is repealed. Repeal of section 146 of No. 18 of 2012.
- 81.** The Authority shall be the successor in title to the Public Debt Management Office established under the Public Finance Management Act, 2012. Authority to be successor of Public Debt Management Office.
- 82.** All rights, obligations and contracts which, immediately before coming into operation of this Act, were vested in or imposed on the Public Debt Management Office shall by virtue of this section, be deemed to be the rights, obligations and contracts of the Authority. Rights and Obligations.
- 83.** (1) Every person who, immediately before the commencement of this Act, was an officer or member of staff of the Public Debt Management Office, not being then under notice of dismissal or resignation shall be an officer or member of staff of the Authority. Transfer of Staff.
- (2) The Head of the Public Debt Management Office shall be the Director General of the Authority and shall serve for his or her unexpired term.

SCHEDULE**(s. 10)****CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD**

1. (1) The Board shall meet not less than four times in every financial year and not more than two months shall elapse between the date of one meeting and the date of the next meeting.

Meetings.

(2) A meeting of the Board shall be held on such date and at such time as the Chairperson shall appoint.

(3) Unless the majority of the membership of the Board otherwise agree, at least fourteen days' notice of every meeting shall be given to every member.

(4) The Chairperson shall on the written application of at least one-third of the members, convene a special meeting of the Board.

(5) The quorum for the conduct of the business of the Board shall be five members.

(6) The Chairperson shall, when present, preside at every meeting of the Board but the members present shall elect one member to preside whenever the Chairperson is absent, and the person so elected shall have all the powers of the Chairperson with respect to that meeting and the business transacted thereat.

(7) Unless an unanimous decision is reached, a decision on any matter before the Board shall be by a majority of the votes of the members present and voting, and in case of an equality of votes, the Chairperson or the person presiding shall have a casting vote.

(8) Subject to subparagraph (5), no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.

2. (1) A member who has an interest in any contract, or other matter present at a meeting shall at the meeting and as soon as reasonably practicable after the commencement, disclose the fact thereof and shall not take part in the consideration or discussion of, or vote on, any questions with respect to the contract or other matter, or be counted in the quorum of the meeting during consideration of the matter.

Disclosure of interest by Board members.

(2) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(3) A member of the Board who contravenes subparagraph (1) commits an offence and is liable on conviction to imprisonment for a term not exceeding six months, or to a fine not exceeding one hundred thousand shillings, or both.

3. Any contract or instrument which, if entered into or executed by a person not being a body corporate, would not require to be under seal, may be entered into or executed on behalf of the Board by any person generally or specially authorized by the Board.

Execution of instruments.

4. The Board shall cause minutes of all resolutions and proceedings of meetings of the Board to be entered in books kept for that purpose.

Minutes.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to establish the Public Debt Management Authority as an independent body to manage the public debt in the country at both levels of government. The country's debt is rising at an alarming level and there is need to manage the same to protect the current and future generations. The Authority shall succeed the Public Debt Management Office.

PART I (Clauses 1-3) of the Bill provides for preliminary provisions of the Bill including the short title and objectives of the Act.

PART II (Clauses 4-23) of the Bill deals with the establishment, functions and powers of the Authority. Clause 4 specifically establishes the Public Debt Management Authority. The functions and powers of the Board are outlined under clauses 5 and 6 respectively.

PART III (Clauses 24-28) of the Bill deals with the financial provisions. The sources of funds for the Board are outlined in clause 23. The Board is required to comply with prudent financial management systems including the provisions of the Public Audit Act, No. 34 of 2015.

PART IV (Clauses 29-43) of the Bill deals with provisions on loans and guarantees by the national government.

PART V (Clauses 44-50) of the Bill deals with provisions on loans and guarantees by the county government.

PART VI (Clauses 51-54) of the Bill contains miscellaneous provisions. It provides for the requirement of the Authority to have a public engagement strategy. It also outlines the guiding principles for the Cabinet Secretary when formulating delegated legislation.

PART VII (Clauses 55-82) of the Bill contains repeal and saving provisions.

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

The Bill delegates legislative powers to the Cabinet Secretary. It does not limit fundamental rights and freedoms.

Statement that the Bill concerns county governments

The Bill affects the functions of the county governments 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 enactment of this Bill will occasion additional expenditure of public funds to be provided for through the annual estimates.

Dated the 25th October, 2020

SAKWA J. BUNYASI,
Member of Parliament.

Section 45 of the Central Bank of Kenya Act which it is proposed to amend—

Functions as fiscal agent

The Bank in its capacity as fiscal agent and banker to any public entity may, subject to the instructions of that public entity, have power—

- (a) be the official depository of the public entity concerned and accept deposits and effect payments for the account of that public entity:

Provided that the Bank may, after consultation with the Minister, select any specified bank to act in its name and for its account as the official depository of that public entity in places where the Bank has no office or branch;

- (b) maintain and operate special official accounts in accordance with arrangements made between the Bank and the public entity concerned;
- (c) as an agent of the Government, administer the public debt including the issuance of, payment of return on, and redemption of, bonds and other securities of the Government;
- (d) pay, remit, collect or accept for deposit or custody funds in Kenya or abroad;
- (e) purchase, sell, transfer or accept for custody cheques, bills of exchange and securities;
- (f) collect the proceeds, whether principal or interest or return, resulting from the sale for, or accruing to the interest of, a public entity of securities or other property;
- (g) purchase, sell, transfer or accept for custody gold or foreign exchange.

Sections 49 to 65 of the Public Finance Management Act, 2012 which it is proposed to amend—

49. Authority for borrowing by the national government

(1) Subject to provisions of this Act, the Cabinet Secretary may, on behalf of the national government, raise a loan only if the loan and the terms and conditions for the loan are set out in writing and in accordance with—

- (a) the fiscal responsibility principles and the financial objectives set out in the most recent Budget Policy Statement; and

(b) the debt management strategy of the national government over the medium term.

(2) A loan may be raised either within Kenya or from outside Kenya.

50. Obligations and restrictions on national government guaranteeing and borrowing

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

(2) The national government may borrow money in accordance with this Act or any other legislation and shall not exceed a limit set by Parliament.

(3) The national government may borrow money only for the budget as approved by Parliament and the allocations for loans approved by Parliament.

(4) The guarantee of debt shall be done in terms of criteria agreed with the Intergovernmental Budget and Economic Council and prescribed in regulations approved by Parliament.

(5) Parliament shall provide for thresholds for the borrowing entitlements of the national government and county governments and their entities.

(6) A public debt incurred by the national government is a charge on the Consolidated Fund, unless the Cabinet Secretary determines, by regulations approved by Parliament, that all or part of the public debt is a charge on another public fund established by the national government or any of its entities.

(7) The Cabinet Secretary shall ensure that the proceeds of any loan raised under this Act are—

- (a) paid into the Consolidated Fund;
- (b) paid into any other public fund established by the national government or any of its entities as the Cabinet Secretary may determine in accordance with regulations approved by Parliament;
- (c) disbursed directly to the suppliers where the loan is a government to government loan and is raised for the purpose of financing goods and services provided by a supplier outside Kenya; or

(d) in the case of an external loan or external government security, applied, in part, to pay at closing, pre-negotiated expenses associated solely and exhaustively with the borrowing, including but not limited to, the fees, commissions and expenses of lenders, financial arrangers, managers and book runners, fiscal agents, trustees, paying agents, exchange and information agents, syndicate agents, counsel, clearing systems, listing agents, and stock exchanges, rating agencies and other expenses of a similar nature arising from the external loan or external government security.

(8) The Cabinet Secretary may, by regulations approved by Parliament, establish such sinking fund or funds for the redemption of loans raised under this Act by the national government.

(9) The Cabinet Secretary may, subject to Article 227 of the Constitution and in accordance with national legislation on Public Procurement and Asset Disposal—

(a) appoint advisers, agents and underwriters for the purpose of raising loans and issuing, managing or redeeming national government securities; and

(b) enter into agreements with the advisers, agents and underwriters appointed under paragraph (a) on the role to be undertaken by them and the remuneration to be paid to them.

(10) Any expenses incurred in connection with borrowing by the national government or the issue of national government securities is a charge—

(a) on the Consolidated Fund; or

(b) on such other public fund established by the national government or any of its entities as the Cabinet Secretary may determine by regulations approved by Parliament.

(11) The costs, interests and principal payments made by the national government concerning loans to each level of government shall be passed on by the national government to the relevant level of government.

(12) A copy of the details of the expenses and costs referred to under subsections (10) and (11) shall be submitted to the Controller of Budget and to Parliament, at the end of each quarter.

51. Borrowing by national government entities

(1) A national government entity may borrow in accordance with this Act or any other Act of Parliament.

(2) A national government entity shall obtain the approval of the Cabinet Secretary for its intended program of borrowing, refinancing and repayment of loans—

- (a) over the medium term; and
- (b) for the forthcoming financial year, prior to the beginning of that financial year.

(3) A national government entity shall also obtain the approval of the Cabinet Secretary before making any changes to its program of borrowing, refinancing and repayment during a financial year.

(4) The national government is not liable to contribute towards payment of any debt or liability of a national government entity, unless the national government has guaranteed the debt or liability.

52. Persons authorized to execute loan documents at national government level

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

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

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

53. Issuance of securities by national government

(1) The national government may issue national government securities, whether for money that it has borrowed or for any other purpose, only in circumstances expressly authorised by this Act.

(2) The Cabinet Secretary may issue national government securities on behalf of the national government for money borrowed by the national government in accordance with criteria prescribed by regulations approved by Parliament for the purpose of this subsection.

(3) Any national government securities issued by the Cabinet Secretary under this section shall be within the borrowing limits set out by the National Assembly under section 50(2).

(4) The authority of the Cabinet Secretary to borrow money includes the authority to borrow money by issuing national government securities.

(5) National government securities may be issued in one or more series and in accordance with prescribed regulations.

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

(7) The Cabinet Secretary shall ensure that every national government security issued under this section is given in the name of the Republic of Kenya.

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

- (a) the Cabinet Secretary;
- (b) a delegate appointed by the Cabinet Secretary; or
- (c) a borrowing agent appointed for the purposes of this Act.

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

(10) The Cabinet Secretary may authorise in writing the issue of a duplicate national government security to replace a national government security that is lost, damaged, or destroyed, but only if the Cabinet Secretary is satisfied that the loss, damage or destruction has occurred.

(11) Subject to any other legislation, secondary trading of national government securities shall be carried out only in such manner as may be prescribed by regulations made for that purpose and for purposes of this subsection “secondary trading” means any activity leading to a change in the ownership of a national government security before its redemption date.

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

(13) If the proceeds of a national government security have not been collected by, or cannot be paid to, the holder of the security because the whereabouts of the holder or, if the holder has died, the whereabouts of the holder’s personal representatives, are unknown, the Cabinet Secretary shall arrange for the National Treasury to credit the amount of money due to the holder to an interest free account for the holder’s benefit.

(14) If, after six years from the redemption date of a national government security, the proceeds of the security have not been collected by, or paid to, the holder or the holder’s personal representatives, the

Cabinet Secretary shall return the uncollected amount to the National Exchequer Account to form part of the Consolidated Fund in accordance with regulations.

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

(16) The Cabinet Secretary shall publish and publicise annually all payments made in terms of subsection (13).

53A. Issuance of external securities by national government

(1) Notwithstanding the provisions of section 53 of this Act, the national government may issue external government securities, for money borrowed or for any other purpose, only in circumstances expressly authorised by this Act.

(2) The Cabinet Secretary may raise an external loan or issue external government securities, authorized by this Act, on behalf of the national government for money borrowed by the national government in such manner as the Cabinet Secretary may determine.

(3) Any external loans or external government securities issued by the Cabinet Secretary under this section shall be within the borrowing limits set by Parliament under section 50(2) of this Act.

(4) The authority of the Cabinet Secretary to borrow money includes the authority to borrow money by raising external loans or issuing external government securities.

(5) The Cabinet Secretary shall ensure that every external loan or external government security issued under this section is given in the name of the Republic of Kenya.

(6) An external loan or external government security may be executed on behalf of the national government only by—

- (a) the Cabinet Secretary;
- (b) a delegate appointed by the Cabinet Secretary, in writing; or
- (c) a borrowing agent appointed in accordance with section 50(9) of this Act.

(7) For the purposes of subsection (6), it shall be sufficient if the signature of a person who is required to execute an external government security under this section is reproduced on the security.

(8) External government securities shall be registered and may be recorded and traded in accordance with the terms and conditions of the external government security.

(9) Claims against the borrower or issuer by holders of external loans or external government securities for payment shall be prescribed and become void if the claims are not made within six (6) years from the redemption date in the case of principal and five years from the due date in the case of interest or any other amount.

(10) In the case of external government securities, a duplicate external government security may be issued in accordance with the terms and conditions applicable to the external government security to replace an external government security that is lost, damaged or destroyed.

54. Exemption from stamp duty

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

55. Establishment of the office of Registrar of national government securities

(1) There is established an office of the Registrar of the National Government Securities which shall be an office under the Public Debt Management Office.

(2) The office of Registrar of the National Government Securities shall be headed by the Registrar who shall be competitively recruited and appointed by the Cabinet Secretary.

(3) The Registrar shall establish and maintain a register, to be known as the Register of the National Government Securities in which shall be recorded details of all securities issued by or on behalf of the national government.

(4) Securities issued by or on behalf of the national government shall be published and publicised.

(5) An entry in the Register relating to a national government security is evidence of the ownership of the security, unless the contrary is proved.

(6) The holder of a national government security recorded in the Register may, in writing, request the Registrar to amend the entry relating to the security.

(7) If a request under subsection (6) is in accordance with guidelines given by the Cabinet Secretary for the purposes of this subsection, the Registrar shall, in accordance with the request, amend the entry in the Register relating to the security.

(8) The Registrar shall provide the holder of a national government security with a consolidated statement in writing, showing all entries in the register relating to the security—

- (a) as soon as practicable after the security is issued;
- (b) at least once during each year the security is held; and
- (c) immediately after the security is redeemed.

(9) On receiving a written request from the holder of a national government security, the Registrar shall provide the holder with a statement showing all entries in the Register relating to the security.

(10) The provisions of this section shall not apply to external government securities except that notifications shall be made in the Register of the National Government Securities to reflect the outstanding amount of each issue of external debt securities.

56. Power of national government to enter into derivative transactions

(1) The national government may enter into derivative transactions, either directly or indirectly through an intermediary, but only within the framework and limits of the Budget Policy Statement and in a manner prescribed by regulations.

(2) The Cabinet Secretary may, on behalf of the national government, in exceptional circumstances enter into a derivative transaction if it appears to that Cabinet Secretary to be in the public interest to do so and the transaction does not result in commitment that is beyond what is contained in the Budget Policy Statement.

(3) The Cabinet Secretary may enter into a derivative transaction on such terms and conditions, within the scope prescribed by the regulations approved by the National Assembly.

(4) Money required to be paid by the national government under a derivative transaction entered into under this section shall be a charge—

- (a) on the Consolidated Fund; or
- (b) on some other public fund established for the purpose of making such payments, if the Cabinet Secretary determines so.

(5) Any expense incurred in connection with a derivative transaction entered into by the national government or by the Cabinet Secretary on behalf of the national government shall be a charge on the Consolidated Fund and no further appropriation than this section shall be required.

(6) Derivative transactions entered into in terms of this section shall be published and publicised.

57. Power of national government to lend money

(1) The national government is authorised to lend money but only in accordance with terms and conditions prescribed by the regulations approved by Parliament.

(2) A national government entity may lend money only if authorised to do so by an Act of Parliament and in accordance with terms and conditions prescribed in regulations.

(3) The Cabinet Secretary may, in relation to any money sent by the national government under this section—

- (a) accept money payable under the loan in any currency considered appropriate by the Cabinet Secretary in consultation with the Central Bank of Kenya; and
- (b) agree at any time to revise upwards any security given in respect of that loan.

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

- (a) from an appropriation for development expenditure; or
- (b) from some other authority approved by Parliament for the purpose for which the loan is made.

(5) The Cabinet Secretary shall ensure that a security given in respect of a loan under this section is given in the name of the national government.

(6) The Cabinet Secretary may, on behalf of the national government, carry out any of the responsibilities and exercise any of the powers of the national government with respect to securing a loan granted by the national government.

58. Power of Cabinet Secretary to guarantee loans

(1) Subject to subsection (2), the Cabinet Secretary may guarantee a loan of a county government or any other borrower on behalf of the national government and that loan shall be approved by Parliament.

(2) The Cabinet Secretary shall not guarantee a loan under subsection (1) unless—

- (a) the loan is for a capital project;
- (b) the borrower is capable of repaying the loan, and paying any interest or other amount payable in respect of it;

- (c) in the case of a private borrower, there is sufficient security for the loan;
 - (d) the financial position of the borrower over the medium term is likely to be satisfactory;
 - (e) the terms of the guarantee comply with the fiscal responsibility principles and financial objectives of the national government;
 - (f) where Parliament has passed a resolution setting a limit for the purposes of this section—
 - (i) the amount guaranteed does not exceed that limit; or
 - (ii) if it exceeds that limit, the draft guarantee document has been approved by resolution of both Houses of Parliament;
 - (g) the Cabinet Secretary takes into account the equity between the national government's interests and the county government's interests so as to ensure fairness;
 - (h) the borrower complies with any conditions imposed by the Cabinet Secretary in accordance with the regulations;
 - (i) the Cabinet Secretary has taken into account the recommendation of the Intergovernmental Budget and Economic Council in respect of any guarantee to a county government; and
 - (j) the loan is made in accordance with provisions of this Act and any regulations made thereunder.
- (3) Parliament may approve a draft loan guarantee document as provided by subsection (2)(f)(ii) only if satisfied that—
- (a) the guarantee is in the public interest;
 - (b) the borrower's financial position is strong enough to enable the borrower to repay the loan proposed to be guaranteed and to pay interest or other amounts payable in respect of the loan; and
 - (c) the loan is geared towards stimulating economic growth in a county government.
- (4) To enable Parliament to decide whether or not to approve a draft loan guarantee document as provided by subsection (3), the Cabinet Secretary shall prepare and submit to each of the House of Parliament a paper that—
- (a) gives details of the loan that is proposed to be guaranteed, including the amount of the loan, the terms of repayment, and the details of the interest or any other amount payable under the loan;

- (b) specifies the national government's total contingent liability under guarantees given under this section; and
- (c) specifies any other information that the Cabinet Secretary considers relevant.

59. Cabinet Secretary to submit a statement on loan guarantee to Parliament

Not later than fourteen days after the guarantee is entered into, the Cabinet Secretary shall submit to Parliament and publish a statement—

- (a) stating that a guarantee is entered into; and
- (b) containing details of—
 - (i) the guarantee, including the name and other particulars of the borrower whose loan is guaranteed;
 - (ii) the duration and nature of the guarantee;
 - (iii) a risk assessment in respect of the guarantee; and
 - (iv) any other information prescribed by regulations for the purposes of this subsection.

60. Money payable in respect of a guarantee to be a charge on the Consolidated Fund

(1) Subject to subsection (2), money payable on a guarantee is a charge on, and is payable out of, the Consolidated Fund without further appropriation than this section.

(2) Money payable on a guarantee shall be paid only if the payment has been authorised by the Controller of Budget.

(3) Where money is paid out of the Consolidated Fund on a guarantee, the Cabinet Secretary shall submit a report to Parliament giving details of the payment.

(4) The Cabinet Secretary shall include in the report made under subsection (3)—

- (a) details of the guarantee;
- (b) the circumstances giving rise to the payment;
- (c) reasons why the borrower failed to pay; and
- (d) such further information as the Cabinet Secretary may consider relevant.

61. Recovery of amounts paid on a guarantee

(1) Money paid by the Cabinet Secretary' on a guarantee, including any expenses incurred by the Cabinet Secretary in respect of the guarantee, shall—

- (a) be a debt due to the national government from the borrower whose loan was guaranteed; and
- (b) be recoverable from the borrower as a debt due to the national government by—
 - (i) proceedings brought in a court of competent jurisdiction; or
 - (ii) withholding a transfer of money in terms of Article 225 of the Constitution, if the borrower receives appropriations.

(2) Where Cabinet considers that the debt is more likely to be recovered if the borrower is allowed to pay the debt over a period of time, the Cabinet Secretary may enter into an agreement with the borrower to pay the debt over that period and at such intervals, and subject to such terms and conditions, as may be specified in the agreement.

(3) The Cabinet Secretary shall not impose terms and conditions in an agreement under subsection (2) which are inconsistent with the terms and conditions specified in the guarantee document.

(4) Where the Cabinet Secretary enters into an agreement under subsection (2), no proceedings under subsection (1)(b) shall be taken unless the borrower defaults under the agreement.

(5) The Cabinet Secretary shall ensure that any money received or recovered from a borrower in respect of money paid under a guarantee entered into under this section is paid into the Consolidated Fund.

The Public Debt Management Office

62. Establishment and objectives of the Public Debt Management Office

(1) There is established an office to be known as the Public Debt Management Office within the National Treasury.

(2) The Head of the Public Debt Management Office shall be recruited through a competitive process by the Public Service Commission.

(3) The objectives of the Public Debt Management Office shall be to—

- (a) minimise the cost of public debt management and borrowing over the long-term taking account of risk;
- (b) promote the development of the market institutions for Government debt securities; and

- (c) ensure the sharing of the benefits and costs of public debt between the current and future generations.

63. Functions of the Public Debt Management Office

The functions of the Public Debt Management Office shall include—

- (a) carrying out the government's debt management policy of minimising its financing cost over the long-term taking account of risk;
- (b) maintaining a reliable debt data base for all loans taken by the national government, county governments and their entities including other loans guaranteed by the national government;
- (c) prepare and update the annual medium-term debt management strategy including debt sustainability analysis;
- (d) prepare and implement the national government borrowing plan including servicing of outstanding debts;
- (e) acting as the principal in the issuance of Government debt securities on behalf of the National Treasury;
- (f) monitor and evaluate all borrowing and debt-related transactions to ensure that they are within the guidelines and risk parameters of the debt management strategy;
- (g) process the issuance of loan guarantees including assessment and management of risks in national government guarantees.
- (h) transact in derivative financial instruments in accordance with best international practices benchmarked to the debt management offices of other governments that are internationally respected for their practices.

64. Role of Cabinet Secretary in Public Debt Management Office

(1) The Cabinet Secretary shall—

- (a) develop the policy and financial framework in accordance with Constitutional principles within which the Public Debt Management Office operates;
- (b) delegate to the Head of the Public Debt Management Office the operational decisions on borrowing and debt management and the day-to day management of the Office;
- (c) ensure that the Public Debt Management Office has the resources and skills to manage the debt and borrowing according to international best practices for liability management; and

(d) be accountable to Parliament for the work of the Public Debt Management Office.

(2) The Public Debt Management Office shall prepare and submit to the Cabinet Secretary and the Commission on Revenue Allocation the following reports—

- (a) the Medium Term Debt Management Strategy consistent with the Budget Policy Statement;
- (b) the government borrowing plan for the approved Annual Budget;
- (c) the statistical and analytical reports on debt and borrowing; and
- (d) the annual performance reports of the Public Debt Management Office.

(3) The reports referred to in subsection (2) shall be published and publicised and a copy of each sent to each county government.

(4) The Public Debt Management Office may appoint agents to provide technical advice or undertake administrative functions for the management of debts provided that control and accountability for these functions remain with the Cabinet Secretary.

65. Relationship with county treasuries in debt management

(1) At the request of a County Treasury, the Public Debt Management Office shall assist the county government in its debt management and borrowing.

(2) At the request of the Public Debt Management Office, the County Treasury shall supply the Public Debt Management Office with any information that shall enable it to execute its mandate efficiently.

Sections 140 to 146 of the Public Finance Management Act, 2012 which it is proposed to amend—

140. Authority for borrowing by county governments

(1) A County Executive Committee member for finance may, on behalf of the county government, raise a loan for that Government's purposes, only if the loan and the terms and conditions for the loan are set out in writing and are in accordance with—

- (a) Article 212 of the Constitution;
- (b) sections 58 and 142 of this Act;
- (c) the fiscal responsibility principles and the financial objectives of the county government set out in its most recent County Fiscal Strategy Paper; and

(d) the debt management strategy of the county government over the medium term.

(2) A loan may be raised either within Kenya or outside Kenya.

141. Obligations and restrictions with respect to county government borrowing

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

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

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

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

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

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

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

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

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

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

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

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

142. Borrowing by county government entities

(1) The County Assembly may authorise short term borrowing by county government entities for cash management purposes only.

(2) Any borrowing under subsection (1) may not exceed five percent of the most recent audited revenues of the entity.

(3) A county government entity that has any such borrowing shall ensure that the money borrowed is repaid within a year from the date on which it was borrowed.

143. Persons who are authorised to execute loan documents at county government level

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

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

- (a) the accounting officer responsible for the entity; and
- (b) any other specified office holder authorised by legislation to execute such documents on behalf of an entity.

144. County government may issue securities only if authorised by this Act

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

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

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

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

(5) A county government securities—

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

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

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

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

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

(a) the County Executive Committee member for finance;

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

145. County government authorised to lend money

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

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

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

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

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

(a) from an appropriation for development expenditures; or

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

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

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

146. County government joint infrastructure investment

(1) Regulations approved by Parliament shall prescribe financial relations with respect to joint infrastructure investments undertaken by counties and any joint infrastructure investments undertaken by counties shall be done in terms of those regulations.

(2) The Intergovernmental Budget and Economic Council may agree on regulations with guidelines for county government joint infrastructure investments.

