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ASSUMPTION OF THE OFFICE OF GOVERNOR ACT

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NO. 4 OF 2019

ASSUMPTION OF THE OFFICE OF GOVERNOR ACT

[Date of assent: 13th May, 2019.]

[Date of commencement: 31st May, 2019.]

AN ACT of Parliament to provide for the procedure and ceremony for the assumption of the Office of Governor by the Governor-elect; and for connected purposes

[Act No. 4 of 2019.]

PART I — PRELIMINARY

1. Short title

This Act may be cited as the Assumption of the Office of Governor Act, 2019.

2. Interpretation

In this Act—

"Commission" means the Independent Electoral and Boundaries Commission established under Article 88 of the Constitution;

"Committee" means the Assumption of the Office of Governor Committee established under section 5;

"county public officer" has the meaning assigned to it under the County Governments Act (No. 17 of 2012);

"Governor-elect" means the person elected as Governor under Article 180 (1) of the Constitution and who has not assumed office; and

"public officer" has the meaning assigned to it under Article 260 of the Constitution.

3. Application

The provisions of this Act shall apply—

- (a) to the assumption of the Office of County Governor by a governor-elect; and
- (b) with necessary modifications, to the assumption of the Office of the County Governor by a deputy county governor or a speaker of a county assembly under Article 182(2) and (4) of the Constitution.

4. Guiding principles

In the performance of the functions and exercise of powers under this Act, the committee shall be guided by the values and principles set out in Article 10 of the Constitution.

PART II — ESTABLISHMENT OF ASSUMPTION OF THE OFFICE OF COUNTY GOVERNOR COMMITTEE

5. Establishment of the Assumption of the Office of Governor Committee

(1) There is established in each county, the Assumption of the Office of County Governor Committee.

(2) The Committee shall be an *ad hoc* committee and shall comprise—

- (a) the County Secretary who shall be the chairperson;
- (b) the officer in charge of legal matters in the county;
- (c) the chief officer in the department responsible for matters relating to county public service;
- (d) the chief officer in the department responsible for matters relating to information and communication;
- (e) the chief officer in the department responsible for matters relating to finance;
- (f) the chief officer in the department responsible for matters relating to culture and social services;
- (g) a representative of the Ministry responsible for matters related to devolution;
- (h) the County Commissioner;
- (i) a representative of the National Intelligence Service at the county level;
- (j) a representative of the National Police Service at the county level;
- (k) the Clerk of the county assembly;
- (l) a representative of the Judiciary at the county level; and
- (m) two persons, one man and one woman nominated by the Governor-elect.

(3) The Chief Officer in the department responsible for matters relating to the county public service shall be the secretary to the Committee.

(4) The members referred to in subsection 2(h) and (i) shall be the members serving as members of the County Policing Authority established under the National Police Service Act (No. 11A of 2011).

(5) The members referred to in subsection 2(1) shall be nominated upon the declaration of the final results of the election of the Governor.

(6) The chairperson of the Committee shall convene the first meeting of the Committee thirty days before the date of the general elections.

(7) In the absence of the chairperson, the members of the Committee shall elect a chairperson from among the members appointed under subsections (2)(b) to (f) to preside over the meeting.

(8) A vacancy in the membership of the Committee shall not affect the decisions of the Committee.

(9) The quorum for the conduct of business of a meeting of the committee shall be one-third of all the members of the Committee.

(10) The term of office of a Committee established under this section shall lapse upon the submission of the report of the Committee to the county assembly in accordance with section 18.

6. Functions and powers of the committee

(1) The functions of the committee are to—

- (a) facilitate the handing over process by the outgoing Governor to the Governor-elect;
- (b) ensure and coordinate the provision of security services to the Governor-elect;

- (c) put in place the necessary facilities and deploy the necessary personnel for the Governor-elect upon assumption of office;
- (d) co-ordinate the briefings of the Governor-elect by the relevant county public officers including submission of the following information—
 - (i) an up to date assets register;
 - (ii) an up to date register of liabilities;
 - (iii) a complete list of all bank accounts and reconciled balances;
 - (iv) a report of staff establishment per department;
 - (v) a comprehensive report on county entities or corporations and agencies containing information outlined in (i) to (iv);
 - (vi) a report of all ongoing projects including donor funded projects;
 - (vii) an up to date report on all pending legal cases; and
 - (viii) county source of funding.
- (e) facilitate communication between the outgoing Governor and the Governor-elect;
- (f) prepare the programme and organise for the swearing-in ceremony;
- (g) prepare the oath and the certificate of inauguration; and
- (h) carry out any other activity necessary for the performance of its functions under this Act and perform any other function assigned to it under any other written law.

(2) The Committee shall have all powers necessary for the execution of its functions under this Act and any other written law.

(3) The information to be provided during the briefings referred to under section 6(1)(d) shall be submitted in the form set out in the Second Schedule and shall be information for a period of up to thirty days before the date of the general elections.

7. Sub-committees of the Committee

(1) The Committee may establish such sub-committees as may be necessary for the better carrying out of its functions under this Act.

(2) The Committee may co-opt into a sub-committee established under subsection (1), not more than two persons whose knowledge and skills are necessary for the effective functioning of the Committee.

8. Procedure of the Committee

Except as otherwise provided in this Act, the Committee shall determine its own procedure.

PART III — ARRANGEMENTS FOR ASSUMPTION OF OFFICE BY THE GOVERNOR-ELECT

9. Provision of security to Governor-elect

Upon the declaration of the final results of the election of the Governor by the Commission under Article 180 of the Constitution and section 39 of the Elections Act, (No. 24 of 2011) the Committee shall ensure that the Governor-elect and Deputy Governor-elect are accorded adequate security.

10. County public officers to provide required information

(1) The Committee shall, in consultation with the Governor-elect, carry out such preparations as may be necessary for the purpose of the assumption of office by the Governor-elect.

(2) The county governor-elect may for the purpose of subsection (1) request in writing, for such information from a county public officer as the county governor-elect may consider necessary.

(3) A county public officer from whom information is requested under subsection (2) shall provide the information within a reasonable time.

(4) A county public officer who fails to comply with the provisions of this section commits an offence and is liable, on conviction, to a fine not exceeding three hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both.

PART IV — SWEARING-IN CEREMONY

11. Swearing in ceremony

(1) The Committee shall publish, by notice in the *Kenya Gazette* and the county *Gazette*, the date, time and place for the conduct of the swearing-in ceremony.

(2) The County Governor-elect shall be sworn-in on the first Thursday after the tenth day following the declaration of the final results of the election of the County Governor by the Commission.

(3) The swearing-in of the County Governor-elect shall be conducted in a public ceremony before a High Court Judge.

12. Taking of oath and signing of certificate of inauguration

(1) The County Governor-elect shall, during the swearing-in ceremony, take and subscribe to the oath or affirmation of office as prescribed in the First Schedule.

(2) The oath or affirmation under subsection (1) shall be administered not earlier than 10:00 am and not later than 2:00 pm.

(3) Upon taking or subscribing to the oath or affirmation under subsection (1), the County Governor shall sign a certificate of inauguration in the presence of the High Court Judge who conducts the swearing in ceremony under section 15.

13. Handing over of instruments of power and authority

(1) Upon signing the certificate of inauguration, the outgoing County Governor shall handover to the County Governor elect the following county symbols as a sign of transfer of executive power and authority—

- (a) the county flag;
- (b) the county coat of arms;
- (c) the Constitution; and
- (d) the county public seal.

(2) The provisions of this section shall not apply where—

- (a) the outgoing governor is not present during the inauguration; or
- (b) the incumbent is re-elected into office.

(3) The County Governor-elect shall, upon receiving the instruments of power be considered to have assumed the office of county governor.

(4) Failure by the outgoing County Governor to handover the instruments of power to the County Governor-elect shall not invalidate the assumption to the office of County Governor by the County Governor-elect.

14. Swearing-in of the deputy governor-elect

The deputy county governor-elect shall take and subscribe to the oath or affirmation of office as prescribed in the First Schedule.

15. Inauguration speech

The County Governor shall, upon the swearing-in of the deputy county governor-elect, give an inauguration speech to the county.

16. Swearing in of Deputy Governor who assumes office of County Governor

(1) The provisions of this Act relating to the swearing in ceremony of a County Governor-elect shall apply, with the necessary modifications—

- (a) to the swearing in ceremony of a Deputy Governor who assumes the office of the County Governor;
- (b) to the swearing in ceremony of a Deputy Governor who is nominated to fill in a vacancy in the office of the Deputy Governor upon assumption by the Deputy Governor of the office of the County Governor; or
- (c) to swearing of a speaker of a county assembly who assumes office under Article 182(5) of the Constitution.

(2) Upon nullification of an election of a county governor and a receipt of the notification by a relevant speaker, the speaker of a county assembly shall assume office as a governor within seven days and an election shall be held pursuant to Article 182(5) of the Constitution.

PART V — MISCELLANEOUS PROVISIONS

17. Security

The head of the National Police Service in the county shall ensure the provision of adequate security during the conduct of the swearing-in ceremony.

18. Reports of the Committee

(1) The Committee shall, within a period of one month from the date of the swearing-in of the County Governor-elect, cause to be prepared a report on the affairs of the Committee.

(2) The Committee shall submit to the respective county assembly the report prepared under subsection (1).

(3) The report shall contain, in respect of the assumption of office by the county governor-elect under this Act—

- (a) the financial statements of the Committee;
- (b) a description of the activities of the Committee;
- (c) such other statistical information as the committee considers appropriate relating to its mandate; and
- (d) any other information relating to its functions that the Committee considers necessary.

(4) The Committee shall cause the report to be published in the *Gazette* and in such other manner as the Committee may determine.

19. Management of information and records

(1) The Committee shall publish and publicize all important information within its mandate affecting the respective county.

(2) A request for information in the public interest by a citizen—

- (a) shall be addressed to the chairperson of the Committee or such other person as the Committee may for that purpose designate;
- (b) may be subject to the payment of a reasonable fee in instances where the Committee incurs an expense in providing the information; and
- (c) may be subject to confidentiality requirements of the Committee.

20. Limitation of rights and access to information

(1) The Committee shall not comply with a request for information by an applicant where—

- (a) disclosure of such information would be prejudicial to the security arrangements in place for the assumption of office of county governor;
- (b) the disclosure of such information is undesirable in the public interest; or
- (c) the information requested is at a deliberative stage by the Committee.

(2) The Committee may decline to submit information to the applicant where—

- (a) the applicant has failed to satisfy the confidentiality requirements to the Committee; or
- (b) payment of the prescribed fee has not been made.

(3) The right of access to information under Article 35 of the Constitution shall be limited with respect to information within the custody of the Committee in the manner and to the extent specified under this section.

(4) Every member and staff assigned to the committee shall sign a confidentiality agreement.

21. Funding

The funding for the assumption of office of a governor committee shall be borne by the respective county government.

22. Consequential amendments to Act No. 17 of 2012

The County Governments Act (No. 17 of 2012) is amended by—

- (a) deleting section 30(1);
- (b) deleting section 32(1); and
- (c) deleting the oath of office for the governor/deputy governor as contained in the First Schedule.

23. Consequential amendments to Act No. 24 of 2011

The Elections Act (No. 24 of 2011) is amended in section 86 by inserting the following new subsection immediately after subsection (1)—

(1A) Upon the nullification of an election of a county governor, the Commission shall upon receipt of certification under sub section (1), publish a notice in the *Gazette* within seven days.

(1B) The notice referred to in subsection (2) shall—

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- (a) indicate that the election of the county governor has been invalidated; and
- (b) announce the date for election of a county governor pursuant to Article 182(5) of the Constitution.

(1C) Where a vacancy arises as contemplated under section (1A), the speaker of a county assembly shall act as a governor and an election shall be held pursuant to Article 182(5) of the Constitution.

24. Regulations

The county executive committee member responsible for the county public service may make regulations for the better carrying into effect of the provisions of this Act.

FIRST SCHEDULE

[Sections 12(1), 14.]

OATHS AND AFFIRMATIONS**OATH OR AFFIRMATION FOR GOVERNOR**

I, do swear/solemnly affirm that I shall always truly and diligently serve the people and the Republic of Kenya in the office of the Governor ofcounty; that I shall diligently discharge my duties and perform my functions in the said office; and I will do justice to all in accordance with the Constitution and the Laws of Kenya without fear, favour, affection or ill-will. (In the case of an oath: So help me God).

OATH OR AFFIRMATION FOR DEPUTY GOVERNOR

I, do swear/solemnly affirm that I shall always truly and diligently serve the people and the Republic of Kenya in the office of the Deputy Governor of County; that I shall diligently discharge my duties and perform my functions in the said office; and I will do justice to all in accordance with the Constitution and the Laws of Kenya without fear, favour, affection or ill-will. (In the case of an oath: So help me God).

SECOND SCHEDULE

[Section 6(3).]

FORMAT FOR COUNTY INFORMATION**1. County Assets — Paragraph 1(d)(i)**

A summary of assets currently held by the county government derived from an up-to-date assets registers in conformity with the provisions of the Public Finance Management Act, 2012, the Public Finance Management (County Government) Regulations 2015 and Guidelines issued by the Public Sector Accounting Standards Board; the Public Procurement and Asset Disposal Act, 2015 and the Public Procurement Regulations 2006.

Assets should include those inherited from the defunct local authorities, those transferred from the National Government and those acquired by the county government since 2013 including all assets that have disputes or outstanding unresolved matters.

No.	Category of Assets	Quantity	Status	Ownership Documents	Remarks
1.	Land				
	Categories				
	(i) Residential estates (rental)				
	(ii) Staff housing				
	(iii) Office Blocks				
	(iv) Learning institutions				
	(v) Farm land				
	(vi) Rented premises				
	(vii) Undeveloped				
	(viii) Others				
2.	Motor Vehicles				
3.	Plant and Equipment				
4.	Furniture and Fittings				
5.	ICT equipment, computers and computer accessories				
6.	Intangible assets (software)				
7.	Heritage and cultural assets				

8.	Biological assets				
9.	Investments				
10.	Debtors including outstanding imprests, salary advances, car loan, mortgages and any other recoverable and advances, unpaid rent (detailed listings to be attached)				

Note:

- (a) Land and buildings — indicate whether titles are available or not;
- (b) Motor vehicles — indicate whether the log books are available or not;
- (c) Plant and equipment—indicate whether the log books or certificates are available or not; and
- (d) Intangible assets (software) — indicate whether contracts or licenses are available or not.

2. County Liabilities - Paragraph 1 (d)(ii)

Summary of liabilities currently owed by the county government derived from an up-to date schedule of liabilities. Supporting documents should be prepared and availed for scrutiny.

<i>No.</i>	<i>Category of liabilities</i>	<i>Amount</i>	<i>Status</i>	<i>Remarks</i>
1.	Loans and overdrafts (including accrued interest)			
2.	Creditors			
3.	Unremitted statutory deductions (including penalties)			
4.	Unpaid personnel emoluments			
5.	Legal liabilities			
6.	Contingent liabilities			
7.	Any other			

3. County Bank Accounts and Reconciled Balances - Paragraph 1(d)(iii)

Summary of all bank accounts and reconciled balances currently owned by the county government. Bank statements and certificates must be availed. For Cash on hand a cash survey should be conducted.

<i>No.</i>	<i>Account name</i>	<i>Account No.</i>	<i>Bank</i>	<i>Amount</i>	<i>Remarks</i>
1.					
2.					
3.					
4.					
5.					

4. County Staff Establishment per Department-Paragraph 1(d)(iv)

Summary of human resource information of the county government derived from an up-to-date personnel records in conformity with the provisions of Constitution of Kenya (2010), County government Act 2012, Public Service (Values and Principles) Act 2015 and any other legislation and guidelines issued from time to time on human resource management in the public service.

No.	Department	Authorized Establishment	In post		Variance	Pensionable	Contract	Casuals	No. of Persons with Disability	Management	Annual Wage Bill	Remarks
			Male	Female								
1.												
2.												
3.												

No.	Department	Authorized Establishment	In post		Variance	Pensionable	Contract	Casuals	No. of Persons with Disability	Management	Annual Wage Bill	Remarks
			Male	Female								
4.												
5.												

5. County Entities, Corporations and Agencies - Paragraph 1(d)(v)

Summary of Entities, Corporations and Agencies either partially or wholly owned by the County Government.

No.	Name of Entity	Function	Shareholding (%)	Directorship	Remarks
1.					
2.					
3.					
4.					
5.					

6. Ongoing/multiyear projects and donor funded projects in the County - Paragraph 1(d)(vi)

Summary of all on ongoing/multiyear projects and donor funded projects in the County indicating whether the projects are active, stalled, abandoned, terminated or rescaled on the remarks column.

No.	Project	Source of Funding	Contract Value	Expenditure to Date	Implementation Status (%)	Remarks
1.						

No.	Project	Source of Funding	Contract Value	Expenditure to Date	Implementation Status (%)	Remarks
2.						
3.						
4.						
5.						

7. Pending litigations - Paragraph 1(d)(vii)

Summary of all cases where the county government is a party either as a plaintiff/applicant or defendant/respondent. It should also include proceedings under alternative dispute resolution (ADR) mechanism and cases instituted by or against the Council of Governors. Specific details on each case number, place of suing, parties, advocates on record, relief sought, status, legal fees (paid and outstanding) and any other relevant information to be prepared and availed for scrutiny.

No.	Nature of Case	Total No. of Cases	No. of cases where County is the Plaintiff /Applicant	No. of cases where County is the Defendant/ Respondent	Remarks
1.					
2.					
3.					
4.					
5.					

8. County Sources of Funding for Preceding Five Financial Years — Paragraph 1(d)(viii)

Summary of all sources of funds for the preceding five financial years and the projections for the upcoming financial year.

No.	Revenue Source	FY 20...../ 20..... (Actual)	Remarks					
1.	Equitable share							
2.	Conditional grants							
3.	Own source revenue							
4.	Unconditional grants							
5.	Development partners							
6.	Borrowings							
7.	Other sources							

