

NO. 26 OF 2016

THE CONTROLLER OF BUDGET ACT

SUBSIDIARY LEGISLATION

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THE CONTROLLER OF BUDGET REGULATIONS, 2021

[Legal Notice 254 of 2021]

1. Citation

These Regulations may be cited as the Controller of Budget Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

“Act” means the Controller of Budget Act (Cap. 429);

“accounting officer” has the meaning assigned to it under section 2 of the Public Finance Management Act (Cap. 412A);

“any other public funds” has the meaning assigned to it under section 2 of the Act;

“budgetary ceilings” has the meaning assigned to it under regulation 2 of the Public Finance Management (National Government) Regulations (sub. leg);

“Cabinet Secretary” has the meaning assigned to it under section 2 of the Act;

“consolidated fund services” has the meaning assigned to it under regulation 2 of the Public Finance Management (National Government) Regulations (sub. leg);

“Controller of Budget” has the meaning assigned to it under the Act;

“control ledger” means—

- (a) the Consolidated Fund Control Ledger;
- (b) the Equalization Fund Control Ledger;
- (c) County Revenue Fund Control Ledger; and
- (d) Control Ledger for any other public fund that show the vote, appropriated amounts, revenue receipts, and cumulative approved withdrawal amounts;

“County Executive Committee Member” means the County Executive Committee Member responsible for matters relating to finance;

“county exchequer account” has the meaning assigned to it under section 2 of the Public Finance Management Act (Cap. 412A);

“county government entity” has the meaning assigned to it under section 2 of the Public Finance Management Act (Cap. 412A);

“County Treasury” has the meaning assigned to it under section 2 of the Public Finance Management Act (Cap. 412A);

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

“National Exchequer Account” has the meaning assigned to it under section 2 of the Public Finance Management Act (Cap. 412A);

“national government entity” has the meaning assigned to it under section 2 of the Public Finance Management Act (Cap. 412A);

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

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

“Public Debt Management Office” means the Office established under section 62(1) of the Public Finance Management Act (Cap. 412A);

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

“publicise” has the meaning assigned to it under section 2 of the Public Finance Management Act (Cap. 412A);

“publish” has the meaning assigned to it under section 2 of the Public Finance Management Act (Cap. 412A);

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

“vote” has the meaning assigned to it under section 2 of the Public Finance Management Act (Cap. 412A); and

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

3. Application

These Regulations shall apply to—

- (a) Parliament;
- (b) Judiciary;
- (c) a County Assembly;
- (d) the National Treasury;
- (e) a County Treasury;
- (f) a National Government entity;
- (g) a County Government entity;
- (h) Commissions and Independent offices;
- (i) state officers;
- (j) accounting officers;
- (k) receiver of revenue;
- (l) public officers; and
- (m) any other person performing any act or doing such thing that is provided for under these Regulations.

4. Object of the Regulations.

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

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

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

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

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

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

- (a) Medium Term Plan;
- (b) Budget Review and Outlook Paper;
- (c) Debt Management Strategy Paper;
- (d) Budget Policy Statement;
- (e) approved budget estimates or Vote-on-Account;
- (f) submitted budget estimates and Appropriation Bill in case of a Vote-on-Account;
- (g) the Appropriation Act;
- (h) the Equalization Fund Appropriation Act;
- (i) Presidential Warrant;
- (j) Annual Cash Flow plan;
- (k) names of authorized signatories for national exchequer account and Equalization Fund account, their specimen signatures and relevant mandate number;
- (l) annual work plans;
- (m) the Division of Revenue Act;
- (n) approved Cash Disbursement Schedules for County Governments;
- (o) the County Allocation of Revenue Act;
- (p) evidence that the approved budget estimates or Vote-on-Account has been uploaded in the financial management system prescribed by the National Treasury;
- (q) a report on unspent cash balances of the previous financial year in the Consolidated Fund and the accounts of national government entities;
- (r) a report by the National Treasury on adherence with advisories by Controller of Budget on budget issues; and
- (s) documentary evidence of public participation undertaken in the development of the planning and budget documents.

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

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

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

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

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

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

(6) Where there is the assumption of the Office of President by a President-elect, the Deputy President or the Speaker of the National

Assembly under Article 146(2) of the Constitution, the Assumption of Office of President Committee shall submit a copy of the Committee's report to the Controller of Budget within seven days after submitting the report to Parliament.

6. Submission and review of county government and planning and budgeting documents

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

- (a) County Integrated Development Plan;
- (b) Annual Development Plan;
- (c) annual work plan for conditional grants;
- (d) County Budget Review and Outlook Paper;
- (e) County Debt Management Strategy Paper;
- (f) County Fiscal Strategy Paper;
- (g) An Act of County Assembly or subsidiary legislation establishing a fund in accordance with the Public Finance Management Act (Cap. 412A);
- (h) submitted budget estimates and Appropriation Bill in case of a Vote-on-Account;
- (i) approved budget estimates or Vote-on-Account;
- (j) an Appropriation Act;
- (k) Governor's Warrant;
- (l) Annual Cash Flow plan;
- (m) refund statement for unspent cash for the previous financial year;
- (n) documentary evidence that public participation was undertaken in the development of the planning and budget documents including a report from the County Budget and Economic Forum as provided for under section 137 of the Public Finance Management Act (Cap. 412A);
- (o) evidence of budget estimates uploaded in the financial management system prescribed by the National Treasury; and
- (p) names of authorized signatories for county exchequer account, their specimen signatures and relevant mandate numbers.

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

- (a) the relevant supplementary Appropriation Act;
- (b) Governor's Warrant;
- (c) supplementary budget estimates approved by a County Assembly; and

- (d) evidence that the approved supplementary budget estimates has been uploaded in the financial management system prescribed by the National Treasury.

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

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

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

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

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

PART II – PROCEDURE FOR APPROVAL OF WITHDRAWAL FROM PUBLIC FUNDS

7. Authorization of withdrawal of funds.

Money shall not be withdrawn from—

- (a) the Consolidated Fund and its components;
- (b) the Equalization Fund;
- (c) a County Revenue Fund and its components; or
- (d) any other public fund,

unless the Controller of Budget has approved the withdrawal.

8. Request for approval of withdrawal of funds from the consolidated Fund

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

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

(2) In addition to the documents listed in subregulation (1), where applicable—

- (a) a request for approval for withdrawal to the County Revenue Fund shall be supported by disbursement schedule and any other document in accordance with section 16 of the Act;
- (b) a request for approval for withdrawal to the Equalization Fund shall be supported by an Appropriation Act and an extract of the approved budget estimates;
- (c) a request for approval for withdrawal for development expenditure for a national government entity, shall be supported by—
- (i) a schedule of development expenditure in line with the request;

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- (ii) up to date project implementation status report, whether ongoing or stalled projects, relating to the request;
 - (iii) up to date schedule of pending bills and payment plan;
 - (iv) bank statement reflecting the settled pending bills;
 - (v) vote book for development expenditure;
 - (vi) a bank statement of development operational account; and
 - (vii) an extract of the budget estimates approved by the National Assembly.
- (d) a request for approval for withdrawal for recurrent expenditure for a national government entity shall be supported by—
- (i) a summary of the monthly payroll report from an integrated personnel and payroll database, for payment of salaries;
 - (ii) a schedule and analysis of salaries for staff to be paid outside an integrated personnel and payroll database and the reasons thereof;
 - (iii) a schedule of operations and maintenance expenditure, in compliance with the Standard Chart of Accounts, in line with the request;
 - (iv) analysis of operations and maintenance expenditure in a specified manner;
 - (v) up to date schedule of pending bills and payment plan;
 - (vi) bank statement reflecting the settled pending bills;
 - (vii) vote book for recurrent expenditure;
 - (viii) a bank statement of recurrent operational account;
 - (ix) an extract of the budget estimates approved by the National Assembly;
- (e) a request for approval for withdrawal of funds on Vote-on-Account, shall be supported by—
- (i) communication from the Speaker of the National Assembly confirming the approval of the Vote-on-Account;
 - (ii) budget estimates submitted to the National Assembly by the Cabinet Secretary;
 - (iii) budget estimates approved by the National Assembly, if any;
 - (iv) exchequer ledgers showing not more than one-half ceiling of the budget estimates;
 - (v) evidence that not more than one-half of the budget estimates has been uploaded to the financial management system prescribed by the National Treasury; and
 - (vi) Appropriation Bill;
- (f) a request for approval for withdrawal of funds where there has been stoppage of funds under Article 225(3) of the Constitution and section 97 of the Public Finance Management Act (Cap. 412A) shall be supported by—
- (i) an assessment by the Cabinet Secretary of the national government entity's financial state; or
 - (ii) in case of a county government, a recovery plan in accordance with section 99 of the Public Finance Management Act (Cap. 412A), provided that for subsequent requests for approval for withdrawal of funds, a county government shall submit a status of implementation of the recovery plan.
- (3) In addition to the documents listed in sub- regulation (1), and for the purpose of Consolidated Fund Services, a request for approval of withdrawal —
- (a) into the Judiciary Fund, Parliamentary Fund and any other public funds established under section 24(4) of the Public Finance Management Act (Cap. 412A), shall be supported by—

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- (i) published legislation establishing the Fund in accordance with the Public Finance Management Act (Cap. 412A), and relevant subsidiary legislation;
- (ii) an extract of the budget estimates approved by the National Assembly; and
- (iii) an extract of the approved annual work plan;
- (b) for payment of domestic debt, shall be supported by—
 - (i) a schedule stating redemption amount, interest, bank charges, if any, and any other fees and expenses relating to the borrowing;
 - (ii) Central Bank of Kenya cash call ups;
 - (iii) an up to date schedule of repayments;
 - (iv) analysis of debt level in relation with set ceilings as provided for in section 15 of the Public Finance Management Act (Cap. 412A); and
 - (v) monthly overdraft schedule for the overdraft facility;
- (c) for payment of external debt, shall be supported by—
 - (i) a loan agreement stipulating the terms and conditions;
 - (ii) a schedule of the loan agreement stating principal payment and interest, bank charges, commitment fee, penalties, if any, and any other fees and expenses relating to the loan;
 - (iii) an up to date schedule of repayments;
 - (iv) analysis of debt level in relation with set ceilings as provided in section 15 of the Public Finance Management Act (Cap. 412A);
 - (v) a legal opinion from the Office of the Attorney General; and
 - (vi) demand note or invoice for settlement of the principal amount or loan interest, where applicable;
- (d) for payment of remuneration of constitutional office holders, shall be supported by a monthly payment schedule of constitutional office holders being remunerated;
- (e) for subscription to an international organization, shall be supported by an invoice from the international organization;
- (f) for payment of pension shall be supported by schedule of pensioners for monthly and lump-sum payment.

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

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

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

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

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

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9. Request for approval for funds from the Equalization Fund.

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

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

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

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

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

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

- (a) a request for approval for withdrawal of funds for development expenditure, shall be supported by—
 - (i) a schedule of development expenditure in line with the request;
 - (ii) up to date project implementation status report generated from approved project management government system;
 - (iii) up to date schedule of pending bills and payment plan;
 - (iv) bank statements reflecting the settled pending bills;
 - (v) vote book for development expenditure;
 - (vi) bank statement of development operational account; and
 - (vii) an extract of the budget estimates approved by a County Assembly relating to the request.
- (b) a request for approval for withdrawal of funds for recurrent expenditure shall be supported by—
 - (i) a summary of the monthly payroll report from an integrated personnel and payroll database, for payment for salaries;
 - (ii) a schedule and analysis of salaries for staff paid outside an integrated personnel and payroll database and the reasons thereof;
 - (iii) a schedule of operations and maintenance expenditure, in compliance with the Standard Chart of accounts, in line with the request;
 - (iv) analysis of the operations and maintenance expenditure in a specified manner;
 - (v) up to date schedule of pending bills and payment plans;
 - (vi) bank statement reflecting the settled pending bills;
 - (vii) vote book for recurrent expenditure;
 - (viii) a bank statement of recurrent operational account; and
 - (ix) an extract of the budget estimates approved by a County Assembly relating to the request.
- (c) a request for approval for withdrawal of funds into public funds established under section 110 or 116 of the Public Finance Management Act (Cap. 412A), shall be supported by—
 - (i) an extract of the budget estimates approved by a County Assembly;

- (ii) expenditure report on utilization of the previous release;
- (iii) quarterly financial reports for the Funds; and
- (d) a request for approval for withdrawal of funds for conditional grants shall be supported by—
 - (i) an agreement or agreements setting out the conditions of the grant;
 - (ii) a county exchequer statement confirming receipt of the conditional grant;
 - (iii) a bank statement for the Special Purpose Account;
 - (iv) an extract of the budget estimates, if any, approved by the County Assembly;
 - (v) expenditure report on utilization of the previous release; and
 - (vi) an extract of approved annual work plan showing how the funds being requested shall be applied.
- (e) a request for approval for withdrawal of funds under Voteon-Account shall be accompanied by—
 - (i) communication from the Speaker of a County Assembly confirming the approval of the Vote on Account;
 - (ii) budget estimates submitted to a County Assembly by the County Executive Committee Member;
 - (iii) budget estimates approved by a County Assembly, if any;
 - (iv) County Exchequer Ledgers showing not more than one-half ceiling of the budget estimates;
 - (v) evidence that not more than one-half of the budget estimates has been uploaded to the financial management system prescribed by the National Treasury; and
 - (vi) Appropriation Bill.

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

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

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

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

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

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

(1) A request to the Controller of Budget by the National Treasury for approval for withdrawal of funds where the national government needs to spend money that has not been appropriated as envisaged under Article 223(1) of the Constitution shall be made in

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Requisition Form A as prescribed in the Schedule, supported by the following for justification of expenditure—

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

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

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

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

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

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

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

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

12. Request for approval of withdrawal of funds under section 135(1) of the Public Finance Management Act (Cap. 412A)

(1) A request to the Controller of Budget by a County Treasury for withdrawal of funds where a county government needs to spend money that has not been appropriated by a county appropriation Act as envisaged under section 135(1) of the Public Finance Management Act (Cap. 412A) shall be made in Requisition Form A as prescribed in the Schedule, supported by the following for justification of expenditure—

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

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

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

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

- (c) the historical trend of utilization of funds under section 135 of the Public Finance Management Act (Cap. 412A) by the respective county government entity;
- (d) that in any particular financial year, a county government may not spend more than ten per cent of the sum appropriated by a County Assembly for that financial year unless, in special circumstances, the County Assembly has approved a higher percentage; and
- (e) any other factors as may be relevant in the circumstance.

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

16. Overdrawing of funds and real time viewer rights

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

PART III – MONITORING, EVALUATION AND
REPORTING ON BUDGET IMPLEMENTATION

17. Compliance and enforcement of budgetary ceilings

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

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

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

18. Advisory on compliance and enforcement of budgetary ceilings

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

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

- (h) any other relevant institution.

19. Monitoring, evaluation and reporting for improvement of budget implementation

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

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

20. Development of monitoring, evaluation and reporting framework

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

21. Factors to consider when conducting monitoring, evaluation and reporting

When undertaking monitoring and evaluation, the Controller of Budget shall consider the following factors—

- (a) whether the budget estimates comply with the Program Based Budgeting Approach;
- (b) whether the budget estimates comply with fiscal responsibility principles provided for under sections 15 and 107 of the Public Finance Management Act (Cap. 412A);
- (c) the reasonableness of revenue estimates;
- (d) classification and composition between recurrent and development expenditure;
- (e) linkage between policy, planning and budgeting framework;
- (f) prior year comparative data as the baseline for resource allocation in the subsequent periods;
- (g) adherence to Medium Term Expenditure Framework during budget making process;
- (h) adherence to approved budgetary ceilings;
- (i) information on geographical location of projects to monitor or ascertain equity in resource allocation across the country;
- (j) compliance with statutory timelines for budget documents;
- (k) public participation in the budget process;
- (l) actual expenditure against the budget estimates;
- (m) compliance with principles of public finance provided for under Article 201 of the Constitution; and
- (n) any other factors that the Controller of Budget may consider necessary in executing this mandate.

22. Submission of quarterly reports to the Controller of Budget

(1) For purposes of preparing the quarterly reports under section 9 of the Act, an accounting officer for a national government entity and county government entity shall prepare financial and nonfinancial report for each quarter of the financial year in respect of the entity in a manner specified by the Controller of Budget.

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(2) Not later than the 10th day after the end of every quarter, the accounting officer shall submit a quarterly report to the National Treasury and County Treasury with a copy to the Controller of Budget.

(3) Not later than the 15th day after the end of each quarter, the national treasury and county treasury shall consolidate the quarterly reports under subregulation (2) and submit them to the Controller of Budget.

(4) Despite the first quarterly report of the year submitted under this regulation, each subsequent report shall contain cumulative amounts from the beginning of that year.

(5) The National Treasury and a County Treasury entity shall certify the reports before submitting to the Controller of Budget.

23. Content of the report

The report submitted by an accounting officer for a county government entity or national government entity under regulation 22 shall include—

- (a) actual revenue receipts disaggregated by revenue streams including appropriation-in-aid;
- (b) report on payments made to the Consolidated Fund Services;
- (c) report on funds released and expenditure by programme sub-programme and project against the budget estimates;
- (d) expenditures classified in economic classification as follows—
 - (i) compensation to employees;
 - (ii) use of goods and services;
 - (iii) transfer to other levels of government;
 - (iv) capital expenditure; and
 - (v) development expenditure;
- (e) report on outstanding payments, overdue for over ninety days;
- (f) project implementation status report;
- (g) report on stalled projects and the work plan for completing the projects;
- (h) report on established funds by Parliament or a County Assembly;
- (i) projection of expected expenditure and revenue collection for the remainder of the financial year;
- (j) report on the receipts and expenditure of conditional or non-conditional grants; and
- (k) any other information that the Controller of Budget may require for reporting.

24. Special reports

(1) The Controller of Budget shall prepare and submit special reports as provided for under section 10 of the Act.

(2) For purposes of preparing the special report under section 10 of the Act, an accounting officer shall submit the requisite information as may be requested by the Controller of Budget.

PART IV – INVESTIGATIONS

25. Power to investigate

The Controller of Budget may conduct investigations on his or her own motion or upon a complaint made by a member of the public on any matter on implementation of the budgets of the national and county governments.

26. Guiding principles for conducting investigations

The guiding principles for conducting investigations under this Part shall include—

- (a) independence;

- (b) objectivity;
- (c) impartiality;
- (d) fairness; and
- (e) integrity.

27. Investigating officers

(1) The Controller of Budget shall be an investigating officer for purposes of the Act and these Regulations.

(2) The Controller of Budget may, in writing, delegate the performance of the power conferred on him or her under subregulation (1) to an officer of the Office.

(3) In addition to the officers delegated under subregulation (2), the Controller of Budget may designate, in writing, other public officers to be investigating officers for purposes of the Act and these Regulations.

(4) A delegation or designation under this regulation—

- (a) shall be subject to any conditions that the Controller of Budget may impose;
- (b) shall not relieve the Controller of Budget of responsibility concerning the exercise of the performance of the delegated power; and
- (c) may be withdrawn or varied by the Controller of Budget.

(5) An officer delegated or designated under this regulation shall, at all times, perform their functions under the superintendence and direction of the Controller of Budget.

28. Impersonating investigator

(1) A person, other than an investigating officer under these Regulations, shall not present himself or herself to be or act as an investigating officer.

(2) A person who contravenes subregulation (1) commits an offence and is liable on conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a term not exceeding six months, or to both.

29. Procedure for conducting investigations

(1) The Controller of Budget shall conduct a preliminary investigation to determine whether a matter to be investigated raises substantive issues to warrant a full investigation.

(2) In this regulation, a matter to be investigated raises “substantive issues” where that matter—

- (a) relates to serious or persistent material breach as provided for under section 94 of the Public Finance Management Act (Cap. 412A);
- (b) relates to non-compliant in budget implementation including—
 - (i) failure of the budget to be in line with the planning documents;
 - (ii) failure to apply approved exchequer as authorized;
 - (iii) where the budget exceeds the set ceilings;
- (c) relates to falsification of documents.

(3) If the matter warrants full investigation, the investigating officer shall gather evidence

- (a) oral examination;
- (b) documentary and record evidence;
- (c) expert evidence; or
- (d) site inspection.

(4) An investigating officer shall—

- (a) report on actual or potential conflict of interest, if any;
- (b) ensure confidentiality;
- (c) conduct the investigation expeditiously;

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- (d) base his or her findings on facts and related analysis including reasonable inferences;
- (e) provide the entity or person against whom an allegation or complaint is made an opportunity to respond to the allegations or complaints; and
- (f) provide any data, information or witnesses that may support their case.

30. Power to summon, enter and search

An investigating officer may, with the consent of a person or a court warrant, summon a person, enter upon and search any premises for any record, property or other thing reasonably suspected to be in or on the premises and that has not been produced by a person pursuant to a requirement under the provisions of the Act or these.

31. Action upon investigation

Upon conclusion of an investigation, the Controller of Budget may—

- (a) make a finding and give recommendations; or
- (b) refer the complaint to a relevant public body for further action;

32. Conduct of investigation on stoppage of funds

(1) Where the Cabinet Secretary stops the transfer of funds to a national government entity or county government entity, the Controller of Budget shall conduct investigations and submit a report to Parliament.

(2) Within fourteen days of the decision of the Cabinet Secretary to stop the transfer of funds, the Controller of Budget shall conduct investigations to ascertain whether the reasons for the decision by the Cabinet Secretary meet the threshold for serious material breach or persistent material breach as provided for under section 94 of the Public Finance Management Act (Cap. 412A).

(3) The Controller of Budget shall submit the report to Parliament, giving an independent opinion on the findings and details of material breach or persistent material breach in such manner as to allow Parliament make a decision on whether or not to approve or rescind the Cabinet Secretary's decision to stop the transfer of funds.

(4) The report shall contain recommendations on measures to rectify the breach.

(5) Where the Cabinet Secretary has applied to Parliament to renew a decision to stop the transfer of funds for a period beyond the sixty days, the Controller of Budget shall investigate and prepare a report to Parliament within fourteen days after being informed of the decision to renew the period of stoppage of funds.

PART V – COMPLAINT HANDLING

33. Lodging of complaint

(1) A complaint may be lodged at the offices of the Controller of Budget or at such place or places and in such manner as the Controller of Budget may from time to time determine.

(2) A complaint may be lodged by the complainant in person or by a person acting on behalf of the complainant or by any other person authorized by law to act for the complainant, provided that the Controller of Budget may admit anonymous complaints.

34. Register of Complaints

The Controller of Budget shall maintain a register of all complaints received and action taken, including any resolution made.

35. Oral complaint to be reduced to writing

(1) Where the complaint is made orally, or otherwise, or the complainant cannot read or write, the complaint shall be reduced to writing by an authorized officer.

(2) A written complaint shall be in such manner as the Controller of Budget may determine and shall include—

- (a) the name and contact details of the complainant;
- (b) the particulars of the respondent; and
- (c) the substance of the complaint in sufficient detail to enable

the Controller of Budget to act.

(3) The complainant may attach or provide any documents necessary to support the complaint.

(4) Despite the foregoing, a complaint may be made anonymously, or treated in such a manner as to protect the identity of, or particulars of, the complainant where necessary, as may be directed by the Controller of Budget.

36. Screening of complaints

(1) A complaint shall, upon being entered into the register under regulation 34, be forwarded to the relevant department for screening.

(2) Upon screening the complaint, the Controller of Budget may—

- (a) admit the complaint;
- (b) where appropriate, advise the complainant in writing that the matter is not within the mandate of the Controller of Budget; or
- (c) advise the complainant that the matter lies for determination by another public body or institution and refer the same to that body or institution.

37. Discontinuation of a complaint

(1) Where, in the opinion of the Controller of Budget, a complaint does not merit further consideration, he or she may discontinue further proceedings on the complaint, record his or her reasons and notify the complainant of the discontinuation within fourteen days.

(2) The Controller of Budget shall inform the complainant of the right to review the decision taken under subregulation (1).

(3) Where a review is allowed, the provisions of these Regulations shall apply.

38. Review

(1) Where a complaint has been discontinued under regulation 37, the complainant may, in writing, apply to the Controller of Budget for a review of the decision.

(2) Where a review is disallowed, the complaint shall be closed and the complainant notified in writing.

(3) Where a review is allowed, the provisions of these Regulations shall apply.

39. Withdrawal and lapse of complaint

(1) A complainant may, in writing, withdraw a complaint pending before the Controller of Budget at any stage during its consideration.

(2) Where a complainant unjustifiably fails or neglects to respond to communication from the Controller of Budget within three months from the date of the last communication, the Controller of Budget may deem the complaint to have lapsed.

(3) Despite the provisions of subregulations (1) and (2), the Controller of Budget may, in his or her discretion, proceed to deal with a complaint in the public interest.

(4) Where a complaint has lapsed, the complainant may apply to the Controller of Budget for re-admission of the complaint and give reasons in support of the application for re-admission to the satisfaction of the Controller of Budget.

40. Joint consideration of complaint

(1) Where two or more complaints are lodged in which the same or similar allegations are raised against a respondent or respondents, the Controller of Budget may—

- (a) consolidate the complaints; or

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- (b) treat one complaint as a test complaint and stay further action on the other complaints pending resolution of the test complaint.

(2) The decision on a test complaint shall apply, *mutatis mutandis*, to all other complaints with which the test complaint was consolidated.

41. Action on complaint

(1) Upon admission of a complaint, the Controller of Budget shall inform the respondent accordingly.

(2) Upon the expiry of fourteen days, if there is no response from the respondent, a reminder giving a further fourteen days to respond shall be communicated to the respondent.

(3) If there is still no response, the Controller of Budget may issue summons or make such other orders, as he or she may deem fit.

42. Failure to respond to summons

If a respondent fails to respond to the summons or other orders, the Controller of Budget may proceed to determine the complaint in the absence of the respondent or issue any orders.

43. Resolution of complaint

In resolving a complaint, the Controller of Budget may—

- (a) conduct investigations in accordance with Part IV;
- (b) request and obtain relevant information or documents;
- (c) undertake mediation, negotiation or conciliation in accordance with Part VI;
- (d) refer the complaint to the appropriate public body for further action; or
- (e) determine the complaint appropriately.

PART VI – DISPUTE RESOLUTION

44. Mediation, conciliation and negotiation

The Controller of Budget may resolve any matter, relating to budget implementation, brought before him or her by conciliation, mediation or negotiation as provided for under Article 252(1)(b) of the Constitution.

45. Procedure for mediation, conciliation or negotiation

(1) Where the Controller of Budget determines that there is a dispute, he or she shall call upon the parties to resolve the matter amicably within twenty-one days.

(2) Where the parties resolve the matter amicably, the parties shall record the consent and register the same with the Controller of Budget.

(3) Where the parties fail to resolve the matter amicably, the Controller of Budget shall issue a notice which shall include—

- (a) the names of the parties to the dispute; and
- (b) the date, time and venue of the meeting.

(4) Upon the issuance of a notice, but before the date of the meeting, the Controller of Budget shall constitute a panel comprising officers or persons with relevant expertise in dispute resolution, as the Controller of Budget may consider necessary.

(5) During the meeting, the panel appointed under subregulation (2) may apply such procedures as it may, in the interests of the parties, deem appropriate in the circumstances.

(6) At the conclusion of the process, the parties shall sign an agreement bearing the Common Seal and the signature of the Controller of Budget.

(7) The agreement signed under this regulation shall be deemed to be a determination of the Controller of Budget and shall be enforceable as such.

46. Service of process

(1) Any document required or authorized to be served under this Part shall, where practicable, be served personally on the person by delivering or tendering the document to that person.

(2) Where it is not possible to effect personal service, the document may be served in such manner as the Controller of Budget may determine.

(3) Any document requiring service under this Part shall be served by an authorized officer or any other person authorized to do so by the Controller of Budget.

47. Principles of natural justice

In the determination of disputes under these Regulations, the Controller of Budget shall have due regard to the principles of natural justice and shall not be bound by any legal or technical rules of evidence applicable to proceedings before a court of law.

PART VII – MISCELLANEOUS PROVISIONS**48. Fees**

The Controller of Budget shall not charge any fee in the lodging and determination of complaints and disputes.

49. Offences

A person who fails to comply with these Regulations and where a penalty has not been provided for, commits an offence and shall be liable upon conviction to the penalty provided for under Section 22 of the Act.

50. Certification of documents

Any document submitted to the Controller of Budget under these Regulations shall be certified.

51. Access to information

(1) The Controller of Budget shall provide information on budget implementation matters to the public, by publishing and publicizing quarterly and special reports.

(2) The Controller of Budget may avail the information to the public through—

- (a) the Controller of Budget's official website;
- (b) print media;
- (c) electronic media; or
- (d) public fora;

(3) The Controller of Budget shall sensitize the public on budget implementation.

(4) In exercising his or her functions and powers under these Regulations, the Controller of Budget shall be bound by the provisions of the Access to Information Act, 2016.

52. Issuance of circulars

The Controller of Budget may issue circulars to a national government entity or a county government entity on budget implementation on measures to improve budget implementation and for compliance purposes.

53. Management of information

(1) The Controller of Budget shall maintain confidence in respect of all matters that come to his or her knowledge in the exercise of their duties.

(2) Subject to the provisions of Article 35 of the Constitution, the Controller of Budget shall not be called to give evidence in respect of any matter that comes to their knowledge in the exercise of their duties.

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(3) Notwithstanding subregulation (1), the Controller of Budget may disclose in any report made by him or her, any matter that in the opinion of the Controller of Budget may be disclosed in order to establish grounds for the Controller of Budget's findings and recommendations.

54. Record management

Subject to the Public Archives and Documentation Service Act (Cap. 19), the Controller of Budget shall maintain a database of—

- (a) planning and budget documents submitted under regulation 5 and 6;
- (b) requests for approval for withdrawal of funds;
- (c) authorization for withdrawal of funds;
- (d) reports prepared by the Controller of Budget under the Act and these Regulations; and
- (e) any other relevant information.

55. Digitization

The Controller of Budget may digitize the processes involved in budget implementation including authorization for withdrawal of funds to enhance efficiency.

SCHEDULE

[rr. 8(1), 8(8), 9, 10 (1), 10(1), 10(7), 11(1), 11(6), 12(1), 13(1), 13(5), 14(1)]

FORMS

[Insert logo, physical and postal address]

REQUISITION FORM A

Ref. No..... Date.....

The Controller of Budget
Office of the Controller of Budget
P.O. Box 35616-00100

NAIROBI

REQUEST FOR APPROVAL TO WITHDRAW FUNDS

FROM _____ {Insert name of appropriate Fund}

In accordance with Article _____ {Insert appropriate Article} of the Constitution of Kenya, Section 5 (a) of the Controller of Budget Act, 2016, Section _____ {Insert as appropriate} of the Public Finance Management Act (Cap. 412A) and the Appropriation Act No. ____ of 20__ Insert as appropriate}, the National Treasury /County Treasury delete as appropriate}, requests you to authorize the approval to withdraw of funds from the _____ {Insert name of appropriate

Fund}, in the sum of Ksh. _____ {Insert amount in words}, to meet the cost of services for _____ {Insert appropriate classification of expenditure}, for the year ending 30th June 20_____

Authorized Signatory

Name:.....

Designation:.....

Mandate number:.....

Signature:.....

Signed in.....on.....

Encl.

ANNEX

National/County Code	Account Number	Account Title	Amount (Kshs.)
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AUTHORIZATION FOR WITHDRAWAL OF FUNDS FORM B



Ref. No.....

Date:.....

Central Bank of Kenya
P. O. Box 60000 - 00200

NAIROBI

APPROVAL TO WITHDRAW FUNDS FROM

_____ *Insert*

name of appropriate fund

FUND FOR THE FINANCIAL YEAR 20__/20__

Ref No. _____ *{Insert relevant Form A reference}*

Date: _____ *{Insert date of relevant Form A}* By virtue of Article _____ *{Insert appropriate Article}* of the Constitution of Kenya, Section 5 (a) of the Controller of Budget Act, 2016, Section _____ *{Insert appropriate section}* of the Public Finance Management Act (Cap. 412A) and the Appropriation Act No. ____ of 20__ and the request for approval to withdraw funds from _____

{Insert name of appropriate fund} Thereby authorize the withdrawal of Kshs. _____ *{Insert*

amount in words} from

the _____ *{Insert name of appropriate fund}* to the _____ *{Insert name of specific account of Parliament, Judiciary, a national government entity or a county government entity}* for the services of the year ending 30th June, 20__.

_____ *{Signature}*

CONTROLLER OF BUDGET

Copy to: National Treasury/County Treasury *{delete as appropriate}*

P.O BOX _____ *{Insert physical address}*