

LAWS OF KENYA

THE FISCAL MANAGEMENT ACT

NO. 5 OF 2009

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THE FISCAL MANAGEMENT ACT**No. 5 of 2009**

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THE FISCAL MANAGEMENT ACT, 2008

Date of Assent: 16th June, 2009

Date of Commencement: 19th June, 2009

AN ACT of Parliament to provide for the regulation and oversight of the national budget process and the establishment of a parliamentary budget office for the oversight of the national budget process and for connected purposes

ENACTED by the Parliament of Kenya, as follows:-

PART I—PRELIMINARY

1. This Act may be cited as the Fiscal Management Act, 2008. Short Title.

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

“budget” means the process by which estimates of Government revenue and expenditures are set and includes fiscal priority setting and formulation of tax and spend policies, legislation, execution and audit of public finances;

“Budget Office” means the Parliamentary Budget Office established by section 3;

“budget policy statement” means the budget policy, statement prepared under section 7;

“compliance report” means one of several reports submitted to the National Assembly by the Minister under section 14;

“departmental committee” means the relevant select departmental committee established the Standing Orders of the National Assembly;

“financial year” means the period of twelve months ending on 30th June of each year;

“Minister” means the Minister for the time being responsible for matters relating to finance;

“principles of prudent financial management” means to the principles of product financial management established by section 6 (2);

“public entity” means–

- (a) the Government or any department of the Government;
- (b) the Courts;
- (c) the commissions established under the Constitution;
- Cap. 265. (d) a local authority under the Local Government Act;
- Cap. 446. (e) a state corporation within the meaning of the State Corporation Act;
- Cap. 491. (f) the Central Bank of Kenya established under the Central Bank of Kenya Act;
- (No. 2 of 1997) (g) a co-operative society established under the Co-operative Societies Act, 1997;
- Cap. 211. (h) a public school within the meaning of the Education Act;
- Cap. 210B. (i) a public university within the meaning of the Universities Act;
- (j) a college or other educational institution maintained or assisted out of public funds; or
- (k) an entity prescribed as a public entity for the purpose of this paragraph;

“relevant committee” means the departmental committee of the National Assembly responsible for economic and budgetary matters;

“Treasury Report” means the report made by Treasury under section 9 (3).

PART II—ADMINISTRATION

Parliamentary
Budget Office.

3. (1) There is established an office to be known as the Parliamentary Budget Office which shall be an office in the parliamentary service.

(2) The Budget Office shall consist of persons appointed on merit by virtue of their expertise in finance, economic and public policy matters.

4. (1) The functions of the Budget Office shall be to provide the National Assembly with timely and objective information and analysis in connection with the national budget and economy. Functions of the Budget Office.

(2) Without prejudice to the generality of subsection (1), the Budget Office shall—

- (a) provide budget related information to the relevant committee, the departmental committees and other financial select committees of the National Assembly;
- (b) provide service the committees referred to in paragraph (a) within their budgetary jurisdictions;
- (c) prepare reports on budgetary projections and economic forecasts and options to reduce the budget deficit;
- (d) prepare analytic studies of specific subjects such as financial risks posed by Government sponsored enterprises and financial policies;
- (e) sponsor such national and international forums as it may consider necessary.
- (f) study budget proposals and trends and where appropriate, suggest changes in the content or format of such proposals or trends;
- (g) propose, where necessary, alternative scenarios for various macro economic variables in respect of any financial year;
- (h) establish and foster such relationships with the Treasury and with other national and international organisations, with interest in budgetary and economic matters, as it deems fit for the efficient and effective discharge of its mandate;
- (i) undertake, independently or in collaboration with any appropriate person or institution, any other study or activity likely to assist in carrying out the functions specified in this subsection.

(3) The Budget Office shall ensure that its researches, studies, evaluations, findings, recommendations and other relevant literature are presented in a readily intelligible and user-friendly form.

5. (1) The relevant committee shall—

- (a) provide general direction and impetus in the realization of the objectives of this Act;

Functions of the relevant committee.

- (b) study all economic and budgetary questions falling within the competence of the National Assembly and transmit its recommendations thereon to the Assembly;
- (c) study or consider any specific question or matter referred to it by the National Assembly and transmit its recommendations thereon to the Assembly;
- (d) subject to this Act and any other written law, take policy decisions for the efficient and harmonious functioning of the Budget Office;
- (e) ensure adherence by the Minister and public entities to the board principles of prudent fiscal management;
- (f) examine all reports relating to fiscal and economic performance tabled in the National Assembly by the Minister, including the budget policy statement, annual estimates of expenditure and the various compliance reports and report to the Assembly what improvements of form or substance, if any, should be made to those reports so as to achieve optimum value for the money foregone, received or spent on the target objectives of public entities;
- (g) be the link between the Budget Office and the National Assembly.

(2) In the performance of its functions under this section, the relevant committee shall be assisted by the Budget Office, which shall also serve as its secretariat.

PART III—OVERSIGHT OF THE BUDGETARY PROCESS

Principles of prudent fiscal management.

6. (1) The Government and all public entities shall, in their policy objectives, adhere to the principles of prudent fiscal management.

(2) The principles of prudent fiscal management shall include—

- (a) a borrowing policy that ensures that public debt is sustainable;
- (b) a fiscal policy that will achieve and maintain an adequate buffer of the State's total net worth in the future;
- (c) minimization of fiscal risk to the State in respect of guaranteed loans, pension obligations and pending bills;

- (d) a wage policy that is sustainable, attractive, not wasteful pegged to the size of the economy, and ensures retention of competent staff;
- (e) policies that ensure a reasonable degree of future predictability about the level and stability in tax rates;
- (f) a national budget and budgetary process that promotes transparency, accountability and effective management of the economy and the public sector;
- (g) prioritization of productive expenditures rather than expenditures geared towards present consumption, in allocation of resources;
- (h) observance of the doctrine of separation of powers by ensuring that Parliament only gets involved in the management of public resources in the instances set out by the Constitution and any other written law.

(3) The Minister shall ensure that the principles of prudent financial management are taken into account in the preparation of and reporting to the National Assembly on all the matters required to be reported under this Act.

(4) The Government may deviate from the principles of prudent fiscal management if the Minister—

- (a) states the reasons for the departure including a plan of action and duration within which Government will revert to the principles of prudent financial management;
- (b) tables such reasons, plan of action and duration of deviation to the National Assembly for approval before such fiscal management policies are implemented.

7. (1) The Minister shall prepare and lay before the National Assembly a paper to be referred to as a budget policy statement.

Budget policy statement.

(2) The budget policy statement shall be laid before the National Assembly not later than 21st March each year or, in the event that the National Assembly is not in session on 21st March, within the first week upon the reconvening of the Assembly.

(3) The budget policy statement shall state the broad strategic macroeconomic issues that will be the basis of the budget of the succeeding financial year and the medium term and shall include –

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- (a) an assessment of the current financial year and the projected state of the economy for the succeeding three years;
 - (b) the macro economic and fiscal policies for the period specified under paragraph (a);
 - (c) targets for overall revenues, total aggregate expenditure and domestic and external borrowing for the succeeding financial year and the medium term;
 - (d) the total resources to be allocated to individual programmes within a sector or Ministry for the period identified under paragraph (a) indicating the outputs expected from each such programme during that period;
 - (e) the criteria used to allocate or apportion the available public resources among the various programmes;
 - (f) the estimates of interest and debt servicing charges and loan repayments for the financial year to which the budget relates and the next two financial years;
 - (g) proposal for financing any deficits for the financial year;
 - (h) indication of the intention regarding borrowing and actions that may increase public debt for the financial year;
 - (i) budgeted and actual revenue levels for the two preceding financial years;
 - (j) budgeted and actual expenditure for the two preceding financial years by vote and main divisions;
 - (k) forecast financial position for the financial year to which the budget relates and the next two financial years;
 - (l) statement of specific fiscal risks and contingent liabilities including guaranteed loans, pending bills, uninsured risks, promissory notes and other internationally accepted instruments, as at the day on which the forecast financial statement are published and the rules that determine what constitutes current and future fiscal risks;
 - (m) the policy objectives that will guide the Government's budget decisions during the financial year and the policy areas that the Government will focus on during the financial year.

8. (1) Upon being laid before the National Assembly, the budget policy statement shall stand committed to the relevant committee without question put.

Procedure for adoption of budget policy statement by the National Assembly.

(2) In considering the budget policy statement, the relevant committee shall consult each departmental committee and shall, not later than 15th April, lay its report before the National Assembly.

(3) The National Assembly shall discuss the report of the relevant committee on a motion that “this House do adopt the report of the Parliamentary Budget Committee on the budget policy statement”.

9. (1) The Minister shall, not later than 20th June of each year, lay before the National Assembly, the annual estimates of revenue and expenditure for the succeeding financial year.

Laying of annual estimates.

(2) The annual estimates laid before the National Assembly under the provisions of sub-section (1) shall be accompanied by a Treasury Report specifying, by department, all the measures taken by the Government to implement the audit recommendations made by the National Assembly in the previous year.

10. (1) Upon being laid before the National Assembly, the annual estimates shall stand committed to the respective departmental committees according to their jurisdictions.

Consideration of estimates by parliamentary committees.

(2) Each departmental committee shall consider, discuss and review the estimates apportioned to it by subsection (1) and submit its report thereon to the National Assembly within twenty-one days after the estimates were first laid before the National Assembly.

(3) A departmental committee shall, in considering the departmental votes assigned to it under this section, consult with the Minister responsible for the vote under consideration by that departmental committee.

11. Without prejudice to the generality of section 10, in preparing the final estimates of revenue and expenditure referred to in sub-section 9 (1), the Minister shall take into consideration the comments and recommendations of the relevant committee as submitted to the National Assembly under section 10 (2).

Minister to take into account recommendations of Assembly.

12. (1) Every public entity shall be required to prepare its budget and submit to its parent Ministry by the 28th of February each year.

Preparation of budget by public entities.

(2) The budget referred to under subsection (2) shall comprise estimates of—

(a) all revenue for the period:

(b) expenditure divided into capital and recurrent.

(2) The approved budget by Treasury must be annexed to the annual estimates of expenditure and revenue listed before the National Assembly each year.

Monthly publication
of revenues.

13. (1) Within twenty-one days after the end of each month the Minister shall publish in the Gazette a statement of actual revenues collected by category and net exchequer issues by Ministry.

Compliance report.

14. (1) The Minister shall, three months after the laying of the budget before the National Assembly, and every quarter thereafter, lay before the National Assembly, sequentially and cumulatively, a compliance report in such form and of such content as may be prescribed.

(2) Where the National Assembly is not in session on the date specified under subsection (1), the compliance report shall be laid before the National Assembly on the second day immediately after the reconvening of the National Assembly.

(3) A compliance report shall—

(a) indicate for the period under review, the extent to which the objectives and targets in the budget policy statement were met;

(b) specify the following amounts and compare them with the corresponding targets for the period under review—

(i) the actual revenue for the relevant period and a comparison of the expected:

(ii) the actual expenditure per vote, distinguishing between capital and current expenditure for that period, and for the financial year up to the end of that period.

(iii) actual borrowing for that period, and for the financial year up to the end of the financial year.

(4) In the event that objectives and targets were not met, the compliance report shall state—

(a) the reasons why such objectives and targets were not met;

- (b) the remedial measures being undertaken to ensure that objectives and targets not met will be made good in the next quarter;
- (c) any proposed Government policy decisions that may materially affect the objectives and targets in the budget statement of intent or the country's overall fiscal and economic performance.

15. The first compliance report falling due between one hundred and eighty (180) days and one hundred and twenty (120) days to a general election shall be styled "The Pre-Election Fiscal Report" and shall, in addition to requirements in section 14, provide details—

Pre-election fiscal report.

- (a) of all election related expenditure including but not limited to—
 - (i) direct election expenses such as allocations the Electoral Commission of Kenya for costs of the election and election materials;
 - (ii) indirect election expenses such as allocations to the police and security forces for the election year;
 - (iii) any other allocations as may be determined by the rules.
- (b) if any, of all planned or anticipated material deviations from the objectives and targets laid out in the Budget Policy Statement of intent for the year and the next.

16. (1) Where the National Assembly is satisfied that there has been material failure to implement previous audit recommendations made by the National Assembly, the Assembly may withhold the withdrawal of specific line items on a vote on account, from the Consolidated Fund such monies as it may determine for the purpose of meeting any expenditure of such department.

Withholding of approval.

(2) Where a department has willfully and persistently failed to implement or respond to audit questions and recommendations, the National Assembly may, subject to such conditions as it thinks expedient, withhold such amounts from the department's vote for the year as are commensurate to the amounts in the audit queries regarding that department.

(3) If the National Assembly is satisfied that a department has wilfully and persistently failed to:

- (a) practice the principles of prudence and sound fiscal management; or
- (b) adhere to proper accounting and financial management practices; or
- (c) meet fiscal objectives and goals,

it may, subject to such conditions as it considers expedient, withhold any one or more of the line items in votes for the several services under that department.

(4) Where the waste and persistent failures of a department under this section have been shown to be caused by the persistent misconduct of any public officer, the National Assembly may, by a simple majority vote, and subject to such conditions as it may impose, withhold any of the emoluments and benefits of such officer for such period as it deems fit.

(5) If the department lays a report before the National Assembly showing that it has subsequently implemented the audit recommendations, the National Assembly may, if the Appropriation Act has not come into operation, authorize such withdrawals on a vote on account by that department as it may determine.

(6) The Controller and Auditor General may, in his report to the National Assembly, recommend to the National Assembly the withholding of any item in accordance with this section.

(7) In this section—

- (a) “with-holding” means the with-holding, in part or in whole, temporarily or permanently, any one or more of the line items in the votes included in the annual estimates.
- (b) “department” includes a Ministry or any of its sub-units.

PART IV—GENERAL

Transitional.

17. (1) Upon the coming into force of this Act, the consideration of the votes on account for the various departments that have not filed compliance reports or implemented audit recommendations shall take place on the day after the annual estimates are laid before the National Assembly.

(2) Departments shall request such amounts as are needed for the purpose of meeting the expenditure necessary to provide Government services before the coming into force of the Appropriations Act for the year.

(3) The National Assembly may limit amounts approved under votes on account to twenty five per centum-or less-of the total sums in the estimates for the year if the requesting department has not complied with any of the provisions of section 18.

(4) In this Section, "Government services" means any of the services rendered and activities undertaken by any Government department whether such services are recurrent or not.

18. (1) The Permanent Secretary for the time being in-charge of the Treasury may from time to time request for information from any public institution that is necessary for purposes of preparing any report that is required to be prepared by this Act.

Authority to obtain information.

(2) A request under subsection 1 must be in writing and may provide guidance in terms of the date by which, and the format in which, the information must be provided and any public institution, that is so requested, must comply with the request.

(3) Any officer of a public institution who without reasonable cause fails to provide information required under this section commits an offence and is liable to a fine not exceeding one million shillings or to imprisonment not exceeding three years or to both fine and imprisonment.

19. (1) The Minister shall, on the recommendations of the relevant committee, make such regulations as necessary for the better carrying out of the provisions of this Act and, without prejudice to the generality of the foregoing, such regulations shall provide for—

Regulations.

- (a) the contents and form of the various reports required under this Act;
- (b) the times in which the quarterly compliance reports shall be laid before the National Assembly;
- (c) the criteria by which the National Assembly determines that there has been persistent or wilful failure to comply with audit recommendations;

(d) the formula or criteria to be used to determine what proportion of a department's vote on account is to be withheld for failure to comply with the provisions of this Act.

(2) The regulations under subsection (1) shall be made within three months from the date of coming into force of this Act and thereafter as may be necessary.

(3) Section 34 of the Interpretation and General Provisions Act shall apply with respect to regulations made under this Act.

[Subsidiary]

SUBSIDIARY LEGISLATION**THE FISCAL MANAGEMENT REGULATIONS, 2009**

L.N. 163/2009.

1. These Regulations may be cited as the Fiscal Management Regulations, 2009. Citation.
2. In these Regulations, unless the context otherwise requires— Interpretation.
 “accounting officer” has the meaning assigned thereto in the Government Financial Management Act, 2004. No. 5 of 2004.
3. Every accounting officer shall bring to the attention of every public officer working under him, the provisions of the Act and these Regulations regarding the principles and practice of prudent financial management. Sensitization of public officers.
4. The Treasury shall not later than 1st September in every year, issue a circular providing guidelines on the budget preparation and the calendar that leads to the budget policy statement and annual estimates in respect of the ensuing financial year. Preparation of budget policy statement etc.
5. (1) Where the audit recommendations made by the National Assembly under section 9 (2) of the Act have been received by the Treasury after 31st December of the preceding calendar year, the Treasury may not include a report on the implementation of the recommendations in the immediate Treasury report but shall include it in the subsequent report. Inclusion of action taken on audit recommendations in Treasury report.
- 2) Every accounting officer shall, within thirty days after every quarter of the financial year, submit to the Treasury a report on the action taken to implement the audit recommendations made by the National Assembly.
6. (1) Every public entity shall, by the 28th of February each year, prepare its budget and submit it to its parent Ministry in form FMR I set out in Schedule. Preparation of the annual budget by public entities.
- (2) A parent Ministry may, as long as the substance of the form relating to revenue and expenditure prescribed in the form is included, modify form FMR I submitted by a public entity falling under its mandate.
- (3) A parent Ministry shall keep a detailed budget in each public entity falling under its mandate.
7. For purposes of section 13 of the Act—
- (a) the actual monthly revenue shall be published in form FMR II set out in the Schedule; and
- (b) the net exchequer issues shall be published in form FMR III set out in the Schedule.
- Forms for the publication of monthly revenues and net exchequer issues.

[Subsidiary]

Form and content of compliance report.

8. The Minister shall prepare the compliance report required under section 14 (1) of the Act, in the form of a quarterly economic and budgetary review which shall contain the contents provided in section 14 (3) and 14 (4) of the Act, within forty-five days after every quarter of the financial year.

Criteria to determine proportion of vote on account to be withheld etc.

9. (1) If the National Assembly decides to withhold the vote on account of a department, the withholding of such vote on account shall remain in force until the department has complied with such conditions accompanying the withholding as the National assembly may impose, to the satisfaction of the National Assembly.

(2) If, at the time the Appropriation Act of a particular year comes into operation, there is failure to comply with such conditions as the National Assembly may impose under paragraph (1), the National Assembly shall invoke the provisions of section 16 (2) of the Act regarding withholding of amounts from the department's vote for the year as are commensurate to the amounts in the audit queries regarding the department, or such amount as the National Assembly may deem appropriate.

Cases not covered by Regulations.

10. Any case not covered by these Regulations shall be dealt with in accordance with such instructions as the Treasury may from time to time issue.

SCHEDULE

FMR—I: FORM OF BUDGET BY A PUBLIC ENTITY

Income

(i) Own generated income	xx	
(ii) Government Resources		
Grants	xx	
Loans	xx	
(iii) Other Incomes		
Grants	xx	
Loans	xx	
TOTAL INCOME		XXX

Expenditures

Recurrent Expenditures	xx	
Capital Expenditures	xx	
TOTAL EXPENDITURES		XXX
(Deficit) or Surplus		XXX

[Subsidiary]

Notes.— “Other incomes” means all other incomes own generated not from the Government of Kenya.

FMR—II: FORM OF ACTUAL MONTHLY REVENUES

	<i>Actual (KSh.)</i>
Total Revenue	
Ordinary Revenue	
Taxes on International Trade and Transactions (Import Duty)	
Excise Taxes	
Taxes on Income, Profits and Capital gains (Income Tax)	
Income Tax from Individuals (Pay As You Earn)	
Income tax from Corporations (Other Income Tax)	
Taxes on goods and services (Value Added Tax)	
VAT on Domestic goods and services	
VAT on Imported goods and services	
Other Revenue	
Investment Income (Central Bank of Kenya)	
Investment Income - Others	
Other taxes on goods and services	
Traffic Revenue	
Land Revenue	
Royalties (Forest and Mining Revenue)	
Fines and Forfeitures	
Loan Interest Receipts	
Loan Redemption Receipts	
Miscellaneous Revenue	
Taxes on Intl. Trade & Transactions (IDF Fee)	
Reimbursements	
Ministerial AIA	
Grants from Foreign Govt. through exchequer	
Loans from Foreign Govt. through exchequer	

[Subsidiary]

FMR – III: FORM OF NET EXCHEQUER ISSUES

<i>Vote</i>	<i>Ministries/Departments</i>	<i>Recurrent (KSh.)</i>	<i>Development (KSh.)</i>