

Government Financial Management Act, 2004

Act 5 of 2004 - Government Financial Management

Arrangement of Sections

- 1 - Short title and commencement.
- 2 - Definitions.
- 3 - Ministerial responsibility
- 4 - Treasury duties.
- 5 - Treasury powers - government documents, etc.
- 6 - Control of expenditures.
- 7 - Purchase and capacity of official vehicles for certain Government officers.
- 8 - Treasury directions to government officers.
- 9 - Required public service offices.
- 10 - Exchequer account.
- 11 - Exchequer account not to be overdrawn.
- 12 - Exchequer bank statements.
- 13 - Payments into exchequer account.
- 14 - Issue from exchequer account.
- 15 - Approval of withdrawals from Consolidated Fund.
- 16 - Approval of withdrawals from Consolidated Fund for investments.
- 17 - Accounting officers, appointment.
- 18 - Responsibilities of accounting officers.
- 20 - Discipline, reporting of government officers.

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- 21 - Receivers of revenue, appointment.
- 22 - Responsibilities of receivers of revenue.
- 23 - Receipt of revenue by government officers.
- 24 - Revenue from state
- 25 - Duration of appropriations.
- 26 - Special funds.
- 27 - Administration of money not for government purposes.
- 28 - Format of estimate.
- 29 - Reports on budgetary performance.
- 30 - Bank accounts.
- 31 - Cash advances (imprest).
- 32 - Duties of government officers
- 33 - Personal liability for losses, etc.
- 34 - Admissibility - printouts from electronic records.
- 35 - Regulations.
- 36 - Offence obstruction, etc.
- 37 - Transitional provisions.
- 38 - Exchequer and Audit amendments.
- 39 - Other consequential amendments and repeals.

Schedules

THIRD SCHEDULE TRANSITIONAL PROVISIONS

FIRST SCHEDULE TRANSITIONAL PROVISIONS

FIRST SCHEDULE TRANSITIONAL PROVISIONS

FIRST SCHEDULE Existing directions or instructions

FIRST SCHEDULE Existing appointments as accounting officer, etc.

FIRST SCHEDULE Discipline and reporting - past acts.

FIRST SCHEDULE Government revenue previously received.

FIRST SCHEDULE Existing public funds

SECOND SCHEDULE AMENDMENTS TO THE EXCHEQUER AND AUDIT ACT (CAP. 412)

1 - Short title and commencement.

1. This Act may be cited as the Government Financial Management Act, 2004 and shall come into operation on 1st November, 2005.

2 - Definitions.

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

"accounting officer" means an accounting officer appointed under section 17;

"Consolidated Fund" means the Consolidated Fund of Kenya established by the Constitution;

"exchequer account" means the exchequer account provided for under section 10;

"government" includes the commissions established under the Constitution and the courts;

"government money" means all money held by the government including any trust or other moneys

held by a government officer in his official capacity, either alone or jointly with another person;

"government officer" includes any public officer or official employee of the government;

"government revenue" means all revenue and receipts of the government; and

"receiver of revenue" means a receiver of revenue appointed under section 21.

3 - Ministerial responsibility

The Minister shall manage the Consolidated fund and be responsible for all matters relating to public financial affairs that are not assigned to any other Minister.

4 - Treasury duties.

4) The Treasury shall -

(a) establish procedures and systems for proper and effective management of government money and property;

(b) establish accounting procedures and systems for the government to properly account for government money and property;

(c) superintend the expenditure of government money to ensure that it can be properly accounted for;

(d) prepare and submit accounts for each financial year under the Public Audit Act, 2003' for audit by the Controller and Auditor-General; and'

(e) ensure- that the accounts prepared under paragraph. (d) comply with the provisions of this Act.

5 - Treasury powers - government documents, etc.

5. For the purposes of carrying out the duties of the Treasury, an officer of the Treasury, authorised' for the purpose of this section, has the: following powers -

(a) the officer shall have access to all' books, records, returns, reports and other documents of the government, including electronic documents, or, to any government property; and

(b) the officer may require any government officer to provide explanations, information and assistance

6 - Control of expenditures.

6.(1) No expenditure involving a charge on the Consolidated' Fund shall' be incurred without the general or specific authority of the Treasury.

(2) Notwithstanding any authority the Minister may have given, the Minister may limit or suspend an expenditure if, in the Ministers opinion;. the exigencies of the financial situation render, such a limitation or suspension necessary.

7 - Purchase and capacity of official vehicles for certain Government officers.

7:(1) Official' vehicles purchased for use by Ministers, the Speaker of the Nationa Assembly, the Chief Justice, the Attorney-General and the Head' of the Public Service, shall not exceed 2600 cc for saloon cars and 3400 cc for 4 x 4 utility vehicles.

(2) Official vehicles purchased for use by Permanent Secretaries, Accounting Officers, Court of Appeal Judges, the Controller and Auditor-General, the Chairman of the Public Service Commission, the Chairman of the Electoral Commission of Kenya, Provincial Commissioners and the Commissioner of Police shall not exceed 2400 cc for saloon cars and 3000 cc for 4 x 4 utility vehicles.

(3) Official vehicles purchased for use by officers on Job Group R and above, High Court Judges and Chief Executives of state corporations shall not exceed 2000 cc for saloon cars and 2900 cc for 4 x 4 utility vehicles:

Provided that this section shall not apply in case of vehicles purchased for official use by the President and ,the Vice-President.

8 - Treasury directions to government officers.

9.(1) The following offices shall be established as offices in the public service -

(a) the Accountant General;

(b) the Director of the National Budget; and

(c) the Internal Auditor-General, all of whom shall be qualified registered accountants.

(2) The duties and functions of the offices established under subsection (1) shall be prescribed by regulation.

9 - Required public service offices.

9.(1) The following offices shall be established as offices in the public service -

(a) the Accountant General;

(b) the Director of the National Budget; and

(c) the Internal Auditor-General, all of whom shall be qualified registered accountants.

(2) The duties and functions of the offices established under subsection (1) shall be prescribed by regulation.

10 - Exchequer account.

10.(1) There shall be an account, to be called the exchequer account, to hold the Consolidated Fund.

(2) The exchequer account shall be kept only at the Central Bank of Kenya.

11 - Exchequer account not to be overdrawn.

11. A bank at which the exchequer account is kept shall not allow the exchequer account to be overdrawn.

12 - Exchequer bank statements.

12. A bank at which the exchequer account is kept shall render statements to the Treasury showing payments into and issues from the exchequer account, at such intervals and in such form as the Treasury may direct.

13 - Payments into exchequer account.

13.(1) All amounts that form the Consolidated Fund shall be paid into the exchequer account at such times and in such manner as the Treasury may direct.

(2) Notwithstanding subsection (1), a receiver of revenue may deduct amounts required for drawbacks, repayments or discounts from gross government revenue that is required to be paid into the exchequer account.

(3) Notwithstanding subsection (1), the Treasury may allow an agent of the Government to retain revenue received by the agent to defray its expenses to the extent that such expenditures are authorized under the Constitution or another Act.

(4) Subsection (3) applies with respect to credits obtained outside Kenya under the External Loans and Credits Act but only if the credits are applied in the purchase of goods or services outside Kenya.

14 - Issue from exchequer account.

14.(1) No amount shall be issued from the exchequer account except in accordance with this Act.

(2) An approval by the Controller and Auditor-General of a withdrawal from the Consolidated Fund described in section 15 or 16 together with a direction from the Treasury to issue the approved withdrawal is sufficient authority for a bank at which the exchequer account is held to issue amounts from the exchequer account in accordance with the approval and direction.

(3) The direction from the Treasury referred to in subsection (2) shall specify the bank account or accounts that the issued amounts shall be paid to and the bank at which the exchequer account is held shall pay the amounts in accordance with that specification

15 - Approval of withdrawals from Consolidated Fund.

15.(1) The Treasury may make a requisition for the approval of the Controller and Auditor-General to a proposed withdrawal from the Consolidated Fund authorised under -

(a) an Act appropriating amounts for a financial year; or

(b) the Constitution or an Act other than an Act appropriating amounts for a financial year.

(2) A withdrawal under the authority of an Act described in subsection (1)(a) is not authorised if the total of the proposed withdrawal and previously approved withdrawals would exceed the amounts appropriated for the financial year.

(3) A withdrawal under the authority of the Constitution or an Act described in subsection (1)(b) is not authorised if the total of the proposed withdrawal and previously approved withdrawals would exceed the total amounts authorised under the Constitution or Act up to the end of the month immediately following the month in which the requisition is made.

16 - Approval of withdrawals from Consolidated Fund for investments.

16.(1) The Treasury may make a requisition for the approval of the Controller and Auditor-General to a proposed withdrawal from the Consolidated Fund for the following investments -

(a) an investment with a bank redeemable at call or upon notice not exceeding twelve months; or

(b) an investment authorized under the Trustee Act for the investment of trust funds.

(2) A withdrawal for an investment described in subsection (1) is authorised only if the Minister has authorized the investment.

(3) The proceeds of an investment described in subsection (1) shall be paid.

17 - Accounting officers, appointment.

17.(1) The Treasury shall appoint persons, to be known as accounting officers, to be responsible for accounting for such services, as the Treasury may specify, in respect of which money is appropriated by Parliament.

(2) In specifying the services in respect of which an accounting officer is appointed under subsection (1) the Treasury shall ensure that all the services for a ministry, department or commission are specified for the same accounting officer.

18 - Responsibilities of accounting officers.

18.(1) An accounting officer is responsible to the Treasury to ensure that the resources of his ministry, department or commission are used in a way that is -

(a) lawful and authorised; and

(b) effective, efficient, economical and transparent.

(2) In carrying out his responsibilities under subsection (1), an accounting officer shall do the following in relation to his ministry, department or commission -

(a) ensure that no expenditure is made unless it is lawful, authorised, effective, efficient and economical;

(b) ensure proper financial and accounting records are kept;

(c) ensure that any financial or accounting records kept in electronic format are adequately protected which shall include ensuring that such records are adequately backed-up and adequately protected against computer viruses;

No. 12 of 2003.

(d) prepare and submit accounts for each financial year under the Public Audit Act, 2003 for audit by the Controller and Auditor-General;

(e) ensure that adequate arrangements are made for the management of liabilities;

(f) ensure that all contracts are complied with;

(g) ensure that all applicable procedures are followed in the acquisition or disposal of property and that adequate arrangements are made for the custody, safeguarding and maintenance of property;

(h) bring any concerns he has that a proposed decision or policy originating from his ministry, department or commission may result in resources being used in a way that is unlawful, unauthorised, ineffective, inefficient, uneconomical or not transparent to the attention of the Minister responsible for the ministry, department or commission of the accounting officer and, if his concerns are not adequately addressed, bring them to the attention of the Treasury; and

(i) perform such other duties as may be directed by the Treasury.

20 - Discipline, reporting of accounting officers.

19.(1) If an accounting officer becomes aware that a government officer of his ministry, department or commission has done something improper, within the meaning of subsection (2), in relation to the resources of the ministry, department or commission of the accounting officer, the accounting officer shall either -

(a) take the appropriate steps to discipline the government officer; or

(b) if the accounting officer does not have the authority to discipline the government officer, report the government officer to a person who has the authority to discipline the government officer.

(2) For the purposes of subsection (1), a government officer does something improper if the government officer -

(a) fails to comply with the law or a direction issued by the Treasury;

(b) undermines any financial management procedures or controls; or

(c) makes or permits an expenditure that is unlawful or unauthorised or that is not effective, efficient or economical.

(3) A person to whom a report is made under subsection (1)(b) shall take appropriate steps to discipline the government officer.

(4) If the accounting officer believes that a government officer may have committed an offence in relation to the resources of the ministry, department or commission of the accounting officer, the accounting officer shall, in addition to complying with subsection (1), report the offence to the police and to the Treasury.

(5) For the purposes of this section the ministry, department or commission of an accounting officer is the ministry, department or commission that the services, in respect of which the accounting officer is appointed, are for.

21 - Receivers of revenue, appointment.

21.(1) The Treasury shall appoint persons, to be known as receivers of revenue, to be responsible for receiving and accounting for such government revenue as the Treasury may specify.

(2) In specifying the revenue in respect of which a receiver of revenue is appointed under subsection (1) the Treasury shall ensure that all the revenue for a ministry, department or commission are specified for the same receiver of revenue.

22 - Responsibilities of receivers of revenue.

22.(1) A receiver of revenue is responsible to the Treasury to ensure that the revenue in respect of which the receiver of revenue is appointed is collected, received and accounted for.

(2) In carrying out his responsibilities under subsection (1), a receiver of revenue shall prepare and submit accounts for each financial year under the Public Audit Act, 2003 for audit by the Controller and Auditor-General.

23 - Receipt of revenue by government officers.

23.(1) A government officer who receives government revenue but who is not a person authorised to collect it within the meaning of subsection (2) shall give the revenue to such an authorised person within seven days after receiving the revenue.

(2) The following are persons who are authorised to collect revenue for the purposes of subsection (1) -

(a) the receiver of revenue appointed in respect of the revenue;

(b) a person authorised by the receiver of revenue to collect the revenue;

(c) a person authorised by a person described in paragraph (b) to assist in the collection of the revenue by the person described in paragraph (b); and

(d) the Kenya Revenue Authority in respect of the revenue it is authorized to collect under the Kenya Revenue Authority Act.

(3) The authorised person to whom government revenue is given by a government officer under subsection (1) shall give the government officer a receipt for the revenue.

24 - Revenue from state

24.(1) Government revenue from state corporations in the form of repayments of loans, interest on loans, dividends or other similar amounts, shall be revenue for the ministry responsible for finance.

(2) The Investment Secretary shall be the receiver of revenue for the revenue described in subsection (1) and for that purpose shall be deemed to have been appointed under section 21.

(3) Notwithstanding section 21(2), the Treasury may appoint, under section 21, a different receiver of revenue for the ministry responsible for finance in respect of revenue other than the revenue described in subsection (1).

25 - Duration of appropriations.

25. (1) The following apply with respect to every appropriation by Parliament for a financial year -

(a) the appropriation ceases to have effect at the end of the financial year; and

(b) any appropriated amounts that have been withdrawn from the exchequer account but that have not been expended at the end of the financial year shall be paid into the exchequer account.

(2) The application of this section is subject to any specific provision in an Act relating to an appropriation.

26 - Special funds.

26. (1) If moneys are appropriated by Parliament to establish a fund separate from the Consolidated Fund, the Minister may establish such a fund.

(2) Money in a fund established under this section may be expended for the purposes for which the fund was established.

(3) Unless the Treasury directs otherwise -

(a) earnings or accruals of a fund established under this section shall be retained in the fund; and

(b) section 25 does not apply to an appropriation for a fund established under this section.

(4) The Minister may, by order, wind up a fund established under this section and upon the winding up of such a fund any amounts remaining in the fund shall be paid into the exchequer account.

(5) A person administering a fund established under this section shall prepare and submit accounts for each financial year under the Public Audit Act, 2003 for audit by the Controller and Auditor-General.

(6) The Minister may make regulations governing funds established under this section.

27 - Administration of money not for government purposes.

27. Government money that does not form part of the Consolidated Fund because it was raised or received other than for government purposes shall be administered in accordance with the regulations under this Act.

28 - Format of estimate.

28. The format of the annual estimates of revenues and expenditures of the government shall be in accordance with the directions issued by the Treasury.

29 - Reports on budgetary performance.

29.(1) For each financial year, the Treasury shall prepare two reports on budgetary performance, the first report covering the first half of the financial year and the second report covering the entire financial year.

(2) A report on budgetary performance shall, for the period it covers, set out the actual expenditures and revenue for the period and compare them with the expenditures and revenues that had been budgeted for that period.

(3) The Minister shall lay each report on budgetary performance before the National Assembly.

(4) For the purpose of enabling the Treasury to prepare a report required under subsection (1) an accounting officer shall prepare a report on budgetary performance for his ministry, department or commission covering the same period as is required for the report prepared by the Treasury under subsection

(5) Subsection (2) applies with respect to a report prepared under subsection (4).

(6) For the purpose of subsection (4) the ministry, department or commission of an accounting officer is the ministry, department or commission that the services, in respect of which the accounting officer is appointed, are for.

30 - Bank accounts.

30.(1) No bank account for government purposes may be opened without the written authority of the Treasury.

(2) For greater certainty, the Treasury may authorise the opening of a foreign currency bank account.

31 - Cash advances (imprests).

31.(1) An accounting officer may authorise the payment of a cash advance to a government officer to be used for payments made by the government officer in the course of his duties.

(2) A government officer to whom a cash advance has been made shall account for the use of the cash advance.

(3) A government officer to whom a cash advance has been made shall surrender the cash advance in accordance with any requirement set out in any of the following -

(a) the documents used to apply for or authorise the cash advance;

(b) the directions issued by the Treasury;

(c) the regulations; or

(d) a written notice from the accounting officer.

(4) If a government officer fails to account for the use of a cash advance or fails to surrender it when required the following apply -

(a) the amount of the cash advance not accounted for or not surrendered shall become a debt owed by the government officer;

(b) the debt shall be subject to interest at the rate prescribed by regulation; and

(c) the debt and interest may be recovered from any salary or other amounts owed to the government officer.

32 - Duties of government officers

32. A government officer shall -

(a) comply with the provisions of this Act, the regulations and any directions issued by the Treasury;

(b) ensure that the resources within his area of responsibility are used in a way that is -

(1) lawful and authorised; and

(ii) effective, efficient, economical and transparent;

(c) ensure that, within his area of responsibility, no expenditure is made unless it is lawful, authorised, effective, efficient and economical;

(d) ensure that, within his area of responsibility, adequate arrangements are made for the custody, safeguarding and maintenance of property; and

(e) use his best -efforts, within his area of responsibility, to prevent any prejudice to the financial interests of the government.

33 - Personal liability for losses, etc.

33. A government officer is personally liable to the government for any losses or damages occasioned by any act or omission in contravention of section 32.

34 - Admissibility - printouts from electronic records.

34. The admissibility, under section 38 of the Evidence Act, of an entry in a record kept in the performance of a duty under this Act extends to a printout of an entry in such a record kept in electronic format.

35 - Regulations.

35.(1) The Minister may make regulations generally for the better carrying out of the provisions of this Act and, without limiting the generality of the foregoing, may make regulations -

(a) prescribing what constitutes proper financial and accounting records for the purposes of section 18(2)(b);

(b) requiring that financial and accounting records be retained for specified periods and governing the disposal of such records after the expiry of those specified periods; governing how cash advances authorised under section 31 shall be dealt with by the government officers to whom the advances are made.

(2) The Minister shall take all proper steps to ensure that any regulations made under this section are brought to the notice of the persons directly affected by the regulations.

(3) Subject to subsection (2), it shall not be necessary to publish regulations made under this section in the Gazette.

(4) Section 34 of the Interpretation and General Provisions Act shall not apply in respect of regulations made under this section.

36 - Offence obstruction, etc.

36.(1) No person shall --

(a) obstruct or hinder a person carrying out a duty or function under this Act or exercising a power under this Act;

(b) knowingly deceive or mislead a person carrying out a duty or function under this Act or exercising a power under this Act; or

(c) wrongfully destroy or conceal a record required under this Act, the regulations or the directions issued by the Treasury.

(2) A person who contravenes subsection (1) is guilty of an offence and is liable, on conviction, to a fine not exceeding two hundred thousand shillings or to imprisonment for a term not exceeding five years or to both.

37 - Transitional provisions.

37. The provisions of the First Schedule shall apply.

38 – Exchequer and Audit amendments.

38. The Exchequer and Audit Act is amended in the manner set out in the Second Schedule.

39 - Other consequential amendments and repeals.

Schedules

39. The Acts identified in the Third Schedule are amended or repealed as indicated in the Third Schedule.

Schedules

FIRST SCHEDULE TRANSITIONAL PROVISIONS

Existing directions or instructions. Cap. 412.

1. (1) A direction or instruction of the Treasury under the Exchequer and Audit Act in force immediately before this Act comes into operation shall, so far as it is not inconsistent with this Act, remain in force and be deemed to be a direction of the Treasury under section 8.

(2) A direction or instruction to which subsection (1) applies may be repealed or amended by the Treasury under section 8.

Existing appointments as accounting

2. An appointment under the Exchequer and Audit Act as an accounting officer or a receiver of revenue in force immediately before this Act comes into operation shall continue and be deemed to be an appointment under this Act.

Discipline and reporting - past acts.

3. Sections 19 and 20 apply with respect to improper acts that occurred before this Act comes into operation.

Government revenue previously received.

4. Section 23 applies with respect to government revenue received before this Act comes into operation, but a person by whom such revenue was received has until seven days after this Act comes into operation to comply with section 23(I).

Existing public funds. Cap. 412.

5. A fund established under section 34 of the Exchequer and Audit Act shall be deemed to be a fund established under section 26.

SECOND SCHEDULE AMENDMENTS TO THE EXCHEQUER AND AUDIT ACT (CAP. 412)

Cap. 412.

1. This Schedule amends the Exchequer and Audit Act.
2. Section 2 of the Act is amended by deleting the definitions of "Consolidated Fund" and "exchequer account".
3. Sections 3, 4 and 5 of the Act are deleted.
4. Section 6 of the Act is deleted.
5. Part IV of the Act, consisting of sections 10 to 17, is deleted.
6. Part VIII of the Act, consisting of sections 33 to 36, is deleted.