

# Highlights of the Public Finance Management Act, 2012

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# Outline of the presentation

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- The legal framework for PFM
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- National and County PFM Institutions
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# What informs the design of the PFM Legal Framework

- The PFM legal framework is firmly anchored in **Article 201** of the constitution and gives effect to **‘the Principles of public finance’** and in particular, the Bill emphasizes
  - openness, accountability, and public participation in PFM;
  - equitable sharing of revenues;
  - Equitable sharing of burdens and benefits of public borrowing ; and
  - fiscal discipline is observed.
- **Article 189** of the constitution which requires national and county governments to have **autonomy in the management of their finances and setting priorities.**
- Hence the **mirror treatment** of the roles and responsibilities of key institutions involved in public financial management at the two levels of governments.
- **Chapter 12** and the **5<sup>th</sup> Schedule** of the constitution that set out the PFM legal instruments that are to be enacted.

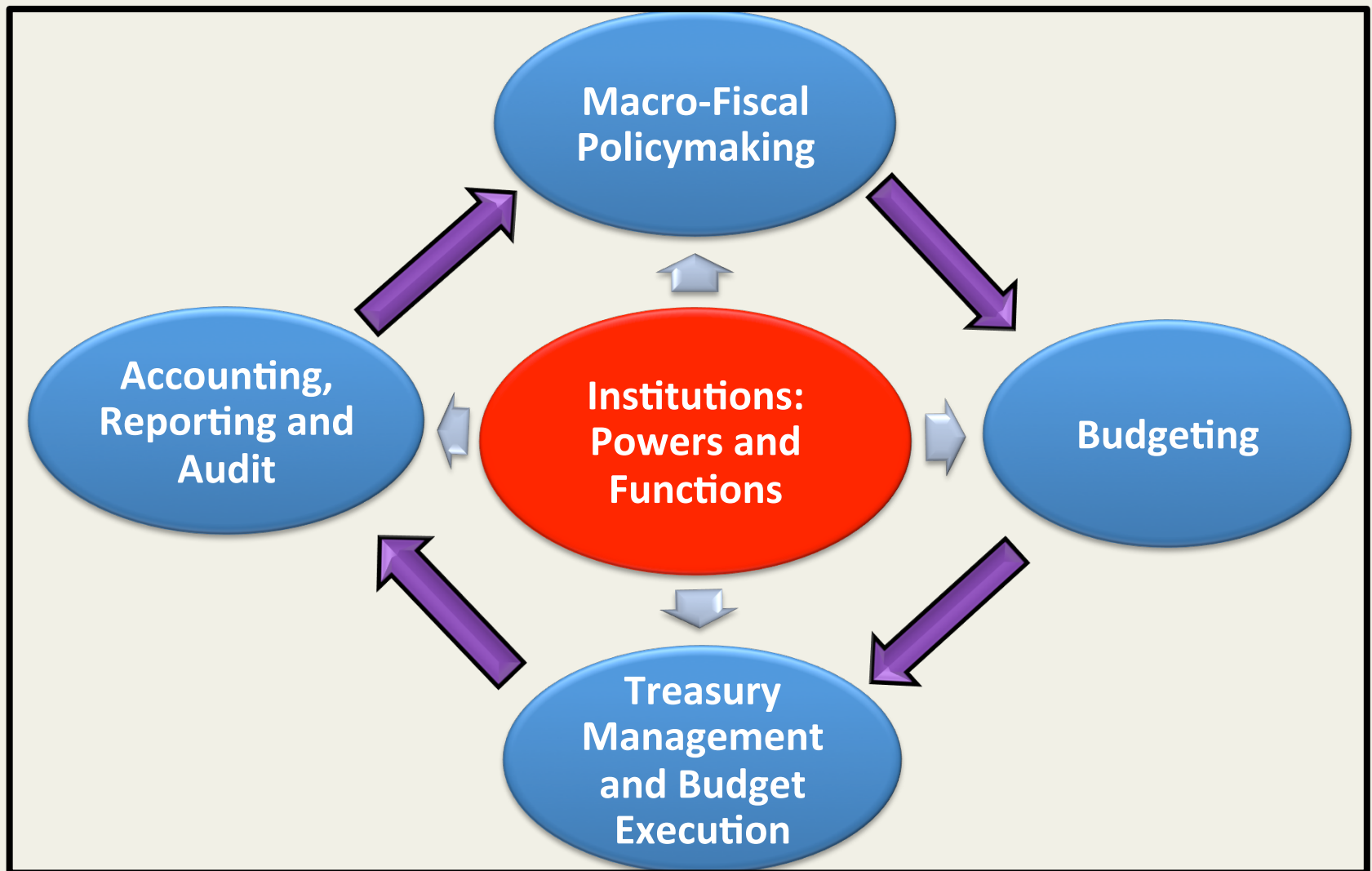
# The Legal Framework for PFM

- Relevant **PFM legal instruments enacted** recently:
  - Public Finance management Act, 2012;
  - The Commission on Revenue Allocation Act, 2011;
  - The Independent Offices (Appointment) Act, 2011; and
  - The Salaries and Remuneration Commission Act, 2011.
- **Pending important PFM legal Instruments**
  - The Controller of Budget law;
  - The Public Audit Law; and
  - The Procurement of Public Goods and Services law.
- In order to consolidate the PFM legal framework, some **laws have been repealed**:
  - The Fiscal Management Act, 2009;
  - The Government Financial Management Act, 2004;
  - The Internal Loans Act (Cap 420);
  - The External Loans and Credits Act (Cap 422);
  - The Civil Contingencies Act;
  - The Contingencies Fund and County Emergency Fund Act, 2011; and
  - The National Government Loans Guarantee Act, 2011.

# Objective of the PFM Act, 2012

- To promote **good financial management** at the National and County Government level.
- This would in turn facilitate **effective** and **efficient use of limited resources**.
- To have **one overarching legislation** applied to both levels of governments instead of several PFM laws as is the case today (based on best practice).
- To comply with **constitutional requirement to enact legislations on public finance** listed in the 5<sup>th</sup> schedule and also mentioned in Chapter 12.

# Core Areas covered by the PFM Act, 2012



# National and County PFM Institutions

## National

- Parliament: National Assembly/  
Senate/PBO
- Cabinet
- National Treasury
- Cabinet Secretary for finance
  
- Accounting Officers for National  
Government
- Receivers and Collectors of Revenue  
for national government
- **Public Debt Management Office  
(PDMO)**
- **Accounting Standards Board (ASB)**
- **Controller of Budget and Auditor-  
General;**
- **Commission on Revenue Allocation**

## County

- County Assemblies
- County Executive Committee
- County Treasuries
- County Executive Member for  
finance
  
- Accounting Officers for County  
Governments
- Receivers and Collectors of  
Revenue for CG
- **Boards of Cities and  
Municipalities**
- **County Budget and Economic  
Forum**

# Intergovernmental Fiscal Coordination Institutions

- The **Intergovernmental Budget and Economic Council** comprises of the Deputy President, Cabinet Secretary (finance), Cabinet Secretary (intergovernmental relations), Chair of Council of County Governors, each County Executive Committee members (finance) and representatives of Parliamentary Service Commission, Judicial Service Commission and Commission on Revenue Allocation.
- **Joint Intergovernmental Technical Committee**
  - Comprises of:
    - the Cabinet Secretary responsible for finance,
    - Cabinet Secretary responsible for intergovernmental relations;
    - representative of the CG or CG entity concerned;
    - representative of the Commission on Revenue Allocation; and
    - Representative of the Intergovernmental Budget and Economic Council.
  - The Committee will review any discretionary national intervention (by the Cabinet Secretary) in the financial management of county governments.



# Macro Fiscal Policy Making framework

## National Government

- Prepares a Medium-Term fiscal strategy: **Budget Policy Statement**.
- Prepares progress reports on fiscal strategy by way of the **Budget Review & Outlook Paper (BROP)**.
- Prepares a **pre-election and post-election** report.
- Required to observe the **fiscal responsibility principles** covering – debt, spending, wage bill, borrowing, fiscal risks and tax rates/bases.

## County Government

- Prepares a Medium-Term fiscal strategy: **County Fiscal Strategy Paper(CSFP)**.
- Prepares progress reports on CFSP by way of the **County Budget Review & Outlook Paper (CBROP)**.
- Required to observe the **fiscal responsibility principles** covering – debt, spending, wage bill, borrowing, fiscal risks and tax rates/bases.

# Budgeting: - The Budget Process

## National Government

Provides for the **budget process** covering:

- Issuance of the Budget circular
- Budget Review and Outlook Paper (BROP) and the Budget Policy Statement.
- **Division of Revenue Bill and County Allocation of Revenue Bill**
- Budget estimates
- Appropriation Bill
- Submission of the National Debt Management Strategy
- Public pronouncement of budget policy highlights and revenue raising measures by the Cabinet Secretary
- Approval of Finance Bill

## County Government

Provides for the **Budget Process** covering:

- **Issuance of the Budget Circular**
- Budget Review and Outlook Paper (BROP) and the CFSP
- **County Government development plan.**
- **Urban areas and cities strategic plan**
- Budget estimates
- Appropriation Bill
- Submission of the National Debt Management Strategy
- Public pronouncement of revenue raising measures
- Approval of Finance Bill

# Budgeting: -Changes in the National Budget Process in the first Transition year to accommodate the election timetable

Budget Activity	PFM Act timelines	Transition year timelines
• Issue of MTEF guidelines	• 30 <sup>th</sup> August 2012	• End July 2012
• Submission and approval of BROP by Cabinet	• By 30 <sup>th</sup> Sep 2012	• By 15 <sup>th</sup> Sep 2012
• Submission of approved BROP to Parliament	• 7 <sup>th</sup> Oct 2012	• By 22 <sup>nd</sup> Sep 2012
• Submission of BPS, DoRB and CARB to cabinet for approval	• Before 15 <sup>th</sup> Feb 2013	• Before 15 <sup>th</sup> Nov 2012
• Submission of BPS, DoRB and CARB to Parliament for approval	• By 15 <sup>th</sup> Feb 2012	• By 15 <sup>th</sup> Nov 2012
• Submission of supplementary budget proposal by ministries and departments	• Every 2 months but no later than end June 2013	• Every 2 months but no later than 3 <sup>rd</sup> Dec 2012
• Submission of supplementary budget proposals to Cabinet for approval.	• Every 2 months but no later than end June 2013	• Every 2 months but no later than 5 <sup>th</sup> Dec 2012
• Submission of supplementary budget proposals to Parliament for approval .	• Every 2 months but no later than end June 2013	• Every 2 months but no later than 15 <sup>th</sup> Dec 2012

# Budgeting: - Other critical changes in the budget process worth noting

- **Programme based budgets** to be fully implemented in 2013/14 for national government entities and 2014/15 for county government entities (section 12 of 2<sup>nd</sup> schedule of PFM Act, 2012).
- **Division of Revenue** determined first and budget estimates must be strictly in accordance with the Division of Revenue Act (section 39 of the PFM Act).
- **Review of Budget estimates** will be strictly in accordance with resolutions adopted by Parliament on the Budget Policy Statement (section 39 of the PFM Act, 2012) and:
  - Increase in one appropriation must be offset by a reduction in another appropriation
  - Any savings from reduction in expenditure will be go to reduce the deficit
- **Limited scope for additional expenditure mid-stream:** Contingencies Fund only for urgent and unforeseen expenditure (as defined in section 21 of PFM Act, 2012) and Supplementary in accordance with Article 223 and **budget reserves** will be restricted.

# Budgeting: Implication for health sector

- Budgets for health sector must be **programme based** effective 2013/14 for NG and 2014/15 for CGs
- CGs will have **autonomy** in the preparation and approval of **health sector strategies** and **budgets estimates** for health services devolved to counties.
- NG may provide incentives for purposes of motivating counties to prioritise certain health programmes through **conditional grants**.
- Health sector budgets for the CGs must be subjected to **public scrutiny through County Budget and Economic Forums**.
- Decisions on the health sector **decentralised funds** will have implication the costing of functions and therefore the revenue Bill.
- Decision on health facilities providing across county borders (e.g. **provincial health hospitals**) – especially during the transition phase will have implication on NG and CGs budgets

# Treasury Management and Budget Execution

## National Government

- Provides for the operationalization of **Consolidated Fund, Equalisation Fund and Contingencies Fund**.
- Provides for the establishment of **other national public funds**
- Establishes a **Single Treasury Account** for the National Government
- Each national government entity is required to prepare an **annual cash flow plan and forecast**
- Provides for process of **budget reallocations** and **supplementary estimates**

## County Government

- Provides for the operationalization of the **County Revenue Fund**.
- **Authorises each county government to open a County Emergency Fund.**
- Provides for the establishment of **other county public funds**.
- Each County Treasury shall establish a **Treasury Single Account for each CG**.
- Each county government entity is required to prepare an **annual cash flow plan and forecast**
- **Every county government shall prepare a consolidated annual cash flow projection by 15<sup>th</sup> June** which shall be the basis for the preparation of the **NT schedule of disbursement** to CGs.
- Provides for process of **budget reallocations** and **supplementary estimates**

# Treasury Management and Budget Execution – cont'd

- The PFM Act 2012 requires the national and county governments to establish institutional arrangements to perform the **internal audit function**.
- With regard to the management of revenues, the Act provides for the **designation of receivers of revenue** as well as the **appointment of the collectors of revenue** at both the national and county government level.
- The Act provides for the process of the **stoppage of funds** to national and county government entities.
- With regard to enforcement, the Act also provides for **sanctions** for persons who contravene the PFM law both at the national and county government levels.
- Note that **only Parliament may extend a time limit** set in the PFM Act 2012 (section 90).

# Accounting, reporting and audit

## National Government

Provides for the preparation of:

- **consolidated annual financial statement** of NG
- **annual financial statement** of NG entity
- **quarterly report** of NG entity.
- **annual report of revenue received and collected**
- **report of waivers and variations in taxes, fees and charges.**
- **annual financial statement of a national public fund**
- **Quarterly report of a national public fund**
- Separate reports by **State Corporations** (sections 88 and 89)
- **Pre and Post election reports**

## County Government

Provides for the preparation of:

- **consolidated annual financial statement** of CG.
- **annual financial statement** of CG entity
- **quarterly report** of CG entity.
- **annual report of revenue received and collected**
- **report of waivers and variations in taxes, fees and charges.**
- **annual financial statement of a county public fund**
- **Quarterly report of a county public fund**
- Separate reports by **County Corporations** (sections 184 and 185)



# Public Participation

- Various sections in the PFM Act 2012 provide for public participation in public financial management and in particular:
  - the formulation of the **Budget Policy Statement, County Fiscal Strategy Paper** and the **Budget Estimates**.
  - the formulation of **budget estimates** and **strategic plans** for urban areas and cities
  - the preparation of division of revenue Bill and County Allocation of Revenue Bill.
  - **County Budget and Economic Forum** provides a platform for public participation in county planning and budgeting.
- Section 207 of the PFM Act, 2012 requires development of **regulations** to prescribe further guidelines for public participation in public financial management.
- Requirement for **publication and publicizing** of budget documents and reports enhances public participation.

# Enforcement

## National Government

- Any offence under the PFM Act, 2012 attracts a term of **imprisonment of upto 5 years or a fine of upto Ksh. 10 Million, or both**
- Principal Secretary responsible for National Treasury **to report suspected offences** to relevant law enforcement authorities.
- **Public Officers are personally liable** for losses incurred by NG as a result of their fraudulent, corrupt or negligent acts.
- **Cabinet Secretary may impose sanctions** on errant national government entities.

## County Government

- Any offence under the PFM Act, 2012 attracts a term of **imprisonment of upto 5 years or a fine of upto Ksh. 10 Million, or both**
- County Chief Officer responsible for finance **to report suspected offences** to relevant law enforcement authorities.
- **Public Officers are personally liable** for losses incurred by CG as a result of their fraudulent, corrupt or negligent acts.

# PFM Transition Issues requiring further action

1. Transfer of fiscal powers and county budgets following the **immediate and asymmetrical transfer of functions** to county governments as required under section 23 of the Transition to devolved government Act, 2012.
2. The **quantum of county budgets** to be transferred following the decision to transfer functions to counties in the transition period
3. Need for adjustments in the **transition year Budget calendar** given the elections will take place very close to the end of the current financial year (2012/13).
4. Transition of **revenue raising powers of existing local authorities** following the repeal of Local Government Act (Cap 265) after the first elections of county assemblies under the constitution.
5. Gap is **county staff capacity** in terms of numbers and skills mix and the need to expedite capacity building of counties as required by Article 262(15)(2) of the constitution.

## Next steps

- Development of the **PFM Regulations** and **manuals**
- **CG and NG needs assessment/capacity building**
- Operationalization of PFM institutions and restructuring of existing PFM institutions
- Other activities to operationalize PFM Act 2012 e.g. establishing the Treasury Single Account; IFMIS rollout etc.

**Thank You Very Much**