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NO. 26 OF 2016
CONTROLLER OF BUDGET ACT

[Date of assent: 31st August, 2016.]

[Date of commencement: 21st September, 2016.]

AN ACT of Parliament to give effect to the provisions of Articles 225, 228 and 252 of the Constitution regarding the functions of the Office of the Controller of Budget and for connected purposes

[Act No. 26 of 2016.]

PART I — PRELIMINARY

1. Short title

This Act may be cited as the Controller of Budget Act, 2016.

2. Interpretation

In this Act, unless the context otherwise—

"accounting officer" means an officer designated as such in accordance with relevant provisions of the Public Finance Management Act, 2012, (No. 18 of 2012) or any other Act of Parliament;

"any other public funds" means any public fund other than the Consolidated Fund, County Revenue Funds or Equalization Fund that —

- (a) is reasonably excluded from the Consolidated Fund by an Act of Parliament;
- (b) is payable to another public fund established for a specific purpose; and
- (c) requires the Controller of Budget to approve withdrawals from that public fund as provided by an Act of Parliament;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for matters relating to finance;

"Controller of Budget" means the Controller of Budget appointed under Article 228 of the Constitution;

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

"Public Service Commission" means the Public Service Commission established under Article 233 of the Constitution; and

"State Organ" has the meaning assigned to it under Article 260 of the Constitution.

PART II — ADMINISTRATION

3. Qualification for appointment as Controller of Budget

(1) A person shall be qualified for appointment as the Controller of Budget if such person—

- (a) is a citizen of Kenya;
- (b) holds the qualification for the office specified in Article 228 of the Constitution;

- (c) holds a degree in finance, accounting or economics from a university recognized in Kenya; and
- (d) meets the requirements of Chapter Six of the Constitution.

(2) A person shall not be qualified for appointment under subsection (1) if the person—

- (a) is a member of Parliament;
- (b) is a member of a county assembly;
- (c) has not met his or her tax obligations;
- (d) has been removed from office for contravening the Constitution or any other law; or
- (e) is an undischarged bankrupt.

4. Vacancy and procedure for appointment of the Controller of Budget

(1) The office of the Controller of Budget shall become vacant if the Controller of Budget—

- (a) resigns in writing by a notice addressed to the President;
- (b) is removed from office under the provisions of Article 251 or Chapter six of the Constitution; or
- (c) dies.

(2) Where a vacancy occurs under subsection (1), the Public Service Commission shall within seven days by notice in the *Gazette*, at least two newspapers of national circulation and at least two television and radio stations declare the office vacant and invite applications.

(3) An application under subsection (2) shall be forwarded to the Public Service Commission within fourteen days by a qualified person.

(4) The names of all applicants under subsection (3) shall be published in the *Gazette*.

(5) The Public Service Commission shall within seven days of expiry of the period prescribed under subsection (3) convene a committee for the purpose of considering the applications and shortlisting three persons for appointment as Controller of Budget.

(6) The Committee under subsection (5) shall consist of the following persons —

- (a) a representative from the Office of the President;
- (b) a representative from the Ministry for the time being responsible for matters relating to finance;
- (c) a representative from the Office of the Attorney-General; and
- (d) a representative from the Ministry for the time being responsible for matters relating to the public service.

(7) The Committee shall hold its proceedings in public and submit to Parliament a report of the interview proceedings including the scores awarded to each candidate by each member of the committee and the criteria used in selecting the three shortlisted candidates.

(8) The Public Service Commission shall within seven days of the shortlisting of candidates under subsection (5), forward the names to the President.

(9) The President shall within seven days of receipt of the names under subsection (8), nominate one candidate for appointment as the Controller of Budget and forward the name to the National Assembly.

(10) Where the National Assembly—

- (a) approves the nominee, the Speaker of the National Assembly shall within three days of the approval, forward the name of the nominee to the President for approval.
- (b) rejects the nominee, the Speaker of the National Assembly shall within three days of the rejection, communicate the decision to the President who shall submit a fresh nominee from amongst the candidates forwarded by the Public Service Commission.

(11) If the National Assembly rejects all or any subsequent nominee under subsection (10), the provisions of subsection (1) to (9) shall apply with the necessary modifications.

(12) The President shall within seven days of receipt of the name under subsection (10) (a), by notice in the *Gazette* appoint the Controller of Budget.

(13) For the avoidance of doubt, the Public Service Commission shall only provide secretariat services for the committee convened under subsection (5).

(14) Despite the foregoing provisions, the President may by notice in the *Gazette* extend the period specified in respect of any matter under this section by a period not exceeding twenty one days.

5. Functions of the Controller of Budget

In the performance of his or her functions under Articles 228 (4) to (6), and 252 of the Constitution, the Controller of Budget shall ensure prudent and efficient use of public funds —

- (a) by authorising withdrawals from the Equalization Fund, Consolidated Fund, County Revenue Funds and any other public fund which by an Act of Parliament requires approval of the Controller of Budget for withdrawal from that fund;
- (b) by monitoring, evaluating, reporting and making recommendations to the national and county governments on measures to improve budget implementation in accordance with Article 228 of the Constitution;
- (c) in consultation with the national and county treasuries and the Public Sector Accounting Standards Board established under section 192 of the Public Finance Management Act, 2012, (No. 18 of 2012) by reviewing from time to time, the formats of requisitions and approvals of withdrawals of funds in paragraph (a);
- (d) by enforcing budgetary ceilings by Parliament on national and county government expenditure; and
- (e) in performing any other function that may be assigned to him or her by an Act of Parliament.

6. Deputy-Controller of Budget

(1) Pursuant to Article 252(1)(c) of the Constitution, there shall be a Deputy-Controller of Budget who shall be recruited through a competitive process and appointed by the Controller of Budget.

(2) A person shall be qualified for appointment as the Deputy-Controller of Budget if such person —

- (a) is a citizen of Kenya;
- (b) holds the qualification for the office specified in Article 228 of the Constitution;
- (c) holds a degree in finance, accounting or economics from a university recognized in Kenya; and
- (d) meets the requirements of Chapter Six of the Constitution.

(3) A person shall not be qualified for appointment under subsection (1) if the person —

- (a) is a member of Parliament;
- (b) is a member of a county assembly;
- (c) has not met his or her tax obligations;
- (d) has been removed from office for contravening the Constitution or any other law; or
- (e) is an undischarged bankrupt.

(4) The Deputy-Controller of Budget shall deputize the Controller of Budget and perform such duties and exercise such other powers as the Controller of Budget may delegate to him or her.

(5) In the performance of his or her duties, the Deputy Controller of Budget shall report to the Controller of Budget.

7. Acting Controller of Budget

(1) Where—

- (a) the office of the Controller of Budget becomes vacant;
- (b) the Controller of Budget has been suspended in accordance with the Constitution;
- (c) the appointment of a person as Controller of Budget is pending; or
- (d) the Controller of Budget is, for any reason unable to perform the functions of his or her office,

then, until a person is appointed to and has assumed the functions of that office in accordance with section 3, or until the Controller of Budget has resumed the performance of those functions, the Public Service Commission shall recommend the most senior officer in the office of the Controller of Budget to the President for designation as the acting Controller of Budget.

(2) A person designated under subsection (1) shall meet the minimum qualifications for appointment to the office of the Controller of Budget and shall serve for a period of not more than ninety days.

(3) When acting in terms of subsection (1), the acting Controller of Budget shall have all the powers of the Controller of Budget.

8. Submission of copies of estimates and County Fiscal Strategy Paper to Controller of Budget

For the purposes of enabling the Controller of Budget to effectively oversee the implementation of the Budget—

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- (a) the Cabinet Secretary shall at the time of submitting the budget estimates of the national government to the National Assembly submit a copy of the estimates to the Controller of Budget;
 - (b) each County Executive member responsible for finance shall at the time of submitting the budget estimates to the County Assembly of the respective county government submit a copy of the estimates to the Controller of Budget; and
 - (c) each County Executive member responsible for finance shall at the time of submitting the County Fiscal Strategy paper to the County Assembly of the respective county government submit a copy of the County Fiscal Strategy Paper to the Controller of Budget.

9. Reports of the Controller of Budget

(1) The Controller of Budget shall, in accordance with Article 228 (6) of the Constitution, submit to Parliament quarterly budget implementation reports for the national and county governments within thirty days after the end of each quarter.

(2) The reports submitted under subsection (1) shall provide information relating to —

- (a) the approved budget;
- (b) the total funds released by programmes;
- (c) the absorptive capacity of funds by projects; and
- (d) reasons of the decline if any.

(3) The reports submitted under subsection (1) shall comprise of—

- (a) a report on approved expenditures, authorised withdrawals, actual releases and actual expenditures;
- (b) the comparison between amounts provided for in the County Allocation of Revenue Act for each county in accordance with county government disbursement schedule approved by the Senate with the authorised withdrawals from the Consolidated Fund to county governments; and
- (c) a report on the receipts into the Consolidated Fund and the County Revenue Funds.

(4) For the avoidance of doubt, the reports submitted under subsection (1) shall not include reports on recent economic developments and outlook, including revenue, grants and loans forecasts and receipts.

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

(6) The Controller of Budget shall publish and publicise the reports referred to in this section not later than fourteen days after the reports are submitted to Parliament.

10. Special reports

The Controller of Budget shall prepare and submit the following special reports as provided for in the Constitution —

- (a) in accordance with Article 225 (7), a report to Parliament on funds withheld by the Cabinet Secretary giving a detailed account as to why the withholding should be continued or withdrawn;

- (b) pursuant to any investigations conducted under Article 252(1)(a), a report to Parliament, the national executive, county assemblies or county executives, or any other state agency as may be appropriate, on any matters that have come to the attention of the Controller of Budget relating to the performance of his or her functions;
- (c) pursuant to Article 254 (2), and upon request by the President, National Assembly, or the Senate, a report on a particular issue; and
- (d) a report on any particular issue as may be requested by a Governor or a county assembly.

11. Delegation of powers and duties

- (1) The Controller of Budget may—
 - (a) delegate in writing, any of his or her powers to any employee in the Office of the Controller of Budget; or
 - (b) instruct in writing, any employee in the Office of the Controller of Budget to perform any of the duties of his or her office.
- (2) A delegation or instruction under subsection (1) above —
 - (a) shall be subject to any conditions the Controller of Budget may impose; and
 - (b) shall not divest the Controller of Budget of the responsibility concerning the exercise of the power or the performance of the duty.

12. Staff of the Controller of Budget

(1) The Controller of Budget may appoint such staff as may be necessary for the proper discharge of the functions of the Office of the Controller of Budget under this Act, on the basis of such qualifications and on such terms and conditions as the Controller of Budget may determine and on such remuneration and benefits as the Salaries and Remuneration Commission, shall advise.

(2) In making appointments in terms of subsection (1), the Controller of Budget shall be guided by Articles 27 and 232 of the Constitution.

13. Secondment

(1) In addition to the staff recruited by the Controller of Budget under Article 252 (1)(c) of the Constitution and section 12 of this Act, any public entity may, upon request by the Controller of Budget, second to his or her office such number of public officers as may be necessary for the purposes of carrying out the functions of this office.

(2) A public officer seconded under subsection (1) shall, during the period of secondment, be deemed to be an officer of the Controller of Budget and shall be subject only to the direction and control of the Controller of Budget.

(3) For purposes of this Act, a public officer who is seconded to the Office of the Controller of Budget under this section, shall be deemed to be an employee of the Controller of Budget and shall enjoy the same benefits as an employee recruited directly by the Controller of Budget under this Act.

(4) The Controller of Budget may upon request by a public entity second an officer for an agreed period, for purposes of capacity building of the institution.

(5) A public officer seconded by the Controller of Budget under subsection (4), shall be deemed to be an officer of that institution and shall be subject only to the direction and control of that institution.

14. The common seal

(1) The common seal of the Controller of Budget shall be kept in such custody as the Controller of Budget shall direct and shall not be used except on his or her order.

(2) The common seal of the Controller of Budget when affixed to a document shall be *prima facie* evidence of authority unless the contrary is proved.

(3) The fixing of the common seal by the Controller of Budget shall be authenticated by the signature of the Controller of Budget:

Provided that the Controller of Budget shall nominate a member of staff to authenticate in his or her absence.

15. Protection from personal liability

Nothing done by the Controller of Budget or any person working under the instructions of the Controller of Budget shall, if done in good faith for the purposes of executing the powers, functions or duties of the Controller of Budget under the Constitution, this Act or any other law, render the Controller of Budget, officer or agent personally liable for any action, claim or demand.

16. Duty to co-operate

(1) A public officer, State Organ or State office shall co-operate with the Controller of Budget to enable the Controller of Budget to carry out his or her functions in accordance with the Constitution and any other law and shall in particular—

- (a) respond promptly to any inquiry made by the Controller of Budget;
- (b) furnish the Controller of Budget with periodic reports as to the status of management of the budget and public funds in respect of the question raised within such period as may be prescribed by the Controller of Budget; and
- (c) provide any other information that the Controller of Budget may require in the performance of his or her functions under the Constitution or any other legislation.

(2) A public officer, who refuses or fails to cooperate with the Controller of Budget as required by this section commits an offence and is liable, on conviction, to a term of imprisonment not exceeding two years or to a fine not exceeding one million shillings, or to both.

PART III — FINANCIAL PROVISIONS

17. Funds of the Controller of Budget

The funds of the Controller of Budget shall consist of—

- (a) monies appropriated by Parliament for the purposes of his or her office;
- (b) such monies or assets as may lawfully accrue to the Controller of Budget in the course of the exercise of his or her powers or in the performance of the functions set out in this Act; and
- (c) all monies from any other lawful source provided or donated.

18. Financial year

The financial year of the Controller of Budget shall be the period of twelve months ending on the thirtieth of June of each year.

19. Annual report

(1) The Controller of Budget shall cause an annual report to be prepared for each financial year.

(2) The annual report shall contain, in respect of the year to which it relates—

- (a) the audited financial statements of the Controller of Budget;
- (b) a description of the activities of the Controller of Budget;
- (c) such other statistical information as the Controller of Budget considers appropriate; and
- (d) any other information relating to his or her functions that the Controller of Budget considers necessary.

(3) The Controller of Budget shall cause the annual report to be published and publicised.

20. Annual estimates

(1) The annual estimates of the Controller of Budget shall be submitted and reported upon in accordance with the relevant provisions of the Constitution and the Public Finance Management Act, 2012, (No. 18 of 2012).

(2) Without prejudice to the generality of subsection (1)—

- (a) before the commencement of each financial year, the Controller of Budget shall cause to be prepared estimates of the revenue and expenditure for that year;
- (b) the annual estimates prepared by the Controller of Budget under paragraph (a) shall be forwarded to the Cabinet Secretary.

21. Accounts and Audit

(1) The Controller of Budget shall cause to be kept all proper books and records of accounts for his or her office.

(2) Within a period of three months after the end of each financial year, the Controller of Budget shall submit to the Auditor-General the financial statements of his or her office in respect of that year for audit.

(3) The annual accounts of the Controller of Budget shall be prepared, audited and reported upon in accordance with the provisions of the Constitution, the Public Finance Management Act, 2012 (No. 18 of 2012), the Public Audit Act, 2015 (No. 34 of 2015) and any other relevant legislation.

PART IV — MISCELLANEOUS PROVISIONS**22. Offences**

A person who —

- (a) without justification or lawful excuse, obstructs, hinders, assaults or threatens the Controller of Budget or his or her members of staff acting under this Act;
- (b) knowingly submits false or misleading information; or
- (c) knowingly misrepresents to or misleads the Controller of Budget or a member of his or her staff acting under this Act,

commits an offence and is liable, on conviction, to a term of imprisonment not exceeding two years or to fine not exceeding five million shillings or to both.

23. Offences by officers of the office of the Controller of Budget

(1) Any officer of the Office of the Controller of Budget commits an offence if that officer —

- (a) engages in a corrupt act;
- (b) knowingly and willfully conceals information on the Controller of Budget's findings for whatever reason, including in order to obtain a financial benefit for the officer or an accomplice or another person;
- (c) knowingly and willfully fails to disclose information on fraud or corrupt practice by a State Organ or public entity;
- (d) fails to disclose any conflict of interest in any matter under consideration in the course of discharging any functions under this Act; or
- (e) knowingly and willfully discloses, publishes or publicizes the Controller of Budgets' report or its contents to third parties including the media before the report is finalized and formally submitted to Parliament or a county assembly and copied to the entity that is subject of the report.

(2) Any officer of the Office of the Controller of Budget who commits an offence under subsection (1) shall be liable on conviction to a fine not exceeding ten million shillings or to imprisonment for a term not exceeding five years, or to both.

24. General penalty

Except as otherwise provided for under this Act, a person who is convicted of an offence under this Act for which no other punishment is provided, such person shall be liable to a fine not exceeding two million shillings or to a term of imprisonment not exceeding one year or, to both.

25. Regulations

The Controller of Budget may make regulations generally, which shall be laid before Parliament, for better carrying out and giving effect to, any provision of this Act.

26. Code of conduct

Within six months of the commencement of this Act, the Controller of Budget shall prepare a code of conduct for members of staff of the Office of the Controller of Budget.

27. Repeal of No. 8 of 2011

The Independent Offices (Appointment) Act is repealed.
