

THE PUBLIC FINANCE MANAGEMENT (AMENDMENT) BILL, 2023

A Bill for

AN ACT of Parliament to amend the Public Finance Management Act, 2012; and for connected purposes.

ENACTED by the Parliament of Kenya as follows—

Short title.	1. This Act may be cited as the Public Finance Management (Amendment) Act, 2023.	
Amendment of section 186 of No. 18 of 2012.	2. The Public Finance Management Act, 2012, in this Act referred to as the “Principal Act” is amended by inserting the following new part immediately after section 186—	
	PART IVA— FINANCIAL MANAGEMENT OF JOINT COMMITTEES AND JOINT AUTHORITIES	
	Application of this part to joint committees and joint authorities.	<p>186A. In this Part, unless the context otherwise requires—</p> <p>“County assemblies” means the county assemblies of the county governments for the time being cooperating to form a joint committee or joint authority;</p> <p>“County Finance Committee” means the committee of County Executive Committee Members for Finance of the county governments for the time being co-operating to form a joint committee or joint authority;</p> <p>“County Sectoral Forum” means a forum of chief officers of the county departments relating to the functions identified for cooperation by county governments for the time being co-operating to form a joint committee or joint authority;</p> <p>“County steering committee” means a committee of Governors of the county governments for the time being co-operating to form a joint committee or joint authority;</p> <p>“Finance Committee” means a committee comprising the Cabinet Secretary for the National Treasury and the County Executive Committee Members for Finance of the county governments for</p>

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	<p><i>No. 2 of 2012.</i></p> <p><i>No. 2 of 2012.</i></p>	<p>the time being co-operating to form a joint committee or joint authority;</p> <p>“Joint Authority” has the meaning assigned to it under section 23 of the Intergovernmental Relations Act, 2012;</p> <p>“Joint Committee” has the meaning assigned to it under section 23 of the Intergovernmental Relations Act, 2012;</p> <p>“Steering Committee” means a committee of the concerned Cabinet Secretaries of the cooperating functions and the Governors of the county governments for the time being co-operating to form a joint committee or joint authority;</p> <p>“Sectoral Committee” means a forum of the concerned Cabinet Secretaries and the county executive committee members of the county departments of the functions identified for cooperation between the national government and county governments respectively for the time being co-operating to form a joint committee or joint authority.</p>
	<p>Designation accounting officer of Joint Authority.</p>	<p>186B. (1) A Joint Authority shall, except as otherwise provided by law, designate an accounting officer to be responsible for the proper management of the finances of the Joint Authority.</p> <p>(2) An accounting officer shall exercise the functions and powers assigned to an accounting officer as provided section 68 and 149 of the Act.</p> <p>(3) An accounting officer shall be accountable to—</p> <p>(a) the County Finance Committee and the County Assemblies, where the cooperation amongst county governments; and</p> <p>(b) the Finance Committee, County Assemblies and the National Assembly for the financial management and administration of the Joint Authority, where the cooperation is between county governments and the National Government.</p>

	<p>Responsibilities of accounting officer designated for Joint Authority.</p>	<p>186C. (1) An accounting officer shall ensure that the resources of the Joint Authority for which the officer is designated are—</p> <ul style="list-style-type: none"> (a) used in a lawful manner and are authorised; and (b) utilized in an effective, efficient, economical and transparent manner. <p>(2) In carrying out the responsibilities imposed by subsection (1), an accounting officer shall, in respect of the Joint Authority—</p> <ul style="list-style-type: none"> (a) ensure that all expenditure by the Joint Authority complies with subsection (1); (b) ensure that the entity keeps and maintains financial and accounting records that comply with this Act; (c) ensure that all financial and accounting records kept by the Joint Authority, in any form including in electronic form, are stored in a secure manner and backed up; (d) ensure that the Joint Authority enters into lawful contracts and comply with the consequent obligations; (e) ensure that all applicable accounting procedures are adhered to in acquiring or disposing of goods and services and that, in the case of goods, adequate arrangements are made for their custody, safe guarding and maintenance; (f) promptly, communicate to the Finance Committee or County Finance Committee if, in the accounting officer’s opinion a decision or policy proposed decision of the Joint Authority or policy may result in resources being used in a way that is contrary to subsection (1); (g) prepare a five-year Joint Integrated Development plan and annual development plans for the Joint Authority in conformity with the medium-term fiscal framework and financial objectives of the Joint Authority; (h) prepare estimates of expenditure and revenue of the Joint Authority in conformity with the annual development plan referred to in paragraph (g);
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		<ul style="list-style-type: none"> (i) submit the estimates referred in (h) of the Joint Authority to the Finance Committee or County Finance Committee; (j) not later than three months after the end of each financial year, prepare annual financial statements to be approved by the Finance Committee or County Finance Committee before submission to the Auditor General and the Controller of Budget with a copy to— <ul style="list-style-type: none"> (i) the National Treasury and the respective county treasuries, in case of cooperation between national and county government; or (ii) the county treasuries, in case of cooperation amongst county governments; (k) resolve any issues resulting from an audit that remain outstanding; (l) manage the assets of the Joint Authority to ensure that it receives value for money when acquiring, using or disposing of its assets; (m) dispose of assets at the most competitive price and at the lowest possible cost ensuring that the proceeds from all asset disposals are deposited in a bank account of the Joint Authority; (n) ensure that the Joint Authority has adequate systems and processes in place to plan for, procure, account for, maintain, store and dispose of assets, including an asset register that is current, accurate and available to the relevant Finance Committee or Finance Committee or the Auditor-General; (o) provide the Finance Committee or County Finance Committee with any information it requires to fulfil its functions under this Act; (p) provide information on any frauds, losses, or any violations of subsection (1) and provide explanations for the actions taken to prevent similar conduct in future; and (q) carry out such other responsibilities as may be specified in Regulations.
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		<p>(3) Not later than three months after the Finance Committee or County Finance Committee has adopted a report with respect to a report submitted by the Controller of Budget under Article 228(6) of the Constitution, the accounting officer shall prepare a report on actions taken by the Joint Authority to the Finance Committee or County Finance Committee.</p> <p>(4) Not later than one month after receiving a report by an accounting officer under subsection (3), the Finance Committee or County Finance Committee shall submit the report to the Steering Committee or County Steering Committee, with a copy to the county assemblies and or the National Assembly as the case may be.</p> <p>(5) The Accounting officer with the approval of the Finance Committee or County Finance Committee as the case may be, shall submit a copy of the report under subsection (4) to the Controller of Budget.</p> <p>(5) The report referred to in subsection (3) shall be published and publicized.</p>
	<p>Designated accounting officer as revenue collector.</p>	<p>186D. (1) The accounting officer of a Joint Authority shall be designated as a collector of revenue to collect taxes, fees and charges on behalf of the Joint Authority.</p> <p>(2) The accounting officer shall—</p> <ul style="list-style-type: none"> (a) manage and implement credit control and revenue arrears of the Joint Authority; (b) prepare and submit quarterly reports to the Finance Committee or County Finance Committee, of any payments due to the Joint Authority in respect of Joint Authority fees and charges for goods or services, where payments due are in arrears for periods of more than thirty days; and (c) take all reasonable steps to ensure that any funds collected by the Joint Authority on behalf of any of the respective government is transferred to that respective government within one day and that such funds are not used for purposes of the Joint Authority.

	Sources of Funds of Joint Authority.	<p>186E. (1) Unless otherwise provided by law, the sources of Funds of a Joint Authority shall include—</p> <ul style="list-style-type: none"> (a) revenue arising from revenue raising measures by the Joint Authority for the purpose of defraying its costs for providing services; (b) revenue allocated and contributed by the— <ul style="list-style-type: none"> (i) county governments to the Joint Authority, where the Joint Authority is established amongst county governments; (ii) national government and county governments to the Joint Authority, where the Joint Authority is established between county governments and the national government; (c) investment income; or (d) grants and donations through the County Governments or National Government as shall be provided for in the agreement. <p>(2) A Joint Authority shall not have powers to borrow.</p>
	Criteria for allocating funds to joint authorities.	<p>186F. (1) In determining the contributions referred to under section 186E, the county governments shall use an objective criteria, where the Joint Authority is established amongst county governments.</p> <p>(2) In determining the contributions referred to under section 186E, the national government and the county governments shall use objective criteria, where the Joint Authority is established between the national government and county governments.</p> <p>(3) The objective criteria referred to under this section shall be specified in the intergovernmental agreement and approved by the County Governments or the National Government, as the case may be.</p> <p>(4) In approving the criteria in subsection (1), the county assemblies shall request for the recommendations of the Commission on Revenue</p>

		<p>Allocation, where the Joint Authority is established amongst county governments.</p> <p>(5) In approving the criteria in subsection (2), the National Assembly and the county assemblies shall seek the recommendations of the Commission on Revenue Allocation, where the Joint Authority is established between the national governments and county governments.</p>
	<p>Expenditure of Joint Authority.</p>	<p>186G. The accounting officer of a Joint Authority shall in managing public finances of the Authority’s —</p> <ul style="list-style-type: none"> (a) ensure that the expenditure on wages and benefits for its public officers shall not exceed a percentage of a Joint Authority’s revenue as shall be prescribed by the Finance Committee or County Finance Committee as the case may be; (b) the total annual expenditure of the Joint Authority shall not exceed its revenue; and (c) prudent management of fiscal risks.
	<p>Budget and budget process for joint authorities.</p>	<p>186H. (1) A Joint Authority shall develop a Joint Integrated Development plan that is consistent with the national government medium term plan and county government Joint Integrated Development plans for the cooperating counties, as the case may be.</p> <p>(2) The Joint Integrated Development plan shall specify the sources of financing in accordance with section 186 E of this Act.</p> <p>(3) The Joint Integrated Development plan shall be submitted for adoption to—</p> <ul style="list-style-type: none"> (a) the County Finance Committee, in case of cooperation amongst county governments; or (b) the Finance Committee, in case of cooperation between the national government and a county government. <p>(4) Within fourteen days of adoption of the Joint Integrated Development plan by the County Finance Committee or the Finance Committee, the accounting officer of the Joint shall submit the adopted Joint Integrated Development plan to the National Assembly</p>

		<p>and or the County Assembly, as the case may be for approval.</p> <p>(5) Upon approval of the Joint Integrated Development plan, by the National Assembly and or County Assembly as the case may be, the accounting officer of the Joint Authority shall submit the same plan to the Controller of Budget and the National Treasury.</p> <p>(6) In preparing the Joint Integrated Development plan as specified under subsection (1), the accounting officers shall seek the views of the Controller of Budget, the Commission of Revenue Allocation and the National Treasury.</p> <p>(7) A Joint Authority shall develop annual development plan in accordance with the Joint Integrated Development plan referred to under subsection (1) and shall form the basis for development of the Joint Authority budget proposals.</p> <p>(8) Where the Joint Authority is a cooperation—</p> <ul style="list-style-type: none">(a) between national government and county government, the Finance Committee shall not later than the 30th day of August of every year, issue a Circular setting out Guidelines on the budget process to be followed by the Sectoral Committee and the Joint Authority;(b) amongst county governments, the County Executive Committee Members for Finance, shall not later than the 30th day of August of every year jointly issue a Circular setting out guidelines on the budget process to be followed by the County Sectoral Committee and the Joint Authority. <p>(9) The plans referred to under subsection (2) shall provide guidelines on development of budget proposals which shall include guidelines on form and timing in which the budget proposals shall be submitted.</p> <p>(10) The sectors shall on the basis of the instructions in subsections (6) and (7) prepare and submit budget proposals to the Joint Authority for consolidation within the timelines provided in the guidelines.</p>
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		<p>(11) The accounting officer shall submit the consolidated budget proposals to the—</p> <ul style="list-style-type: none">(a) Finance committee for approval, where the cooperation is between the national government and county government;(b) County Finance Committee for approval, where the cooperation is amongst county governments. <p>(12) The Finance Committee shall submit the approved budget proposals to the steering committee for approval and onward submission to the national and county governments for inclusion into their respective budgets and approval, where the cooperation is between the national government and county government.</p> <p>(13) The County Finance Committee shall submit the approved budget proposals to the County steering committee for approval and onward submission to the county governments for inclusion into their respective county government budgets and approval, where the cooperation is amongst county governments.</p> <p>(14) The budget proposals referred to under subsection (10) and (11) shall include all estimated expenditure by vote and by programme, clearly identifying both recurrent and development expenditures of the Joint Authority.</p> <p>(15) In preparing the Joint Integrated Development plan in subsection (1) and the medium term budget estimates in subsection (9), the Joint Authority shall undertake public participation in line with this Act and regulations made there under.</p> <p>(16) The accounting officer of the Joint Authority shall—</p> <ul style="list-style-type: none">(a) publish and publicize the Joint Integrated Development plan within seven days from the date of its approval; and(b) publish and publicize the medium term budget estimates within twenty-one days after the National and all county assemblies have approved the budget estimates.
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	<p>Limited powers for the accounting officer to reallocate funds.</p>	<p>186I. (1) An accounting officer may re-allocate funds from the authorized use but may not reallocate funds where—</p> <ul style="list-style-type: none"> (a) the funds are appropriated for capital expenditure except to defray other capital expenditure; (b) the reallocation of funds is from wages to non-wages expenditure; or (c) the transfer of funds may result in contravention of fiscal responsibility principles. <p>(2) An accounting officer for a Joint Authority, may reallocate funds between programs, or between sub-votes, in the budget for a financial year if—</p> <ul style="list-style-type: none"> (a) there are provisions in the budget of a program or Sub-Vote which are unlikely to be utilized; (b) a request for the re-allocation has been made to the Finance Committee or County Finance Committee as the case may be, stating the reasons for the re-allocation and the Finance Committee or County Finance Committee has approved the request; and (c) the total sum of all re-allocations made to or from a program or Sub-Vote does not exceed ten per centum of the total expenditure approved for that program or Sub-Vote for that financial year. <p>(3) Regulations made under this Act may provide for the re-allocation of funds within Sub-votes or programs.</p>
	<p>Joint Authority Fund.</p>	<p>186J. (1) The county executive committee member for Finance for each member county may jointly establish a Fund in the name of the Joint Authority in the case of cooperation amongst County Governments.</p> <p>(2) The Cabinet Secretary and County Executive Members for Finance for each member county shall jointly establish a Fund in the name of the Joint</p>

		<p>Authority respectively in the case of cooperation between National and County Governments.</p> <p>(3) The Accounting officer of the Joint Authority shall be the Administrator of a Joint Authority Fund.</p> <p>(4) The Accounting officer of the Joint Authority shall arrange for the Fund to be kept in a Central Bank of Kenya account to be known as (Name of the Joint Authority) Fund Account.</p> <p>(5) The Accounting officer of the Joint Authority shall requisition for the Funds from the respective county executive member for Finance, in the case of cooperation among County Governments.</p> <p>(6) The Accounting officer of the Joint Authority shall requisition for the Funds from the Cabinet Secretary for the National Treasury and the respective County Executive member for Finance, in the case of cooperation between National and County Governments.</p> <p>(7) The county executive member for Finance shall requisition for funds from the Controller of Budget in line with the county governments' approved budgets for the Joint Authority, in the case of cooperation among County Governments.</p> <p>(8) The Cabinet Secretary for the National Treasury and the county executive member for Finance shall requisition for approval for withdrawal of funds from Controller of Budget in line with the National and county government approved budgets for the Joint Authority, in the case of cooperation between National and County Governments.</p> <p>(9) Upon approval of the requisitions in subsection (8), the funds shall be transferred from individual respective County Exchequer account to the Joint Authority Fund Account referred in subsection (5), in the case of cooperation among County Governments.</p> <p>(10) Upon approval of the requisitions in subsection (9), the funds shall be transferred from the national exchequer accounts or county exchequer accounts, as the case may be, to the Joint Authority Fund Account referred in subsection (4), in the case of cooperation between National and County Governments.</p>
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		<p>(11) The accounting officer of the Joint Authority shall requisition for the approval of withdrawal of funds from the Joint Authority Fund Account from the Controller of Budget to the operational account of the Joint Authority to be operated at the Central Bank of Kenya in line with the approved budgets of the Joint Authority.</p> <p>(12) The Regulations shall provide for the establishment, management, operation or winding-up of Joint Authority Funds.</p> <p>(13) This section applies to all Joint Authority Funds established by cooperating governments at both levels of government.</p>
	<p>Conditions for joint authorities to receive grants.</p>	<p>186K. (1) A Joint Authority may receive a grant or donation from a development partner only through the national and county governments with the approval of the Finance Committee and shall notify the Cabinet Secretary for the National Treasury, in a case of cooperation between National and County Government.</p> <p>(2) A Joint Authority may receive a grant or donation from a development partner only through the county government with the approval of the County Executive Committee member for finance who shall subsequently notify the Cabinet Secretary for National Treasury, in case of cooperation among county governments.</p> <p>(3) The intergovernmental agreement shall provide mechanism for the receipts and transfer of the funds from the donor through the national government or county government to the joint authority.</p> <p>(4) The grants shall be expended in accordance with the Joint Integrated Development plans as provided for under section 186H.</p> <p>(5) Engagement with the development partners on financing through grants shall be as per the Grants Agreement and the donor financing policy as shall be entered into with the development partner.</p>
	<p>Joint Authorities bank accounts.</p>	<p>186L. Allocations to the Joint Authority shall be paid into (Name of the Joint Authority) Fund Account without undue delay and shall be transferred to the Joint Authority's operational account in accordance with this Act and any requirements that may be prescribed.</p>

	<p>Quarterly and annual financial and non-financial reporting by Joint authorities.</p>	<p>186M. (1) An accounting officer for a Joint Authority shall prepare an annual report of the financial year in respect of the Joint Authority.</p> <p>(2) In preparing the annual report in subsection (1), the accounting officer shall ensure that the report—</p> <p>(a) contains information on the financial and non-financial performance of the Joint Authority; and</p> <p>(b) is in a form that complies with the standards prescribed and published by the Accounting Standards Board from time to time.</p> <p>(3) The accounting officer shall submit the annual report to the Finance Committee or County Finance Committee, as the case may be, in accordance with this Act.</p> <p>(4) The Finance Committee or County Finance Committee, as the case may be shall submit the report to the Steering Committee or County Steering Committee with copies to the National Assembly, or the County assemblies, as the case may be and the Controller of Budget.</p>
	<p>Joint Authority Fund annual financial statements.</p>	<p>186N. (1) The administrator of a Joint Authority Fund shall prepare financial statements for the Fund for each financial year in the form prescribed by the Accounting Standards Board.</p> <p>(2) In preparing a financial statement for a Joint Authority Fund, the administrator shall ensure that the report contains information on the financial and non-financial performance of the Joint Authority Fund.</p> <p>(3) Not later than three months after the end of each financial year, the administrator of a Joint Authority Fund shall submit the financial statements prepared under this section to the Auditor-General.</p> <p>(4) The administrator shall submit a copy of the financial statement to the Finance Committee or County Finance Committee, the National Assembly and County assemblies, as the case may be.</p>

	<p>Quarterly reporting by administrator of Joint Authority Fund.</p>	<p>186O. (1) An accounting officer for a Joint Authority shall prepare a report for each quarter of the financial year in respect of the Joint Authority Fund.</p> <p>(2) In preparing a quarterly report in subsection (1), the accounting officer shall ensure that the report—</p> <p>(a) contains information on the financial and non-financial performance of the Joint Authority Fund; and</p> <p>(b) is in a form that complies with the standards prescribed and published by the Accounting Standards Board from time to time.</p> <p>(3) Not later than fifteen days after the end of each quarter, the accounting officer shall submit the quarterly report to the Finance Committee or County Finance Committee, as the case may be.</p> <p>(4) The Finance Committee or County Finance Committee, shall forward a copy of the report to the Steering Committee or County Steering Committee National Assembly, County assemblies and Controller of Budget.</p>
	<p>Oversight.</p>	<p>186P. The National Assembly or the respective County Assembly shall exercise its constitutional and statutory oversight mandate over the performance of the Joint Authority.</p>
<p>PART IVB—FINANCIAL MANAGEMENT IN TRANSFER OF FUNCTIONS</p>		
	<p>Application of the part to transfer of functions.</p> <p><i>No. 2 of 2012.</i></p>	<p>186Q. This part applies to Transfer of functions as provided for under Article 187 of the Constitution and sections 24 to 28 of the Intergovernmental Relations Act, 2012.</p>
	<p>Financing of transferred functions.</p>	<p>186R. (1) Subject to the Constitution, this Act and any other Act of Parliament, and with the approval of the National Assembly and the concerned County Assembly, transferred functions shall continue to be funded from previous sources as contained in the approved budgets of the transferring government.</p> <p>(2) Where there is need for additional financial support, either level of government may finance.</p>

<p>Criteria for allocating funds to transferred functions.</p> <p>No. 2 of 2012.</p>	<p>Criteria for allocating funds to transferred functions.</p>	<p>186S. (1) The cost of the transferred functions shall be based on a costing framework developed by the National Treasury.</p> <p>(2) Additional financial resources to effectively deliver the transferred function may be considered based on availability of revenue.</p> <p>(3) The cost of transferred functions as determined under subsection (1) shall form the basis for the allocation of the transferred functions.</p> <p>(4) Allocations on transferred functions from a—</p> <ul style="list-style-type: none"> (a) county government to the National Government for a financial year shall be provided as a separate Schedule clearly identifying allocations from Equitable share, conditional allocations and own source of revenue; (b) a National government to the County Government for a financial year shall be provided as a separate Schedule clearly identifying allocations from Conditional allocations, own source revenue, appropriation in aid, and proceeds from loans and grants. <p>(5) The allocations under subsection (1) shall be included in the budget estimates of both the County and national government and shall be submitted to Parliament and County assembly for approval pursuant to the intergovernmental agreement entered in accordance with section 24 of the Intergovernmental Relations Act, 2012.</p> <p>(6) The objective criteria shall be specified in the intergovernmental agreement.</p>
<p>Budget and budget process for transferred functions.</p>	<p>Budget and budget process for transferred functions.</p>	<p>186T. (1) The budget for the—</p> <ul style="list-style-type: none"> (a) National Government shall include a transfer item to the County Government, where the national government has transferred a function to a county government, to facilitate

		<p>transfer of funds for the transferred functions; or</p> <p>(b) the County Government shall include a transfer item to the National Government, where the County Government has transferred a function to the National Government, to facilitate transfer of funds for the transferred functions.</p> <p>(2) Where the—</p> <p>(a) county government has transferred a function to the national government, the budget estimates for the national government shall include detailed items of expenditures for purposes of budget execution; or</p> <p>(b) national government has transferred a function to a county government, the budget estimates for the county government shall include detailed items of expenditures for purposes of budget execution.</p> <p>(3) The format and content for budget estimates referred in subsection (1) and (2) shall be as provided in this Act.</p> <p>(4) During the budgeting process for the transferred functions, the transferring and the receiving level of governments shall put in to consideration the provision of the Transitional Clause in the Agreement entered pursuant to Article 187 of the Constitution.</p> <p>(5) The allocations under subsection (1) shall be included in the National Government Appropriation Bill and the respective County Government Appropriation Bill and shall be submitted to the National Assembly and respective County Assembly respectively for approval.</p> <p>(6) The signing of the Deed of transfer of functions may occasion preparation of a supplementary Budget, which shall be prepared in accordance with this Act.</p>
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	<p>Budget execution of transferred functions.</p>	<p>186U. (1) The National Government and the respective County Government, shall prepare joint cash flow projections based on revenue projections from the various sources of revenue.</p> <p>(2) The joint cash flow projections shall be shared with the Controller of Budget, the National Treasury, the County Treasury and Commission on Revenue Allocation and shall form the basis for any requisition of funds from the County Revenue Fund or Consolidated Fund.</p> <p>(3) The Controller of Budget may request for additional documents for requisition of funds under subsection (2).</p> <p>(4) The Joint Authority shall publish and publicize the cash flow projections within fifteen days of receiving the cash flow projections from the National Government and respective County Government.</p> <p>(5) The monies appropriated under subsection 186W shall be transferred to a Special Purpose Account, held at the Central Bank of Kenya for the National or County Government Entity responsible for implementing the transferred functions.</p> <p>(6) The Accounting Officer of—</p> <ul style="list-style-type: none"> (a) the national government, in case of transfer of functions from a county to national government, shall ensure the functions transferred are financed from the Special Purpose Account without undue delay and to the full extent of the appropriated budgets; (b) a county government, in case of transfer of functions from the national to county government, shall ensure the functions transferred are financed from the Special Purpose Account without undue delay and to the full extent of the appropriated budgets.
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		<p>(7) The accounting officers of the national government, in case of transfer of functions from a county to national government, shall requisition for funds from the county government through the county treasury with a copy to the controller of budget.</p> <p>(8) The accounting officer of a county government, in case of transfer of function from the national to a county government, shall requisition for funds from the National Government through the National Treasury with a copy to the Controller of Budget.</p> <p>(9) The accounting officer of—</p> <p>(a) the national government, in case of transfer of functions from the National to County Government, shall requisition for funds to the Special Purpose Account from the Consolidated Fund, from the Controller of Budget; or</p> <p>(b) a County Government, in the case of transfer of function from a county to the national government, shall requisition for funds to the Special Purpose Account, from the County Revenue Fund, from the controller of budget.</p> <p>(10) The Controller of Budget shall require that any requisition for funding transferred functions shall be in accordance with the Constitution and relevant law.</p> <p>(11) When satisfied that the requisition is authorized by the Constitution and any relevant laws, Controller of Budget shall authorize withdrawal of the requested funds to the special purpose account referred in subsection (6).</p>
	<p>Accounting and reporting on transferred functions.</p>	<p>186V. (1) Accounting, reporting and oversight on expenditures in respect to transferred functions shall be as spelt out in this Act.</p> <p>(2) The accounting officer of the entity responsible for implementing transferred functions, shall prepare quarterly and annual financial and non-financial reports and submit to the Cabinet Secretary to the National Treasury with a copy to—</p> <p>(a) the Controller of Budget;</p>

		<p>(b) the County Executive Committee member for finance of respective County Government;</p> <p>(c) the Executive Committee members responsible for the transferred functions; and</p> <p>(d) the Commission on Revenue Allocation.</p> <p>(3) The reports prepared under subsection (2) shall be submitted to the Senate, the National assembly, the Controller of Budget, the Auditor General and the respective County Assembly.</p> <p>(4) The National Assembly or the respective County Assembly shall exercise its constitutional and statutory oversight mandate over the performance of transferred functions.</p>
Consequential amendments.	3. The laws specified under the Second Schedule are amended in the manner specified.	
SECOND SCHEDULE		
CONSEQUENTIAL AMENDMENTS		
Written law	Provision	Amendment
Intergovernmental Relations Act No. 2 of 2012.	s.23	Repeal and replace section 23 and substitute therefor the following new Part—
		PART IIA—INSTITUTIONAL FRAMEWORK FOR INTERGOVERNMENTAL CO-OPERATION
	Joint authorities and Joint Committees.	<p>23. For purposes of this Part—</p> <p>“Joint Authority” means an intergovernmental organ established by the National and County government or amongst county governments in accordance with Article 189(2) of the Constitution;</p> <p>“Joint Committee” means an intergovernmental organ established by the National and County government or amongst county governments in accordance with Article 189(2) of the Constitution;</p>

			<p>“intergovernmental cooperation” means cooperation between levels of government.</p>
		Principles of intergovernmental cooperation.	<p>23A. The following principles shall guide in constituting joint committees or establishment of joint authorities contemplated under this Part—</p> <ul style="list-style-type: none"> (a) the principles of intergovernmental relations specified under section of the Act; (b) recognition of the sovereignty of the people as provided for under Article 1 of the Constitution; (c) promotion of national values and principles of governance provided under Article 10 of the Constitution; (d) mutual trust, political will and equality; (e) equitable distribution of the costs and benefits of co-operation; (f) co-operation for mutual benefit; (g) the requirement for consultation and co-operation as provided under Article 6(2) of the Constitution; and (h) amicable resolution of intergovernmental disputes while co-operating in exercising their functions.
		General objectives of the Joint Authority.	<p>23B. (1) The main objective of the Joint Authority shall be to establish an intergovernmental mechanism that promotes consultation and cooperation between the National and County Governments and amongst county governments for the implementation of the Government policies, projects and programmes.</p> <p>(2) Without Prejudice of the generality of subsection (1), the specific objectives of the Joint Authority may include—</p> <ul style="list-style-type: none"> (a) coordinating and harmonizing development of norms, policies, laws and sector priorities; (b) coordinating and harmonizing implementation of government programmes at the National and county level and amongst county governments.

			<ul style="list-style-type: none"> (c) monitoring the implementation of National and County sector plans of the cooperating functions; (d) developing and advocating the coordinated development support by the National and County Governments, Development Partners, Non-state actors, and others stakeholders; (e) promoting capacity building, good Governance and partnership principles or tenets; (f) facilitate access to wider markets nationally, regionally and internationally; (g) pursue economic growth by establishing an enabling environment for trade and investment initiatives; (h) pursue joint investment initiatives to leverage on economies of scale. (i) enhance and strengthen partnerships with the private sector through public private partnerships initiatives in the various sectors promoting sharing of resources, infrastructure, Data or Information and other facilities.
		<p>Circumstances for cooperation.</p>	<p>23C. (1) The National Government and one or more County Governments, or two or more County Governments may set up a Joint Authority to—</p> <ul style="list-style-type: none"> (a) exercise a common power or function; (b) perform a concurrent function between the two levels of government; or (c) enable the member governments to combine their commercial efforts and achieve economies of scale

			<p>(2) In setting up a Joint Authority as contemplated under subsection (1), the National Government and one or more County Governments or two or more County Governments shall enter into an intergovernmental agreement specifying the manner of cooperation as envisaged under Article 189 of the Constitution and in the manner set out in First and Second Schedule to this Act.</p> <p>(3) The intergovernmental agreement under subsection (2), shall provide for—</p> <ul style="list-style-type: none"> (a) the parties to the agreement; (b) the preferred mode of establishment of the Joint Authority and its administrative framework including composition; (c) establishment of organs of the Joint Authority and their respective composition; (d) the purpose and functions to be executed by the Joint Authority; (e) the responsibilities of each party participating in the agreement; (f) the apportioning and sharing of costs and benefits, if any; (g) withdrawal or involuntary termination of the agreement; (h) amendment, modification and termination of the agreement including winding up of the Joint Authority; (i) the management of the Joint Authority.
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			<p>(4) Where the National Government intends to enter into an agreement under subsection (2), the Cabinet Secretary and County Executive Committee Member shall submit the agreement to the National Assembly and respective County Assemblies, respectively, for approval.</p> <p>(5) Where a County Government intends to enter into an agreement under subsection (2), the County Executive Committee Member shall submit the agreement to the respective County Assemblies for approval.</p> <p>(6) In executing the agreement, where the cooperation framework is —</p> <p>(a) between the national government and a county government, the responsible Cabinet Secretary and the relevant Governor shall be responsible for the execution of the Intergovernmental Agreement;</p> <p>(b) amongst county governments, the responsible Governors shall be responsible for the execution of the Intergovernmental Agreement.</p> <p>(7) Upon the approval of the Intergovernmental agreement under subsection *, the parties shall deposit the agreement with the Intergovernmental Relations Technical Committee.</p> <p>(8) The Intergovernmental Relations Technical Committee shall maintain a repository for the intergovernmental agreements.</p> <p>(9) The agreements shall be submitted to the Summit, through the Intergovernmental Relations Technical Committee, for information.</p>
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		<p>Mechanisms of cooperation.</p>	<p>23D. (1) For purposes of the cooperation, the cooperating governments may establish—</p> <ul style="list-style-type: none"> (a) either a State corporation or a Government linked company in case of vertical cooperation in line with sections 86 and 87 of Public Finance Management Act, 2012; or (b) either a County corporation or a County government linked company in case of horizontal cooperation in line with sections 182 and 183 of the Public Finance Management Act, 2012. <p>(2) For purposes of subsection (1) (a), where the National Government establishes either a State corporation or a Government linked company, the concerned County Governments participating in the agreement shall contribute and invest in the State corporation.</p> <p>(3) For purposes of subsection (2) (b), where a County Government establishes either a County corporation or County Government linked company the concerned County Governments participating in the agreement shall contribute and invest in the County corporation.</p>
		<p>Corporate status of Joint Authority.</p>	<p>23E. (1) The Joint Authority contemplated under this Part shall be a body corporate with perpetual succession and a common seal, and shall, in its corporate name, be capable of—</p> <ul style="list-style-type: none"> (a) suing and being sued; (b) taking, purchasing or otherwise acquiring, holding, charging or disposing of movable and immovable property; (c) doing or performing all other things or acts for the proper performance of its functions under this Act which may be lawfully done or performed by a body corporate.

			<p>(2) The Joint Authority shall subject to the provisions of this Act, have power to—</p> <ul style="list-style-type: none"> (a) enter into contracts, agreements, or partnerships with any other body necessary for the discharge of its functions; (b) acquire, purchase, lease, hold, or maintain any property required for the performance of its functions and sell, dispose of or otherwise deal with such property or any part thereof; (c) establish and maintain joint infrastructure projects; (d) levy taxes, fees or charges in connection with the provision of its services as authorized in this Act.
		<p>Organs of the Joint Authority.</p>	<p>23F. (1) The following shall be the organs of the Joint Authority—</p> <ul style="list-style-type: none"> (a) in case of cooperation between national and County government <ul style="list-style-type: none"> (i) the Steering Committee ; (ii) the Finance Committee; (iii)the Sectoral Committee; and (iv)the secretariat; (b) in case of cooperation amongst County governments: <ul style="list-style-type: none"> (i) the County Steering Committee; (ii) the County Finance Committee; (iii)the County Sectoral Committee; and (iv)the secretariat; <p>(2) A Joint Authority may establish such departments, directorates and services as may be necessary.</p>

		<p>Composition and functions of the Steering Committee.</p>	<p>23G. (1) The Steering Committee shall be the apex organ of the Joint Authority comprising –</p> <ul style="list-style-type: none"> (a) the concerned Governors; and (b) the relevant Cabinet Secretary. <p>(2) The County Steering Committee of the Joint Authority in case of cooperation amongst County government shall comprise of the concerned Governors.</p> <p>(3) The Steering Committee or committee shall –</p> <ul style="list-style-type: none"> (a) provide the general directions, guidance and impetus to the development and achievement of the Joint Authority; (b) consider the annual progress reports and such other reports submitted to it by the finance committee and as specified in the agreement; (c) direct the achievement of the objectives of the Joint Authority; (d) approve the budget of the Joint Authority; (e) approve administrative rules and guidelines of the Joint Authority formulated by the finance committee; (f) recommend the enactment of legislations for enactment by member governments for carrying into effect the provisions of this Part; and (g) undertake any other functions as may be conferred to it by the intergovernmental agreement. <p>(4) The Steering Committee shall meet at least twice a year and may hold extraordinary meetings at the request of any member of the steering committee.</p> <p>(5) At least half of the total membership of the steering committee shall form quorum at any of its meetings.</p> <p>(6) The decisions of the steering committee shall be by a simple majority of</p>
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			<p>the members of the committee provided that the steering committee shall endeavor from time to time to reach its decisions by consensus.</p> <p>(7) Subject to the provisions of this Act, the steering committee shall determine its own procedures, including that for convening its meetings, conduct of its business and the rotation of the office of chairperson amongst their number.</p> <p>(8) The provision of sub sections 3 to 7 shall with necessary modification to the County Steering committee.</p>
		<p>Composition and functions of the Finance Committee.</p>	<p>23H. (1) The finance Committee of the Joint Authority in case of cooperation between national and County governments shall comprise –</p> <ul style="list-style-type: none"> (a) the Principal Secretary for the time being responsible for Finance; and (b) the concerned chief officers for Finance. <p>(2) The County Finance Committee of the Joint Authority in case of cooperation amongst County government shall comprise –</p> <ul style="list-style-type: none"> (a) the concerned county executive committee members for Finance; (b) **** <p>(3) The members of the finance committee shall elect from their number a chairperson of the committee who shall serve for a period of one year, on a rotational basis.</p> <p>(4) The finance Committee shall–</p> <ul style="list-style-type: none"> (a) promote, and oversee the implementation of the projects or programs of the Joint Authority; (b) oversee the implementation of policy decisions for the realization of the objectives of the Joint Authority; (c) coordinate and ensure harmonization of the policies, programs and projects of the Joint Authority;

			<p>(d) give directions to the sectoral Committee and the Secretariat;</p> <p>(e) formulate administrative rules and guidelines of the Joint Authority;</p> <p>(f) consider the budget of the Joint Authority;</p> <p>(g) recommend to the steering committee the establishment or reorganization of any sectoral committee;</p> <p>(h) implement the decisions and directives of the steering committee;</p> <p>(i) submit annual progress reports to the steering committee and prepare the agenda for the meeting of the steering committee;</p> <p>(j) make recommendations and give opinions to the steering committee, as may be necessary for the realization of the objectives of the Joint Authority; and</p> <p>(k) exercise such other powers and perform such other functions as are vested in or conferred in it by the intergovernmental agreement.</p> <p>(5) The finance Committee shall meet at least four times in every year: Provided that a meeting of the finance committee shall precede a meeting of the steering committee.</p> <p>(6) The finance committee may, with the concurrence of at least one third of the member governments delegations, hold an extra-ordinary meeting.</p> <p>(7) At least half of the total membership of the finance committee shall form quorum at any of the meetings of the finance committee.</p> <p>(8) The decisions of the finance committee shall be by a simple majority of the members provided that the finance committee shall endeavor from time to time to reach its decisions by consensus.</p> <p>(9) All members of the finance committee who emanate from the same government</p>
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			<p>shall collectively constitute a single member government for purposes of subsections (4), (5) and (6).</p> <p>(10) Subject to the provisions of this Act, the finance committee shall determine its own procedures, including that for convening its meetings, conduct of its business and the rotation of the office of chairperson amongst their number.</p> <p>(11) The provision of subsections (3) to (9) shall with necessary modification to the County Finance committee.</p>
		<p>Composition and functions of the Sectoral Committee.</p>	<p>23I. (1) The Sectoral Committee of the Joint Authority shall comprise –</p> <ul style="list-style-type: none"> (a) the concerned Principal Secretary; and (b) the concerned chief officers for the sectors. <p>(2) The County Sectoral Committee of the Joint Authority in case of cooperation amongst County governments shall comprise of the respective Chief Officers for the sectors.</p> <p>(3) The members of the Sectoral Committee shall elect from their number a chairperson of the committee who shall serve for a period of one year, on a rotational basis.</p> <p>(4) The Sectoral Committee shall be responsible for –</p> <ul style="list-style-type: none"> (a) be responsible for the formulation of a comprehensive Joint Authority programme specifying the priorities thereof; (b) monitor and review the implementation of the Joint Authority programme; (c) submit to the finance committee reports or recommendations on the implementation of the Joint Authority programme; (d) undertake such other functions that may be conferred on it by this Act or the intergovernmental Agreement.

			<p>(5) Subject to any directions that may be given by the finance committee, the sectoral Committee shall meet as often as necessary, for the proper discharge of its functions and shall prepare its rules of procedure.</p> <p>(6) The rules of procedure of meetings applicable to the finance committee shall apply with necessary modifications to the sectoral Committee.</p> <p>(7) The provision of subsections (3) to (6) shall with necessary modification to the County Sectoral committee</p>
		Secretariat of the Joint Authority.	<p>23J. (1) There shall be established for each Joint Authority a Secretariat headed by the Chief Executive Officer.</p> <p>(2) The Finance committee shall competitively recruit a Chief Executive Officer and submit the names of three nominees for appointment by the Steering Committee.</p>
		Qualification for appointment as a chief executive officer.	<p>23K. (1) A person shall be qualified for appointment as chief executive officer, if that person —</p> <ul style="list-style-type: none"> (a) holds at least a degree in a relevant field from a university recognized in Kenya; (b) has knowledge and experience in any of the following fields— <ul style="list-style-type: none"> (i) Public administration; (ii) law; (iii) economics; (iv) finance; (v) social science; or (vi) any other relevant field; (c) has a distinguished career in a senior management position in either private or public sector; (d) holds at least ten years' post

			<p>qualification professional experience; and</p> <p>(e) satisfies the requirements of Chapter Six of the Constitution.</p> <p>(2) A person shall not be qualified for appointment as a chief executive officer under subsection (1), if that person—</p> <p>(a) is a member of Parliament or County Assembly;</p> <p>(b) is a member of a governing body of a political party;</p> <p>(c) is a member of a Commission established under the Constitution;</p> <p>(d) is adjudged bankrupt or enters into a composition scheme or arrangement with his or her creditors;</p> <p>(e) fails to comply with the requirements of Chapter Six of the Constitution; or</p> <p>(f) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months or to a fine exceeding ten thousand shillings.</p>
		<p>Responsibilities of the chief executive officer.</p>	<p>23L. (1) The Chief Executive Officer shall be the accounting officer of the Joint Authority and shall—</p> <p>(a) be the Head of the Secretariat;</p> <p>(b) be the Secretary of the committees established under sections *** in the case of vertical and horizontal cooperation; and</p> <p>(c) carry out such other duties as are conferred by this Act or the intergovernmental Agreement or as the finance committee may direct.</p> <p>(2) The terms and conditions of service of the Chief Executive Officer shall be determined by the finance committee and approved by the steering committee.</p>

		Other officers and staff of the Secretariat.	<p>23M. (1) There shall be such other officers and staff in the service of the Joint Authority as the Steering Committee or County Steering Committee may determine.</p> <p>(2) All staff of the secretariat shall be appointed in accordance with staff rules, regulations and terms and conditions of service of the Joint Authority.</p> <p>(3) The terms and conditions of the service of the staff shall be determined by the finance committee.</p>
		Functions of the Secretariat.	<p>23N. The Secretariat shall be responsible for—</p> <p>(a) the general administration and financial management of the Joint Authority;</p> <p>(b) implementing the decisions of the steering committee and the finance committee;</p> <p>(c) undertake any other duties as may be assigned from time to time,</p>
		Joint Committees	
		Constitution of Joint Committees.	<p>23O. (1) The National Government and one or more County Governments, or two or more County Governments may, through a written agreement and by notice in the <i>Gazette</i>, constitute a Joint Committee.</p> <p>(2) Pursuant to section 23 of the Act, the Joint Committee constituted under paragraph (1) shall undertake specific tasks of common interests to the member governments as stipulated in the agreement.</p> <p>(3) Where a Joint Committee is established between—</p> <p>(a) the National Government and a County Government, the Joint Committee Agreement shall be executed by the Cabinet Secretary responsible for the sector and the respective Governor; and</p>

			<p>(b) two or more County Governments, the Joint Committee Agreement shall be executed by the Governor of each member County.</p> <p>(4) A Joint Committee Agreement shall provide for—</p> <p>(a) the parties to the agreement;</p> <p>(b) the responsibilities of each member government participating in the agreement;</p> <p>(c) the terms of reference of the Joint Committee;</p> <p>(d) the number of members that each member government may appoint to the joint committee;</p> <p>(e) withdrawal or involuntary termination of the agreement;</p> <p>(f) amendment, modification or termination of the agreement;</p> <p>(g) financing arrangements for the joint committee including contribution from member counties; and</p> <p>(h) any other matter relating to the appointment, operation, or responsibilities of the Joint Committee that the member parties agree.</p>
		<i>Other forms of co-operation</i>	
		Intergovernmental partnerships and associations.	23P. The provisions of section 23M shall with necessary modifications apply in establishment of other forms of cooperation

			between National and one or more county governments and among two or more county governments including Intergovernmental partnerships and associations.
		Savings and Transitional provisions.	<p>23Q. (1) On the appointed day, the Chief Executive Officer and staff of the existing Joint Authority or Joint committee shall continue to serve in the offices of Chief Executive Officer and staff of the Joint Authority respectively and shall be deemed to have been appointed under the provisions of this Act:</p> <p>Provided that the Chief Executive Officer shall serve for the remaining period of his current contractual term.</p> <p>(2) On the appointed day, there shall be transferred to and vested in the Joint Authority by virtue of this section and without further assurances, all assets and liabilities of the secretariat.</p> <p>(3) Every contract made by or on behalf of the Joint Authority/Joint Committee before the commencement of this Act in writing, shall have effect as if made under this Agreement.</p>
		Winding up of a Joint Authority or joint committee.	<p>23R. A Joint Authority or Joint Committee may be wound up in accordance with the provisions of the Agreement which shall include the distribution of assets and liabilities and conditions under which the Joint Authority or Joint Committee may be wound up</p>

MEMORANDUM OF OBJECTS AND REASONS

The purpose of the Bill is to amend the Public Finance Management Act, 2012 in order to *inter alia* provide for:

The Bill contains of 18 clauses and contains:

Statement on the delegation of legislative powers and limitation of fundamental rights and freedoms

The Bill does not limit fundamental rights and freedoms neither does it delegate any legislative power.

Statement on how the Bill concerns county governments

The Bill is one that concerns county governments in terms of Article 110(1)(a) of the Constitution.

Statement that the Bill is not a money Bill, within the meaning of Article 114 of the Constitution

This is a money Bill within the meaning of Article 114 of the Constitution.

Dated the, 2023.

Njuguna Ndung'u,
Cabinet Secretary for National Treasury.

FIRST SCHEDULE (SECTION **)

COOPERATION AGREEMENT BETWEEN THE NATIONAL AND ...COUNTY GOVERNMENTS

PREAMBLE

AND WHEREAS the Constitution of Kenya provides an enabling framework for cooperation frameworks and in particular, Article 189(2) of the Constitution require Government at each level to cooperate in the performance of functions and exercise of powers and permits the establishment of joint committees and joint authorities to facilitate such cooperation:

WHEREAS the National Government and County Government(s) of *****(hereinafter referred to as the Member Governments) enjoy economic, commercial, industrial and other ties:

AND WHEREAS the Constitution of Kenya establishes a devolved system of government (consisting of a national government and forty-seven county governments) that not only brings decision-making structures and processes closer to the people, but also creates opportunities for cooperation, growth and development:

AND WHEREAS while the devolved system of government promises to address inclusive governance;

AND WHEREAS Article 6(2) of the Constitution requires governments at the national and county levels to conduct their mutual relations on the basis of consultation and cooperation:

AND WHEREAS joint authorities can enable the National and County Governments to leverage economies of scale, and facilitate the development, management and utilization of cross boundary economic resources and infrastructure:

AND WHEREAS the said Member Governments, with a view to realizing a fast and balanced development are resolved to creating an enabling environment in all the Member Governments in order to attract investments and allow the private sector to play a leading role in the socioeconomic development activities through the development of sound macroeconomics and sectoral policies and their efficient management and while taking cognizance of the world's government negotiated set of Sustainable Development Goals (SDGs) and the national development plans particularly Kenya Vision 2030, which constitutes the country's economic blueprint that charts the strategic priorities and interventions for development for the period 2008-2030:

AND WHEREAS the said Member Governments, with a view to strengthening their cooperation have resolved to adhere to the fundamental and operational principles that shall govern the achievements of the objectives set out herein:

AND WHEREAS the said Member Governments have resolved to act in concert to achieve the objectives set out herein:

NOW THEREFORE the National Government and County Governments of *****

DETERMINED to strengthen their economic, industrial, social, technological and other ties for their fast, balanced and sustainable development by the establishment of a Joint Authority:

CONVINCED that cooperation by the Member Governments will raise the standard of living of their people, leverage economies of scale, maintain and enhance the economic stability, foster close and peaceful relations among the counties and accelerate the development of the Member Governments:

AGREE AS FOLLOWS: Clause 1 Interpretation

1. In this Agreement Agreement means the *****

Joint Authority means ***** established under Section ****;

Cabinet Secretary means *****

Principal Secretary means *****

Member Governments means *****

Chief Executive Officer means the Chief Executive Officer appointed under section **

Council means

Minorities means a category of people differentiated from the social majority in a particular Member County;

Pillar Committee means; *****

2. In this Agreement a reference to a law, regulation or guidelines shall be construed as a reference to the law, regulation or guidelines as from time to time amended, added to or repealed.

CLAUSE 2 Establishment of the Joint Authority

By this Agreement the Member Governments establish amongst themselves the xxxxxxxx Joint Authority. (NAME OF JOINT AUTHORITY)

CLAUSE 3 Membership of the Joint Authority

1. The members of the Joint Authority, in this Agreement referred to as “the Member Governments”, shall be the National and County Government(s) of *****and any other county granted membership to the Joint Authority under this Agreement.

2. The Member Governments may, upon such terms and in such manner as they may determine together negotiate with any other county the granting of membership to, or association of that county with, the Joint Authority or its participation in any of the activities of the Joint Authority.

3. Matters to be taken into account by the Member Governments in considering the application by another county to become a member of, be associated with, or participate in any of the activities of the Joint Authority shall include that county’s;

(a) Acceptance of membership to the Joint Authority as set out in this Agreement;

(b) potential contribution to the strengthening of cooperation in the achievement of the objectives of the Joint Authority; and

(c) social and economic policies being compatible with those of the Member Governments of the Joint Authority.

4. The conditions and other considerations that shall govern the membership or association of a new county with the Joint Authority or participation in the activities of the Joint Authority shall be those prescribed in this agreement.

5. The granting of observer status with respect to the Joint Authority shall:

(a) in the case of another county, be the prerogative of the
and

(b) in the case of an intergovernmental organization or civil society organization, be the prerogative of the.

6. The procedure to be followed with respect to the granting of membership, participation in any activities of the Joint Authority, or observer status shall be prescribed by the

CLAUSE 4 Objectives of the Joint Authority

1. The objectives of the Joint Authority shall be to develop policies and programs aimed at widening and enhancing cooperation among the Member Governments more specifically in- (specify the objects of the agreement)

CLAUSE 5 Fundamental Principles of the Joint Authority

The principles that shall govern the practical achievements of the objectives of the Joint Authority includes—

- (a) the values and principles set out in the Constitution and laws of Kenya;
- (b) mutual trust, political will and equality;
- (c) equitable distribution of the costs and benefits of cooperation;
- (d) cooperation for mutual benefit; and
- (e) peaceful coexistence.

CLAUSE 6 Budget

1. There shall be a budget for the Joint Authority developed in line with section **** of the Public Finance Management Act.

CLAUSE 7 Applicable Law

This Agreement shall be interpreted according to and shall be governed by the laws of Kenya.

CLAUSE 8 Dispute Resolution

(a) Any dispute arising in connection with this Agreement, including any question in respect of the interpretation, validity, termination, or non-termination of this Agreement, shall be settled within the framework of the Intergovernmental Relations Act, 2012.

CLAUSE 9 Headquarters and other offices of the Joint Authority

1. The headquarters of the Joint Authority shall be in *****
2. There may be established such offices of the Joint Authority in any of its Member Governments as may be agreed upon from time to time.

CLAUSE 10 Cooperation

The Joint Authority may, pursuant to the Constitution and the Intergovernmental Relations Act, 2012, enter into such agreement with a national government entity or county government(s) that are not members of the Joint Authority

CLAUSE 11 Sanctions

A Member Government which defaults in meeting its financial and other obligations under this Agreement shall be subject to such action as the Steering committee may on the recommendation of the Finance Committee, determine.

CLAUSE 12 Implementation of the Agreement

1. Each Member Government undertakes to adopt and enforce the necessary rules and regulations to implement and enforce this Agreement and the programs adopted by such Member Governments to implement the programs contemplated by this Agreement.

2. The Joint Authority shall submit an annual report on implementation of this Agreement to the Steering Committee

CLAUSE 13 Admission of New Member(s)

1. Where a county government intends to become a member of the...

Any county government may, at any time after the entry into force of this agreement, notify the Chairperson of the Steering Committee or County Steering Committee body of its intention to accede to this agreement and to be admitted as a member of the Joint Authority.

2. The Chairperson of the Steering Committee or County Steering Committee shall, upon receipt of such notification, transmit copies thereof to all the Member Governments.

3. The Steering Committee shall decide to admit a County Government as a member of the Joint Authority by consensus. However, in the instance where there more than two member Governments and a decision to admit cannot be made by consensus, such a decision shall be made by majority vote of the committee members.

CLAUSE 14 Cessation of Membership

1. Any Member Government that desires to renounce its membership of the Joint Authority shall submit a written notification to the Chairperson of the Apex body.

2. At the end of one year from the date of such notification, if not withdrawn, this agreement shall cease to apply with respect to the renouncing Member Government, which shall there by cease to belong to the Joint Authority.

3. During the period of one referred to in Paragraph 2 of this clause, a Member County wishing to withdraw from the Joint Authority shall comply with the provisions of this agreement and shall be bound to discharge its obligations under this agreement up to and including the date of its withdrawal.

4. If the Joint Authority comprises of only two member governments and one of them renounces membership, the agreement shall be deemed to have automatically lapsed.

5. Where the National Government withdraws from the agreement, the agreement shall lapse automatically

CLAUSE 15 Expulsion of a Member County

1. The Steering Committee body may expel a Member Government from the Joint Authority for gross and persistent violation of the principles and objectives of this Agreement after giving such a Member County six months' written notice.
2. Upon expiration of the period specified in Paragraph 1, the Member County concerned shall cease to be a member of the Joint Authority, unless the notice is cancelled within the notice period.
3. During the period referred to in paragraphs 1 and 2, the Member County concerned shall continue to comply with the provisions of this Agreement and is liable to discharge all subsisting obligations and long-term commitments incurred during membership.

CLAUSE 16 Rights over property and Assets of the Joint Authority upon Cessation of Membership

1. Where a Joint Authority exists and a Member Government withdraws or is expelled in accordance with this Agreement, the property of the Joint Authority in that Member Government shall remain vested in the Joint Authority.
2. A County that has ceased to be a member of the Joint Authority shall have no claim to or any rights over any property and assets of the Joint Authority.
3. The signed agreement shall provide for the sharing of property and assets to be applied during cessation of membership.
4. Where an agreement involving two Member Governments lapses, Assets shall be shared among the governments in accordance with the relevant laws, policies and frameworks

CLAUSE 17 Amendments

1. A Member Government may propose an amendment or revision to this agreement.
2. A proposal for the amendment or revision of this agreement shall be submitted to the Steering Committee who shall make a determination.
3. The Steering Committee shall, upon the advice of the finance committee, examine the proposals for amendment or revision of this agreement within a period of six months following notification of the Member Governments.
4. The Steering Committee shall adopt any amendment or revision of this agreement by consensus or, failing which, by a two-thirds majority vote of the Member Governments.
5. An amendment or revision of this agreement that the Steering Committee adopts in accordance with Paragraph 4 of this Clause shall be submitted for ratification by all the Member Governments.

CLAUSE 18 Duration of the Agreement and Termination

1. Once effective, this Agreement shall continue in force and remain binding for the specified duration for each and every Member Government unless terminated.
2. This Agreement may be terminated at any time by a two-thirds majority vote of the Steering Committee. In the event of such termination, all rights established under the Agreement shall continue unimpaired.
3. Where the agreement involves two Member Governments and one Member Government withdraws from the agreement, the agreement shall be deemed to be terminated.
4. Where the agreement involves the National Government and more than two County Member Governments and the National Government withdraws from the agreement, the agreement shall be deemed to be terminated automatically.

CLAUSE 19 Approval of the Agreement by the County Assembly

A proposed agreement by Member Governments shall be transmitted to the clerk of the National Assembly and the clerk of the relevant Member County Assemblies accompanied by a report of the outcome of public participation indicating: -

- a) who was consulted;
- (b) the period within which the consultations were undertaken
- (c) the responses received from the public; and
- (d) an analysis of the outcome of the consultations.

Parliament and Member County Assemblies may conduct further public consultation on the proposed agreement through an appropriate mechanism in accordance with the respective standing orders.

Where the National Assembly and the Member County Assemblies by a simple majority adopt the proposed agreement, the respective clerks of the Assemblies shall within fourteen days notify the CS and the Governors of the Member Counties of the decision.

Where the National Assembly and the Member County Assembly reject the proposed agreement, the clerks of the respective Assemblies shall within fourteen days of the rejection notify the CS and Governors of the Member Counties of the decision.

CLAUSE 20 Ratification, Effective Date and Execution

1. This Agreement shall be signed and sealed in identical original copies by the respective Cabinet Secretary and County Governors of the signatory Member Governments.
2. A signed copy shall be filed with the Principal Secretary and County Secretary of each of the signatory Member Governments, and one copy shall be filed and retained in the archives of the Joint Authority.
3. The signatures shall be affixed and attested under the following form:

In Witness Whereof, and in evidence of the adoption and enactment into law of this Agreement by the National Assembly and County Assemblies of the signatory Member Governments, the respective Cabinet Secretary and County Governors do hereby, in accordance with the authority conferred by law, sign this Agreement in duplicate original copies, witnessed by the respective Principal Secretary and County

The Public Finance Management (Amendment) Bill, 2023

Secretaries, attested to the attorney general and the respective county attorney have caused the seals of the respective Counties to be hereunto affixed this _____ day of _____ (month), _____ (year).

SECOND SCHEDULE (SECTION **)

COOPERATION AGREEMENT BETWEEN COUNTY GOVERNMENTS

PREAMBLE

AND WHEREAS the Constitution of Kenya provides an enabling framework for cooperation frameworks and in particular, Article 189(2) of the Constitution require County governments to cooperate in the performance of functions and exercise of powers and permits the establishment of joint committees and joint authorities to facilitate such cooperation:

WHEREAS the County Governments of *****(hereinafter referred to as the Member Counties) enjoy economic, commercial, industrial and other ties for many years:

AND WHEREAS the Constitution of Kenya establishes a devolved system of government (consisting of a national government and forty-seven county governments) that not only brings decision-making structures and processes closer to the people, but also creates opportunities for cooperation, growth and development:

AND WHEREAS while the devolved system of government promises to address inclusive governance;

AND WHEREAS a critical object of the system of devolved government, according to Article 174(f) of the Constitution of Kenya to promote social and economic development;

AND WHEREAS joint authorities can enable the Counties to leverage economies of scale, and facilitate the development, management and utilization of cross boundary economic resources and infrastructure:

AND WHEREAS the said Member Counties, with a view to realizing a fast and balanced development are resolved to creating an enabling environment in all the Member Counties in order to attract investments and allow the private sector to play a leading role in the socioeconomic development activities through the development of sound macroeconomics and sectoral policies and their efficient management and while taking cognizance of the world's government negotiated set of Sustainable Development Goals (SDGs) and the national development plans particularly Kenya Vision 2030, which constitutes the country's economic blueprint that charts the strategic priorities and interventions for development for the period 2008-2030:

AND WHEREAS the said Member Counties, with a view to strengthening their cooperation have resolved to adhere to the fundamental and operational principles that shall govern the achievements of the objectives set out herein and to the principles of devolution and cooperation governing relationship between county governments:

AND WHEREAS the said Member Counties have resolved to act in concert to achieve the objectives set out herein:

NOW THEREFORE the County Governments of *****

DETERMINED to strengthen their economic, industrial, social, technological and other ties for their fast, balanced and sustainable development by the establishment of a Joint Authority; and

CONVINCED that cooperation within counties will raise the standard of living of their people, leverage economies of scale, maintain and enhance the economic stability, foster close and peaceful relations among the counties and accelerate the development of the Member Counties:

AGREE AS FOLLOWS: CLAUSE 1 Interpretation

1. In this Agreement Agreement means the *****

Joint Authority means ***** established under Section ****;

Chief Executive Officer means the Chief Executive Officer appointed under section *** Council means

Minorities means a category of people differentiated from the social majority in a particular Member County;

Pillar Committee means; and

Summit means

2. In this agreement a reference to a law, regulation or guidelines shall be construed as a reference to the law, regulation or guidelines as from time to time amended, added to or repealed.

CLAUSE 2 Establishment of the Joint Authority

By this Agreement the Member Counties establish amongst themselves ***** (NAME OF JOINT AUTHORITY).

CLAUSE 3 Membership of the Joint Authority

1. The members of the Joint Authority, in this Agreement referred to as “the Member Counties”, shall be the County Governments of ***** and any other county granted membership to the Joint Authority under this Agreement.

2. The Member Counties may, upon such terms and in such manner as they may determine together negotiate with any other county the granting of membership to, or association of that county with, the Joint Authority or its participation in any of the activities of the Joint Authority

3. Matters to be taken into account by the Member Counties in considering the application by another county to become a member of, be associated with, or participate in any of the activities of the Joint Authority shall include that county’s;

- (a) Acceptance of membership to the Joint Authority as set out in this Agreement;
- (b) potential contribution to the strengthening of cooperation in the achievement of the objectives of the Joint Authority; and
- (c) social and economic policies being compatible with those of the Member Counties of the Joint Authority.

4. The conditions and other considerations that shall govern the membership or association of a new county with the Joint Authority or participation in the activities of the Joint Authority shall be those prescribed in this agreement.

5. The granting of observer status with respect to the Joint Authority shall:

(a) in the case of another county, be the prerogative of the Summit;

and

(b) in the case of an intergovernmental organization or civil society organization, be the prerogative of the County steering committee.

6. The procedure to be followed with respect to the granting of membership, participation in any activities of the Joint Authority, or observer status shall be prescribed by the County steering committee.

CLAUSE 4 Objectives of the Joint Authority

1. The objectives of the Joint Authority shall be to develop policies and programs aimed at widening and enhancing cooperation among the Member Counties more specifically in- ((copy objectives in first schedule) specify the objects of the agreement)

CLAUSE 5 Fundamental Principles of the Joint Authority

The principles that shall govern the practical achievements of the objectives of the Joint Authority includes—

(a) the values and principles set out in the Constitution and laws of Kenya;

(b) mutual trust, political will and equality;

(c) equitable distribution of the costs and benefits of cooperation; (d) cooperation for mutual benefit;

(e) adherence to the principles of devolved government established in Article 175 of the Constitution of Kenya;

(f) peaceful coexistence; and

(g) peaceful settlement of disputes.

CLAUSE 6 Budget

1. There shall be a budget for the Joint Authority developed in line with section **** of the *****Act.

CLAUSE 7 Applicable Law

This Agreement shall be interpreted according to and shall be governed by the laws of Kenya.

CLAUSE 8 Dispute Resolution

(a) Any dispute arising in connection with this Agreement, including any question in respect of the interpretation, validity, termination or non-termination of this Agreement, shall be settled within the framework of the Intergovernmental Relations Act, 2012.

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CLAUSE 9 Headquarters and other offices of the Joint Authority

1. The headquarters of the Joint Authority shall be in *****

2. There may be established such offices of the Joint Authority in other Member Counties as may be agreed upon from time to time.

CLAUSE 10 Cooperation

The Joint Authority may, pursuant to the Constitution and the Intergovernmental Relations Act, 2012, enter into such agreement with the National Government, national government entities, counties that are not members of the Joint Authority

CLAUSE 11 Sanctions

A Member County which defaults in meeting its financial and other obligations under this Agreement shall be subject to such action as the *****(County Steering Committee subject to Group 1) may on the recommendation of the County Finance Committee, determine.

CLAUSE 12 Implementation of the Agreement

1. Each Member County undertakes to adopt and enforce the necessary rules and regulations to implement and enforce this Agreement and the programs adopted by such Member County to implement the programs contemplated by this Agreement.
2. The Joint Authority shall submit an annual report on implementation of this Agreement to the**** (County Steering Committee).

CLAUSE 13 Accession

1. Any County may, at any time after the entry into force of this agreement, notify the Chairperson of the County Steering Committee) of its intention to accede to this agreement and to be admitted as a member of the cooperation.
2. The Chairperson of the County Steering Committee shall, upon receipt of such notification, transmit copies thereof to all the Member Counties.
3. The County Steering Committee shall decide to admit a County as a member of the Joint Authority by consensus or, failing which, by a two-thirds majority vote of the Member Counties.

CLAUSE 14 Cessation of Membership

1. Any Member County that desires to renounce its membership of the cooperation shall submit a written notification to the Chairperson of the (County Steering Committee)
2. At the end of one year from the date of such notification, if not withdrawn, this agreement shall cease to apply with respect to the renouncing Member County, which shall there by cease to belong to the cooperation.
3. During the period of one year referred to in Paragraph 2 of this Clause, a Member County wishing to withdraw from the cooperation shall comply with the provisions of this agreement and shall be bound to discharge its obligations under this agreement up to and including the date of its withdrawal.

4. If the cooperation comprises of only two member counties and one of the county renounces membership, the agreement shall be deemed to have automatically lapsed.

CLAUSE 15 Expulsion of a Member County

1. The County Steering Committee may expel a Member County from the Joint Authority for gross and persistent violation of the principles and objectives of this Agreement after giving such a Member County six months' written notice.

2. Upon expiration of the period specified in Paragraph 1, the Member County concerned shall cease to be a member of the cooperation, unless the notice is cancelled within the notice period.

3. During the period referred to in paragraphs 1 and 2, the Member County concerned shall continue to comply with the provisions of this Agreement and is liable to discharge all subsisting obligations and long-term commitments incurred during membership.

CLAUSE 16 Rights over property and Assets of the Joint Authority upon Cessation of Membership

1. Where a member county withdraws or is expelled in accordance with this Agreement, the property of the cooperation in that Member County shall remain vested in the Joint Authority.

2. A County that has ceased to be a member of the Joint Authority shall have no claim to or any rights over any property and assets of the Joint Authority.

3. Where an agreement lapses and it involves two Member Counties, Assets shall be shared equitably on the basis of contribution of each Member County.

CLAUSE 17 Amendments

1. Any Member County may submit proposals for the amendment or revision of this agreement.

2. Proposals for the amendment or revision of this agreement shall be submitted to the Chairperson of the County Steering Committee, who shall transmit such proposals to the Member Counties within thirty (30) days of receipt thereof.

3. The County Steering Committee shall, upon the advice of the County Finance Committee, examine the proposals for amendment or revision of this agreement within a period of six months following notification of the Member Counties.

4. The County Steering Committee shall adopt any amendment or revision of this agreement by consensus or, failing which, by a two-thirds majority vote of the Member Counties.

5. Any amendment or revision of an agreement that the County Steering Committee adopts in accordance with Paragraph 4 of this Clause shall be submitted for ratification by all the Member Counties.

CLAUSE 18 Duration of the Agreement and Termination

1. Once effective, this Agreement shall continue in force and remain binding for the specified duration for each and every Member County unless terminated.
2. This Agreement may be terminated at any time by a two-thirds majority vote of the County Steering Committee. In the event of such termination, all rights established under the Agreement shall continue unimpaired.
3. Where the agreement involves two Member Counties and one Member County withdraws from the agreement, the agreement shall be deemed to be terminated.

CLAUSE 19 Approval of the Agreement by the County Assembly

A proposed agreement by Member Counties shall be transmitted to the clerk of the relevant Member County Assembly accompanied by a report of the outcome of public participation indicating: -

- a) who was consulted;
- b) the period within which the consultations were undertaken;
- c) the responses received from the public; and
- d) an analysis of the outcome of the consultations.

Member County Assemblies may conduct further public consultation on the proposed agreement through an appropriate mechanism in accordance with the respective standing orders.

Where the Member County Assemblies by a simple majority adopt the proposed agreement, the respective clerks of the County Assemblies shall with fourteen days notify the Governors of the Member Counties of the decision.

Where all the Member County Assemblies reject the proposed agreement, the clerks of the respective County Assemblies shall within fourteen days of the rejection notify the CS and Governors of the Member Counties of the decision.

Where one or some of the Member County Assemblies rejects the proposed agreement but the same is passed by all or a majority of the other Member County Assemblies, the proposed agreement shall stand approved except for the Member Counties that rejected the proposed agreement.

CLAUSE 20 Ratification, Effective Date and Execution

1. This Agreement shall be signed and sealed in identical original copies by the respective Governors of the signatory Member Counties.
2. A signed copy shall be filed with the County Secretary of each of the signatory Member Counties, and one copy shall be filed and retained in the archives of the Joint Authority.
3. The signatures shall be affixed and attested under the following form:

In Witness Whereof, and in evidence of the adoption and enactment into law of this Agreement by the County Assemblies of the signatory

Member Counties, the respective Governors do hereby, in accordance with the authority conferred by law, sign this Agreement in duplicate original copies, attested to by the

The Public Finance Management (Amendment) Bill, 2023

respective County Secretaries, and have caused the seals of the respective Counties to be here unto affixed this day of (month), (year)

