

Proposal for Financial Autonomy of Constitutional Bodies

1. Introduction and rationale :

The Public Finance Management (PFM) Act, 6 (2) states that the Minister (of Finance) shall, subject to the Constitution and this Act, be responsible for the management of the Consolidated Fund and the supervision and control of all matters relating to the financial affairs of the government.

In addition, 7 (4) states that an accounting officer shall submit to the Minister of Finance within 6 months of the end of the financial year, an annual performance report on the programme under each Head or part of a Head of expenditure charged on the Consolidated Fund by law and identified in the main or supplementary appropriation that will be laid before the National Assembly by the Minister, in such form that the Minister may direct.

In view of these provisions, this paper sets out the general proposed structure of a 'Financial Management Policy document' that the Constitutional bodies will need to adopt once they are to have 'Financial autonomy' over their operations, as already committed by the Government. It will require the constitutional bodies to put in place the required structures and policies in operation to safeguard the funding being provided to them.

It is imperative that the constitutional bodies execute the PFM Act financial obligations, but through an independent structure of oversight from the Executive in view that financial autonomy will require that certain financial management is not carried out through the oversight of the Department of Finance. However, it must be noted that certain components of the PFM Act such as policy development and the overall control and management of public finance will still be retained by the Minister responsible for Finance.

The PFM Regulations provides an already structured and transparent approach on the management of public funds. However, these are prescribe in terms of centralizing the controls towards the Department of Finance. The policy will therefore ensure that it regulate the financial matters of these Constitutional Bodies to ensure that all revenue, expenditure, assets and liabilities of these bodies are managed efficiently, effectively and transparently. The policy will ensure that it provides for the responsibilities of persons that is to be entrusted with financial management in these bodies and to provide financial management norms and standards for these bodies.

A consultative relationship between the constitutional bodies and the Ministry of Finance, Trade and Economic Planning, must also be allowed to be conducted based on respect for:

- The constitutional status of these bodies

- The budget processes, uniform expenditure classifications and accounting practices as established in terms of the Public Financial Management (PFM) Act
- Ensuring the Fiscal policy of the national government is maintained
- To provide the Department of Finance the opportunity to make comments on proposed annual budgets and adjustment budgets of these bodies
- Regular information on the budgets of these bodies to be made available
- To provide for these bodies oversight of their budgeting and expenditure through an appropriate oversight mechanism
- To establish the norms and standards for managing the financial affairs these bodies

2. Scope of the Policy

2.1. Oversight, Executive Authority and Administration of the Policy

Oversight Authority

An Oversight Authority is required as a mechanism to maintain oversight of the financial management of the constitutional bodies. Amongst other things it will consider the Constitutional bodies annual reports and consider instructions issued by the Executive Authority.

Except members of the Executive Authority, members should not consist of other management staff of the institution. Members of the Executive Authority will be appointed by the Constitutional Appointments Authority.

The oversight committee shall have the powers that committees in the national assembly has (to state specific clause)

The authority may require the Accounting Officer and any other official to appear before it.

Executive Authority

The Executive Authority (*different from the definition of the Executive arm of Government*) of the constitutional bodies as must be established and the Heads appointed accordingly: for instance, for the Legislature it will be the Speaker and the Chief Justice for the Judiciary.

They are accountable to the National Assembly for the sound financial management of their institution and must act in accordance with the POEC code of ethics.

Accounting Officers

The Accounting Officers would remain as the Clerk and Registrar for the Legislature and Judiciary respectively. Their role is to ensure:

- That the resources are used effectively, efficiently and transparently.
- Maintain full and proper records, financial systems, internal controls and internal audit
- They comply with the obligations in relation to taxes, levies and duties
- Ensure disciplinary action is instituted against any employee of the constitutional bodies who has allegedly committed an act of financial misconduct

2.2. Control and Management of the Constitutional monies

Financial management of the Constitutional bodies must therefore be adopted to ensure that appropriate procedures, regulations, monitoring and controls are set in each of these respective bodies.

2.2.1. Planning and Budgeting

The Executive Authorities of the Constitutional bodies must prepare their strategic plans, annual performance plans, budgets and adjustments in budgets

Table their strategic plan and annual performance plan in the National Assembly

The Accounting officer, must also prepare the annual performance plan at the start of the year covering the medium term requirements as determined by the Constitutional bodies

The Constitutional bodies must prepare a budget taking into consideration the budget ceiling provided by the Executive Government and the country's macro-fiscal framework. In general, other countries where there are financial autonomy, the constitutional bodies are careful not to present a budget which bears no relation to the general Budget of the state.

The budget must therefore:

- (a) Cover the following financial year and the two financial years thereafter
- (b) Specify Constitutional bodies expected revenues distinguishing between funds to be appropriated through the annual national budget and funds derived from the constitutional bodies' own revenue sources, excluding Donor funds;
- (c) Specify the constitutional bodies proposed expenditure requirements per main division within the budget, distinguishing between the sources of funds identified in paragraph (b);
- (d) Specify the purpose of each main division within the budget and provide explanations and other information substantiating the amounts proposed in terms of paragraphs (b) and (c);

- (e) *For the Legislature;* Specify the allocations to Members of Parliament and political parties, providing details of the different purposes for which allocations are made and the amounts allocated for such purposes;
- (f) Provide details of all transfers to other entities;
- (g) Contain a schedule of planned expenditure under their donor funded projects; and
- (h) Be in accordance with the format prescribed by the Department of Finance, for the purpose of maintaining consistency with the format followed by other organs of state.

The Executive Authorities must thereafter submit after consulting with the Minister of Finance on the budget and adjustments budget before consolidation by the Department of Finance for the National Assembly approval as per the requirement of the PFM Act

The Executive authorities can apply the same principles as prescribed in the PFM Act, in regards to treatment of virement and must ensure it spend only in on authorized expenditures as approved by the National Assembly.

2.2.2. Cash Management

Each Constitutional body with the Approval of the Department of Finance will be allowed to open one commercial Bank account only in its own name for which:

- All monies received by the Constitutional body from the Consolidated Fund as approved by the National Assembly be paid
- Ensure efficient and effective banking and cash management

2.2.3. Expenditure management

The Accounting officer will be responsible to manage the expenditure and must ensure an effective system of expenditure control, which includes procedures for approval and authorisation of the withdrawal and payment of funds

The constitutional bodies must maintain an accounting and information system to capture all transactions once incurred.

Chapter 59, Payment procedures of the PFM Regulations can be adapted towards the Constitutional bodies to regulate their spending.

2.2.4. Investment

The constitutional bodies may not borrow money, issue a guarantee or enter into any other similar transaction that bind it to any future financial commitment

However, this does not prevent the constitutional bodies from issuing guarantees for employees for housing or bank loans for instance (salary sub-assignments) or entering into operating lease agreements for use of equipment

2.2.5. Procurement

The constitutional bodies are to follow the Procurement Act.

2.2.6. Audit committee

An internal audit committee must be established, as appointed by the Executive Authority in each constitutional bodies to set out the operating procedures, carry out investigations in to the bodies financial and risk management as it considers, report on the effectiveness of internal controls, the quality of financial management and the annual financial statements, report and advise on matters relating to the financial and risk management of these bodies.

The Constitutional bodies must have an audit committee constituted in a manner that ensures its independence. Composition of the committees must be members not employed by the respective Constitutional bodies, the State or MNAs. Members must have sufficient knowledge of the requirement of the committee.

2.2.7. Reporting and Auditing

The Accounting Officer must ensure monthly reports, mid-year budget performance reports are submitted to the Executive Authority in a format agreed with the Office of the Auditor General and the Ministry of Finance.

The Accounting Officer must also prepare annual reports and annual financial statements by 31st March of the subsequent year, to provide a record of the activities of the Constitutional bodies and submitted to the Auditor General for it to report of the financial statements. The Department of Finance is to receive the annual audited annual financial statements for discussion during budget discussions and inclusion in the consolidated financial statements.

All reports must also be referred to the Oversight mechanism promptly.

Any unauthorized, irregular or wasteful expenditure must be reported must also be reported to the Oversight mechanism and Auditor General as identified.

2.2.8. Other Financial Management:

- Asset and liability management : chapter 10 of the PFM Regulations provides a framework for the constitutional bodies to operate
- Revenue management and Management of debtors : chapter 13 of the PFM Regulations provides a framework for the constitutional bodies to operate

2.2.9. Revenues

Any appropriated funds not spent by 31st December of the given year will not be returned to the Consolidated Fund. However, this unspent amount will be appropriated as part of the Constitutional Body's budget for the subsequent year.