

Implications for PFM Legal Frameworks within a Monetary Union

**Recent Legal Framework Development in Kenya:
The Proposed Public Financial Management Framework
for a Devolved System of Government in Kenya**

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Outline of the presentation

I. Background

- Objectives of the new PFM legislation
 - Link between the Constitution and the new PFM Bill

II. Design of the new PFM law for a Devolved System of Government in Kenya

- Main Elements:
 - Roles, Responsibilities, and Powers:
 - » PFM Institutions at the National and County Government Level
 - » Other National/County Government PFM Institutions
 - » Intergovernmental Fiscal Relations Institutions
 - Macro-Fiscal Policy Making and Budgeting
 - Treasury Management
 - Budget Execution, Accounting and Reporting

III. Conclusion

I. Background

a. Objectives of the new PFM law

- Developed with recognition that good PFM system is key for the success or failure of the system of devolved government.
- To ensure a good PFM system, several objectives were taken into account:
 - 1. Consistency with the new Constitution**
 - 2. Modernize and consolidate the many existing PFM laws**
 - 3. Follow international best practice**

I. Background (Cont...)

a. Objectives of new PFM—Links with the Constitution

- Articles 6 and 189: provide for “**autonomy**” in financial management (distinct and inter-dependent, consultation and cooperation).
- Art. 201: provides the ‘**Principles of public finance**’ – openness, equity, prudence and responsible financial management
- Article 206 on the **Consolidated fund and other public funds.**
- Article 207 which establishes **County Revenue Funds** and provides for setting up of other funds at the county level.
- Article 208 on **Contingencies Fund.**
- Article 211 to 214 on **borrowing** and **guarantees.**
- Article 220 which requires national legislation to prescribe the **form, content and timing of budgets.**
- Article 225 on **financial controls** at the national & county level.
- Article 226 which requires an Act of Parliament to provide for **financial records** and **audit** of all accounts of governments;
- Article 227 on **procurement.**

I. Background (cont...)

a. Objectives of the new PFM law—modernize and consolidate existing PFM laws

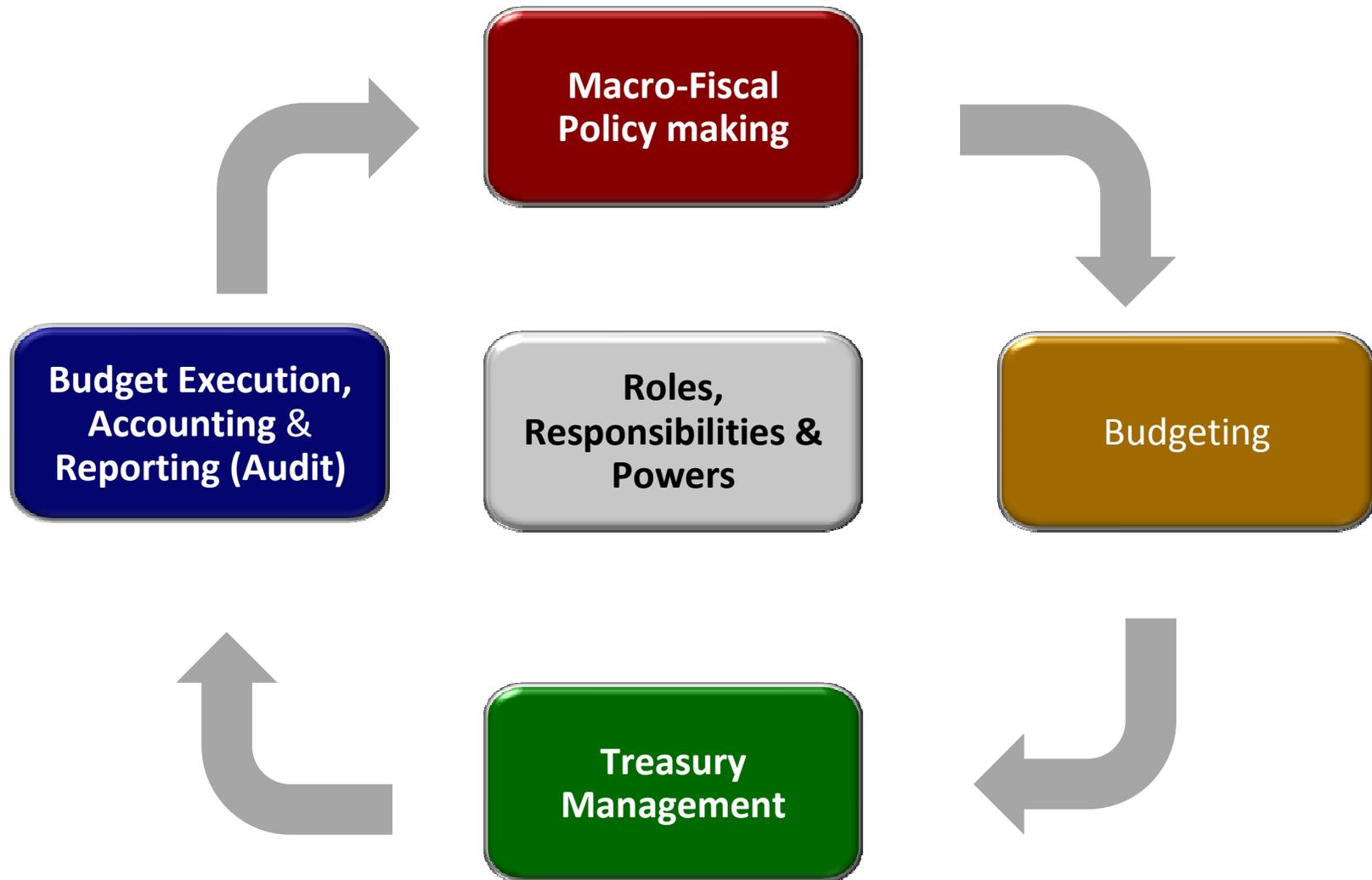
- **Second objective: modernize and consolidate the many PFM laws** we currently have into one integrated PFM Law.
- With the new PFM law we will repeal:
 - The Government Financial Management Act, 2004
 - The Fiscal Management Act, 2009
 - The Internal Loans Act
 - The external Loans Act
 - The National Government Loans Guarantee Act, 2011
 - The Contingencies Fund and County Emergency Funds Act 2011.

I. Background (cont...)

a. Objectives of the new PFM law—follow international best practise

- The third and final objective: Ensure the Bill incorporated **best international practices**.
- We did this by:
 - Holding extensive public consultations within/outside government, counties, getting comments from international/local experts on PFM
 - Ensuring that we had a single PFM law that covers both levels of government.
 - Basing the policy framework on the five core areas of a good system of public finances.

II. Main Elements of the PFM Bill



Roles, Responsibilities & Powers—Summary of PFM Institutions

National Government

National Assembly (Legislature)
Cabinet (Executive)
National Treasury
Cabinet Secretary Responsible for Finance
Accounting officers
Receivers and collectors of revenue
Public Debt management Officer
Accounting Standards Board
...
...
Intergovernmental Budget and Economic Council (I-BEC)

County Government

County Assembly (Legislature)
County Executive Committee (Executive)
County Treasury
County Executive Member Responsible for Finance
Accounting officers
Receivers and collectors of revenue
...
...
Boards of Cities and Municipalities and Town Committees
County Budget and Economic Forum (C-BEF)
...

Other Independent – Commission on Revenue Allocation, Controller of Budget, and Auditor General 8

II. Core Areas of PFM System

a. Roles, Responsibilities & Powers—The National and County Assemblies (Legislature)

- Reviews the Budget Policy Statement/Fiscal Strategy Paper and makes recommendations
- Determines the vertical division of revenue
- Approves the Budget Estimates
- Provides overall oversight over public finances
- Ensure adherence by NG and CS to Principles of Public Finance and fiscal responsibility principles;
- Senate:
 - Determines the allocation of revenue among counties
 - Exercises oversight of national revenue allocated to county Governments.

II. Core Areas of PFM System

a. Roles, Responsibilities & Powers—Cabinet and County Executive Committee (Executive)

- Approves the **Budget Policy Statement (BPS), Budget Review and Outlook Paper (BROP), and MT/DMS.**
- Reviews the **Annual Budget Estimates** for the National Government (excluding Parliament and the Judiciary) before submission to Parliament/County Assemblies for approval.
- **CEC has powers to establish a County Emergency Fund but with the approval of the County Assembly.**

II. Core Areas of PFM System

a. Roles, Responsibilities & Powers—National and County Treasuries

- Overall responsibility for macro-economic formulation and management;
- Coordinate preparation and implementation of annual budget estimates of revenues and expenditures
- Prepares the BPS/FSP
- Enforces the fiscal responsibility principles
- Other:
 - Prepares the annual DoRB and CARB.
 - Administers consolidated fund, Equalization fund and the Contingencies fund.
 - Prepares **budget, financial and fiscal reports** (annual, quarterly and on demand) and submits them to Parliament and also publishes and publicizes them.
 - Strengthening financial and fiscal relations between the two levels of government.
 - Prepare the pre-and-post election budget reports.
 - Oversees the **cash and banking** arrangements for NG

II. Core Areas of PFM System

a. Roles, Responsibilities & Powers—Cabinet and County Secretary for Finance

- Head of Treasury and responsible for **overseeing formulation of macroeconomic and financial policies** of Government
- Manages the **Budget Process**
- NG: Has powers to **stop transfer of funds** to National Government entities and County Governments for serious material breach or persistent material breaches of measures established in the PFM.
- CG: May at the request of the CS **stop transfers of funds** to a County Government Entity for serious material breach or persistent material breaches.
- NG: Has Powers to **raise a loan and issue guarantees** on behalf of the National Government
- CG: Has powers to **raise loan** on behalf of the County Government in accordance with the law.

II. Core Areas of PFM System

a. Roles, Responsibilities & Powers—Accounting Officers at NG and CG

- Are to be **responsible for accounting for money** appropriated by Parliament;
- Are **designated** by the Cabinet Secretary responsible for Finance;
- **Ensures** that public **resources** are used in a way that is **lawful** and authorised and in an **effective and efficient** manner.
- Must **ensure proper financial management** of the respective public entity.
- Ensure they have appropriate arrangements in place for **internal audit**.

II. Core Areas of PFM System

a. Roles, Responsibilities & Powers—Receivers and Collectors of Revenue

- **Receivers of revenue** are to be designated by the Cabinet Secretary responsible for Finance.
- Receivers of revenue are to be **responsible for receiving and accounting** for revenue.
- **Kenya Revenue Authority** has been preserved (in the PFM Bill 2012) as a collector of National Government revenue.
 - CEC has **powers to appoint Kenya Revenue Authority as collector** of County Government Revenue.

II. Core Areas of PFM System

a. Roles, Responsibilities & Powers—Public Debt Management Office (PDMO)

- The **PFM Establishes** a Public Debt Management Office within the National Treasury.
- The **function** of the PDMO is to oversee the effective **management of public debt and borrowing as well as the issuance of debt instrument** in respect of the National Government and County Governments and their entities.
- Will also **ensure benefits and burden of public debt are shared equitably** between current and future generations.
- Will be responsible for preparing the M/T Debt Management Strategy.

II. Core Areas of PFM System

a. Roles, Responsibilities & Powers—Accounting Standards Board (ASB)

- The **PFM Bill establishes** “The Accounting Standards Board” (ASB).
- The **function** of the ASB is to **prepare and publish standards of generally accepted accounting practice** for use by National and County Governments and their entities.
- The ASB will help ensure **standardised reporting** on public finance at the national and county level. This would facilitate consolidation of accounts of NG and CGs to get the General Government position.
- The ASB will also help ensure **independence in the determination of accounting standards** at the National and County level—based on best domestic and international practices.

II. Core Areas of PFM System

a. Roles, Responsibilities & Powers—Boards of Cities and Municipalities and Town Committees

- **Boards or Town Committees oversee preparation of the integrated Development Plans** and approve **Annual Budget Estimates** for Urban Areas or Cities, consistent with the C-Fiscal Strategy Paper.
- **Annual Budget Estimates to be submitted to the County Treasury for consideration and submission to the County Assembly** for approval as part of the annual appropriations Bill.
- Sources of revenues will include revenue arising from rates, fees, levies, charges and other revenue raising measures. These sources of revenues shall be retained by the urban area or city in order to **defray the costs of delivering services.**

II. Core Areas of PFM System

a. Roles, Responsibilities & Powers—County Budget and Economic Forum (C-BEF)

- The County Budget and Economic Forum is established.
- The Forum provides **means for consultation** on County Government Plans, Budgets, the County economy, financial management at the County and related matters.
- The **County Budget and Economic Forum is chaired by the County Governor** and comprises members of the County Executive Committee and representatives of non-state actors.
- The C-BEF is expected to **meet at least twice** in a financial year. The timing of meetings should be such that **their deliberations will inform the meetings of the I-BEC.**

II. Core Areas of PFM System

a. Roles, Responsibilities & Powers—Intergovernmental Budget and Economic Council (I-BEC)

- The **I-Budget and Economic Council** comprises of representatives from the National Government and from the County Governments.
- Provides **means for consultation and cooperation** between the two tiers of government on a broad range of economic and financial issues; borrowing by both levels of government, the BPS, the BROP, the MT/DMS, regulations etc.
- The Budget and Economic Council will be **consulted** prior to the submission of **Division of Revenue Bill** and **County Allocation of Revenue Bill** to Parliament for approval.
- It will meet at least twice in a year to provide guidance on budget and economic matters.

II. Core Areas of PFM System

a. Roles, Responsibilities & Powers—Commission on Revenue Allocation (CRA)

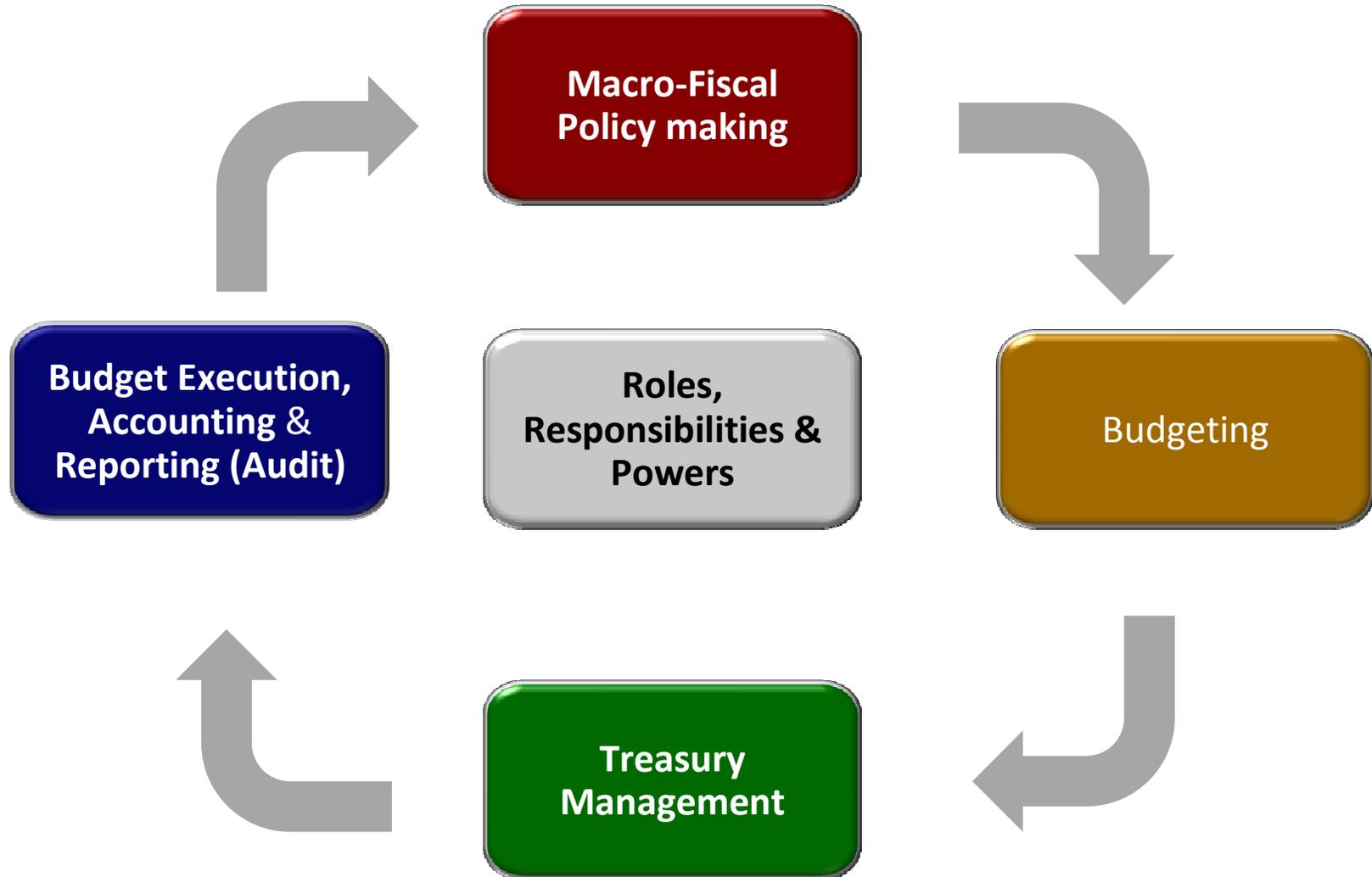
- To recommend the basis for the equitable sharing of revenue between:
 - National Government and County Governments
 - County Governments
- Give recommendations on other matters concerning the financing of, and financial management by, county governments.
- In formulating its recommendations the CRA is expected to encourage fiscal responsibility
- The recommendations will be submitted to the Senate, NA, National Executive, CAs, and County Executives.
- The recommendations should be made early enough in the budget process to allow both levels of government to formulate their budgets in a timely manner.
- Determines, publishes and regularly reviews a policy setting criteria to identify the marginalized areas for purposes of the Equal. Fund.

II. Core Areas of PFM System

a. Roles, Responsibilities & Powers—Others

- Controller of Budget (Controller of Budget Act):
 - to oversee the implementation of the budget by **authorizing the withdrawals** from public funds after satisfying that withdrawals is authorized by law
- Auditor General (Kenya National Audit Act):
 - Audit accounts of NG and CG and report to Parliament within six months after end of financial year
 - Parliament to debate and consider report within three months upon receipt

II. Main Elements of the PFM Bill



II. Core Areas of PFM System

b. Macro-Fiscal Policy Making

National Government

- Preparation of a **macro-fiscal framework** in the BPS. Determine the **resource envelope**.
- The Macro-fiscal framework should support a stable macro-economic environment-- low inflation, stable interest and exchange rates.
- The MTEF/MTFF must also be consistent with debt sustainability in accordance with Art. 201 of the CoK2010.
- The BPS to contain the:
 - Indicative resource envelope for the State Departments of the NG, 47 CGs, Judiciary and Parliament.
 - The Fiscal responsibility Principles

County Government

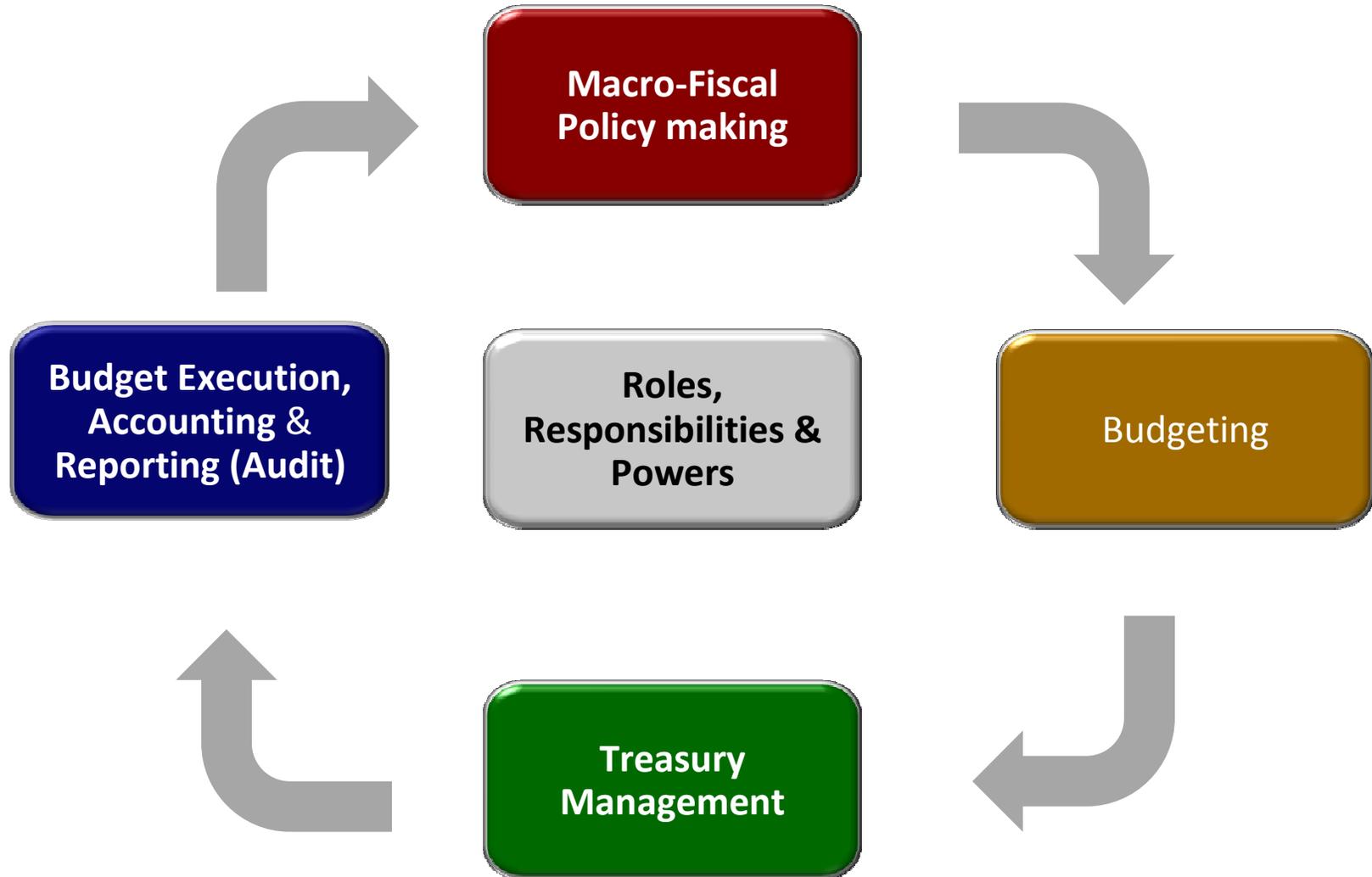
- Preparation of CFS Paper—perhaps in a simpler format than the BPS at NG.
- The Medium-term plans must also be consistent with debt sustainability of the County in accordance with Art. 201 of the CoK2010.
- The CFS-P to contain the:
 - Medium-term plans of the CG.
 - Indicative resource envelope for the County State Departments.
 - The Fiscal responsibility Principles

II. Core Areas of PFM System

b. Macro-Fiscal Policy Making--Fiscal Responsibility Principles (for both levels of Government)

- Over the Medium Term:
 - **Recurrent expenditure** is not to exceed a % of revenue prescribed in regulations
 - **Wages** not to exceed a % of revenue prescribed in regulations.
- **Borrowings** to finance development expenditure
- **Public debt** to be maintained at sustainable level
- **Fiscal risks** to be managed prudently
- Reasonable predictability of **tax rates and bases**.

II. Main Elements of the PFM Bill



II. Core Areas of PFM System

b. The Budget Process—Budget preparation and timelines of key activities

National Government

- The BPS, DoRB, CARB and MT/DMS to be submitted to NA in mid-Feb.
- The DoRB and CARB Bill to be approved within one month.
- After approval by Cabinet, CS to submit to the National Assembly by end-April the following:
 - Budget estimates—excl. Judiciary/Parliament
 - Appropriation Bill
- **Parliament and Judiciary also to submit their budgets to NA by end-April.**

County Government

- Following approval by CEC, the Exec. Com. Member for Finance submits to the CA by end-April:
 - the budget estimates.
 - The appropriations Bill
- After public participation, the relevant committee of the CA makes recommendations to the CA.

II. Core Areas of PFM System

b. The Budget Process—Legislative approval

National Government

- **Views of the CS** on the Committees recommendations are also **to be tabled.**
- **The NA may amend budget** estimates only in accordance with the DoRB and the BPS.
- Any proposed increase in expenditure is offset by a savings.
- The Finance Bill to be sent to Parliament at same time as other EAC members. Should be consistent with the DoRB.

County Government

- Views of the Exec.Com Member on the Committees recommendations are also to be tabled.
- The CA may amend budget estimates only in accordance with the CARB and the FSP.
- The Finance Bill to be sent to the CA before end-June.

II. Core Areas of PFM System

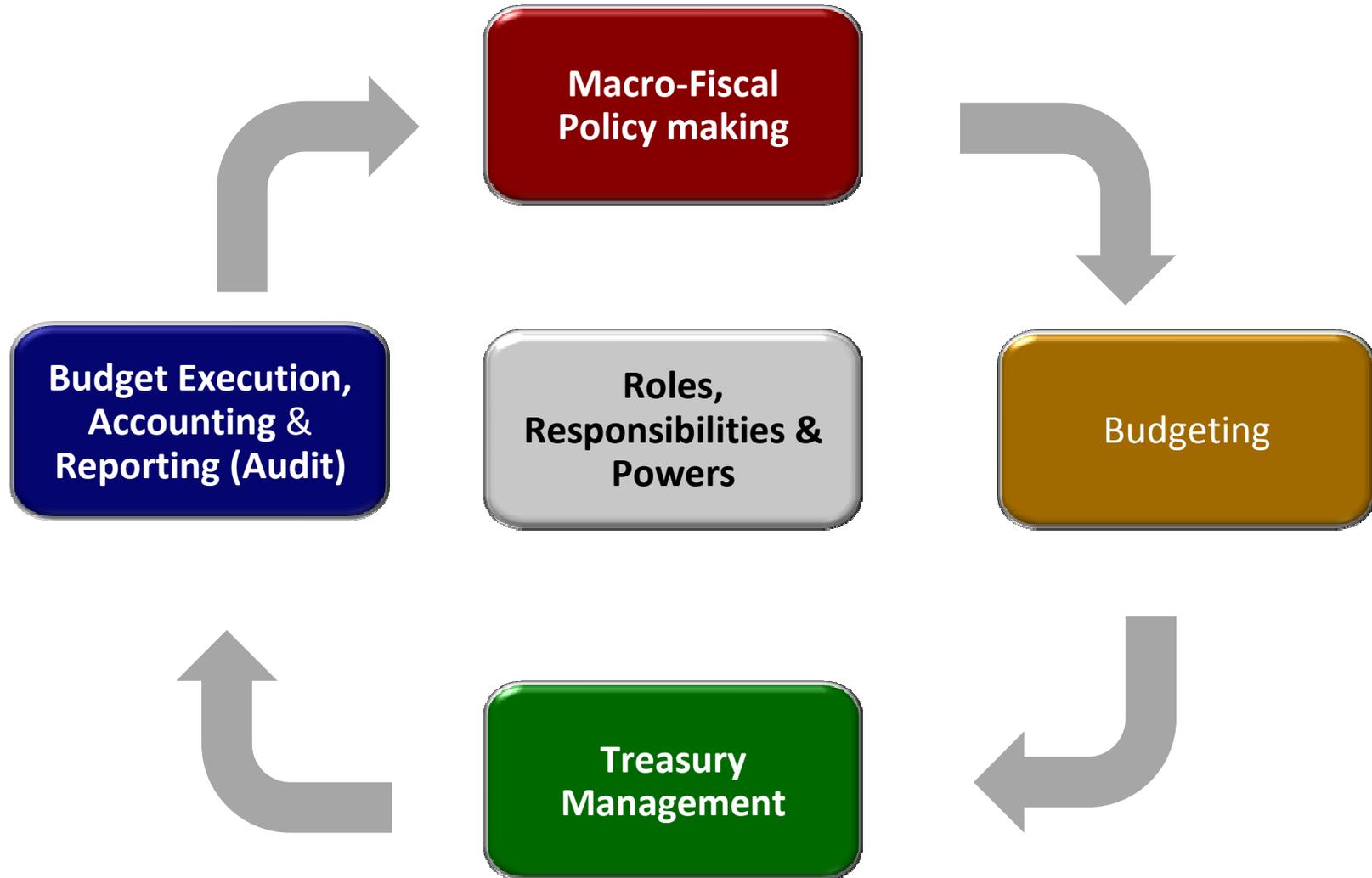
b. The Budget Process—Legislative approval (cont...) National Government

- Appropriations Bill to be passed by end-June.
- The finance Bill to be passed within 90 days of approval of appropriation Bill.
- Provisions for:
 - Vote on account
 - Supplementary budgets

County Government

- Appropriations Bill to be passed by end-June.
- The finance Bill to be passed within 90 days of approval of appropriation Bill.
- Provisions for:
 - Vote on account
 - Supplementary budgets

II. Main Elements of the PFM Bill



II. Core Areas of PFM System

c. Treasury Management

- Establishment and administration of:
 - Consolidated Fund (NG) / County Revenue Funds (CG)
 - Contingencies Fund (NG) / Emergency Funds (CG)
 - Equalization Fund
- Role of **Controller of Budget**: to oversee the implementation of the budget by authorizing the withdrawals
- **Banking arrangements** (e.g. Establishment of Treasury Single Bank Account)
- **Borrowing and loan guarantee** to National Government entities and Counties to be approved by Parliament.

II. Core Areas of PFM System

d. Budget Execution, Accounting and Reporting

- Powers/responsibilities of **Accounting Officers** to:
 - Spend (incur expenditure),
 - write-off losses,
 - make cash advances, and
 - manage assets and liabilities.
- **Reporting** by:
 - National/County Treasury (consolidated NG Financial Statements)
 - Accounting Officers (annual and quarterly reports),
 - Receivers of Revenue and
 - Administrators of public funds.

III. Summary and Conclusion

- To ensure **autonomy of two levels of government** in public finance management, PFM Institutions established at the National level have been mirrored at the County level.
- The PFM Bill also provides for a **Budget and Economic Council** to ensure that decision on matters touching on intergovernmental fiscal relations are arrived at through consultations and cooperation.
- To enhance transparency in public finance management the PFM Bill 2012 includes adequate **accountability mechanisms** through strict disclosure and public participation requirements as well as legislative oversight.
- We believe that proposed PFM framework will ensure the success of the new devolved system of government and **fiscal discipline**.

Thank you !