Growing tomorrow's economy
PwC constitution scorecard

National Budget 2012/2013

Implementation of the Constitution and the 2012/13 National Budget

The scorecard for the overall implementation of the Constitution

The implementation of the Constitution is a fairly lengthy process as many of its chapters and articles need further legislation to give effect to their purpose and intent.

The Commission for the Implementation of the Constitution has continued its good work by promoting the enactment of appropriate legislation to give effect to the Constitution and in addition many new commissions as required by the Constitution have been established.

The 2012/13 Budget makes provision for the cost of the commissions.

Some examples of the above-mentioned commissions are:

Revenue Allocation: To make recommendations concerning the basis for the equitable sharing of revenue raised by national government – between the national and county governments and among county governments

Salaries and Remuneration: To set and regularly review the remuneration and benefits of all state officers and to advise the national and county governments on the remuneration and benefits of all other public officers.

Each commission has a unique and separate function and they are starting to fulfil the mandate given to them. They will be very active during the 2012/13 year.

A lot of progress has to be made in all aspects of the implementation of the Constitution but there is still much to be done, such as:

- The reform of the State Law Offices and
- The National Police Service

What influenced the 2012/13 National Budget in relation to the implementation of the Kenyan Constitution 2012?

The Budget preparation in relation to the implementation of the Constitution is influenced by the date of the next General Election after which the 47 county governments and devolved government becomes a reality.

In view of the contested election date, the Budget has been prepared without a specific date in mind and therefore appears to have been based on macro numbers as if the counties were already in existence but with the allocated funds still remaining within the budgets of the line ministries under the heading counties.

The county governments will therefore only come into operation well into the 2012/13 financial year, at a time when the preparation for the 2013/14 Budget will be well underway. This means that the earliest that county governments can formulate and start implementing their budgets will be June 2013 if the General Election is held in December 2012, or in early 2014 with the supplementary budget if the elections are held in March 2013.

What has been provided for in the budget?

The recommendations of the Commission for Revenue Allocation have resulted in the following allocations of funds being made to county governments directly or to ministries specifically in the 2012/13 Budget. It amounts to 18.9% of the nationally collected revenue vs. the 15% minimum set out in the Constitution. In the 2013/14 and 2014/15 Budget, it is just over 19%. In our opinion, these amounts are insufficient to fund the requirements of the counties.

The allocation is divided in two for the 2012/13 financial year as follows:

1. Funding the cost of elected representatives

1.1 Provision has been made in this Budget for elected representatives' salaries and remuneration as well as basic operational costs including some permanent staff salaries from Election Day until 30th June 2013

1.2 Other staff filling posts at the county government level are on secondment from their current national ministries and continue to be paid by them.

2. Funding devolved government operational expenses

2.1 Each national government ministry ultimately affected by the devolution has set aside funds which are ear marked for use when paying for operational expenses that will be incurred in the name of the counties during the course of the financial year. This will include the cost of seconded staff from ministries to counties, an activity which has already commenced to pave the way to an orderly start up of the counties administration.

2.2 The devolved powers and functions as set out in the fourth schedule of the Constitution are only likely to start from 1 July 2013 and then will be transferred slowly as capacity is created at the county level and the Transition Authority, created under the Transition to Devolved Government Act 2012, decides what should go where and when. There is a three year window for full implementation.

What has not been provided for in the Budget?

In our opinion, there are three important things that have not been provided for in the Budget.

Cost of clearing the significant backlog in the current administration

There is a significant backlog of audits, asset and liability verification, to name just a few of the matters requiring urgent attention so that the counties can start up with the necessary confidence, ensuring that they are successful and sustainable from the beginning.

The task of clearing the backlog is large and will require a significant amount of time and money as well as involvement from private sector firms.

It should not be forgotten that there are many administrative activities that are still hand written.

Currently, the government acknowledges the problem but is paying very little attention to it.

Cost of funding counties that are initially not financially viable

There is a general consensus that a large number of counties will not initially be financially viable.

Determining the extent of the financial burden has not been reliably estimated. A financial modelling exercise spread over different types of counties would better help the government to understand the full extent of the funding gap.

The 15% minimum of national collected revenue allocated to counties in the Constitution is not new money but rather funds currently used for service delivery; therefore it will not be available to assist in funding the anticipated shortfall.

Where the funds will come from to fund the gap between what the counties will receive via the Commission for Revenue Allocation funding formulae and what they actually require for sustainable development and financial viability is still to be determined but represents a significant political risk.

Cost of developing the capacity necessary for the counties to assume the devolved functions in a sustainable manner

The government acknowledges that there is a shortage of trained and capable staff to run the day-to-day service delivery and administrative activities of the 47 counties.

The recently published PwC report on the staff structure and capacity in the City of Nairobi highlights the problem very clearly. If Nairobi does not have the people, how is it possible for a remote county to have the capable staff it needs?

Although a training institute for county and devolved government staff is proposed, the government needs to seek the assistance of the private sector to bridge the gap until trained staff become available.

New systems and processes are about to be implemented such as the IFMIS computerised accounting system for government.

This is a major exercise that will require significant time and money. The very last thing that government needs at the moment is a poorly managed and run county government system.

Outstanding Legislation

There are three very important pieces of legislation that have not yet been enacted but which effect both the implementation of the Constitution and the processes, procedures and implementation. They are:

- Controller of the Budget Bill
- Public Finance Management Bill
- County Governments Bill

The enactment of these bills is a priority particularly before the start of the next budget cycle.