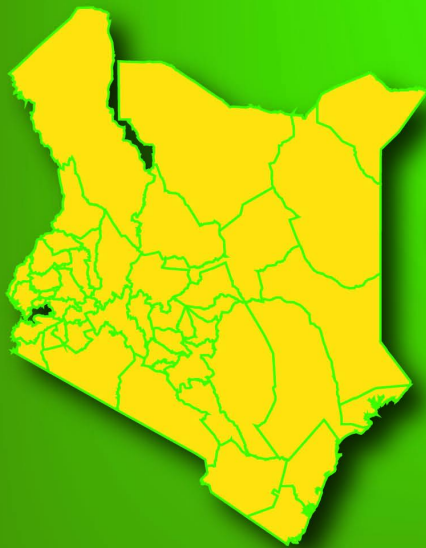


Laikipia Bomet Lamu Baringo Kisumu Uasin Gishu Trans Nzoia
 Marsabit Lamu Baringo Migori Turkana Homa Bay Isiolo
 Samburu Narok Wajir Machakos West Pokot Nyamira
 Meru Tana River Bungoma Nairobi Kitui Vihiga
 Busia Siaya Kakamega Taita Taveta Kisii Kericho
 Kirinyaga Nyeri Kajiado Kiambu Manderera Murang'a
 Makueni Tharaka Nithi Elgeyo Marakwet Garissa Kilifi Nandi Nakuru
 Nyandarua Embu



MODEL COUNTY REVENUE LEGISLATION

H A N D B O O K

MAY 2014

Table of Contents

INTRODUCTION	5
CHAPTER 1. COUNTY REVENUE LAWS—LEGAL AND CONSTITUTIONAL ISSUES ..	13
CHAPTER 2. COUNTY MODEL LAW ON PROPERTY RATES	18
CHAPTER 3. COUNTY MODEL LAW ON TRADE LICENCES	33
CHAPTER 4. COUNTY MODEL LAW ON REVENUE ADMINISTRATION	48
CHAPTER 5. COUNTY MODEL FINANCE LAW	59
CHAPTER 6. ADAPTING MODEL LAWS FOR USE BY COUNTY GOVERNMENTS	72
GLOSSARY OF HANDBOOK TERMS	74
ANNEX 1	75
ANNEX 2	79
ANNEX 3	91
ANNEX 4	102
ANNEX 5	111

Foreword

In addition to the equitable share, counties are expected to raise their own revenue from taxes, fees and fines. So far, it has generated mixed reactions and interpretations, considering that the former local authorities and former district officers had some powers to raise revenue. What constitutes raising-revenue powers and where this power stems from has become an elusive and contentious interpretation for the two levels of government so far.

This Handbook has been put together jointly by the Commission on Revenue Allocation, the Kenya Law Reform Commission and the Council of County Governors with support from the Kenya Accountable Devolution Programme of the World Bank, funded by the United Kingdom's Department for International Development and the Australian Department of Foreign Affairs and Trade. As a team, we strove to provide guidelines and principles on the best practice to the 47 counties on revenue-raising measures by county governments.

The Handbook is not only educative, but also practical. We have examined some of the existing legislation on raising revenue, and also touched on issues around revenue-raising mechanisms. In particular, this will support the finance law that annually amends/increases or reduces revenues to be generated in a county.

We believe that this Handbook will provide direction and a framework for proper financial administration by county governments, and collection and administration of revenue in a more transparent and accountable manner.



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INTRODUCTION

Purpose of the Handbook

The purpose of the handbook is to:

- Provide three revenue-raising model laws that county governments can adapt in order to develop county legislation to replace national revenue-raising legislation;
- Provide a framework and model for the basis of an annual Finance Bill;
- Provide explanatory material about the model laws, including detailed information about how each provision of the model laws is intended to operate; and
- Highlight the actions that county governments need to take in order to implement any county legislation that is enacted.

Introducing the Model Laws

To be effective, county legislation based on the model laws must fit into Kenya's overall legal and regulatory structure, and the model laws have been drafted accordingly. The handbook assumes that it is in the best interests of the county governments to have consistent legislative revenue-raising frameworks across the counties.

However, a county government can customise the model laws to suit the particular needs of the county—for example, an agricultural rental value rate is likely to be required in rural areas. The model laws have been drafted so that each county government can customise them with minimal changes, provided that the county government agrees with the policy objective of the model law.

The actual language of the model law is not provided as a definitive text. In other words, there is also scope to customise the text of the model laws. However, it is recommended that the text of the model laws should largely be followed unless a different policy objective is intended.

The model laws in this handbook are:

- County Model Law on Property Rates
- County Model Law on Trade Licences
- County Model Law on Revenue Administration
- County Model Finance Law.

What is the policy followed by the model laws?

The policy of the model laws closely follows the existing policy of the national legislation that dealt with **property rates** and **single business permits**. The model laws have adopted key elements of the national legislation, without consideration of whether policy changes should be made. For example, 'public land' continues to be excluded from the definition of 'rateable property'.



Important!

In this handbook, the term 'trade licence' has been used instead of 'business permit', to ensure consistency with the Fourth Schedule of the Constitution.

Put simply, the policy of the model laws is to adopt the former national system as quickly as possible over this transition period so as to ensure there is express county legislation to protect the collection of revenue by county governments. Property rates and single business permits (trade licences) are very important revenue streams to the counties. The model laws can be considered a 'safety net' to preserve existing revenue collection, but without any attempt to adopt features that will enhance revenue collection in the future. It is expected that counties will do this based on county-specific policies they generate over the years ahead.

At the same time, the policy for trade licences has been simplified in one important respect. Previously, a business permit granted by one local authority was sufficient to conduct the business in the area of another local authority. Subject to further consultations, the Model Law on Trade Licences requires a business to obtain a separate trade licence for each county in which the business operates.

The policy for the Model Law on County Revenue Administration is also based on national policy. The main purpose of the County Revenue Administration Law is to confer a general power and responsibility for the administration of county revenue laws on a public official who is to be held accountable for that administration. The County Revenue Administration Model Law complements certain provisions in the Public Finance Management Act 2012.

The policy framework for the County Model Finance Law mirrors the National Finance Act in that it will set out the amount of any rates, taxes, fees and charges that are payable to the county government, including amendments to existing legislation.





Links to legislation

Some important pieces of legislation that have guided the development of the Model Laws include:

- Constitution of Kenya 2010
- Public Finance Management Act 2012
- Rating Act (Cap 267)
- Local Government Act (Cap 265)
- Kenya Revenue Authority Act (Cap 469)

The table below outlines the policy of the model laws.

	Does 	Does Not 
Model Law on Property Rates	Rely on existing forms of rating and valuations of properties, including collecting rates for a calendar year.	Support any comprehensive changes to the current property rates system. New legislation would be required for a more comprehensive property rates system.
Model Law on Trade Licences	Rely on existing categories of businesses and fees, including collecting licence fees for a calendar year.	Provide authority for recognition of licences across counties, i.e. a separate licence must be obtained in each county in which the business is conducted.
Model Law on County Revenue Administration	Rely on receivers of revenue appointed under the Public Finance Management Act and expands their responsibilities to include oversight of county revenue administration and enforcement based on the functions of the Kenya Revenue Authority at the national level.	Provide for a county to establish a separate statutory body, but a county government could customise the model law to establish such a body.
Model Finance Law	<p>Provide a framework for setting out:</p> <ul style="list-style-type: none"> the annual amount of county rates and other taxes trade licence fees other fees and charges for services provided by county governments. 	Specify the actual amount of the rates, taxes, fees and charges because this will vary from county to county

Drafting of the model laws

The drafting of the model laws follows in many respects the relevant national legislation for property rates and single business permits. However, consequential changes were made to reflect the new county arrangements. For example, the rating authority under the Model Law on Property Rates is now the county government and not the local authority. Provisions under the national laws that were redundant were also excluded.

The layout and numbering system of national legislation has been followed where appropriate. A consistent legislative approach at both the national and county level will assist the interpretation and implementation of the laws. At the same time, the model laws have been drafted in a 'plain English' drafting style to improve readability and to make the laws easier to understand and use.

An important issue in drafting the model laws is the question of what can be included in the model laws and what should be dealt with by way of **regulations or rules** (both are a common form of subsidiary instruments). The approach taken is consistent with good legislative drafting practice, whereby the most important information has been included in the model laws. Less important matters, or matters that are likely to change regularly over time, have been relegated to subsidiary instruments.

Some subsidiary instruments are essential for the implementation of any county legislation—for example, the application form to apply for a trade licence and the trade licence form itself. Both forms are, set out in Schedule 2 of the Model Law on Trade Licences. However, they can be altered by the chief licensing officer who can also prescribe any additional forms required in the future.



Important!

The use of model laws is a 'short cut' method of developing legislation, that is, the policy follows existing policy (which is not always the case for model laws) and the drafting is done. However, it is still open to a county government to customise the model laws to promote the particular interests of the county. Such customised laws, like all laws, are only effective if they are implemented. Information about customising and implementing model laws can be found in Chapter 6 and at the end of Chapters 2, 3, 4 and 5.

In drafting the model laws, relevant national legislative schemes have been followed to avoid unnecessary work and to ensure the model laws complement existing legislative frameworks. In this regard, the model laws on rates and trade licences will provide legal authority to impose the property rates and charge trade licence fees, while the County Model Finance Law will set out the **framework for the actual trade licence fees** and the **amount of property rates that are payable each year**. The County Model Finance Law will also contain a framework for other fees and charges for services provided by the county government.

Any increases to the trade licence fees or property rates for a particular year will be set out in the County Model Finance Law for that year and the model rates and trade licence laws will remain unchanged. The same applies for increases to fees and charges for services provided. This legislative scheme is transparent for users and county governments should find it easy to administer.



Links to legislation

For more information about county finance laws, see the *Public Finance Management Act (2012)*, Section 132.

Organisation and Approach

What is in the handbook?

The handbook is set out as follows:

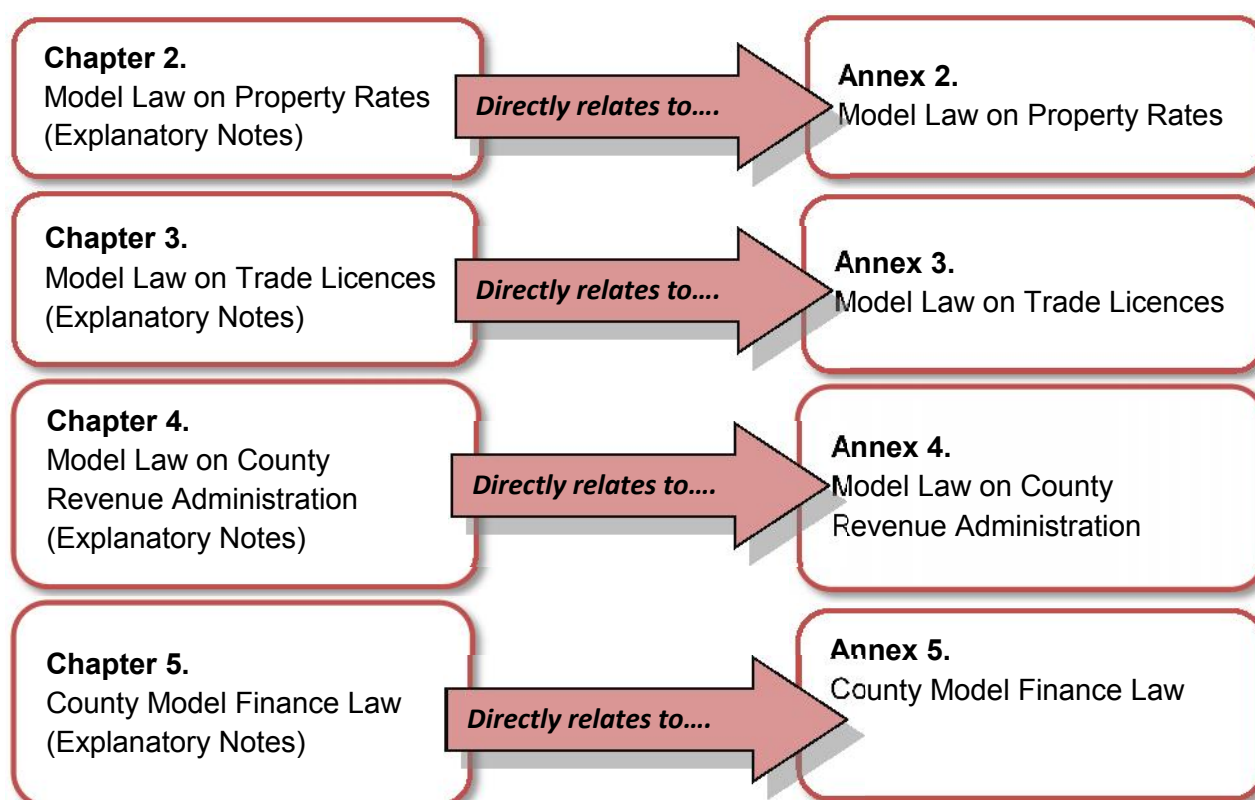
Chapter or Annex	What it contains
Chapter 1. Legislative Powers of Counties to Raise Revenue	A brief overview of the principles for county revenue-raising legislation. Annex 1 contains a detailed legal analysis of legislation relevant to county revenue-raising.
Chapter 2. Model Law on Property Rates (Explanatory Notes)	Each of these chapters is devoted to a particular model law and includes an explanation in everyday language of how each provision of the model law is intended to operate.
Chapter 3. Model Law on Trade Licences (Explanatory Notes)	
Chapter 4. Model Law on County Revenue Administration (Explanatory Notes)	
Chapter 5 Model Finance Law Explanatory Notes	The text of the model laws themselves can be found in Annexes 2–5.
Chapter 6. Adapting model laws for use by county governments	Sets out information about customising the model laws for use by county governments. This also includes important information about the clearance and passage of county laws and enacting county laws. Checklists for adapting and implementing the model laws can be found at the end of Chapters 2, 3, 4 and 5.

Glossary of Handbook Terms	Contains a list of terms that are found in the handbook, with an explanation of their meaning.
Annex 1. Legal Analysis of County Revenue-raising legislation	Contains a detailed legal analysis of legislation relevant to county revenue-raising, including transitional arrangements.
Annex 2. Model Law on Property Rates	The texts of each of the model laws are located here. Memorandums of Objects and Reasons for the model laws are also set out here.
Annex 3. Model Law on Trade Licences	
Annex 4. Model Law on County Revenue Administration	
Annex 5 County Model Finance Law	The text of the Model County Finance Law in Annex 5 does not set out the actual amount of any rates, taxes, fees and charges.

How to use the handbook

Chapters and Annexes

This handbook is designed to support county governments in understanding, adapting and implementing the model laws. As we have seen above, each chapter relates to a specific model law, and this is highlighted again below.





Handbook Tip!

There are **hyperlinks** included throughout the handbook (electronic version), which will help you navigate through the document more easily. Clicking on a hyperlink will take you straight to the relevant part of the document.

This is helpful when you want to move quickly between the Explanatory Notes in the Chapters and the actual Model Laws in the Annexes.

Note: If you are using MS Word, you can easily return to your original place in the document by pressing:

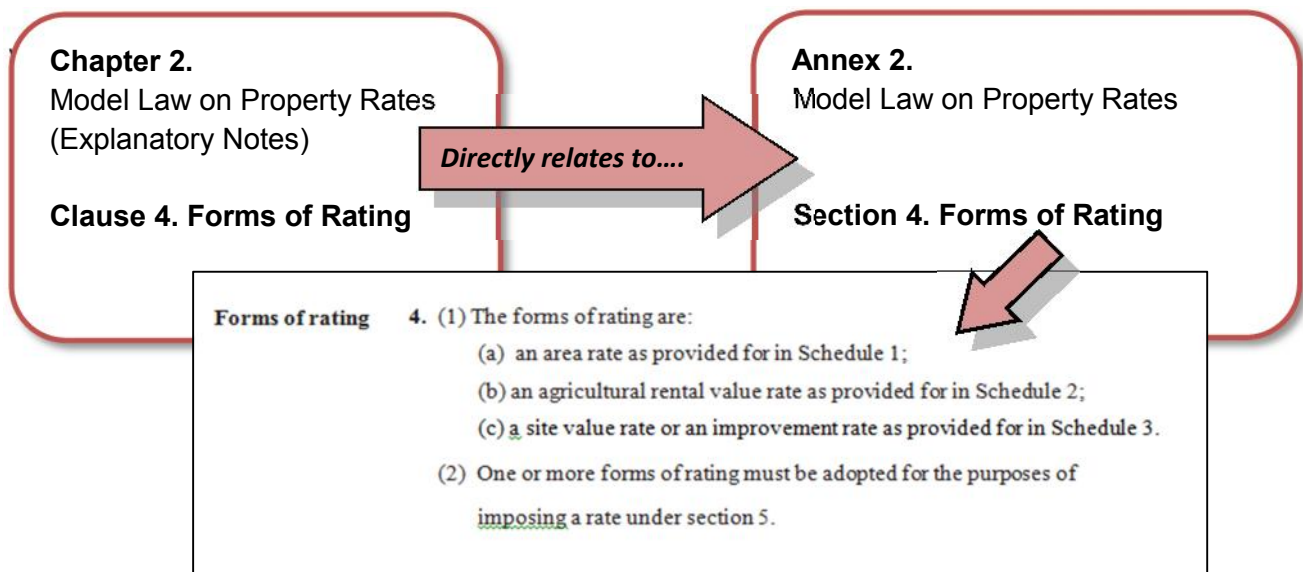
ALT + left arrow on your keyboard

You can also navigate the document by using the 'View>Navigation Pane' function (Word 2010) or 'View>Sidebar' (Word for Mac) function.

Clauses and Sections

It is important to understand the legal terminology used in the handbook, in particular the distinction between 'clauses' and 'sections'. Legislation is drafted as a 'Bill' and when it becomes law after passage by the Parliament it becomes an 'Act'. Each provision of the Bill is referred to as a 'clause' and each 'clause' of the Bill becomes a 'section' of the Act. The drafter drafts legislation (a Bill) on the basis that it will be passed by Parliament and become an Act, and therefore only uses the term 'section' in the draft. Explanatory material for a Bill refers only to 'clauses' of the Bill.

This drafting practice has been used in preparing the model laws and the supporting explanatory material. Accordingly, the Explanatory Notes in Chapters 2–5 describe each of the 'clauses'. Each 'clause' directly corresponds to a 'section' in the model law. For example:



Frequently Asked Questions (FAQs) and Checklists

Two important elements of the handbook are the **Frequently Asked Questions (FAQs)** for each model law and the **Checklists for Adapting and Implementing the Model Laws**. These tools will be useful to assist county governments with the process of adapting and implementing the model laws. Many of the FAQs are based on real questions asked during workshops held to develop the model laws and can be found throughout Chapters 2–4. The checklists are located at the end of Chapters 2, 3, 4 and 5.



Handbook Tip!

The handbook does not have to be read from start to finish, although you are certainly welcome to do that. You may prefer to select and read certain clauses, depending on your specific interest. Or, you may like to go straight to the FAQs or Checklists and work from there. Think of this handbook as a resource that can be used in whichever way best assists your understanding of the model laws.

Who is the handbook for?

It is expected that this handbook will be used by a broad range of people including:

- County assembly members
- County executive committee members
- Legal officers of county governments
- Clerks of the county assemblies
- Chief officers and accounting officers of county governments
- Receivers of revenue and collectors of revenue of county governments
- Staff of the county treasury
- Staff of county departments and county government entities involved in public finance, land, business, health or environment
- Staff of city and municipal boards involved in public finance management
- Audit committee members.

Other users and audiences include:

- Ratepayers and licence holders
- Valuers of land and buildings
- Developers of land.

CHAPTER 1. COUNTY REVENUE LAWS—LEGAL AND CONSTITUTIONAL ISSUES

Introduction

County governments should have a clear legal basis for raising revenue, both in the Constitution and county legislation. This is the case for taxes, fees and charges.

Article 209(3) of the Constitution (see below) provides for two kinds of **county tax**:

- Property rates
- Entertainment tax

Other **taxes** must be authorised by Parliament and to date no other taxes have been authorised.

*3) A county may impose—
(a) property rates;
(b) entertainment taxes; and
(c) any other tax that it is authorised to impose by an Act of Parliament.*

Item 7 of Part 2 of the Fourth Schedule of the Constitution gives counties responsibility for **trade licences**.

*7. Trade development and regulation, including—
(a) markets;
(b) trade licences (excluding regulation of professions);*

County governments have other regulatory functions provided for by Part 2 of the Fourth Schedule of the Constitution, including liquor licensing and development control.

County governments can impose **charges for services** in accordance with Article 209(4) of the Constitution.

(4) The national and county governments may impose charges for the services they provide.

The power to impose charges, together with the regulatory functions under Part 2 of the Fourth Schedule, authorises county governments to charge fees for services provided as part of the performance of those regulatory functions, for example, fees for the grant of trade licences.

Article 210 of the Constitution confirms that legislation in addition to the Constitution is required to impose taxes or fees. It provides:

(1) No tax or licensing fee may be imposed, waived or varied except as provided by legislation.

Is there a legal basis for charging property rates?

The national Rating Act (Cap 267) authorises local authorities (not county governments) to levy and collect property rates. The rating authority defined in section 2 of that Act refers to municipal councils, county councils and town councils.

“the rating authority” means—

(a) in respect of a municipality and any local council area situate therein, the municipal council thereof;

(b) in respect of a county and any urban, area or local council situate therein, the county council thereof;

(c) in respect of a township, the town council thereof;

Such entities ceased to exist upon the repeal of the Local Government Act (see below). The County Governments Public Finance Management Transition Act did try to address the legal uncertainty surrounding the collection of revenues by county governments. Section 23 of the Act provides:

“For avoidance of doubt, until a new law relating to the imposition of rates and charges is enacted, County Governments, urban areas and cities may, with necessary modifications, continue to impose rates and charges under the law for the time being in force in relation thereto.”

In reliance on section 23, county governments proceeded to collect property rates (and fees for single business permits, see below) until 30 September 2013. Section 31 of the County Governments Public Finance Management Transition Act provided for the repeal of that Act on that date. There was an attempt to extend the operation of the Act to 30 June 2014 by amending section 31. However, this legislation was not enacted and the County Governments Public Finance Management Transition Act was repealed with effect from 30 September 2013.

Is there a legal basis for single business permits (trade licences)?

Local authorities issued single business permits under Section 163A of the Local Government Act.

“(1) A local authority may on receipt of an application under this Act grant a business permit to allow the conduct of a business or trade, including a profession or occupation, within its area:

Section 148 also authorised local authorities to charge fees for the issues of licences (and permits).

The Local Government Act was repealed in March 2013 by section 134 of the County Governments Act:

134. Repeal of Cap. 265

(1) The Local Government Act is repealed upon the final announcement of all the results of the first elections held under the Constitution.

(2) All issues that may arise as a consequence of the repeal under subsection (1) shall be dealt with and discharged by the body responsible for matters relating to transition.

County governments continued to collect fees for single business permit in reliance on section 23 of the County Governments Public Finance Management Transition Act until 30 September 2013.

Recommendation 1

County governments need to enact their own laws to preserve the legal basis for these two important revenue sources.

The model laws provide the same revenue powers to county governments as local authorities had. Over time, the basis for these two revenues could be changed to increase revenue.¹

Related Matters

Although not directly related to the county model laws, there are several other issues relating to county finances that are so important they should be included in any discussion on county finances. They are:

- Nature of charges for services
- Status of old county by-laws
- Purpose of the County Finance Acts
- Entertainment tax.

Charges for services

Property rates are a form of taxation and fees for the grant of a trade licence are a charge for a service. The county government provides the service by granting the licence to conduct the business and regulating the conduct of the business—for example, ensuring compliance with health, hygiene and safety standards.

Charging fees for services is not the same as taxes. A fee or charge must as a matter of law relate to a service that is provided, while legally a tax is not required to bear any such relationship (a tax is simply the expropriation of private property). Further, the fee must bear a relationship to the cost of providing the service. If the fee is too high, a court will have grounds to classify it as a tax and may decide that it is beyond power.

¹ A more detailed legal analysis of county finance legislation is set out in Annex 1.

By way of example, the cost of an entrance fee to a national park is a fee for a service and the services being provided are easy to identify, such as the provision of toilet facilities and road maintenance.

Recommendation 2

County governments must ensure that any fee or charge relates to the provision of a service.

Although not directly relevant to the model laws, set out below are some questions to consider in relation to county charges for services:

- Do charges for services include **fees based on the price of goods** (similar to a sales tax)?
- Do charges for services include **fees for extraction of natural resources** (similar to a royalty²)? What if gravel is extracted from county-owned land?
- Can counties charge for **use of roads** they maintain (for example, road user service fee)?
- Can counties recoup **costs of providing and maintaining roads** by charging a cess? Or is cess a tax?³
- Is **charging for branding on the side of vehicles** travelling on county roads constitutional? What if the vehicle is travelling on a national highway?

It is also possible to charge a fee for a service based on agreement, for example, the hiring of a county hall for a meeting or social function.

Can counties continue to base their fees and charges on old local authority by-laws?

Fees and charges payable under local authority by-laws are most likely valid because of the transitional provisions in the Sixth Schedule of the Constitution (see detailed discussion in Annex 1). However, some of the powers used by local authorities to charge fees for services have not been given to county governments.

In accordance with good legislative practice and to ensure legal certainty, the old local authority by-laws should be re-enacted as county laws. At the same time, it will be necessary to confirm the constitutional basis for each of the laws.

² A royalty is the payment made by miners to the State (usually the owner of mineral rights) for the privilege of extracting minerals from the ground.

³ CESS is a tax on the movement of agricultural produce raised by local authorities. It is not the same as an agricultural tax (or levy) on production which is common in the agricultural sector, for example, a levy on the slaughter of cattle is a tax payable on the slaughter of each animal.

Recommendation 3

There should be a county law dealing with each revenue source.

What does entertainment tax cover?

The entertainment tax is one of the exclusive taxing powers of the counties. Currently, the national Entertainments Tax Act (Cap 479) provides for the levying, collection and payment of an entertainments tax. “Entertainment” is defined to include an exhibition, performance or amusement to which persons are admitted for payment, but does not include the following:

- entertainment offered by persons registered for value added tax;
- approved stage plays and performances which are conducted by educational institutions; and
- approved sports, games or cultural performances.

The definition limits the scope of the tax and therefore how much revenue such a tax is likely to generate. For example, an entertainment tax on admission to events does not have the same relevance today as when it was first introduced in the 1950s when there was no Internet or pay TV offering entertainment services. When county governments develop policy and legislation on this tax, they should be innovative enough to cover areas beyond the provisions of the current Act if they expect to raise meaningful revenues from the source.



Links to legislation

For more information about county legislative powers, please refer to Part 2 of the Fourth Schedule of the Constitution of Kenya.

CHAPTER 2. COUNTY MODEL LAW ON PROPERTY RATES

Introduction

The County Model Law on Property Rates is set out in Annex 2. The model law provides for the imposition and collection of property rates by a county government in accordance with Article 209(3)(a) of the Constitution. As mentioned in Chapter 1, property rates are an exclusive taxing power of the county governments under Article 209(3)(a).

Previously, the national Rating Act provided the legislative authority to impose and collect property rates. The model law is based on that Act, in order to minimise disruption to systems currently operating to collect property rates under the national framework. If in the future comprehensive changes to the property rates system are to be made, for example, a system based on banding and self-assessment, then new legislation should be enacted. For now, the model law continues to rely on valuations prepared under the national Valuation for Rating Act for properties on existing valuation rolls.

Formalities—long title and enacting formula

The long title⁴ of the model law is:

An Act of the County Assembly of [Insert County Name] to provide for the imposition of rates on land and buildings in the County of [Insert County Name], and for connected purposes.

The enacting words of the model law are:

Made by the [Insert County Name] County Assembly.

Clause 1. Short title and commencement

On enactment of the Law, the short title⁵ of the Act will be:

The [Insert County Name] County Rating Act [Insert Year].

⁴ Every Act begins with a long title. The long title describes the general purpose of the law. The enacting formula (also known as ‘words of enactment’, ‘enacting words’, or ‘enacting provisions’) is required in every Bill to show the authority by which the legislative power is exercised.

⁵ The short title is found in all Acts. The short title is a *label* for the law and can be used to identify the law in a shorthand way instead of having to use the long title. It is the name used to refer to the law.

The county assembly must decide on a date for the model law to commence. A likely commencement date would be the start of a calendar year or a fiscal year. A retrospective commencement date of the legislation should be avoided. However, if it is necessary to safeguard the legality of property rates that have been collected since 1 October 2013, then legal advice should be sought on a possible retrospective commencement date.



Links to legislation

A county assembly law should come into force on the fourteenth day after its publication (in the county Gazette and Kenya Gazette, whichever comes earlier) by virtue of section 25(2) of the County Governments Act, 2012 (Act 17 of 2012). However, section 25 (2) also allows any such legislation to stipulate a specific date of commencement (for its coming into force).

For more information about the coming into force of a law, see section 25 of the County Governments Act, 2012.

Clause 2. Application of Act

The model law is expressed to apply to all rateable property in the county. Currently property rates may be imposed only on rateable property. Rateable property includes all land except:

- land reserved for roads, streets, car parks, squares, parks or gardens;
- public land; and
- land used for public religious worship, cemeteries, hospitals, educational institutions, charitable institutions, museums, libraries, outdoor sports and national parks.

The definition of rateable property is contained in section 2 of the Valuation for Rating Act. It is a complex definition and includes further definitions of the exceptions which rely on concepts in the Valuation for Rating Act. For this reason and to preserve the existing policy, the model law adopts the definition of rateable property contained in the Valuation for Rating Act by way of a cross-reference, instead of repeating the definition.

Public (or government) land ⁶is excluded from the definition of rateable property and this exclusion has been maintained for the purposes of the model law.

⁶ Whether property rates should be payable in respect of public (government) land is an important policy issue. If in the future the policy is changed to include such land, then an amendment will be required to the definition of rateable property.



Important!

The model law relies on land valuations prepared under the national Valuation for Rating Act. Many of these valuations are out of date and do not reflect current market values. Until the valuation situation is addressed, county governments have no option but to rely on such valuations, regardless of their accuracy. It was beyond the scope of the model laws to deal with the valuation matter.

Clause 3. Interpretation

This clause contains the definitions used in the model law. To preserve existing policy, many of the definitions are the same or similar to those used under the national property rates legislative scheme.

As a general drafting practice, a definition should be self-sufficient and it is better to repeat a definition from another Act than to refer to it in that other Act. Referring to definitions in other Acts forces the reader to refer to that other legislation and this should be kept to a minimum. This drafting practice has been adopted for the drafting of the model law.

Unfortunately, it has been necessary to adopt certain definitions from the Valuation for Rating Act by way of cross-reference on several occasions. The reason is that the definitions are complex and in many instances rely on concepts contained in other sections of that Act. To repeat the definitions in the model law would have unnecessarily complicated the model law and on balance it was considered safer to adopt the existing definitions by way of a cross-reference. It is also consistent with continuing the existing property rates policy.

Some of the key definitions that relate specifically to the Model Law on Property Rates have been outlined in the table below.

Table of Definitions

<i>Self-sufficient definitions</i>	<i>Defined term</i>	<i>Comments on definitions</i>
These are definitions that contain all necessary information and do not require the reader to refer to other laws.	agricultural rental value rate	See clause 4(1)(b) and Schedule 2 of model law
	area rate	See clause 4(1)(a) and Schedule 1 of model law
	improvement rate	See clause 4(1)(c) and Schedule 3 of model law
	land	Includes buildings on the land
	prescribed	Clause 19 provides for the rules to prescribe matters
	rating authority	The county government is the rating authority
	rate	Refers to the tax (the property rate) imposed by clause 5
	site value rate	See clause 4(1)(c) and Schedule 3 of model law
	year	Refers to a calendar year, unless the rules prescribe a financial year
<i>Definitions adopted from other legislation by way of cross-reference</i>	<i>Defined term</i>	<i>Comments on definitions</i>
These are definitions that are contained in other laws and have been adopted by the model law instead of repeating the definitions in the model law.	rateable owner	The model law adopts the meaning given to rateable owner by section 7 of the Valuation for Rating Act
	rateable property	The model law adopts the meaning given to rateable property in the Valuation for Rating Act (see sections 2, 25 and 27 of that Act)
	receiver of revenue	Refers to the receiver of revenue for taxation under section 157 of the Public Finance Management Act
	supplementary valuation roll	Refers to a supplementary valuation roll prepared under the Valuation for Rating Act
	valuation roll	Refers to a valuation roll prepared under the Valuation for Rating Act

Clause 4. Forms of rating

The model law is based on the existing property rates system operating under the national framework. For the purpose of imposing rates, the model law allows the county assembly to adopt the existing forms of rating provided for under the national Rating Act (see Clause 5 below). This is important because it is a major exercise to adopt new forms of rating, requiring new policy and new operational systems.

The existing forms of rating are set out below:

- area rate
- agricultural rental value rate
- site value rate
- improvement rate.

Area Rate (See Schedule 1 of the Model Law on Property Rates)

An area rate is a rate imposed on an area of land, and the county assembly may adopt one or more of the following methods of rating for an area rate, as outlined below:

Method of Rating	Meaning
A flat rate	The tax rate is fixed at a particular level regardless of the taxable base amount.
A graduated rate	The tax rate increases as the taxable base amount increases.
A differential flat rate or a differential graduated rate according to the use to which the land is put, or capable of being put, or for which it is reserved.	The tax rate is fixed or increases as above, depending in part on the use to which the land is put.
An industrial rate if the land is used for purposes other than agricultural or residential purposes.	The tax rate applies only to land used for industry.
A residential rate if the land is used for residential purposes.	The tax rate applies only to land used for housing.

Agricultural rental value rate (See Schedule 2 of the Model Law on Property Rates)

An agricultural rental value rate is a rate imposed on the annual value of agricultural land.

Site value rate (See Schedule 3 of the Model Law on Property Rates)

A site value rate is a rate imposed on the value of unimproved land as appearing in a valuation roll or supplementary valuation roll.

Improvement rate (See Schedule 3 of the Model Law on Property Rates)

An improvement rate is a site value rate in combination with a rate on the assessment for improvement rate as appearing in a valuation roll or supplementary valuation roll. If a site value rate or an improvement rate is adopted, the national Valuation for Rating Act including relevant definitions applies to the form of rating so adopted.



Frequently Asked Questions

Q: What is the most common form of property rates used by counties?

A: As a general rule, counties use a site value rate (land value only) to calculate property rates and do not impose property rates on the value of any buildings on the land. A site value rate is easy to administer, and does not require sophisticated operational and computer systems as would an improvement rate (building values). If a county government did want to adopt other forms of rating, then the capacity of the operating systems to cope with such a change would need to be taken into account. An agricultural rental value rate is also used widely in rural areas.

Clause 5. Imposition of a rate

Clause 5(1) of the model law imposes a rate in respect of each year on all rateable property in the county. Legally, this must be done in order to collect the property rates which are paid on an annual basis. The actual amount paid each year (see clause 6 below) may vary depending on the services provided.

Clause 5(2) provides that, for the purposes of imposing the rate, the form of rating adopted is a site value rate which is a rate based only on the land value (see clause 4 above). This is consistent with the current practice whereby most counties use the site value rate. Consequently, counties do not have to take any further action if they wish to continue with a site value rate.

However, clause 5(3) provides that the county assembly may adopt one or more other forms of rating. This could be done in the annual County Finance Act. The county assembly may adopt different forms of rating for different rating areas.

The following form of wording is suggested as an option for use by the county assembly to adopt another form of rating:

*‘For the purposes of subsection 5(3) of the **[Insert Name of County]** Rating Act **[Insert Year]**, the following forms of rating within the meaning of that Act are adopted:*

(a) an agricultural rental rate is adopted for the rating area [set out description of rating area];

(b) an area rate is adopted for the rating area [set out description of rating area].’

Clause 6. Amount of a rate payable

It is important to specify the amount of a rate that is payable each year. It is proposed to set out the amount of property rates that is payable each year in the annual County Finance Act. The County Executive will propose the amount of a rate that is payable in the annual County Finance Bill and the county assembly will approve, reject or vary the proposed amount. The amount of a rate must be determined each year and Schedule 4 of the model law contains suggested wording for use in drafting a provision in the annual County Finance Bill to determine the amount of a rate. Chapter 6 deals with County Finance Bills in detail.



Important!

County governments would be expected to consult with property owners and other stakeholders before altering the amount of any property rates that are payable by ratepayers. The timing of any such consultations is important and the consultations should be built into each county government's annual budget circular to ensure adequate notice is given to stakeholders.

If property rates are to be increased, ratepayers will want to see improved services. It would therefore be useful to have available for consultations:

- a comparison of old and new rates
- a list of the additional services to be provided.

It is not actually necessary in the County Finance Act to list both the old and new amounts (only the new amounts that are payable), so having a comparison available during consultations will be helpful to stakeholders.

Although the Constitution and national legislation require public participation in policy making processes, specific requirements for consultations could be included in a county law if a county government considered it necessary. This would be an example of a county government customising a model law to suit its own requirements.

Clause 7. Deemed amount of rates

If the county assembly does not determine the amount of a rate payable for a particular year, then the amount of the rate payable for that year is deemed to be the amount of the rate that was payable for the immediately preceding year. This could arise if the annual County Finance Bill for a particular year was not passed by the county assembly, or because of an oversight the amount of property rates payable was omitted from the Bill.

Clause 8. When do rates become due and payable?

Legally rates become due at the start of the year, that is, 1 January. The rating authority is to determine the actual date (a later date) by which a rateable owner must pay the due rates. The payment date must be published in the county *Gazette* and it should also be published in a newspaper circulating in the county. The practice is to give at least 30 days' notice of the payment date and this has been incorporated into the model law.

For example...

If a county wants its rates for 2015 to be paid by 1 April, then it will need to publish the payment date in the county *Gazette* by 28 February *at the latest*. It should also publish the payment date in a (local or national) newspaper. The county government staff responsible for collection of property rates would therefore need to start preparing advertisements for publication as soon as the year commences on 1 January.

Clause 9. Liability for payment of rates

The rateable owner of land is liable to pay the imposed rates. If the rateable owner is absent from Kenya, the rates are payable by any person receiving rent for the land or who is in charge or control of the land. Liability extends to ownership by more than one person and each owner is liable to pay the rates. Clause 9 reflects the current situation for the payment of property rates.

Clause 10. Collection of rates

Rates must be paid to the county receiver of revenue who is designated for taxes under section 157 of the Public Finance Management Act. The receiver of revenue can also authorise other persons to collect rates.



Frequently Asked Questions

Q: What is the best way for counties to collect rates?

A: To improve the collection level of rates, it is important to make payment easier for ratepayers. For this reason, rates can be paid electronically (internet or phone banking), subject to operational systems being in place. Many people still pay rates in person at the county offices. Other places determined by the receiver of revenue can also be used, for example, the offices of collection agents authorised to accept payments. A receipt must be issued for the payment of any rates. The issuing of receipts is an important front-line mechanism for financial accountability.

Clause 11. Discount for early payment of rates

The county assembly may determine a discount for the early payment of rates, that is, if paid on or before the required date for payment. This is intended to encourage ratepayers to pay rates, but can result in reduced amounts of revenue being collected. Under the national Rating Act, a discount of not more than five percent was allowed, while the Minister had the power to increase the amount of that discount. Careful consideration should be given to the pros and cons of providing discounts, and the level of discounts that are appropriate.

Clause 12. Penalty payable on late payment of rates

The county assembly may determine a penalty for the late payment of rates by way of an interest charge calculated on any amount of rates remaining unpaid after the payment date. The interest charge is payable to the rating authority. This is to discourage the late or non-payment of rates. Under the national Rating Act, a penalty of not more than three percent was allowed and the Minister had the power to vary that penalty level. Again, bank interest rates should be taken into account in determining the appropriate level of penalty, to ensure late payment is not financially advantageous to a ratepayer.

Clause 13. Recovery of rates

The clause enables the rating authority to take civil proceedings in a court to recover unpaid rates and penalties from the ratepayer as a debt. The receiver of revenue is authorised to sue for and recover the debt for the rating authority. To assist with debt recovery, the receiver of revenue can issue certain evidentiary certificates confirming the rates were due and remain unpaid for the purpose of the court proceedings.



Important!

Recovering unpaid rates can be an expensive and time consuming process, and it usually requires an order of the court. It is made more difficult if land records are not up to date, for example, land is from time to time sold without proper change of ownership records being maintained, and this can result in legal proceedings being issued against the wrong person, or court judgments not being enforced. Enforcement is an area where new policy initiatives to streamline recovery procedures and encourage payment before getting to court could be considered, so as to improve revenue collection.

Clause 14. Recovery of rates from persons paying rent

This clause allows a rating authority to issue a notice in respect of unpaid rates to any person paying rent to the rateable owner of the land, to require that person to pay the rent directly to the rating authority and not to the rateable owner.

Currently, this mechanism is used only for commercial premises and is most effective. Landlords usually pay the outstanding rate amounts promptly once the tenant has brought to their attention the requirement to direct rental payments to the county. The other benefit of this mechanism is that it does not require an order of the court. The practice is not used for residential premises.

Clause 15. Rates chargeable on property

This clause provides that unpaid rates and penalties become a charge on the land, and can be registered against the land once an order is obtained from the court. The priority of registered charges over land is determined by the relevant law relating to land registration, which reflects the usual legal position. Any change to the order of priorities would require changes to the land law.

Clause 16. Statement of payment of rates and other charges

This clause provides for the rating authority to issue a statement of the current status of the payment of rates. For example, if a purchaser is buying the land, the purchaser can use the statement to calculate any rates adjustment on settlement. It also ensures that a purchaser does not take on any burden of unpaid rates as a result of the purchase.

Clause 17. Publication and service of documents

Documents are to be published, or sent to or served on persons, in accordance with the requirements of Section 16 of the County Model Revenue Administration Law.

Clause 18. Valuer

This clause gives power to the county executive committee member responsible for lands to appoint county public officers or other persons to value land for the purposes of preparing a draft valuation roll or draft supplementary valuation roll under the Valuation for Rating Act. There are many properties that are currently not on the valuation rolls and they should be. One of the reasons for their not being on the roll is that the properties have not been valued and this in part is attributable to a lack of capacity to value properties.



Frequently Asked Questions

Q: Who appoints the valuers when counties want to prepare new rolls?

A: Clause 18 provides that the county executive committee member for lands can appoint county valuers. Until county valuation legislation is enacted, new rolls can be prepared only under the national Valuation for Rating Act.

Clause 19. Power to make rules

This clause gives power to the county executive member responsible for finance to make rules for the purposes of the law, including for:

- the collecting of rates
- the exemption, waiver or reduction of rates
- prescribing fees for services
- prescribing forms.

Such rules must fall within the ambit of the model law (the primary law) in accordance with normal legislative principles relating to subsidiary legislation. Initially, any rules made under this provision should follow the rules in force under the national Rating Act with necessary modifications.

Clause 20. Savings

This clause adopts by reference existing forms and methods of rating in counties under the national Rating Act, and such forms and methods are to continue to apply with necessary modifications.⁷ Existing rules are also adopted by reference and continue in force with necessary modifications. New rules should be enacted as soon as possible.

It also deems to validate for the purposes of the model law rolls that have lapsed under the Valuation for Rating Act. This is potentially problematic, as a county law is purporting to continue in force rolls that do not comply with the relevant national law. However by using a deeming provision that is limited only to the purposes of the model law, arguably, the valuation rolls have been regularised for that particular purpose and no other. A deeming provision relies on a legal fiction (e.g. it is like treating a wild animal to be a domesticated animal for certain purposes), but is a convenient means of attempting to deal with an unforeseeable circumstance.



Frequently Asked Questions

Q: Should all properties in the counties, including land, be subjected to rates?

A: As a matter of revenue policy, all buildings and land in a county should be subject to property rates and be placed on the valuation roll. If property rates are calculated by reference only to the value of the land, then the amount of revenue that can be collected is reduced because expensive buildings are excluded. Criteria to exempt certain land and buildings from the payment of property rates should be developed taking into account public interest, e.g. educational and religious institutions should be exempt, and having regard to the amount of revenue required to be collected from property rates so as to be able to provide basic services to people.

Q: Are the rolls prepared by the former local authorities valid for use by the county governments?

A: The model law provides that existing valuation rolls prepared under the national Valuation for Rating Act are to be used by county governments. This is satisfactory to protect existing revenue being collected, but in time county governments should enact their own valuation legislation.

⁷ Adopting by reference is a drafting technique that applies the provisions of an existing law to a new law, and thus avoids having to repeat those provisions in the new law. Often such adopted provisions can apply in the new law only with modifications.

Diagram 1: Adapting the Model Law on Property Rates

Below are the technical changes that *must* be made to adapt a model law for approval by the county executive and introduction to the county assembly as a County Bill.

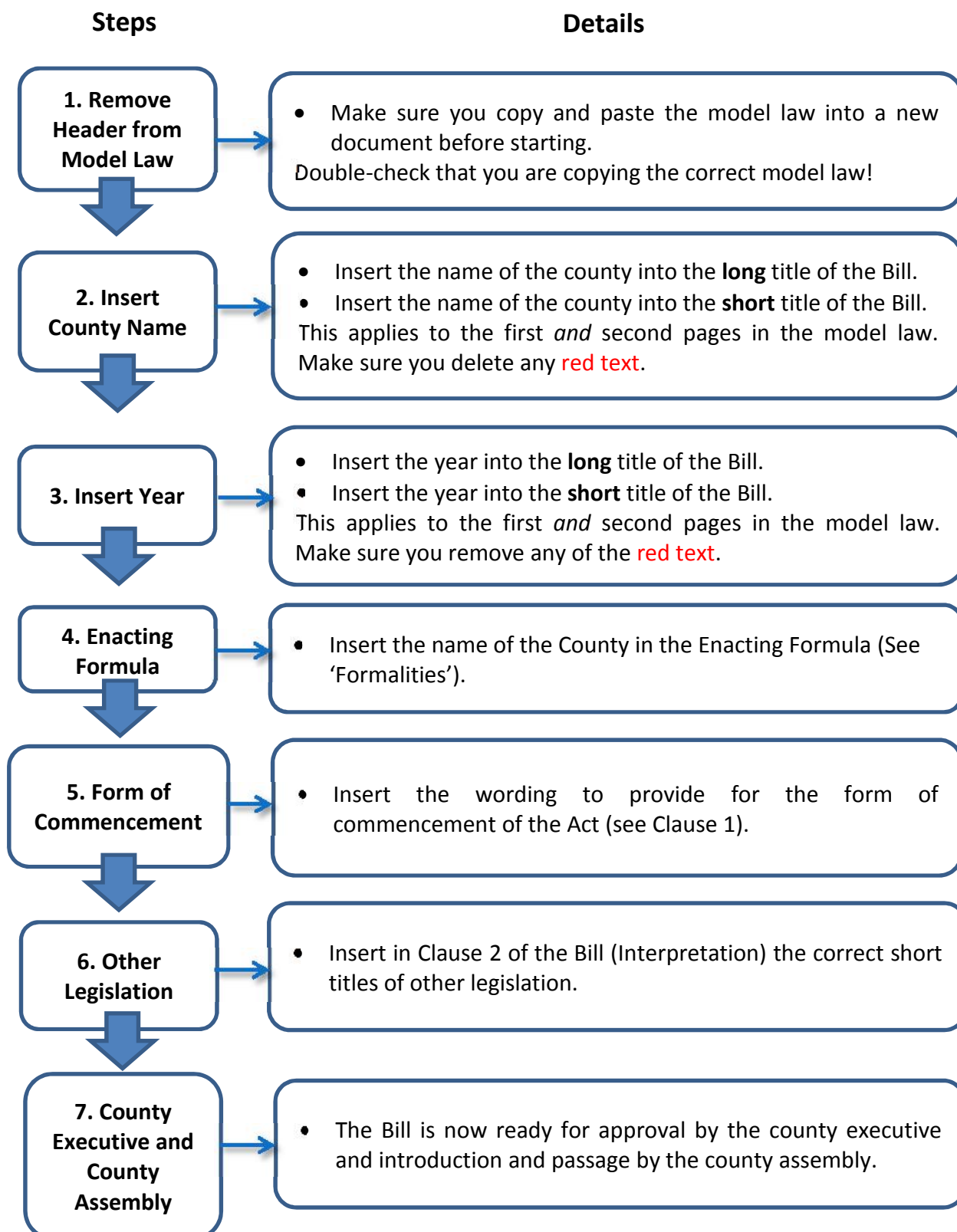
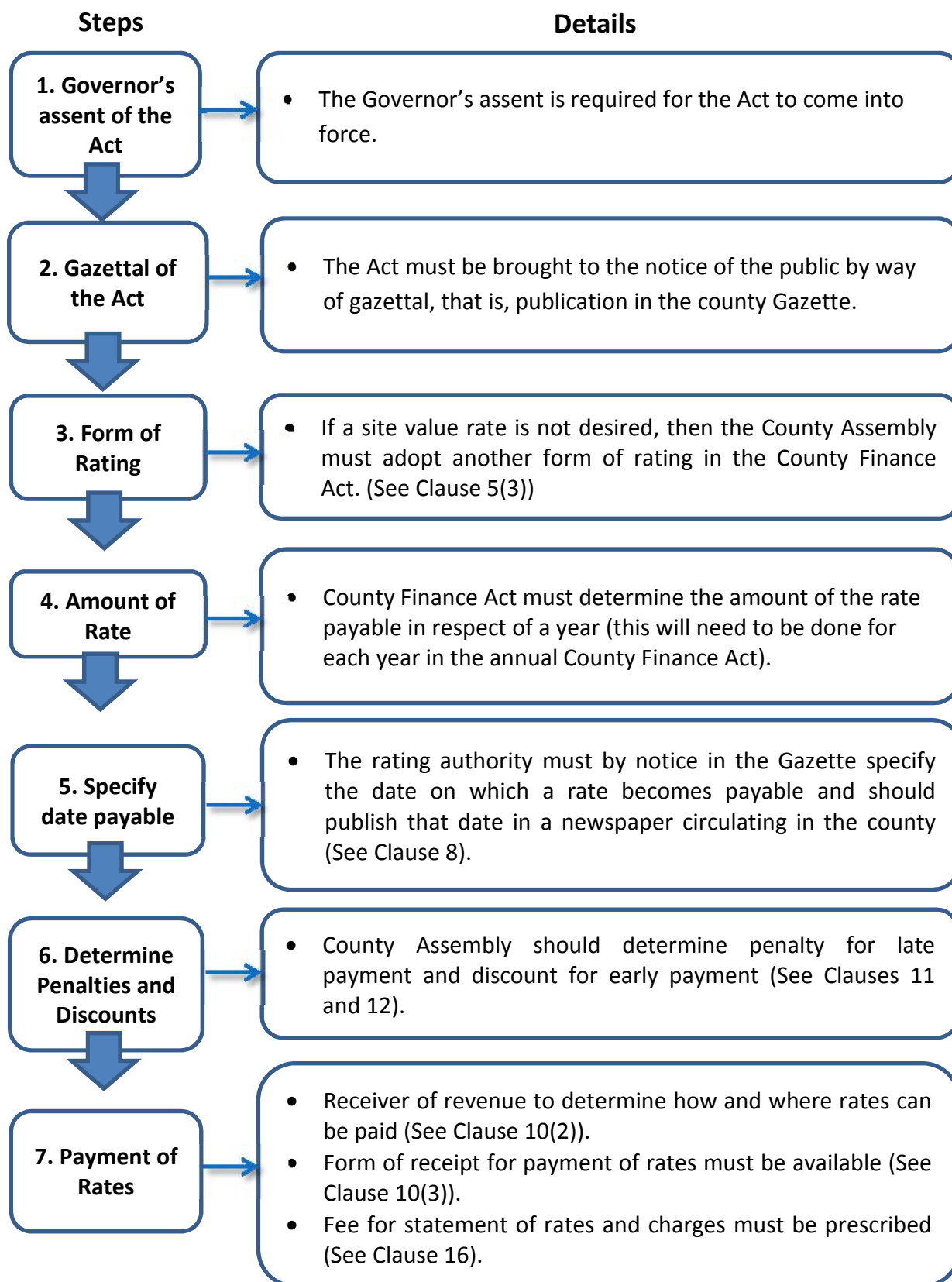


Diagram 2: Implementing the Model Law on Property Rates

Once the required technical changes have been made to the model law, there is a series of steps required in order to implement a County Rating Act.



Checklist 1: Adapting and Implementing the Model Law on Property Rates

This checklist can help you keep track of your progress on completing the actions that are required for adapting the Model Law on Property Rates and for implementing as the County Rating Act.

Action	✓ When completed	Date Completed	Comments
Create new document with model law text and remove header.			
Insert County Name into the long and short titles.			
Insert Year into the long and short titles.			
Insert the name of the County in the Enacting Formula.			
Insert the wording to provide for the form of commencement of the Act.			
Insert in Clause 2 (Interpretation) the correct short titles of other legislation.			
Approval of the Bill by the county executive and introduction and passage of the Bill by the county assembly.			
Governor's assent of the Act.			
Gazettal of the Act.			
Adopt Form of Rating, if site value rate is not to be used (County Finance Act).			
Determine the amount of the rate payable in respect of a year (County Finance Act).			

Action	✓ When completed	Date Completed	Comments
Specify the date a rate becomes payable and publish this in the county Gazette and a newspaper (Rating Authority).			
Determine penalty for late payment and discount for early payment (County Finance Act).			
Determine how and where rates can be paid (Receiver of revenue).			
Form of receipt for payment of rates made available.			
Prescribe fee for statement of rates and charges.			

CHAPTER 3. COUNTY MODEL LAW ON TRADE LICENCES

Introduction

The County Model Law on Trade Licences is set out in Annex 3. The model law provides for a county government to grant trade licences in accordance with Part 2 of the Fourth Schedule of the Constitution. A trade licence authorises a person to conduct a business in the county, including a profession, trade or occupation.

Part 2 of the Fourth Schedule gives counties responsibility for certain licensed activities and other regulatory functions. This includes the power to:

- licence undertakings that sell food (item 2(d));
- issue trade and liquor licences (items 7(b) and 4(c)); and
- licence dogs (item 6(a)).



Links to legislation

These licensing powers are *not* taxing powers, but are a power to charge fees for services. Article 209(4) of the Constitution provides that the County Governments can impose charges for services.

For more information about revenue-raising powers generally, see Chapter 12, Part 3 of the Constitution of Kenya.

Previously, business permits were issued by local authorities under section 163A of the Local Government Act for the conduct of a business or trade, including a profession or occupation, in their areas. Following the repeal of that Act in March 2013, no replacement legislation has been enacted that provides for the licensing of businesses in the counties. The model law will fill the gap and uses the term 'trade licence' instead of 'business permit' to ensure consistency with the Constitution.

Some of the other licensed activities in Part 2 of the Fourth Schedule fall within the scope of conducting a business under the model law, for example, selling food and liquor⁸. Note that the model law does *not* extend to item 6(a) (dog licences).

⁸ In time, County Governments may decide to enact separate legislation regulating liquor and the sale of food.

Formalities—long title and enacting formula

The long title⁹ of the model law is:

An Act of the County Assembly of [Insert County Name] to provide for the grant of trade licences, and for connected purposes.

The enacting words of the model law are:

Made by the [Insert County Name] County Assembly.

Clause 1. Short title and commencement

On enactment of the Law, the short title¹⁰ of the Act will be:

The [Insert County Name] County Trade Licence Act [Insert Year].

The county assembly must decide on a date for the model law to commence. A likely commencement date would be the start of a calendar year or a fiscal year. A retrospective commencement date of the legislation should be avoided. However, if it is necessary to safeguard the legality of business permit and trade licence fees that have been collected since 1 October 2013, then legal advice should be sought on a possible retrospective commencement date.



Links to legislation

A county assembly law should come into force on the fourteenth day after its publication (in the county *Gazette* and *Kenya Gazette*, whichever comes earlier) by virtue of section 25(2) of the County Governments Act, 2012 (Act 17 of 2012). However, section 25 (2) also allows any such legislation to stipulate a specific date of commencement (for its coming into force).

For more information about the coming into force of a law, see section 25 of the County Governments Act, 2012.

⁹ Every Act begins with a long title. The long title describes the general purpose of the law. The enacting formula (also known as ‘words of enactment’ or ‘enacting provisions’) is required in every Bill to show the authority by which the legislative power is exercised.

¹⁰ The short title is found in all Acts. The short title is a *label* for the law and can be used to identify the law in a shorthand way instead of having to use the long title. It is the name used to refer to the law.

Clause 2. Interpretation

This clause contains the definitions used in the model law. Most of the definitions are self-sufficient, although they do follow definitions relied upon for the issue of business permits under the repealed Local Government Act. This helps ensure a smooth transition to the new system.

Table of Definitions

Definitions	Comments on definitions
business	The term ‘business’ includes a profession (excluding regulation of the profession), trade or occupation. Otherwise, business is to be given its ordinary dictionary meaning. There is provision for the rules to exclude certain businesses as required, for example, banking is not to be regulated by a county law.
trade licence	The term ‘trade licence’ is used instead of ‘business permit’ to ensure consistency with the Constitution.
holder	The term ‘holder’ refers to the individual, company or partnership to whom a trade licence is granted, or to whom a licence is transferred or assigned.
licence fee	The licence fee is the annual fee payable for the grant or renewal of a trade licence. The licence fee will be set each year by the annual County Finance Act.
chief licensing officer	The chief licensing officer is the county government officer responsible for the grant and renewal of trade licences, and has other important regulatory responsibilities for trade licences.
authorised officer	Authorised officers refer to county government officers responsible for the administration and enforcement of the trade licence scheme. They are given certain inspection and entry powers under Schedule 1 of the model law.
receiver of revenue	The definition refers to the receiver of revenue appointed under section 157 of the Public Finance Management Act. He or she is responsible for ensuring the collection of, and the accounting for, trade licence fees.

The distinction under the repealed Local Government Act between a consolidated business permit and a single business permit has not been retained in order to simplify the new trade licence scheme. There may be a need for different categories of trade licences to be introduced as the new trade licence scheme is implemented and further developed. Different categories of trade licences can be specified in the rules made under the model law.



Important!

The definition of business excludes the regulation of a profession so as to be consistent with Part 2 of the Fourth Schedule of the Constitution. This means that the grant of a trade licence can regulate the operation of premises at which a professional service is offered to the public, but cannot regulate how the professional service is to be performed.

Example: a trade licence can require the premises used by a dentist to have clean running water, but it cannot regulate how the dentist performs the dental services provided to his or her patients.

A technical but important definition is 'approved form'. Approved forms are required for:

- an application for the grant or renewal of a trade licence; and
- the form of a trade licence upon being granted or renewed.

Approved forms can be found in Schedule 2 of the Model Law on Trade Licences and have been included in the model law for completeness. The chief licensing officer is given the power to approve other forms for the purposes of the model law and to modify existing approved forms.

Alternatively, the forms could be prescribed by the rules (prescribed forms). Giving the power to the chief licensing officer does provide for greater flexibility, which is an advantage as it enables forms to be updated and revised more easily as circumstances change.

Clause 3. Chief Licensing Officer

Clause 3 authorises the county executive member responsible for trade to appoint an officer of the county government as the chief licensing officer. The chief licensing officer is the head of the trade licence administration and is responsible for performing the functions and exercising the powers given to that office under the model law.

In larger jurisdictions, a statutory body (a licensing authority) is often established for this purpose and county government could customise the model law to provide for a licensing authority. However, the appointment of an individual is regarded as an appropriate starting point for the establishment of the new trade licence scheme and 'chief licensing officer' is an appropriate title. The appointment of an officer as the chief licensing officer will need to be done as soon as possible after the county trade licence legislation commences.



Frequently Asked Questions

Q: What happens if a county government wants to appoint a committee as the chief licensing officer?

A: If a County Government does decide to appoint or designate a committee (comprising 3 to 5 persons) instead of a chief licensing officer, then it is good legislative practice to provide precisely *who* will comprise the committee (or the authority or body), and the qualifications for appointment. This information should be included in the parent (county) law itself, without leaving it uncertain or vague to be prescribed at a later date. It is also important to provide at least certain substantial powers and functions to this body, and if possible, specific responsibilities in this regard.

Clause 4. Requirement for a trade licence

Clause 4 makes it an offence for a person (individual or company) to conduct a business within the county, unless the person is the holder of a trade licence for that business. The offence created by clause 4 specifies a maximum penalty of Ksh500,000 for non-compliance that can be imposed only upon conviction by a court. The court is to determine the actual on a case-by-case basis.

The effect of clause 4 is that a person conducting a business in more than one county is required to obtain a licence from each county government. On the one hand, it is reasonable that a county government should expect to receive a fee associated with the regulation of any business conducted in the county, including the fee for the grant of the trade licence. However, a company trading in several counties may argue that it is administratively burdensome and costly to obtain a licence in each county.

Article 209(5) of the Constitution provides:

“(5) The taxation and other revenue-raising powers of a county shall not be exercised in a way that prejudices national economic policies, economic activities across county boundaries or the national mobility of goods, services, capital or labour.”

It is not clear how these competing policy positions are to be balanced and what weight should be given to the constitutional limitations in Article 209(5). Further discussions are required at both the national and county level. County governments may need to customise clause 4 if agreement providing for some recognition of licences across counties is reached.

Clause 5. Application for licence

Clause 5 sets out the requirements for making an application for the grant of a trade licence. A county government can adopt the application form and licence set out in Schedule 2. Alternatively, a county government can customise its own forms for approval by the chief licensing officer.

An application is to be made by lodging a signed application with the chief licensing officer. This also requires:

- Using the approved form (see Schedule 2 of the model law);
- Ensuring that any required documents or information are included; and
- Submitting the forms together with the application fee if any application fee has been prescribed by the rules. There is no application fee unless it has been prescribed by the rules. If it has, the amount of the application fee is not refundable.

Applications are generally made as a printed copy. However, an application may also be made in an electronic format, once such a format has been approved by the chief licensing officer.

As mentioned above, the chief licensing officer may, before determining an application, require the applicant to provide additional information and documents. This could include for example information about the number of managers and skilled employees to be employed by the business if it is a high tech business.

Clause 6. Grant of licence

Clause 6 requires the chief licensing officer to grant an application for a trade licence if the chief licensing officer is satisfied that the applicant has complied with or will comply with relevant health, hygiene and safety requirements and the licence fee has been paid to the receiver of revenue. A trade licence is granted subject to the conditions specified in the trade licence. The conditions are to be set out in the approved form provided in Schedule 2 of the model law.

A trade licence is valid for a calendar year, that is, from January to December. To deal with the initial grant of licences at different times during the year, the licence is initially granted for the remainder of the year and the licence fee can be calculated on a pro-rata basis. For example, if a licence fee for a year is Ksh 10,000 and the applicant applies in June, the licence would be granted until December of that year and 50% of the licence fee would be payable, that is, Ksh 5,000.



Frequently Asked Questions

Q: Why are trade licences issued on a calendar year basis?

A: While county governments have in the past issued business permits on a calendar year basis, nothing prevents a county from moving to a 'rolling year' for trade licences. It is in many regards more logical and administratively easier for a rolling basis of 12 months. However, amendments would be required to the legislation to authorise such a change and changes would be required to operational systems. For now, it was considered appropriate to stay with the current calendar year system.

Clause 7. Renewal of a licence

The holder of a trade licence may apply for a renewal of the licence. The application must be made before the expiry of the current licence and must be in the approved form. This is the same form used for the application for a licence and is set out in Schedule 2 to the model law.

The chief licensing officer must grant the renewal if the holder has complied with relevant health, hygiene and safety requirements and the licence renewal fee has been paid to the receiver of revenue. A trade licence is renewed for a calendar year, unless it is cancelled or suspended.

Clause 8. Cancellation or suspension of licences

The chief licensing officer may cancel or suspend a trade licence if he or she is satisfied that:

- the conduct of the business is endangering the health or safety of persons who live or work in the neighbourhood of the premises from which the business is conducted; or
- the holder of the trade licence has breached a condition of the licence.

If a trade licence is cancelled or suspended, the chief licensing officer must also provide the holder of the licence with a written statement of reasons for the cancellation or suspension. The holder of the licence must immediately cease to conduct the business and a failure to do so is an offence (see clause 8(3)). The offence specifies a maximum penalty of Ksh500,000 for non-compliance that can be imposed only upon conviction by a court. The court is to determine the actual penalty on a case-by-case basis.



Important!

The cancellation or suspension of a trade licence by the chief licensing officer is action that should not be taken lightly. Wherever practicable, it would be advisable to consult with the licence holder before suspending or cancelling a licence.

If the chief licensing officer revokes the suspension of a trade licence, the business can resume.

Clause 9. Surrender of licence

The holder of a trade licence may, if the holder considers it necessary, surrender the licence by returning it to the chief licensing officer, but no refund of the licence fee is payable. For example, the holder may surrender a licence if he or she closes the business or the business is forced to cease operations.

Clause 10. Transfer or assignment of licences

The holder of a trade licence may transfer or assign a trade licence, and must give the chief licensing officer written notice of any such transfer or assignment, for example, on the sale of a business which will require licence fees to be adjusted between the vendor and purchaser on settlement. Notice of the transfer will allow the chief licensing officer to keep the register up to date (see clause 13).

Clause 11. Appeal against a decision

A person aggrieved by a decision of the chief licensing officer may appeal to the county executive committee member responsible for trade, for example, if an application for the grant or renewal of a trade licence is refused, the applicant can appeal against such a decision. Hopefully, appeals can be kept to a minimum if officials regulate the trade licence scheme fairly and follow the legal requirements.

The county executive committee member responsible for trade may confirm, reverse or modify the decision of the chief licensing officer, and instruct the chief licensing officer to give effect to his or her decision. A person could appeal to the courts against the decision of the county executive member on a question of law.

Clause 12. Authorised officers

The county executive committee member responsible for trade may appoint persons as authorised officers. Authorised officers have the powers set out in Schedule 1 to the model law, which are:

- enter any premises for the purposes of granting or renewing a trade licence, or investigating an alleged breach of a condition of a trade licence;
- search the premises or any part of the premises;
- inspect or examine anything in or on the premises;
- seize anything that may afford evidence of the commission of an offence;
- take extracts from, and take copies of, any documents in or on the premises.

Any person on the premises is required to assist the authorised officer.

However, to ensure these powers are exercised legitimately, an authorised officer requires the consent of the owner or occupier of the premises to enter them, or the premises must be open for business. Alternatively, the authorised officer may enter premises if he or she suspects on reasonable grounds that an offence is being committed in or on the premises against the model law.

Clause 13. Register

This clause requires the chief licensing officer to establish and maintain a register of trade licences. The register is to be available for inspection during regular government office hours. The chief licensing officer is to determine the information to be included in the register, excluding commercial-in-confidence information. This would include, for example, information about the business being conducted and compliance by the licence holder with the requirements of the model law. It should also contain details of any transfer or assignment of licences.

Clause 14. Offence—false or misleading statements

This clause makes it an offence for a person to make a false or misleading statement:

- about an application for the grant or renewal of a trade licence; or
- when furnishing information required under the model law.

For example, a person might make a false statement about the condition of the premises from which a business is to operate. The offence created by clause 14 specifies a maximum penalty of Ksh 250,000 for non-compliance that can be imposed only upon conviction by a court. The court is to determine the actual penalty on a case-by-case basis.

Clause 15. County assembly to determine licence fees and additional fees for late payment

Clause 15 gives the county assembly the power to determine the licence fees payable for the grant or renewal of trade licences. The county assembly may also determine that additional fees are payable if the licence or renewal fees are not paid on or before the due date for payment, for example, an additional fee of ten percent of the licence fee may be payable as a 'late' fee.



Frequently Asked Questions

Q: What is the difference between 'penalties' and 'additional fees'?

A: Additional fees for late payment are common in licensing schemes. They are to be distinguished from the penalties imposed by a court upon conviction for an offence against the model law (see clauses 4, 8 and 14). For example, if a person conducts a business and fails to obtain a trade licence for the business, then the person should be prosecuted under clause 4 for operating without a licence. However, if a person is late in applying for the renewal of a licence, that is, they continue to conduct the business with an expired licence, then the chief licensing officer can require the payment of a late fee upon eventual payment of the licence fee. Depending on the circumstances, this may be more appropriate than prosecuting under clause 4.

The annual County Finance Act would be an appropriate law for the county assembly to set out the licence and renewal fees, as well as additional fees for late payment. The county government would be expected as a matter of good practice to consult with businesses before increasing licence fees and late fees for approval by the county assembly. The timing of any such consultations is important and the consultations should be built into the county government's annual program to ensure adequate notice is given to stakeholders. The requirement to consult can be included in the county law if a county government considered it necessary.



Important!

If licence fees are to be increased, then county governments should assess the impact such increases will have on businesses in the county and make it clear how the increased fees will be used to support businesses. Licence fees should not be regarded simply as a revenue-raising mechanism, without regard to providing improved regulation.

It would therefore be useful to have available for consultations a comparison of old and new fees, and a list of the additional regulatory services to be provided. It is not actually necessary in the County Finance Act to list both the old and new fees (only the new fees that are payable), so having a comparison available during consultations will be helpful to stakeholders.

Clause 16. Power to make rules

The county executive committee member responsible for trade may make rules generally for the better carrying out of the provisions and purposes of the model law. As already mentioned, the rules may prescribe the application fee for a trade licence (see clause 5). Other such rules could include prescribing reporting requirements of licence holders and forms for licence holders to submit in completing self-assessments of business operations.

Clause 17. Savings and transitional

This clause is intended to safeguard any business permit fees paid to a county government that were previously payable to a local authority. It does so by deeming any single business permit issued by a local authority under the repealed Local Government Act and that was in force on 30 September 2013 to continue in force as if it were a trade licence granted under the model law. Any fees and charges for the single business permit become payable to the county government.

This is potentially problematic, as a county law is purporting to continue in force a permit issued under a national law that has been repealed. However by using a deeming provision that is limited only to the purposes of the model law, arguably, business permits can continue in force as trade licences. A deeming provision relies on a legal fiction (e.g. it is like treating a wild animal to be a domesticated animal for certain purposes), but is a convenient legal means of dealing with an unforeseeable circumstance.

The single business permit remains valid for three month from the date of commencement of the model law. If the permit holder does not apply for a trade licence within that period, the permit ceases to be in force at the expiry of the three months and the business must cease. If the permit holder applies for a trade licence within the three months, and the application is successful, the business may be conducted in accordance with the trade licence. If the application for a trade licence is rejected or withdrawn, the business must cease. The three month period may need to be extended if a retrospective commencement is given to the model law.



Frequently Asked Questions

Q: Do county governments have the right to require businesses run by certain professionals, such as pharmacies, clinics etc., to obtain trade licences?

A: The definition of business excludes the regulation of a profession so as to be consistent with Part 2 of the Fourth Schedule of the Constitution. This means that the grant of a trade licence can regulate the operation of premises at which a professional service is offered to the public, but cannot regulate how the professional service is to be performed. A county government can therefore require the professional concerned to obtain a trade licence in respect of the premises, but not the conduct of the profession.

Q: Should firms licensed in a county but also doing business in another county be required to get a licence in that county?

A: The effect of clause 4 of the model law is that a person conducting a business in more than one county is required to obtain a licence from each county government. If a trade licence granted in one county is valid in all counties, then some agreement amongst counties would be needed to share the licence fees payable to the county government that granted the licence.

Diagram 3: Adapting the Model Law on Trade Licences

Below are the technical changes that *must* be made to adapt a model law for approval by the county executive and introduction to the county assembly as a County Bill.

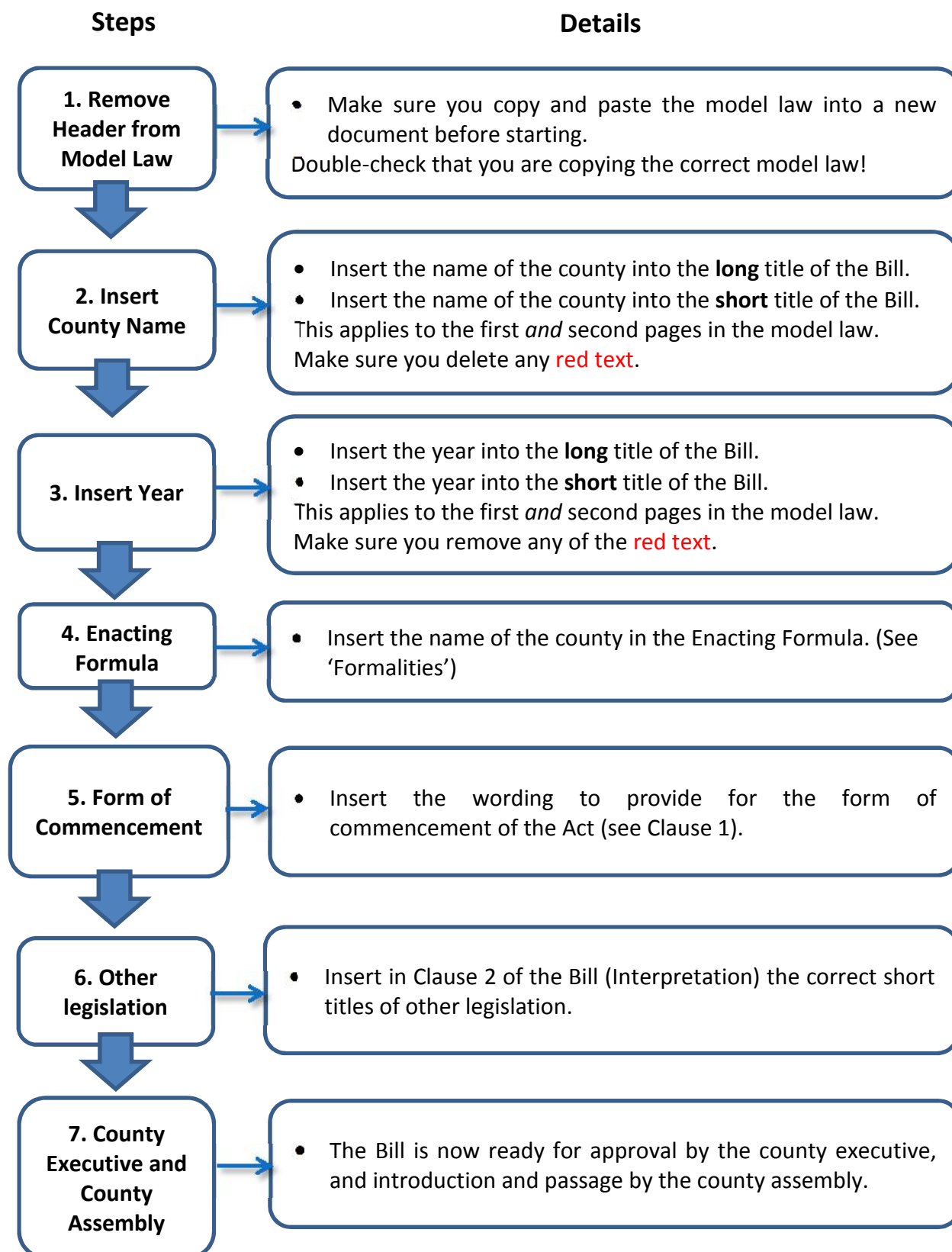
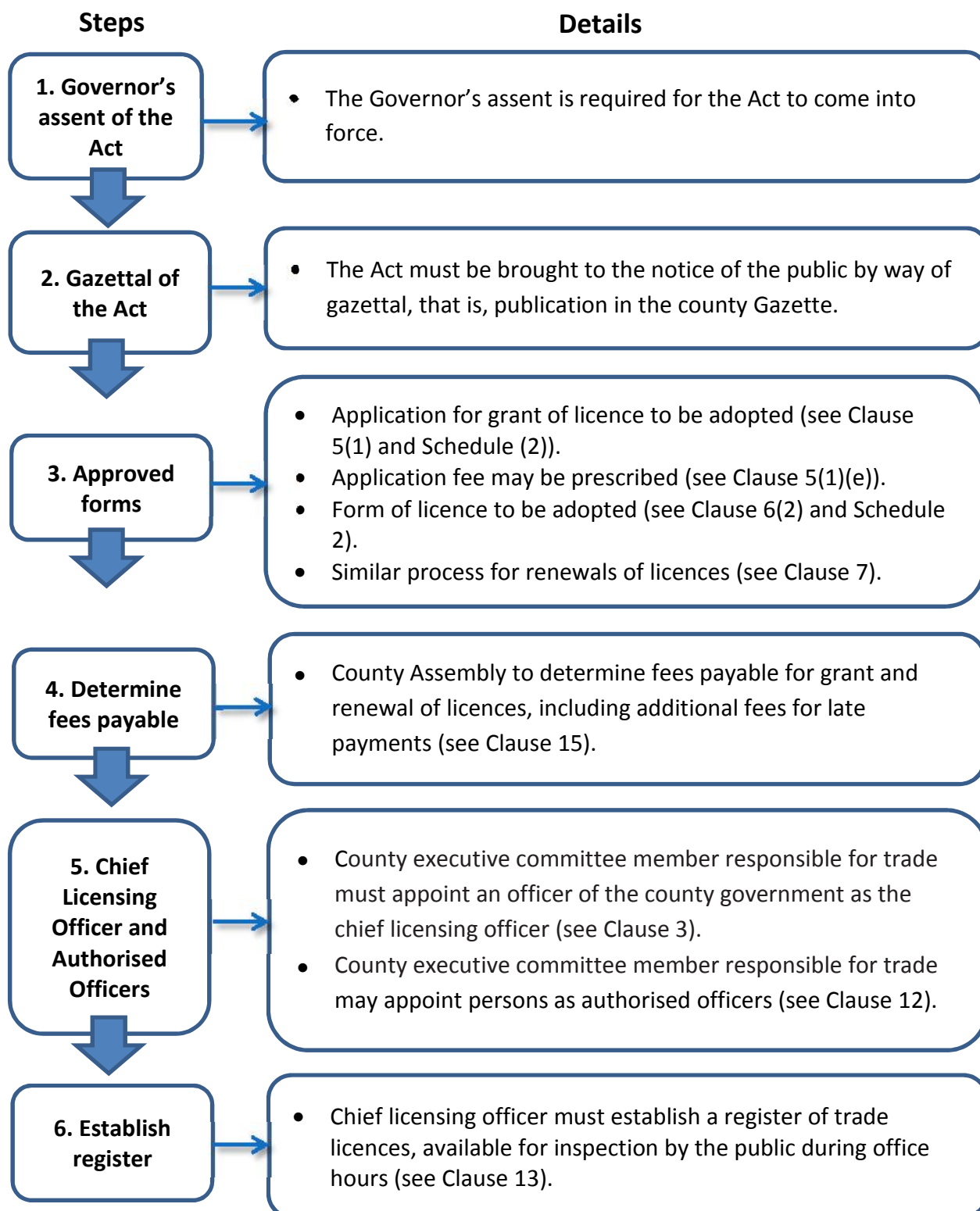


Diagram 4: Implementing the Model Law on Trade Licences

Once the required technical changes have been made to the model law, there is a series of steps required in order to implement a County Trade Licence Act.



Checklist 2: Adapting and Implementing the Model Law on Trade Licences

This checklist can help you keep track of your progress on completing the actions that are required for adapting the Model Law on Trade Licences and for implementing as the County Trade Licence Act.

Action	✓ When completed	Date Completed	Comments
Create new document with model law text and remove header.			
Insert County Name into the long and short titles.			
Insert Year into the long and short titles.			
Insert the name of the County in the Enacting Formula.			
Insert the wording to provide for the form of commencement of the Act.			
Insert in Clause 2 (Interpretation) the correct short titles of other legislation.			
Approval of the Bill by the county executive, and introduction and passage of the Bill by the county assembly.			
Governor's assent of the Act.			
Gazettal of the Act.			
Adopt application for grant and renewal of licence in Schedule 2.			
Adopt form of licence in Schedule 2.			
Prescribe application fee in the rules (if any).			
Determine the fees payable for the grant and renewal of a licence (County Finance Act).			

Action	✓ When completed	Date Completed	Comments
Appoint chief licensing officer (County executive committee member responsible for trade).			
Appoint authorised officers (County executive committee member responsible for trade).			
Establish register of trade licences.			

CHAPTER 4. COUNTY MODEL LAW ON REVENUE ADMINISTRATION

Introduction

The County Model Revenue Administration Law is set out in Annex 4. The main purpose of the model law is to confer a general power and responsibility for the administration of county revenue laws on a public official who is to be held accountable for that administration. To achieve this purpose, the receiver of revenue for the county is given expanded functions relating to the administration and enforcement of county revenue legislation.

Relationship with Public Finance Management Act

The County Model Revenue Administration Law complements certain provisions relating to county revenues set out in the national Public Finance Management Act. Section 157 of that Act provides for a person to be designated as the receiver of revenue in a county. The receiver of revenue designated under section 157 is given additional functions and powers for the purposes of the model law.

Those functions are similar to the functions performed by the Kenya Revenue Authority in respect of national taxes and other revenue. This approach ensures that one person will perform the functions provided for under the Public Finance Management Act and the model law. Some counties are considering establishing a county 'revenue authority' and there is nothing to prevent this, but the model law does not include this option. The receiver of revenue may authorise public officers to be collectors of revenue under section 158 of the Public Finance Management Act.

Further, under section 160 of the Public Finance Management Act, the county executive committee member for finance may authorise the Kenya Revenue Authority or appoint a collection agent to be a collector of county government revenue. Clause 6 of the model law which authorises the contracting out of the revenue collection function complements section 160.

The table below compares the functions of the Kenya Revenue Authority, and the receiver of revenue under the Public Finance Management Act and the County Model Law on Revenue Administration.

Table of functions of receiver of revenue

Entity / Person	Legislation	Establishment / Appointment	Function
Kenya Revenue Authority	Kenya Revenue Authority Act (section 5)	Established under section 3	To administer and enforce certain revenue laws and advise the Government accordingly.
Receiver of Revenue*	Public Finance Management Act	Designated under section 157	Responsible for collecting, receiving and accounting for county revenue, that is, an accounting officer type function e.g. ensuring the money is banked.
	County Model Revenue Administration Law	Section 4 of the model law provides for the receiver of revenue designated under section 157 to perform certain additional functions under the model law	Functions similar to the KRA but at the county level, including being responsible for the administration and enforcement of county revenue laws, and for that purpose ensuring the assessment, collection and accounting for all rates, taxes, fees and charges payable by or under any of those laws, and advising county governments accordingly.
Collector of Revenue*	Public Finance Management Act	Authorised under section 158 by the receiver of revenue	Collection of revenue and remitting it to the receiver of revenue, that is, a cashier type function for example, issuing a receipt for a payment.

**National receivers of revenue are designated under section 75 and national collectors of revenue are authorised under section 76.*

Formalities—long title and enacting formula

The long title¹¹ of the model law is:

An Act of the County Assembly of **[Insert County Name]** to provide for the general administration of certain taxation laws and other revenue raising laws, and for related purposes.

¹¹ Every Act begins with a long title. The long title describes the general purpose of the law. The enacting formula (also known as ‘words of enactment’ or ‘enacting provisions’) is required in every Bill to show the authority by which the legislative power is exercised.

The enacting words of the model law are:

Made by the [Insert County Name] County Assembly.

PART 1—PRELIMINARY MATTERS

Clause 1. Short title and commencement

On enactment of the Law, the short title¹² of the Act will be:

The [Insert County Name] County Revenue Administration Act [Insert Year].

The county assembly must decide on a date for the model law to commence. A likely commencement date would be the start of a calendar year or a fiscal year and would usually be the same as the model laws on trade licences and property rates. The legislation requires only a prospective application and should not have a retrospective commencement date.



Links to legislation

A county assembly law should come into force on the fourteenth day after its publication (in the county *Gazette* and *Kenya Gazette*, whichever comes earlier) by virtue of section 25(2) of the County Governments Act, 2012 (Act 17 of 2012). However, section 25 (2) also allows any such legislation to stipulate a specific date of commencement (for its coming into force).

For more information about the coming into force of a law, see section 25 of the County Governments Act, 2012.

Clause 2. Interpretation

This clause contains the definitions used in the model law. Key definitions are set out in the table below together with explanatory comments.

¹² The short title is found in all Acts. The short title is a *label* for the law and can be used to identify the law in a shorthand way instead of having to use the long title. It is the name used to refer to the law.

Table of Definitions

Definitions	Comments on definitions
rate	'Rate' refers to a property rate imposed under the County Model Law on Property Rates.
revenue law	The term 'revenue law' is defined broadly to include any law under which a county rate, tax, fee or charge is payable and includes revenue collected by county governments under national legislation. The rules can prescribe additional revenue laws as required.
revenue payer	The term 'revenue payer' extends to persons paying rates and other taxes as well as persons paying fees and charges for services.
relevant person	The term 'relevant person' refers to a revenue payer and an employee or agent of a revenue payer, and also extends to any person who can assist in determining the liability of a revenue payer to pay rates, taxes, fees or charges.

PART 2—ADMINISTRATION OF REVENUE LAWS

Clause 3. Receiver of revenue

This clause provides that the receiver of revenue designated under section 157 of the Public Finance Management Act is the receiver of revenue for the model law. A person should be designated in respect of:

- taxes, including property rates, and
- fees and charges for services.

Clause 4. Functions and powers of receiver of revenue

Clause 4 sets out the functions of the receiver of revenue in addition to the functions he or she has under the Public Finance Management Act. Functions under the model law are:

- to be responsible for the administration and enforcement of revenue laws, and for that purpose to ensure the assessment, collection and accounting for all kinds of revenue payable under those laws; and
- to advise the county government on all matters relating to the administration and enforcement of revenue laws, and the assessment and collection of revenues.

The receiver of revenue has such powers as are necessary to enable him or her to perform the above functions. In addition, the receiver of revenue has such other powers and functions as are provided for under the revenue laws.

When carrying out his or her duties, the receiver of revenue must produce identification when requested to do so.

Clause 5. Delegation of functions and powers

The receiver of revenue is given power to delegate functions and powers under any revenue law to a county public officer, other than the power of delegation. It is standard practice for functions and powers to be delegated by a high level official, and the receiver of revenue will need to decide which functions and powers are appropriate to be delegated. A delegate must produce identification when requested to do so.

Clause 6. Agreement in relation to revenue collection

This clause empowers the county government to contract out the function to collect rates, taxes, fees and charges payable under revenue laws. This could be done as a strategy to increase the amount of revenue that is being collected.

Clause 7. Annual report

This clause requires the receiver of revenue to prepare an annual report on the operation and administration of revenue laws. The report must be given to the county executive committee member responsible for finance within 90 days after the year ends, and the member must table the annual report in the county assembly as soon as practicable. Annual reports are an important accountability mechanism.

PART 3—REVENUE PAYERS’ OBLIGATIONS AND COMPLIANCE POWERS

This Part sets out certain obligations of revenue payers relating to the records they must keep and provide as required. It also sets out certain powers of the receiver of revenue that can be used to ensure compliance with revenue laws.

Clause 8. Books, accounts and records to be made and kept

This clause requires a revenue payer to make and keep books, accounts and records as are reasonably necessary to determine the revenue payer's liability to pay rates, taxes, fees or charges under a revenue law. They must be kept for a period of at least 7 years.

The receiver of revenue may in writing direct a revenue payer to keep certain books, accounts and records. It is an offence if a person does not comply with a requirement under clause 8. Upon conviction by a court, the maximum penalty is Ksh 500,000 for an individual and Ksh 2,500,000 for a company.

Clause 9. Providing information and evidence

This clause gives power to the receiver of revenue to require a relevant person to:

- provide the receiver of revenue with such information as the receiver of revenue requires; and
- attend and give evidence before the receiver of revenue.

It is an offence if a person does not comply with a requirement under clause 9. Upon conviction by a court, the maximum penalty is Ksh 500,000 for an individual.

Clause 10. Access, inspection and other powers

Clause 10 gives certain compliance powers to a receiver of revenue.



Important!

A receiver of revenue has power to;

- enter and inspect premises of any relevant person, and any goods in or on those premises, including opening any packaging or containers that may contain goods;
- obtain, copy and print information or data from any computer system in or on those premises and retain all information and data that is obtained, copied or printed; and
- take extracts from or copies of any books, accounts, records and other documents in or on those premises and retain all extracts or copies taken.

The receiver of revenue may remove such things if it is impractical to deal with them at the premises. A person must assist the county receiver of revenue as required. It is an offence if a person does not provide access to premises, or obstructs or hinders a receiver of revenue. Upon conviction by a court the maximum penalty is Ksh 500,000.

Clause 11. Seizure of property required as evidence

The receiver of revenue is given the power take into his or her possession any property, other than land, that may be required as evidence in a court for proceedings to be brought under this model law or any other revenue law. When the property is no longer required, it must be returned as soon as practical to the person entitled to it.

PART 4—MISCELLANEOUS

Clause 12. Waiver or reduction of taxes, fees and charges

This clause provides for a waiver or reduction of the payment of a rate, tax, fee or charge in limited circumstances. The power is given to the county executive committee member for finance, but the application must initially be made in writing to the member responsible for the rate, tax, fee or charge, for example, if it is property rates it would be the member responsible for lands. Alternatively, the application could be required to be made to a person who is not an executive committee member, for example, a senior finance official.



Important!

The grounds for the waiver or reduction of a rate, tax fee or charge include:

- severe financial hardship
- it is not cost effective to take action to recover the tax, fee or charge
- encouraging the applicant to pay amounts outstanding to the county government
- grounds of equity or other good cause
- response to a court decision.

This clause gives effect to Articles 210(2) and (3) of the Constitution, including that a public record must be kept of each waiver or reduction and the Auditor-General must be notified.



Frequently Asked Questions

Q: Will an exemption and waiver provision result in reduced revenue being collected?

A: Yes, revenue will be reduced. However, any revenue-raising scheme must acknowledge that from time to time there are genuine special circumstances that make it bad policy to insist on the payment of rates, taxes, fees and charges.

Clause 13. Revenue register

The receiver of revenue must establish and maintain a revenue register. The register is to be available for inspection during office hours and is to contain such information as is prescribed by the rules (see clause 18).

Clause 14. Approved forms

The county receiver of revenue may approve forms for the purposes of a revenue law. This provides greater flexibility than requiring the forms to be prescribed by the rules.

Clause 15. General penalty for offence

This clause provides a general penalty for non-compliance with any provision of the model law for which a penalty is not expressly provided. The maximum penalty on conviction by a court is Ksh 50,000.

Clause 16. Publication and service of documents

Documents required to be published under a revenue law must be published in the county Gazette and in a newspaper circulating in the county. Clause 16 also sets out the requirements for the sending or service of documents under revenue laws.



Important!

A document may be sent or served by:

- delivering the document personally
- leaving it at a person's last known place of residence or business, or at the registered office of a company
- sending it by ordinary or registered post
- emailing the document
- using any other method prescribed by the rules.

It is sufficient to address a document for service to the 'owner' or 'occupier' of particular premises, without further name or description. If service of a document cannot be effected, provision is made for the document to be advertised in the county Gazette and in a newspaper circulating in the county.

Clause 17. Guidelines

The receiver of revenue may issue guidelines for the purposes of a revenue law. Guidelines are advisory and not mandatory. Guidelines will be important to advise revenue payers of their obligations under revenue laws.

Clause 18. Rules

The county executive committee member responsible for finance may make rules generally for the better carrying out of the provisions and purposes of the law. All rules that are made must be consistent with the model law.



Frequently Asked Questions

Q: What if a county government enacts a Trade Licence Act and a Rating Act, but not a Revenue Administration Act?

A: The three Acts should be enacted at the same time because the Trade Licence Act and the Rating Act rely on certain provisions in the Revenue Administration Act, for example, sections 12 and 16.

Q: Can the receiver of revenue be a person other than the person designated under section 157 of the Public Finance Management Act?

A: Yes, this is possible. However, the definition will need to change including clause 3 of the model law.

Diagram 5: Adapting the Model Law on County Revenue Administration

Below are the technical changes that *must* be made to adapt a model law for approval by the county executive and introduction to the county assembly as a County Bill.

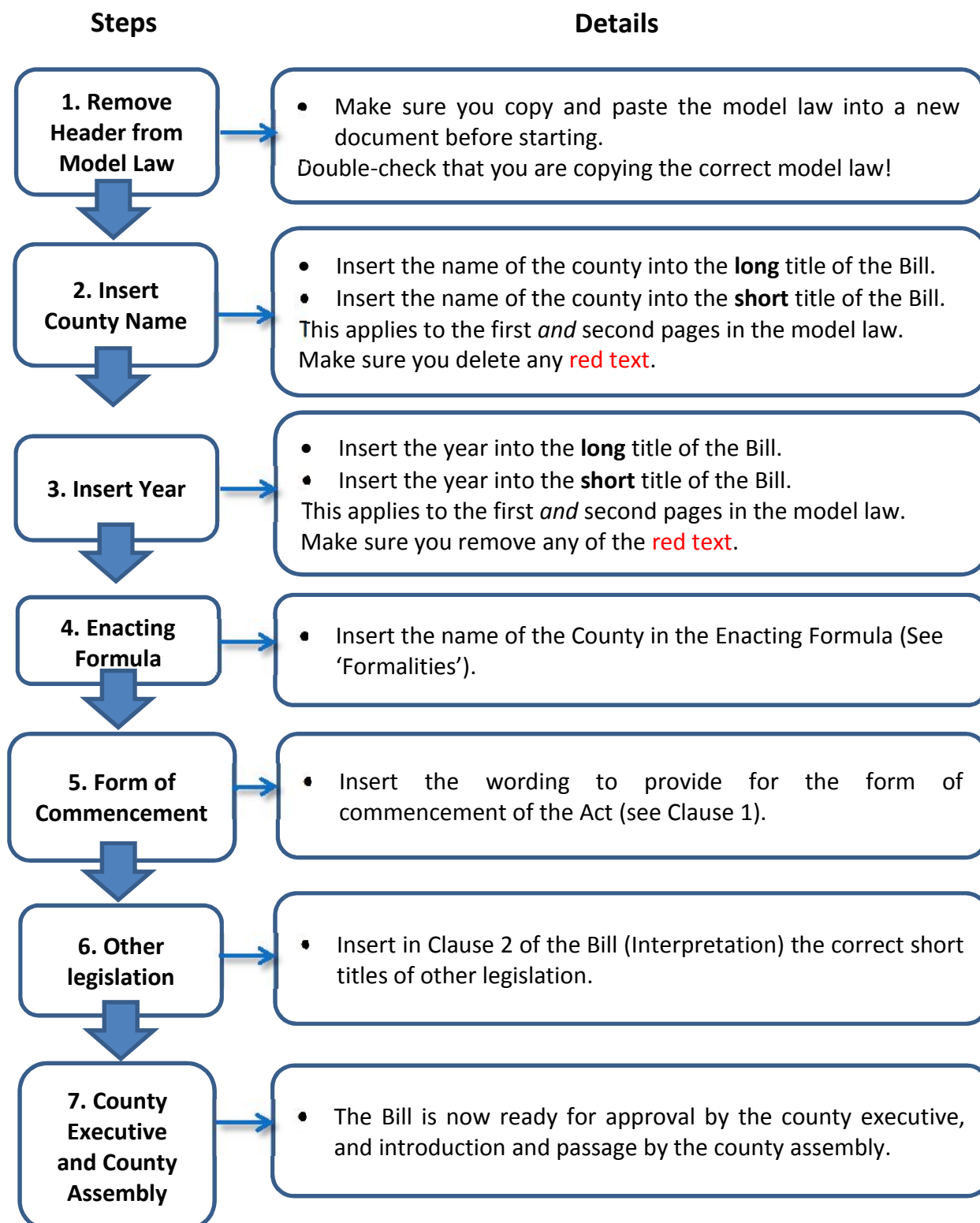
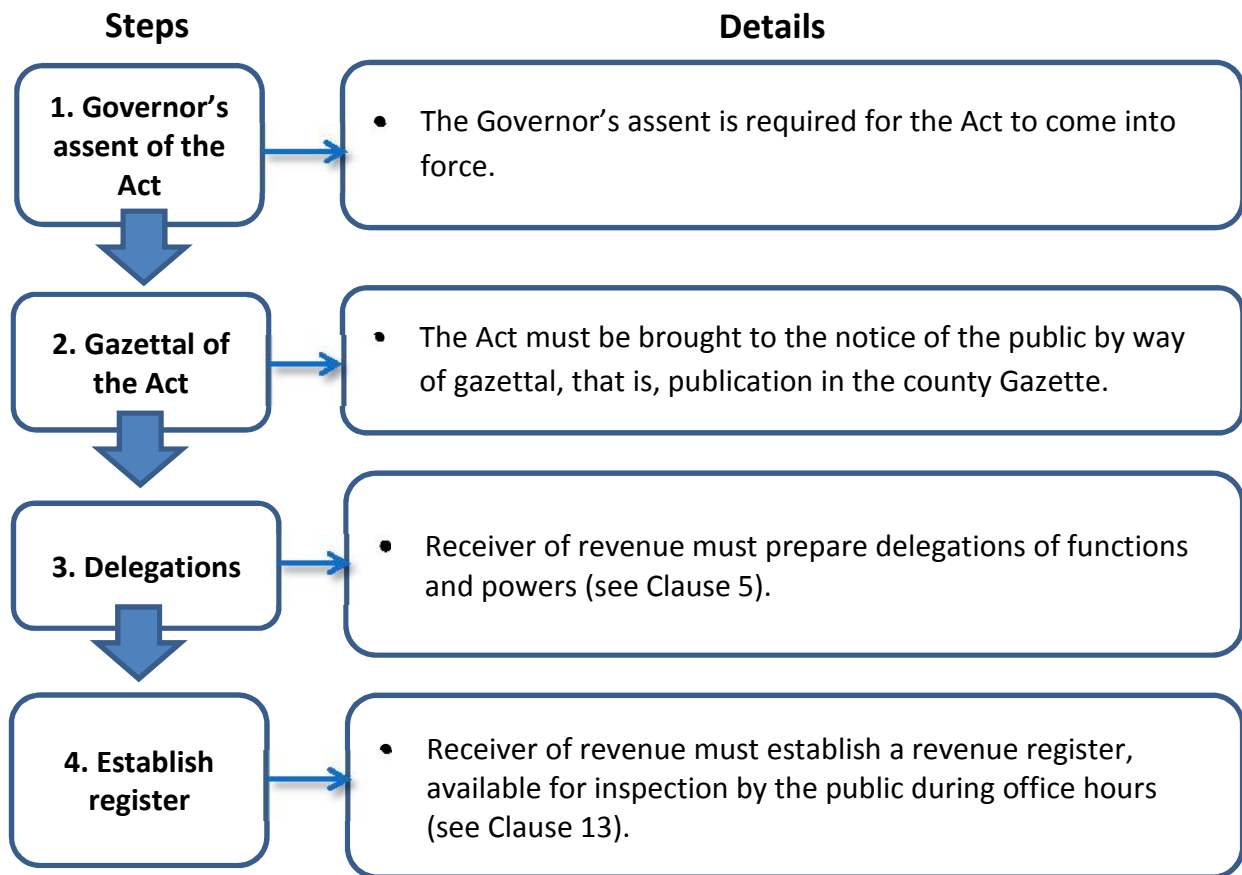


Diagram 6: Implementing the Model Law on County Revenue Administration

Once the required technical changes have been made to the model law, there is a series of steps required in order to implement a County Revenue Administration Act.



Checklist 3: Adapting and Implementing the Model Law on County Revenue Administration

This checklist can help you keep track of your progress on completing the actions that are required for adapting the Model Law on County Revenue Administration and for implementing as the County Revenue Administration Act.

Action	✓ When completed	Date Completed	Comments
Create new document with model law text and remove header.			
Insert County Name into the long and short titles.			
Insert Year into the long and short titles.			
Insert the name of the County in the Enacting Formula.			
Insert the wording to provide for the form of commencement of the Act.			
Insert in Clause 2 (Interpretation) the correct short titles of other legislation.			
Approval of the Bill by the county executive, and introduction and passage of the Bill by the county assembly.			
Governor's assent of the Act.			
Gazettal of the Act.			
Prepare delegations.			
Establish register.			

CHAPTER 5. COUNTY MODEL FINANCE LAW

Introduction

The County Model Finance Law is set out in Annex 5. Section 132 of the Public Finance Management Act provides that each year a County Finance Bill should set out the revenue-raising measures for the county government, together with a policy statement expounding on those measures. This model law has been drafted to provide a legally effective framework for setting out the revenue-raising measures of county governments.

County governments can use this framework to guide them in preparing their annual County Finance Bills. Each county government will have different amounts and streams of revenue, but the framework should be able to be applied consistently across counties. The size of each County Finance Bill will therefore vary from county to county, but substantive provisions should be similar and be able to be kept to a minimum, based on correctly classifying the different revenue streams as taxes, fees or charges.

The County Finance Bill as a matter of law should only contain the amendments to legislation required to give effect to the county government's revenue-raising measures. However, if there are county laws imposing taxes, fees and charges that will not be amended by the County Finance Bill, then such laws could be mentioned as a source of revenue for completeness in supporting county documents.

Background

It is useful to review the defects surrounding the County Finance Acts in 2013 to help us understand the current situation. County revenue-raising was supported by transitional arrangements under section 23 of the County Governments Public Finance Management Transition Act until 30 September 2013, when that section was repealed (see Chapter 1 for more detail). Unfortunately, county governments did not have their own revenue legislation in place by that date.

The Constitution in the Sixth Schedule on Transitional and Consequential Provisions saved national legislative schemes and local authority by-laws dealing with licences, rates, taxes, fees and charges for county revenue-raising purposes. The county governments, however, prepared County Finance Acts and those County Finance Acts were interpreted as providing the basis for the collection of taxes, fees and charges previously levied by local authorities. In other words, the County Finance Acts declared the sources of revenue and imposed a legal obligation to pay taxes, fees and charges.

County revenue-raising measures *should* be set out in County Finance Acts, but the Acts *should not* be used to create or justify a legal obligation to pay a tax, fee or charge. While the County Finance Acts of 2013 did correctly amend some existing taxes, fees and charges, they were also incorrectly used to introduce new taxes, fees and charges. Consequently, county governments were criticised widely for the new taxes, fees and charges, some of the high increases and the lack of public consultation.

Purpose of County Finance Acts

To compare with similar legislation at a national level, the National Finance Act does not of itself impose taxes, fees and charges. Instead, it alters the amount or rate of a tax or fee by amendment of other laws. In effect, the National Finance Act operates like an annual Statute Amendment (Miscellaneous) Bill. This approach is consistent with accepted revenue-raising practice, whereby sector specific legislation imposes taxes, fees and charges, and it also provides for easier financial regulation of each sector.

Examples from the national Finance Bill 2013 are set out below:

18	<i>The Finance Bill, 2013</i>
Insertion of new section 117A in Cap. 472.	5. The Customs and Excise Act is amended by inserting the following new section immediately after section 117—
Railway development levy.	117A. (1) There shall be paid a levy to be known as the railway development levy on all goods imported into the country for home use. (2) The levy shall be at the rate of 1.5 percent of the customs value of the goods and shall be paid by the importer of such goods at the time of entering the goods for home use.

Amendment to section 5 of Cap 470.	9. Section 5 of the Income Tax Act is amended in subsection (2) by deleting paragraph (f) and substituting therefor the following new paragraph -
	(f) an amount paid by an employer as a premium for an insurance on the life of his employee and for the benefit of that employee or any of his dependants:

A County Finance Act should operate in the same way as the National Finance Act.

In this way, the County Model Finance Law:

- aims to provide a clear direction for county governments for their future revenue-raising measures;
- ensures compliance with the Public Finance Management Act; and
- minimises the risk of any legal challenge to county revenue-raising measures.



Important!

The model law on property rates imposes the rates and the model law on trade licences imposes the fees for the grant of the licence. These are both good examples of how sectoral legislation relies on the County Model Finance Law for setting the actual amount of the rates and the licence fees that are payable each year. The framework outlined in the County Model Finance Law does not include the actual *amounts* of such property rates and trade licence fees, because that will vary from county to county.

In addition, the County Model Finance Law includes amounts of other fees and charges for services provided by county governments under other county legislation and national legislation.

An example is the Physical Planning Act (see also discussion below on Reliance on National Legislation). Section 31 provides that an application for a development permission must be made to the clerk of the local authority responsible for the area in which the land concerned is situated. Regulations have been made by the national Minister under section 49 setting charges for inspection, building plans and certificates. Any increase to these charges should be set out in the County Finance Bill by reference to the Physical Planning Act and regulations.

Principles governing the preparation of County Finance Acts

The lessons from 2013 and recent court cases have enabled the formulation of several principles that should be applied to the preparation of County Finance Acts. The model law encapsulates all of these principles.

Transparency of revenue-raising measures

A County Finance Act should include *all* the revenue-raising measures envisaged by the county government, so that the county government does not raise revenue from sources not identified in the County Finance Act.

Clear legal basis

For county governments, there should be a clear legal basis for raising revenues both in the Constitution and in county laws. Chapter 1 sets out relevant information on the Constitutional basis. To recap, property rates are expressly authorised by Article 209(3) of the Constitution and trade licences are authorised by Article 209(4) (fees for services) read together with the Fourth Schedule of the Constitution, which assigns to counties the responsibility for trade licences.

The legal basis for each revenue-raising measure set out in the County Finance Act should be expressly mentioned. This can be achieved by way of a cross-reference to the legislation that imposes the relevant rate, tax, fee or charge.

At the same time, each revenue-raising measure should be categorised as:

- a property rate (a form of taxation); or
- another tax; or
- a trade licence fee (a fee for a service); or
- another fee or charge for a service.

In the case of a fee or charge for service, the service that is being provided should be specified.

Fees and charges for services, and taxes

A distinction must be drawn between fees and charges for services, and taxes. As stated above, both require a clear legal (i.e. legislative) basis. However, a tax is not required to relate to the provision of a service. By way of contrast, a fee or charge for a service must be commensurate with the cost of providing the service.

For example, a tax on the slaughter of chickens for human consumption can be set at any rate. However, a fee for using a county slaughterhouse must be commensurate with the cost of providing the related service, that is, the facilities at the slaughterhouse and the regulation of the slaughtering process to ensure public health.

If the fee or charge is too high having regard to the service being provided, then a court is likely to declare the fee or charge invalid. If that does occur, the fee or charge can only be saved by classifying it as a tax for which there must be legislation imposing the tax. At present Article 209(3) of the Constitution provides for property rates and an entertainment tax. No other taxes have been authorised by national legislation.

For example...

The recent case of Robert N Gakuru & Others Versus the Governor of Kiambu County Government & 3 Others 2014 (the Kiambu Case) is illustrative of the distinction between taxes and fees for services.

The court confirmed that a county assembly has the power to impose property taxes and entertainment taxes, but not other taxes unless sanctioned by an Act of Parliament (see Article 209(3) of the Constitution). County governments also have the power to impose charges for services rendered such as parking and market fees. However, the purported levy on stones (a tax) was declared invalid because it was not sanctioned by an Act of the Parliament and therefore was not imposed by valid legislation. The County Finance Act purported to impose the tax.

The levy could also not be classified as a fee for a service because a service was not provided by the county government relating to the payment of the levy.

Reliance on national legislation

On a related matter, some fees imposed by counties are already fixed under national laws, for example, the Public Health Act and Physical Planning Act. The amount of fees for various licences, permits and approvals are actually specified in the national Acts. County Finance Acts have purported to alter the amounts of those fees. It is not clear whether a county law can alter a fee that is specified in a valid national law. The national laws are technically defective in that they have not been amended to refer to county governments. They still refer to local authorities.

For example...

In the case of Nairobi Metropolitan PSV Sacco Union Limited & 25 others Versus Nairobi City County Government & 3 others and Robert N Gakuru 2014 (the Nairobi Case), the court confirmed that the Nairobi City County could impose parking fees. The court relied on the Fourth Schedule of the Constitution (it assigns parking as a county government responsibility) and the provisions of the Sixth Schedule of the Constitution (See clause 7 of the Transitional and Consequential Provisions), despite the Transport Act not having not been amended and referring to non-existent local authorities. The Court found:

“The Traffic Act must be bought to conformity and must therefore be construed with the devolved County Government structure in mind and it cannot supersede County Legislation on an issue exclusively reserved for the County Government, not by Statute, like the Traffic Act but by the Constitution itself.”

This case supports the proposition that a County Finance Act can alter the amount of any fee or charge for a service relating to a county function set out in the Fourth Schedule of the Constitution, even if the fee or charge is specified in a national law and that national legislation has not been amended to refer to county governments.

However, as a matter of good legislative policy and to address the above issues directly:

- The National Parliament could pass a County Governments Revenue Empowerment (Miscellaneous Amendments) Bill to amend and regularise all national laws that affect county revenue and regulatory powers; and
- The Bill would also need to specify that national laws on county functions only apply as long as there is no county law covering that function in place.

Public participation and consultation

The County government must undertake genuine public consultation on the County Finance Bill. Both the Nairobi case and the Kiambu cases contain useful guidance to county governments on what constitutes adequate public participation. In the Nairobi case, the court relied on the Constitution to confirm the importance of public participation:

“One of the golden principles running through the Constitution is the articulation of the principle of public participation of the people at both national and county levels. With regard to participation in County level, Article 196(1)(b) of the Constitution provides that:

“(1) A County Assembly shall-

(a)

(b) facilitate public participation and involvement in the legislative and other business of the assembly and its committees.

(c) A county Assembly may not exclude the public, or any media from any sitting in unless in exceptional circumstances the Speaker has determined that there are justifiable reasons for doing so.”

The court in finding that there had been adequate public participation stated:

“they engaged those who would be affected by their decision and the latter were given details of the proposals and an opportunity of stating their objections if any. To my mind the process was highly public as there were public forums, meetings with stakeholders, media reports and even lobbying and an opportunity to make written representations through written memoranda.”

In the Kiambu case, the court highlighted the need for genuine consultation:

“in my view public participation ought to be real and not illusory and ought not to be treated as a mere formality for the purposes of fulfillment of the Constitutional dictates”.

The court also stated that the duty was even more onerous in matters concerning the payment of taxes and charges. It was critical of the efforts made by the Kiambu County Government such as tweeting messages and meeting with a few people for a day in a five-star hotel.

Having regard to the decisions of the courts, county governments should include in their annual legislative programs the details of all proposed consultations. A sensible strategy would be to provide for a range of consultation methods spread out over a reasonable period of time, so as to give the widest range of people the best opportunity to participate in a way that is convenient and meaningful to them.

Drafting techniques

In drafting the County Model Finance Law, schedules providing for amendments to legislation have been used to simplify the structure of the Law. A separate substantive clause in the Law deals with a particular kind of revenue-raising measure and the details of each such revenue-raising measure are set out in a corresponding schedule.

<i>Substantive clause and revenue-raising measure</i>	<i>Corresponding schedule and amounts</i>
Clause 3 Property Rates	Schedule 1 Prescribes for County Model Law on Property Rates <ul style="list-style-type: none"> • amounts of rates • discounts for early payments • penalties for late payments
Clause 4 Trade licences	Schedule 2 Prescribes for County Model Law on Trade Licences <ul style="list-style-type: none"> • amount of licence fees • late fees for non/late payment of licence fees
Clause 5 Other fees and charges	Schedule 3 Amends or prescribes amounts of rates, taxes, fees and charges imposed by or under national and other county legislation.

The advantage of this approach is that new revenue-raising measure can be added easily, for example, a new substantive clause on entertainment tax and a new corresponding schedule.

Variations to existing fees and charges

The amendments to national and county legislation in Schedule 3 can be drafted in a short or long form. The short form is a ‘plain English’ drafting technique and the long form is a traditional drafting technique. Both are equally effective and counties can choose. The short form method has been used in the model law for simplicity. Examples are set out below as a guide:

Short form of amendments to legislation

Section of Act	Amendment
Section 6 of the County XYZ Act	Delete “500 shillings”, substitute “1000 shillings”

Long form of amendments to legislation

Section 6 of the XYZ County XYZ Act is amended by deleting “300 shillings” and substituting “500 shillings”.

Prescribing amounts of new fees and charges

In addition, other fees and charges may need to be prescribed for the purposes of national and county legislation (see item 1.2 of Schedule 3 of the model law). These are likely to be new amounts of fees and charges. (Note: If they are existing amounts fees and charges, then they should be amended as above.)

Again, the formulation used for prescribing such fees and charges can be a short form or a long form. The model law has used the short form. Examples are set out below as a guide:

Short form of prescribing amounts of fees and charges

Amount of fee or charge	Description of fee or charge and service	Section of Act or Regulation imposing fee or charge for service
100 shillings per day	Parking fees	Section 5 of the County XYZ Act

Long form of prescribing fees and charges

For the purposes of section 5 of the County XYZ Act, the amount of the parking fee is 100 shillings per day.

The formulation used would need to be repeated for each kind of fee or charge, and may need slight modification having regard to the wording of the relevant imposition provision in the underlying legislation.

Formalities—long title and enacting formula

The long title¹³ of the model law is:

An Act of the County Assembly of [Insert County Name] to provide for revenue-raising measures for the County Government of [Insert County Name], and for connected purposes.

The enacting words of the model law are:

Made by the [Insert County Name] County Assembly.

Clause 1. Short title and commencement

On enactment of the Law, the short title¹⁴ of the Act will be:

The [Insert County Name] County Finance Act [Insert Year].

A County Finance Act should come into operation on 1 January of each year.

¹³ Every Act begins with a long title. The long title describes the general purpose of the law. The enacting formula (also known as ‘words of enactment’, ‘enacting words’, or ‘enacting provisions’) is required in every Bill to show the authority by which the legislative power is exercised.

¹⁴ The short title is found in all Acts. The short title is a *label* for the law and can be used to identify the law in a shorthand way instead of having to use the long title. It is the name used to refer to the law.

Clause 2. Interpretation

The definitions (if any) used in the model law are to be included into clause 2.

Clause 3. Property Rates

Clause 3 provides that Schedule 1 sets out the revenue-raising measures for property rates. Schedule 1 consists of three items:

- Item 1 specifies the annual amount of rates that is payable for each rateable property.
- Item 2 specifies the discount for early payment of rates.
- Item 3 specifies the interest penalty for late payment of rates.

If a county is zoned into different areas for rating or any other revenue purpose, then it might be necessary to introduce sub-items of 1 to provide for different amounts of rates in the different rating areas.

Clause 4. Trade licences

Clause 4 provides that Schedule 2 sets out the revenue-raising measures for trade licences. Schedule 2 consists of two items:

- Item 1 specifies the amount of the fees payable for the grant or renewal of a trade licence, and this is likely to vary depending on the category of trade licence concerned.
- Item 2 specifies the amount of the additional fee payable for the non-payment or late payment of any grant or renewal fee.

Clause 5. Other fees and charges for services

Clause 5 provides that Schedule 3 sets out the fees and charges for services provided by the county government (other than trade licence fees). Schedule 3 is likely to consist of two items:

- Item 1 specifies the amount of any fee or charge payable for a specified service.
- Item 2 amends legislation that impose fees and charges for services, by way of varying the amounts of those fees and charges set out in the relevant legislation.

Clause 6. No prejudice to national economic policies etc.

This clause provides that the revenue raising measures do not prejudice:

- national economic policies
- economic activities across county boundaries
- the national mobility of goods, services, capital or labour.

It repeats Article 209(5) of the Constitution and is a timely reminder to county governments that there are limitations on their revenue-raising measures.

Clause 7. Application of transitional provision

This clause makes it clear that the transitional provisions in clause 7 of the Sixth Schedule of the Constitution apply to any national Act listed in Schedule 3 if required. Although not strictly necessary, it again operates as a reminder to county governments of the importance of identifying the underlying legislation for all of their revenue-raising measures.

Clause 8. Fees and charges authorised by contracts etc.

This clause makes it clear that the Act does not prevent a county government from entering into contracts and agreements providing for the payment of services provided under them. For example, a county government may enter into a long term lease of county premises.



Links to legislation and cases

For more detail about the cases referred to in this chapter, please go to the Kenya Law Cases Database online at: <http://kenyalaw.org/caselaw/>

Diagram 7: Adapting the County Model Finance Law

Below are the technical changes that *must* be made to adapt a model law for approval by the county executive and introduction to the county assembly as a County Bill.

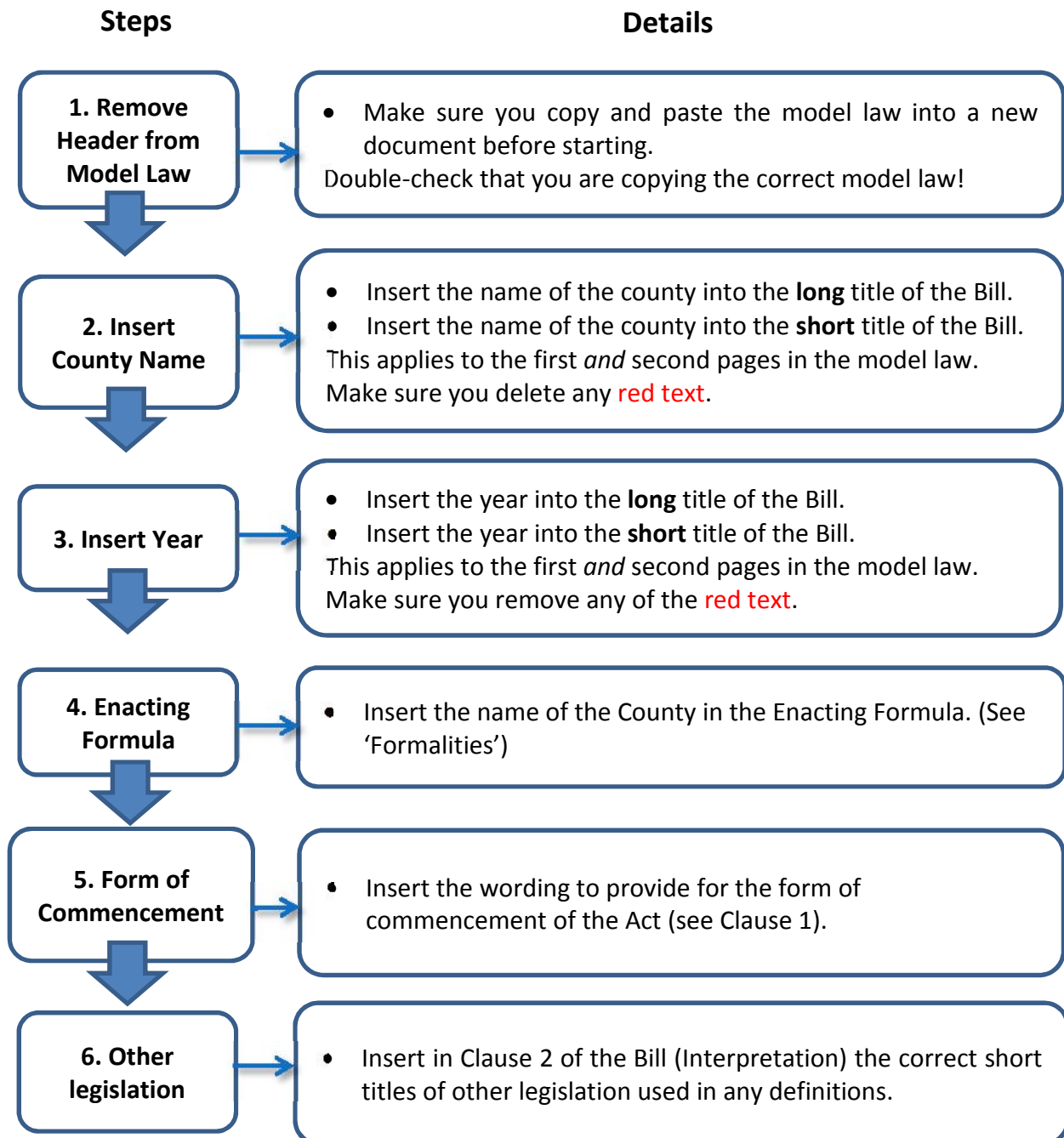
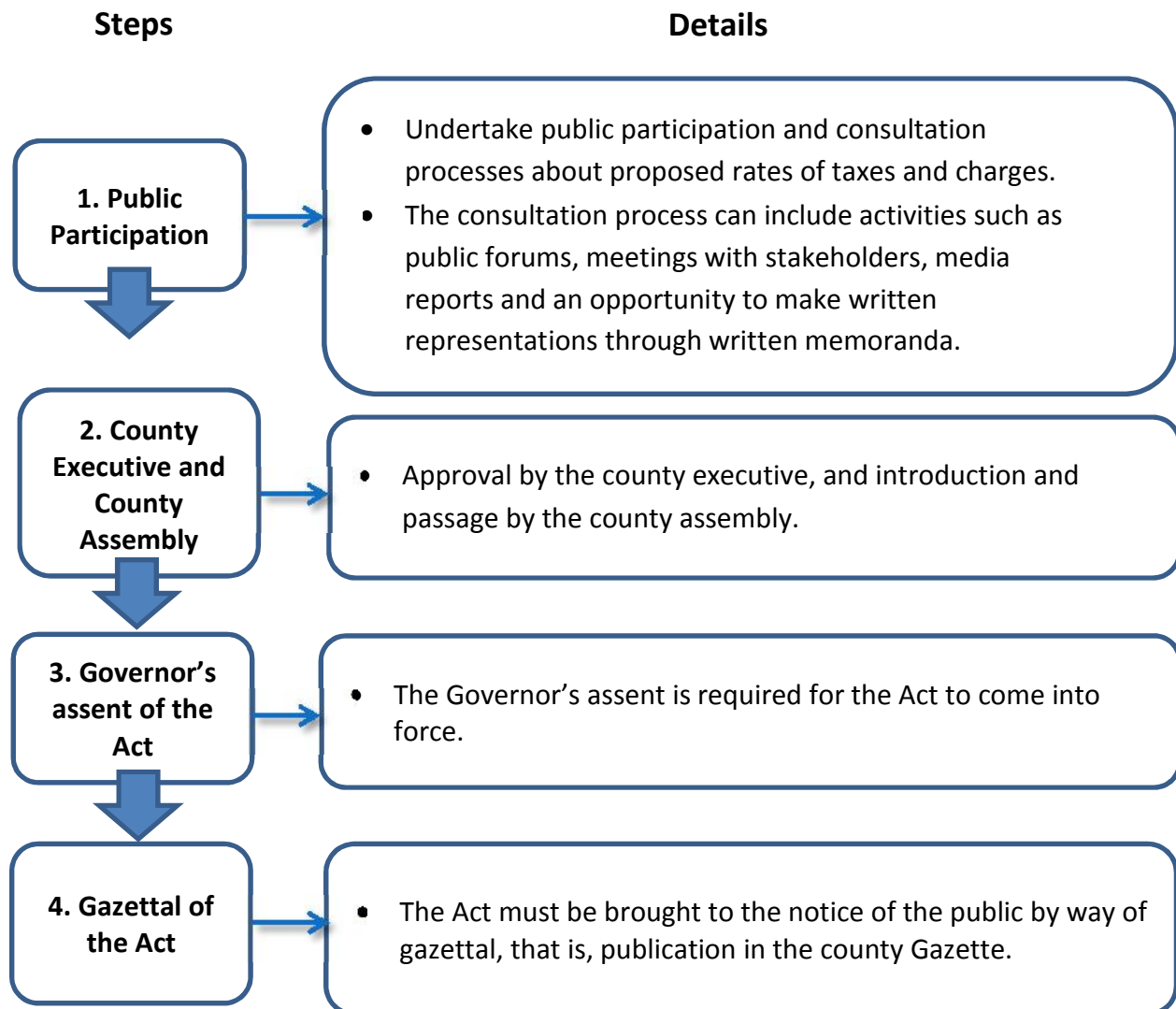


Diagram 8: Public Consultation and Implementing the County Model Finance Law

Once the required technical changes have been made to the model law, there is a series of steps required in order to implement a County Finance Act.



Checklist 4: Adapting and Implementing the County Model Finance Law

This checklist can help you keep track of your progress on completing the actions that are required for adapting the County Model Finance Law and for implementing as the County Finance Act.

Action	✓ When completed	Date Completed	Comments
Create new document with model law text and remove header.			
Insert County Name into the long and short titles.			
Insert Year into the long and short titles.			
Insert the name of the County in the Enacting Formula.			
Insert the wording to provide for the form of commencement of the Act.			
Insert in Clause 2 (Interpretation) the correct short titles of other legislation.			
Public participation and consultation process.			
Approval of the Bill by the county executive, and introduction and passage of the Bill by the county assembly.			
Governor's assent of the Act.			
Gazettal of the Act.			

CHAPTER 6. ADAPTING MODEL LAWS FOR USE BY COUNTY GOVERNMENTS

Adapting Model Laws

The three model laws are designed to be used by county governments to develop their own legislation. If a county government decides to follow the model laws closely, then few changes will need to be made to the text of the model laws as drafted. However, if a county government chooses to make substantive changes, then the model laws will need to be altered accordingly. It is of course open to a county government to develop its own legislative scheme and not have regard to the model laws.

At the very least, a county government must make the technical changes to a model law as outlined in Chapters 2, 3, 4 and 5 in order to adapt the model law for its own use (see Diagram 1 in Chapter 2, Diagram 3 in Chapter 3, Diagram 5 in Chapter 4 and Diagram 7 in Chapter 5). This is a technical legislative exercise, but nonetheless important to ensure the legal effectiveness of any law that is passed by a county assembly.

At the same time, if there is an established county 'house drafting style', then the model law should be customised so that it is consistent with that house drafting style. For example, 'shall' is traditionally used to impose an obligation, while 'must' is used in plain English drafting. Other minor textual changes should also be relatively easy to draft.

However, if a county government intends to customise a model law by making substantive changes, whether by way of adding a new provision or removing a provision, or amending an existing provision, then care should be exercised to ensure that those changes are consistent with the remaining provisions of the model law. It is important to ensure that the altered county law will not only address the particular needs, circumstances and interests of the county, but also that any unchanged provisions remaining from the model law are legally effective.

In adapting a model law, consideration must also be given to ensuring that any forms necessary for use under the county legislation will be available once it comes into force. At the same time, rules may need to be in place at the commencement of the county law to ensure that it is effective. Central to both of these issues is the date of commencement of the county law. It would be unwise to commence a county law unless all required forms and rules are available or at least close to finalisation.

The more detailed implementation checklists can be used to ensure that all necessary steps have been completed for implementing the laws, see Diagram 2 and Checklist 1 in Chapter 2, Diagram 4 and Checklist 2 in Chapter 3, Diagram 6 and Checklist 3 in Chapter 4, and Diagram 8 and Checklist 4 in Chapter 5.

Memorandum of Objects and Reasons

The county law should be accompanied by a Memorandum of Objects and Reasons as is the practice for primary legislation. The current practice is to provide for a short form of Memorandum that does not deal separately with each clause of a Bill. A Memorandum of Objects and Reasons has been prepared for each of the model laws (see Annexes 2, 3 and 4). Each Memorandum can be adapted by a county government for use with the relevant County Bill.

Consultation

It will be necessary to undertake consultation about the new legislation for the business community and ratepayers. The workshops could be undertaken prior to the laws being introduced into the county assembly or as part of the implementation process once the legislation is enacted. There may be a need for both kinds of workshops. Chapter 5 contains detailed information on the importance of public participation in the legislative process for revenue raising matters.

Clearance of County Laws by County Executive

The use of a model law to prepare a county law is a short cut method to developing legislation. Most policy issues will have been considered in developing the model law and the drafting is largely done.

However, this does not mean that the county executive does not have a role to play in scrutinising the law before it is introduced into the county assembly. The county executive should review the county law based on the model law and ensure that it does achieve the required county revenue policy objective.

Passage of County Laws by County Assembly

The county laws should be reviewed and passed by the county assembly in accordance with the Standing Orders/Rules of Procedure of the county assembly. No special procedure applies merely because the Bills have been adapted from model laws.

Enacting County Laws

After passage of the legislation by the county assembly, the usual procedures must be followed to bring the county laws into force, including complying with the requirements for assent and publication of the laws.

GLOSSARY OF HANDBOOK TERMS

Act	A law made by the county assembly, and known as an Act. An Act comes into being when a Bill that has passed all required readings in the county assembly receives assent from the governor. An Act is also referred to as primary legislation.
Assent	The governor by assenting to a Bill signifies that the Bill has become an Act. This is the final step in the enactment of primary legislation.
Bill	Proposed primary legislation. It becomes an Act if passed by the county assembly and assented to by the governor.
Enact	Action by the county assembly and governor to make a Bill into an Act.
Long title	The words appearing at the start of an Act, before the formal words of enactment, that describe the scope of the Act. The title or long title is to be distinguished from the short title.
Memorandum of objects and reasons	An explanation of the purpose of proposed legislation.
Plain English	The drafting of legislation in plain English aims to make legislation easy to read and understand. It involves the use of language, presentation, structure and style, and also seeks to ensure legislation is free of unnecessary complexity and difficulty.
Regulation or rule	An instrument made under an authority stated in an Act and that identifies itself as being a regulation or rule, for example, made by a member of the county executive committee. (See also subsidiary legislation).
Retrospective commencement or operation	Legislation has a retrospective commencement or operation if, once it is made, it can be said that it took effect at a point in time before the time it was made.
Short title	The short name given to a Bill or Act consisting of a name and the year of enactment.
Subsidiary legislation	Subsidiary (or subordinate) legislation is made by a person or body under the authority of an Act (primary legislation). Common forms include a regulation, rule, by-law, ordinance, proclamation or determination.
Supplementary Valuation Roll	A supplementary valuation roll is used to update and maintain the valuation roll. It can be used to add newly created properties and record changes that affect the value of property, for example, sub-divisions and rezoning.
Valuation Roll	A valuation roll contains information about properties in respect of which property rates are payable including the value of the property.

ANNEX 1

Legal analysis of county revenue-raising legislation

Background

Key points:

- The two most important areas of revenue-raising for county governments are property rates and fees from business permits (trade licences).
- Previously, national legislation provided for the collection of property rates and business permit fees by local authorities. The Rating Act and Valuation for Rating Act have been in place for over half a century (with amendments), but are complex and difficult to understand. The Local Government Act which provided for the single business permits was repealed in March 2013.
- Amendments to other legislation, including certain transitional arrangements aimed at ensuring the legality of revenue collected by county governments, made revenue-raising legislation even more difficult to comprehend.
- This situation created legal uncertainty for both county governments and those liable to pay county taxes, fees and charges.

A more detailed explanation of the effect of the relevant legislation, including the amendments and transitional arrangements is set out below for business permits and property rates.

Business Permit Fees

Section 163A of the Local Government Act authorised local authorities to issue business permits and to collect fees for the issue of such permits, together with section 148(1). The Local Government (Single Business Permit) Rules 2008 issued under section 271 of that Act sets out the amount of permit fees payable for different kinds of businesses. The Local Government Act was repealed by section 134 of the County Governments Act with effect from March 2013 and local authorities were also abolished. The County Governments Act does not contain any transitional arrangements to continue the payment of fees for the issue of business permits.

The Urban Areas and Cities Act passed in August 2011, was intended to transition the old local authority revenue powers across to the new county governments. However, the transitional provisions in that Act (Part VIII, sections 54 to 59) did not achieve this policy objective. Section 56 of the Urban Areas and Cities Act did preserve *existing* local authority licences and permits, including business permits. However, such permits were deemed to have been issued by municipal and city boards established by the Act (not county governments).

Interestingly, section 24 of the Interpretation and General Provisions Act was able to be relied upon so as to ensure that the Local Government (Single Business Permit) Rules 2008 continued to apply to the existing permits preserved under section 56 of the Urban Areas and Cities Act. The usual legal position is that upon the repeal of the primary law (the Local Government Act), any rules or other subsidiary instruments made under the repealed law would cease to have any legal effect.

Section 23 transitional arrangements

The Urban Areas and Cities Act did not preserve any national legislative provisions under which *new* permits could be issued by county governments. Consequently, an additional provision was inserted into the County Governments Public Finance Management Transition Act to try and address this defect, and other revenue related defects. Section 23 of the Act provides:

“For avoidance of doubt, until a new law relating to the imposition of rates and charges is enacted, County Governments, urban areas and cities may, with necessary modifications, continue to impose rates and charges under the law for the time being in force in relation thereto.”

In reliance on section 23, county governments proceeded to collect fees for single business permits (and property rates and other fees and charges) without concern until 30 September 2013. Section 31 of the County Governments Public Finance Management Transition Act provided for the repeal of that Act on 30 September 2013. There was an attempt to extend the operation of the Act to 30 June 2014 by amending section 31. However, this legislation was not enacted and the County Governments Public Finance Management Transition Act was repealed with effect from 30 September 2013.

Consequently, county governments could not rely on section 23. This meant that from 1 October 2013 there was no national or county legislation authorising the issue of new business permits and the collection of permit fees by county governments.

Is it possible to re-activate a repealed section 23?

Any attempt now to reactivate Section 23 of the County Governments Public Finance Management Transition Act or its effect by way of an amendment to existing legislation, for example, the County Governments Act, raises difficult questions of statutory interpretation and important legislative policy issues. Such a re-activation would arguably not extend to section 163A of the Local Government Act because it (and the Act) were repealed in March 2013. As stated above, section 163A authorised the issue of single business permits. Any attempted re-activation would apply only to laws in existence at the date of commencement of any such amending legislation, for example, the national Rating Act which deals only with property rates (see below). This is of course not relevant to business permit fees.

To overcome the legislative gap in the collection of business permit fees, any such amending legislation would need to be given a retrospective commencement. However, retrospective legislation should as a matter of legislative policy be avoided, unless there are exceptional circumstances. Protection of government revenue can be considered to be one of those circumstances.

On balance, the opportunity to address the issue in reliance on the approach taken by section 23 of the County Governments Public Finance Management Transition Act should have been implemented before 30 September 2013. This cannot be disputed. Any attempt now based on retrospective legislation lacks legal certainty.

Sixth Schedule of the Constitution and Section 8 of the County Governments Act

“7. (1) All law in force immediately before the effective date continues in force and shall be construed with the alterations, adaptations, qualifications and exceptions necessary to bring it into conformity with this Constitution.”

Clause 7 of Part 2 of the Sixth Schedule of the Constitution provides for some transitional legislative protection, but reliance on this provision raises potentially complex legal and operational arrangements. Section 163A of the repealed Local Government Act refers to local authorities that do not exist and permits (or licences) issued by a non-existent local authority and any fees collected by a county government for the grant of such permits (or licences) remain open to legal challenge.

Section 8(2) of the County Governments Act does provide additional support to the transitional arrangements. It provides:

“(2) If a county assembly fails to enact any particular legislation required to give further effect to any provision of this Act, a corresponding national legislation, if any, shall with necessary modifications apply to the matter in question until the county assembly enacts the required legislation.”

However, it too does not address operational difficulties, for example, what if an applicant for a licence is to be made to an office that no longer exists? What does the applicant do and how does the applicant (not familiar with the Sixth Schedule and section 8) make sense of such a situation?

Nonetheless, reliance on such transitional arrangements as an interim measure is not inappropriate and framers of the legislation clearly intended this to be the case. However, such arrangements must have a ‘use by date’ (whenever that is?) and this approach if continued beyond a ‘reasonable timeframe’ is likely to attract criticism that county governments are not moving forward and implementing the new county legislative powers provided for under the Constitution (see Article 209 and Part 2 of the Fourth Schedule).

Why is the County Model Law on Trade Licences needed?

If adopted by county governments, the County Model Law on Trade Licences will remove any legal uncertainty about the collection of what were the old business permit fees by local authorities. The county legislation will fill the legislative gap created by the repeal of the Local Government Act (section 163A). As such it will expressly provide for the grant of trade licences and the payment of trade licence fees to county governments as envisaged by the Fourth Schedule of the Constitution and Article 209(4). There will be no need for the Parliament to consider reviving repealed national legislation (section 23 of the County Governments Public Finance Management Transition Act) or to attempt to rely on the Sixth Schedule of the Constitution.

Property Rates

The issues relating to property rates are similar to those relating to business permits and for that reason the legal arguments have not been repeated.

Suffice to say, the Rating Act together with the Valuation for Rating Act (both national laws) provide for the imposition of property rates by local authorities. No amendments have been made to those Acts to give effect to the new county structure, for example, the definition of 'rating authority' has not been amended to refer to a 'county government'. Local authorities are provided for under the Local Government Act and as stated above it was repealed in March 2013.

Further, following the repeal of the County Governments Public Finance Management Transition Act with effect from 30 September 2013 (see discussion above on Section 23), there is no express legislative authority for county governments to collect property rates after that date that had been payable to local authorities.

Again, it is possible to rely on the Sixth Schedule of the Constitution and section 8(2) of the County Governments Act, but to do so raises the same potential legal complexities and operational difficulties mentioned above for business permits.

If adapted by county governments, the Model Law on Property Rates will remove any legal uncertainty surrounding the collection of property rates by county governments. There will be no need to rely on the national Rating Act. However, valuations of property prepared under the national Valuation for Rating Act will be used as the basis to calculate the amount of property rates payable to county governments. It was beyond the scope of the model laws to try and address valuation issues relating to properties currently on the valuation rolls, for example, many valuations are out of date and many properties that should be on the valuation rolls are not.

ANNEX 2

County Model Law on Property Rates

THE **[Insert County Name]** COUNTY RATING ACT **[Insert Year]**

ARRANGEMENT OF SECTIONS

- 1—Short title and commencement
- 2—Application of Act
- 3—Interpretation
- 4—Forms of rating
- 5—Imposition of rates
- 6—Amount of rates payable
- 7—Deemed amount of rates payable
- 8—When do rates become due and payable?
- 9—Liability for payment of rates
- 10—Collection of rates
- 11—Discount for early payment of rates
- 12—Penalty payable on late payment of rates
- 13—Recovery of rates
- 14—Recovery of rates from persons paying rent
- 15—Rates chargeable on property
- 16—Statement of payment of rates and other charges
- 17—Publication and service of documents
- 18—Valuers
- 19—Power to make rules
- 20—Savings
- Schedule 1 – Area Rate
- Schedule 2 – Agricultural Rental Value Rate
- Schedule 3 – Site value rate or Improvement Rate
- Schedule 4 – DE terming the amount of a rate that is payable

THE [Insert County Name] COUNTY RATING ACT [Insert Year]

An Act of the County Assembly of [Insert County Name] to provide for the imposition of rates on land and buildings in the County of [Insert County Name], and for connected purposes

MADE by the [Insert County Name] County Assembly

Short title and commencement

1. (1) This Act may be cited as the [Insert County Name] County Rating Act [Insert Year].

(2) This Act comes into operation on [Date to be inserted].

Application of Act

2. This Act applies to all rateable property in the county of [Insert County Name].

Interpretation

3. In this Act, unless the context otherwise requires:

“agricultural rental value rate” has the meaning assigned to it in accordance with clause 1 of Schedule 2;

“area rate” has the meaning assigned to it in accordance with clause 1 of Schedule 1;

“improvement rate” has the meaning assigned to it in clause 2 of Schedule 3;

“land” includes any improvements on, in or under the land;

“prescribed” means prescribed by the rules made under this Act;

“rate” means a rate imposed by this Act;

“rateable owner” has the meaning assigned to it by section 7 of the Valuation for Rating Act (Cap 266);

“rateable property” has the same meaning as in the Valuation for Rating Act (Cap 266);

“rating area” means an area in the county for which:

(a) a form or method of rating is or may be adopted; or

(b) a rate is or may be imposed;

“rating authority” means the county government;

“receiver of revenue” has the same meaning as in the [Insert County Name] County Revenue Administration Act [Insert Year];

“site value rate” has the meaning assigned to it in clause 1 of Schedule 3;

“supplementary valuation roll” means any supplementary

valuation roll prepared under the Valuation for Rating Act (Cap 266);

“valuation roll” means any valuation roll prepared under the Valuation for Rating Act (Cap 266);

“year” means a period of 12 months starting on 1 January or such other prescribed date.

Forms of rating

4. (1) The forms of rating are:

- (a) an area rate as provided for in Schedule 1; and
- (b) an agricultural rental value rate as provided for in Schedule 2; and
- (c) a site value rate and an improvement rate as provided for in Schedule 3.

(2) One or more forms of rating must be adopted for the purposes of imposing a rate under section 5.

Imposition of rates

5. (1) A rate is imposed in respect of each year on all rateable property in the county.

(2) Subject to subsection (3), the form of rating adopted for the purposes of imposing the rate under subsection (1) is a site value rate.

(3) The county assembly may in the County Finance Bill adopt one or more of the other forms of rating referred to in section 4.

(4) Different forms of rating may be adopted for different rating areas.

Amount of rates payable

6. (1) The amount of a rate that is payable is to be determined each year by the county assembly in the County Finance Bill.

(2) Without limiting subsection (1), the wording set out in Schedule 4 may be used by the county assembly to determine the amount of a rate that is payable.

Deemed amount of rates payable

7. If the county assembly does not determine the amount of a rate payable for a particular year, then the amount of the rate payable for that year is deemed to be the amount of the rate that was payable for the immediately preceding year.

When do rates become due and payable?

8. (1) A rate becomes due on 1 January or such other prescribed date of each year.

(2) The rating authority must by notice in the county Gazette specify the date on which a rate becomes payable and may publish that date in a newspaper circulating in the county.

(3) Notice of at least thirty days must be given of the payment date published under subsection (2).

(4) For the purposes of this Act, the valuation roll or any supplementary valuation roll in force on the day on which any rate becomes payable is conclusive evidence of all matters included in such roll.

Liability for payment of rates

9. (1) The rateable owner of any land at the date when a rate imposed on that land becomes payable is liable for payment of the amount of the rate.

(2) If the owners of the land are joint registered owners or tenants in common, they are jointly and severally liable for the payment of the rate.

(3) If the rateable owner of the land is absent from Kenya, any person receiving the rent or being in charge or control of the land is liable for the payment of the rate.

Collection of rates

10. (1) Rates must be paid to the receiver of revenue or any other person authorised by the rating authority to collect rates.

(2) Rates are payable:

(a) by an electronic transfer of funds or such other ways approved by the receiver of revenue; or

(b) at the offices of the rating authority or at any other place approved by the receiver of revenue.

(3) The receiver of revenue must issue a receipt for the payment of any rates to the person who paid the rates.

Discount for early payment of rates

11. The rating authority may allow a discount as determined by the country assembly in the County Finance Bill on any rate paid on or before the day on which the rate becomes payable.

**Penalty payable on
late payment of rates**

12. The rating authority may charge interest as determined by the country assembly in the County Finance Bill on any amount of a rate remaining unpaid after the day on which the rate became payable.

Recovery of rates

13. (1) If any rate or any part of a rate remains unpaid after the day on which the rate became payable, the rate or part of the rate, as the case requires, and any interest on any such unpaid rate or part as provided for in section 12, is recoverable in a court of competent jurisdiction as a debt due and owing to the rating authority from the person liable for payment of the rate.

(2) The receiver of revenue is authorised to sue for and recover the debt for the rating authority.

(3) A certificate signed by the receiver of revenue and certifying that:

(a) an amount of rates is or was due and payable on or before a certain date; and

(b) the amount or a part of the amount has not been paid on or before that date;

is admissible as evidence against the defendant in proceedings under this section, and is prima facie evidence as to the matters certified.

**Recovery of rates
from persons paying
rent**

14. (1) If any rate or any part of a rate remains unpaid after the day on which the rate became payable, the rating authority may serve a written notice under subsection (2) upon any person paying rent to the owner of the land in respect of which such rate was imposed.

(2) The written notice:

(a) is to state the amount of such arrears, which may include interest calculated in accordance with section 12; and

(b) is to state that all future payments of rent (whether already accrued due or not) by the person paying the rent are to be made directly to the rating authority until such arrears and interest have been paid in full.

(3) The notice operates for all purposes to transfer to the rating authority the right to recover, receive and give a discharge for such rent.

Rates chargeable on property	<p>15. (1) Any rate due, together with interest calculated in accordance with section 12, is a charge against the land on which the rate was imposed.</p> <p>(2) If the title to such land is registered under any law relating to the registration of title to land, the rating authority may deliver a notification of such charge, in the prescribed form, to the registrar who must register it against the title to that land and the charge takes priority in accordance with such law.</p>
Statement of payment of rates and other charges	<p>16. The rating authority may, upon payment of the prescribed fee by any person, issue to that person a statement of the current status of the payment of rates for an area of land.</p>
Publication and service of documents	<p>17. Documents are to be published, sent or served for the purposes of this Act in accordance with the requirements of section 16 of the <i>[Insert County Name]</i> County Revenue Administration Act <i>[Insert Year]</i>.</p>
Valuers	<p>18. The county executive committee member responsible for lands may appoint one or more county public officers within the meaning of the County Governments Act 2012 or other persons to value land for the purposes of preparing a draft valuation roll or draft supplementary valuation roll under the Valuation for Rating Act (Cap 266).</p>
Power to make rules	<p>19. (1) The county executive committee member responsible for finance may make rules generally for the better carrying out of the provisions and purposes of this Act.</p> <p>(2) Without limiting subsection (1), rules may be made for the following purposes:</p> <ul style="list-style-type: none"> (a) the collection of rates; (b) the exemption, waiver or reduction of rates; (c) prescribing fees for services; (d) prescribing forms; (e) publication and service of notices and other documents. <p>(3) Different rules may be made in respect of different forms of rating or different rating areas.</p>

20. (1) If, immediately before the coming into operation of this Act, there is in force under any law a form or method of rating in respect of any area of the county which the county assembly is empowered to adopt under this Act, that form or method of rating is adopted by reference under this Act and continues to apply in respect of that area, subject to such modifications (if any) as may be necessary to bring such form or method of rating into conformity with the provisions and requirements of this Act and any rules made under this Act.

(2) Any rules made under the Rating Act (Cap 267), being in force immediately before the coming into operation of this Act, are adopted by reference under this Act and continue in force for the purposes of this Act, subject to such modifications (if any) as may be necessary to bring such rules into conformity with the provisions and requirements of this Act.

(3) A valuation roll that, but for the operation of section 3 of the Valuation for Rating Act (Cap 266), would have been in force immediately before the coming into operation of this Act in respect of the county or a part of the county is deemed to be in force for the purposes of this Act.

Schedule 1 – Area Rate

Section 4(1)(a)

Clause 1 - Area rate

An area rate is a rate imposed on an area of land, and the county assembly may for an area rate adopt one or more of the following methods of rating:

- (a) a flat rate upon the area of land;
- (b) a graduated rate upon the area of land;
- (c) a differential flat rate or a differential graduated rate upon the area of land according to the use to which the land is put, or capable of being put, or for which it is reserved;
- (d) an industrial rate upon the area of land used for other than agricultural or residential purposes;
- (e) a residential rate upon the area of land used for residential purposes;
- (f) such other method of rating upon the area of land or buildings or other immovable property as the county assembly may approve;

and the county assembly may adopt different forms of rating for different rating areas.

Schedule 2 – Agricultural rental value rate

Section 4(1)(b)

Clause 1 - Agricultural rental value rate

An agricultural rental value rate is a rate imposed on the annual value of agricultural land.

Clause 2 - Definitions

In this Schedule,

“agricultural land” has the same meaning assigned to it by the Agriculture Act; and

“annual value”, in relation to an agricultural rental value rate, means:

(a) in the case of land which is held on a lease from the National Government for a term of 999 years and in respect of which an annual rent has been reserved by such lease, the annual rent so reserved; and

(b) in the case of any other land, the annual rent which might reasonably have been reserved if such land had been held on a lease from the National Government for a term of 999 years commencing with the year 1960.

Schedule 3 – A site value rate or an improvement rate

Section 4(1)(c)

Clause 1 - Site value rate

A site value rate is a rate imposed on the value of unimproved land as appearing in a valuation roll or supplementary valuation roll.

Clause 2 - Improvement rate

An improvement rate is a site value rate in combination with a rate on the assessment for improvement rate as appearing in a valuation roll or supplementary valuation roll.

Clause 3 - Application of Valuation for Rating Act (Cap 266)

If a site value rate or an improvement rate is adopted, the Valuation for Rating Act (Cap 266) including relevant definitions applies to the form of rating so adopted.

Schedule 4 –Determining the amount of a rate that is payable

Section 6

For the purposes of section 6 of the [Insert name of County] County Rating Act [Insert Year], the amount of a rate payable in respect of a rateable property for [Insert Year] is [Insert Percentage] percent of the unimproved value of the rateable property.

MEMORANDUM OF OBJECTS AND REASONS

Article 209 (3) of the Constitution provides for the imposition of property rates by the county governments.

The Bill gives effect to that exclusive county taxing power by providing for the imposition and collection of property rates. The Bill relies on the property valuations in place under the national Valuation for Rating Act (Cap 266).

The enactment of this Bill into law does/does not* occasion additional expenditure of public funds.

*delete which does not apply

ANNEX 3

County Model Law on Trade Licences

[Insert County Name] County Trade Licence Act [Insert Year]

Arrangement of Sections

- 1—Short title and commencement
- 2—Interpretation
- 3—Chief licensing officer
- 4—Requirement for a trade licence
- 5—Application for licence
- 6—Grant of licence
- 7—Renewal of licence
- 8—Cancellation or suspension of licence
- 9—Surrender of licence
- 10—Transfer or assignment of licence
- 11—Appeals
- 12—Authorised officers
- 13—Register
- 14—Offence - false or misleading statements
- 15—County assembly to determine licence fees and additional fees
- 16—Power to make rules
- 17—Savings and transitional
- Schedule 1- Powers of authorised officers
- Schedule 2- Approved forms

[Insert County Name] County Trade Licence Act [Insert Year]

An Act of the County Assembly of [Insert County Name] to provide for the grant of trade licences, and for connected purposes

MADE by the [Insert County Name] County Assembly

Short title and commencement

1. (1) This Act may be cited as the [Insert County Name] County Trade Licence Act [Insert Year].

(2) This Act comes into operation on [Date to be inserted].

Interpretations

2. In this Act, unless the context otherwise requires:

“approved form” means a form set out in Schedule 2 or approved by the chief licensing officer;

“authorised officer” has the meaning given by section 12;

“business” includes a profession, trade or occupation, other than a prescribed business;

“chief licensing officer” means the chief licensing officer appointed under section 3;

“county public officer” has the same meaning as in the County Governments Act 2012;

“holder”, in relation to a trade licence, means the person to whom the trade licence is granted or to whom the trade licence is transferred or assigned;

“licence fee” means the fee payable for the grant or renewal of a trade licence;

“prescribed” means prescribed by the rules made under this Act;

“receiver of revenue” has the same meaning as in the [Insert County Name] County Revenue Administration Act [Insert Year];

“trade licence”, in relation to a business, means a licence granted under this Act to conduct the business.

Chief licensing officer

3. (1) The county executive committee member responsible for trade must appoint an officer of the county government as the chief licensing officer.

(2) The chief licensing officer has the functions and powers provided for by or under this Act.

(3) The chief licensing officer may approve forms for the purposes of this Act and amend the forms in Schedule 2.

(4) The chief licensing officer may, by instrument in writing, delegate all or any of his or her functions or powers under this Act to a county public officer, except this power of delegation.

Requirement for a trade licence

4. (1) A person must not conduct a business within the county, unless the person is the holder of a trade licence for that business.

(2) If a person contravenes subsection (1), the person is guilty of an offence punishable on conviction by a fine not exceeding 500,000 shillings.

Application for licence

5. (1) An application for the grant of a trade licence must:

- (a) be lodged with the chief licensing officer; and
- (b) be in the approved form; and
- (c) contain such information and be accompanied by such documents as are required by the approved form; and
- (d) be signed in a manner specified in the approved form; and
- (e) be accompanied by the prescribed application fee (if any).

(2) An application may be made in an electronic format approved by the chief licensing officer.

(3) The chief licensing officer may, before determining an application, require the applicant to provide to the chief licensing officer such additional information or documents as is necessary to enable the application to be determined.

(4) The application fee (if any) is not refundable.

Grant of licence

6. (1) The chief licensing officer must grant an application for a trade licence if:

- (a) the chief licensing officer is satisfied that the applicant has complied or will comply with all laws relating to health, hygiene and safety applicable to the trade licence applied for; and
- (b) the licence fee has been paid to the receiver of revenue.

(2) A trade licence is to be in the approved form and is granted subject to such conditions (if any) as are specified in the trade licence.

(3) Subject to section 8, the initial term of a trade licence starts on the date on which the trade licence is granted and ends on 31

December of that year.

(4) The licence fee for the grant of a trade licence is to be calculated on a pro rata basis having regard to the initial term of the trade licence.

Renewal of licence

7. (1) The holder of a trade licence may, before the expiry of the trade licence or such other prescribed date, apply in the prescribed form for the renewal of the trade licence.

(2) The chief licensing officer must grant an application for the renewal of a trade licence if:

(a) the chief licensing officer is satisfied that the applicant has complied with all laws relating to health, hygiene and safety applicable to the trade licence; and

(b) the licence fee payable for the renewal of the trade licence has been paid to the receiver of revenue.

(3) The chief licensing officer may, before determining an application for renewal, require the applicant to provide to the chief licensing officer such additional information or documents as is necessary to enable the application to be determined.

(4) Subject to section 8, a trade licence is to be renewed for a calendar year.

**Cancellation or
suspension of licence**

8. (1) The chief licensing officer may suspend for a specified period or cancel a trade licence if he or she is satisfied that:

(a) the conduct of the business is endangering the health or safety of persons who live or work in the neighbourhood of the premises from which the business is conducted; or

(b) the holder of the trade licence has breached a condition of the trade licence.

(2) If the chief licensing officer cancels or suspends a trade licence (or revokes any such suspension), the chief licensing officer must give the holder of the licence written notice of the cancellation or suspension, including the period of the suspension, or revocation, together with a statement of the reasons for the decision.

(3) If a trade licence is cancelled or suspended, the holder of the licence must immediately cease to conduct the business.

(4) If a person contravenes subsection (3), the person is guilty of an offence punishable on conviction by a fine not exceeding 500,000 shillings.

(5) If the chief licensing officer revokes the suspension of a trade licence, the holder of the licence may resume conducting the business.

Surrender of licence **9.** The holder of a trade licence may surrender the licence by returning it to the chief licensing officer, but no refund of the licence fee is payable.

Transfer or assignment of licence **10.** The holder of a trade licence may transfer or assign the licence and must give the chief licensing officer written notice in the approved form of any transfer or assignment.

Appeals **11.** (1) A person aggrieved by a decision of the chief licensing officer may appeal to the county executive committee member responsible for trade against the decision.

(2) The county executive committee member responsible for trade may confirm, reverse or modify the decision appealed against, and give such directions to the chief licensing officer as may be necessary to give effect to the member's decision.

(3) The chief licensing officer must comply with any direction given under subsection (3).

Authorised officers **12.** (1) The county executive committee member responsible for trade may appoint persons as authorised officers for the purposes of this Act.

(2) An authorised officer has the powers set out in Schedule 1.

Register **13.** (1) The chief licensing officer must establish and maintain a register of trade licences which is to be available for inspection by the public during usual government office hours.

(2) The register must contain such information as is determined in writing by the chief licensing officer, but must not include commercial-in-confidence information.

Offence - false or misleading statements **14.** (1) A person must not make a statement which the person knows to be false or misleading:

(a) in or in connection with an application for the grant or renewal of a trade licence; or

(b) when providing information required under this Act.

(2) If a person contravenes subsection (1), the person is guilty

of an offence punishable on conviction by a fine not exceeding 250,000 shillings.

County assembly to determine licence fees and additional fees

15. The licence fees that are payable for the grant or renewal of trade licences, including any additional fees for the non-payment or late payment of such licence fees, are to be determined each year by the county assembly in the County Finance Bill.

Power to make rules

16. (1) The county executive committee member responsible for trade may make rules generally for the better carrying out of the provisions and purposes of this Act.

(2) Without limiting subsection (1), rules may be made for the following purposes:

- (a) the payment of licence fees, including additional fees for non-payment or late payment;
- (b) the exemption, waiver or reduction of licence fees;
- (c) prescribing fees for services;
- (d) prescribing forms;
- (e) publication and service of notices and other documents;
- (f) the transfer or assignment of trade licences;
- (g) different categories of trade licences.

Savings and transitional

17. (1) Despite the repeal of the Local Government Act [CAP 265] and the County Governments Public Finance Management Transition Act 2013, any single business permit issued by a local authority under section 163A of the Local Government Act [CAP 265] that was in force on 30 September 2013 is deemed to have continued in force, subject to subsection (2), on and after that date as if it were a trade licence granted under this Act and any fees or charges payable to a local authority in respect of the single business permit were payable to the county government.

(2) The single business permit referred to in subsection (1) continues in force:

- (a) for 3 months from the date of commencement of this Act; or
- (b) if the holder of the single business permit applies for a trade licence under this Act within that period, until the licence is granted or refused or the application is withdrawn, whichever occurs first.

Schedule 1 – Powers of authorised officers

Section 12

1. An authorised officer may:

- (a) enter any premises for the purposes of:
 - (i) granting or renewing a trade licence; or
 - (ii) finding out whether the holder of a trade licence is complying with the conditions of the licence, or this Act or the rules made under this Act; and
- (b) search the premises or any part of the premises; and
- (c) inspect or examine anything in or on the premises; and
- (d) seize anything that may afford evidence of the commission of an offence against this Act; and
- (e) take extracts from, and take copies of, any documents in or on the premises; and
- (f) take into or onto the premises such persons, equipment and materials as the authorised officer reasonably requires for the purpose of exercising any of the powers mentioned in paragraphs (a) to (e); and
- (g) require the holder of the licence, or any person in or on the premises, to give to the authorised officer reasonable assistance in relation to the exercise of any of the powers mentioned in paragraphs (a) to (f).

2. However, an authorised officer must not enter premises unless:

- (a) the owner or occupier of the premises consents to the entry; or
- (b) the entry is made when the premises are open for the conduct of business or otherwise open for entry; or
- (c) the authorised officer suspects on reasonable grounds that the holder of a trade licence is not complying with the conditions of the trade licence, or this Act or the rules made under this Act.

Part A

APPLICATION FORM

COUNTY OF [INSERT NAME OF COUNTY] TRADE LICENCE ACT [INSERT YEAR]

APPLICATION FOR THE GRANT / RENEWAL* OF A TRADE LICENCE

Note: business has its ordinary meaning, and includes a profession (excluding regulation of the profession), trade or occupation

1 Applicant's name and description of business, profession, trade or occupation to be conducted

2 Name under which business, profession, trade or occupation is or is to be carried on

3 If business is a partnership, give full names and addresses of all partners

4 Give any registration details of the business, profession, trade or occupation

5 Address at which business, profession, trade or occupation is or is to be carried on

6 List PO Box address of the business, profession, trade or occupation, and email and telephone contacts

7 Provide a description of the premises including address to which the licence is to apply

8 Is the applicant a resident of Kenya?

9 Is the applicant an undischarged bankrupt?

10 State the date on which it is desired to begin conducting the business, profession, trade or occupation* or the number of the previous licence

11 Please provide the following additional information: *[insert additional information required]*

12 Please provide the following additional documents: *[insert additional documents required]*

13 Application fee is attached* or no application fee applies

I certify that the particulars given above are true and correct.

DATE

Signature of applicant

**Delete if it does not apply*

Part B

COUNTY OF **[INSERT NAME OF COUNTY]** TRADE LICENCE ACT **[INSERT YEAR]**

TRADE LICENCE

Note: business has its ordinary meaning and includes a profession (excluding regulation of the profession), trade or occupation

A trade licence to conduct *[insert business, trade, profession or occupation to be conducted]*

at the premises at *[insert location of the premises to which licence applies]*

is granted for the period starting on *[insert initial date of grant of the trade licence]* and ending on 31 December *[insert year]* * or is renewed for the period from 1 January to 31 December *[insert year]*.

The holder of the licence is *[insert name of person to whom the trade licence is granted or for whom it is renewed]*.

The licence is granted or renewed* subject to the *[Insert name of County]* Trade Licence Act *[Insert Year]* and the rules made under that Act, and the conditions set out below:

[Insert conditions relating to the particular business, trade, profession or occupation to which the licence relates]

Granted by the *[Insert name of County]* chief licensing officer under the *[Insert name of County]* Trade Licence Act *[Insert Year]*

DATE

Chief licensing officer

**Delete if it does not apply*

MEMORANDUM OF OBJECTS AND REASONS

Article 209(4) of the Constitution together with Part 2 of the Fourth Schedule of the Constitution gives counties the power to impose fees and charges for services provided and for regulatory purposes in respect of certain licensed activities. Examples include the power to licence undertakings that sell food (item 2(d)) and to issue trade and liquor licences (items 7(b) and 4(c)). These licensing powers are not taxing powers, but are a power to charge fees for services.

The Bill provides for the grant of trade licences by County Governments to conduct businesses in the county in accordance with the powers mentioned above in Part 2 of the Fourth Schedule of the Constitution.

The enactment of this Bill into law does/does not* occasion additional expenditure of public funds.

*delete which does not apply

ANNEX 4

County Model Law on Revenue Administration

[Insert County Name] County Revenue Administration Act [Insert Year]

Arrangement of Sections

PART 1 – PRELIMINARY MATTERS

- 1— Short title and commencement
- 2— Interpretation

PART 2 – ADMINISTRATION OF REVENUE LAWS

- 3—Receiver of revenue
- 4—Functions and powers of receiver of revenue
- 5—Delegation of functions and powers
- 6—Agreement in relation to revenue collection
- 7—Annual report

PART 3 –REVENUE PAYERS’ OBLIGATIONS AND COMPLIANCE POWERS

- 8—Books, accounts and records to be made and kept
- 9—Providing information and evidence
- 10—Access, inspection and other powers
- 11—Seizure of property required as evidence

PART 4 – MISCELLANEOUS

- 12—Waiver or reduction of rates, taxes, fees and charges
- 13—Revenue register
- 14—Approved forms
- 15—General penalty for offence
- 16—Publication and service of notices and other documents
- 17—Guidelines
- 18—Rules

[Insert County Name] County Revenue Administration Act [Insert Year]

Being an Act of the County Assembly of **[Insert County Name]** to provide for the general administration of certain taxation laws and other revenue raising laws, and for connected purposes.

MADE by the [Insert County Name] County Assembly

PART 1 – PRELIMINARY MATTERS

Short title and commencement

1. (1) This Act may be cited as the **[Insert County Name] County Revenue Administration Act [Insert Year]**.

(2) This Act comes into operation on **[Date to be inserted]**.

Interpretation

2. In this Act, unless the context otherwise requires:

“county public officer” has the same meaning as in the County Governments Act 2012;

“premises” includes:

- (a) any part of a building or structure; and
- (b) any part of a vehicle or vessel; and
- (c) an area of land;

“prescribed” means prescribed by the rules made under this Act;

“rate” means a rate imposed under the **[Insert County Name] County Rating Act [Insert Year]**;

“receiver of revenue” has the meaning given by section 3;

“relevant person” means:

- (a) a revenue payer; or
- (b) an employee or agent of the revenue payer; or
- (c) any other person whom the receiver of revenue believes on reasonable grounds may be able to assist in determining the liability (if any) of the revenue payer to pay a rate, tax, fee or charge payable under a revenue law;

“revenue law” means:

- (a) this Act; or
- (b) the **[Insert County Name] County Rating Act [Insert Year]**; or
- (c) the **[Insert County Name] County Trade Licence Act [Insert**

Year]; or

(d) any other Act imposing an entertainment tax or any other tax that is payable to the county government; or

(e) any Act or other law providing for the payment to the county government of fees or charges for services provided; or

(f) any other prescribed law;

“revenue payer” means a person liable to pay a rate, tax, fee or charge to the county government under a revenue law.

PART 2 – ADMINISTRATION OF REVENUE LAWS

Receiver of revenue

3. The receiver of revenue is:

(a) in the case of taxation, the person who is the receiver of revenue for the county designated in respect of taxation under section 157 of the Public Finance Management Act 2012; or

(b) in the case of any other kind of revenue, the person who is the receiver of revenue for the county designated in respect of that other kind of revenue under section 157 of that Act.

Functions and powers of receiver of revenue

4. (1) The receiver of revenue:

(a) is responsible for the administration and enforcement of revenue laws and for that purpose must ensure that the assessment, collection and accounting of rates, taxes, fees and charges is undertaken in accordance with the requirements of those laws; and

(b) is to advise the county government on all matters relating to the administration and enforcement of revenue laws, and the assessment and collection of rates, taxes, fees and charges under those laws; and

(c) must perform such other functions as the county government directs.

(2) The receiver of revenue has such powers as are necessary to enable him or her to perform the functions under subsection (1).

(3) The receiver of revenue has such other powers and functions as are provided for by or under the revenue laws.

(4) In performing any function or exercising any power under a revenue law, the receiver of revenue must produce written identification establishing his or her position if requested by any person.

**Delegation of
functions and powers**

5. (1) The receiver of revenue may, by instrument in writing, delegate all or any of his or her functions or powers under any revenue law to a county public officer, except this power of delegation.

(2) In performing any function or exercising any power, a delegate of the receiver of revenue must produce written identification establishing his or her position as the county receiver of revenue's delegate if requested by any person.

**Agreement in
relation to revenue
collection**

6. The county government may enter into an agreement authorizing a person to collect rates, taxes, fees and charges payable under revenue laws on such terms and conditions as are specified in the agreement.

Annual report

7. (1) The receiver of revenue must prepare an annual report on the operation and administration of all revenue laws.

(2) The receiver of revenue must give the annual report to the county executive committee member responsible for finance within 90 days after the end of the year to which the report relates.

(3) The county executive committee member responsible for finance must table the annual report in the county assembly as soon as practicable.

**PART 3 – REVENUE PAYERS' OBLIGATIONS AND
COMPLIANCE POWERS**

**Books, accounts and
records to be made
and kept**

8. (1) A revenue payer must make and keep such books, accounts and records as are reasonably necessary to determine the revenue payer's liability to pay rates, taxes, fees or charges under a revenue law for a period of at least 7 years after the completion of the transactions to which they relate.

(2) The receiver of revenue may, by notice in writing, given to a revenue payer direct the revenue payer as to the books, accounts and records the revenue payer is required to make and keep.

(3) If a revenue payer fails to comply with subsection (1) or a notice under subsection (2), the revenue payer is guilty of an offence punishable on conviction by a fine not exceeding:

- (a) in the case of an individual – 500,000 shillings; or
- (b) in any other case – 2,500,000 shillings.

**Providing
information and
evidence**

9. (1) For the purposes of determining the liability (if any) of a revenue payer to pay a rate, tax, fee or charge under a revenue law, the receiver of revenue may, by notice in writing, given to a relevant person require the relevant person to do either or both of the following:

- (a) provide the receiver of revenue with such information as the receiver of revenue requires;
- (b) attend and give evidence before the receiver of revenue, including on oath administered by the receiver of revenue.

(2) If a person fails to comply with a notice under subsection (1), the person is guilty of an offence punishable on conviction by a fine not exceeding 500,000 shillings.

**Access, inspection
and other powers**

10. (1) For the purpose of determining the liability (if any) of a revenue payer to pay a rate, tax, fee or charge payable under a revenue law, the receiver of revenue has full and free access to any premises of, or in the custody or control of, a relevant person and may, at all reasonable times, exercise all or any of the following powers:

- (a) enter and inspect those premises and any goods in or on those premises, including opening any packaging or containers that may contain goods;
- (b) obtain, copy and print information or data from any computer system in or on those premises and retain all information and data that is obtained, copied or printed;
- (c) take extracts from or copies of any books, accounts, records and other documents in or on those premises and retain all extracts or copies taken.

(2) If the receiver of revenue is of the view that it is impractical to exercise any of the powers under paragraph (1) (a), (b) or (c), the receiver of revenue may remove all or any of the things referred to in that paragraph to offices of the county government for such time as is reasonably necessary to determine a revenue payer's liability to pay.

(3) A relevant person must give all reasonable assistance to the receiver of revenue so as to allow him or her to exercise all or any of his or her powers under this section.

(4) If a person:

- (a) fails or refuses to provide access to premises required by the receiver of revenue; or

(b) obstructs or hinders the receiver of revenue in the discharge of his or her duties under paragraph (1)(a),(b) or (c);

the person is guilty of an offence punishable on conviction by a fine not exceeding 500,000 shillings.

**Seizure of property
required as evidence**

11. (1) The receiver of revenue may take into his or her possession any property, other than land, that may be required as evidence in a court for proceedings to be brought under this Act or any other revenue law.

(2) When property is no longer required under subsection (1), the property must be returned as soon as practical to the person entitled to it.

PART 4 – MISCELLANEOUS

**Waiver or reduction
of taxes, fees and
charges**

12. (1) The county executive committee member responsible for finance may on a recommendation made under subsection (3) waive or reduce a rate, tax, fee or charge that is imposed or payable under a revenue law.

(2) An application to waive or reduce a rate, tax, fee or charge that is imposed or payable under a revenue law must be made in writing to the county executive committee member responsible for that revenue law.

(3) The county executive committee member referred to in subsection (2) may recommend that the rate, tax, fee or charge the subject of the application be waived or reduced if he or she is satisfied that:

(a) the applicant would suffer severe financial hardship if the rate, tax, fee or charge were not waived or reduced; or

(b) it is not cost effective to take action to recover the rate, tax, fee or charge; or

(c) the waiver or reduction is for the purpose of encouraging the applicant to pay amounts outstanding to the county government; or

(d) grounds of equity or other good cause exist that make it expedient to waive or reduce the rate, tax, fee or charge; or

(e) an order of a court is in force that specifies the imposition or payment of a rate, tax, fee or charge at a lower rate or amount than is provided for in the revenue law under which the rate, tax, fee or charge is imposed or payable; or

(f) other compelling circumstances exist which make it

expedient to waive or reduce the rate, tax, fee or charge.

(4) A recommendation under subsection (3) must be in writing and must:

(a) specify the rate, tax, fee or charge that is waived or the amount of the reduction of the rate, tax, fee or charge; and

(b) specify the person or body to whom the waiver or reduction applies; and

(c) set out the reasons for the recommendation.

(5) Within 14 days after making a decision under subsection (1), the county executive committee member responsible for finance must cause a copy of the decision to be provided to the Governor and the applicant together with a statement of the reasons for the decision.

(6) A person or body granted a waiver or reduction of a rate, tax, fee or charge is not subject to any collection or enforcement procedure in respect of the rate, tax, fee or charge that is waived or the part of the rate, tax, fee or charge that is reduced.

(7) The county executive committee member responsible for finance must cause:

(a) a public record of each waiver or reduction to be maintained together with the reason for the waiver or reduction; and

(b) within 90 days or such other prescribed period after the end of each year, the Auditor-General to be notified of any waiver or reduction made for that year.

(8) A county public officer within the meaning of the County Governments Act 2012 or any other prescribed office holder may not be excluded from the payment of a rate, tax, fee or charge by reason of his or her office or the nature of his or her work.

Revenue register

13. (1) The county receiver of revenue must establish and maintain a revenue register which is to be available for inspection by the public during government office hours.

(2) The register must contain the prescribed information and may be kept in such form as the receiver of revenue decides.

Approved forms

14. The receiver of revenue may approve forms for the purposes of a revenue law.

General penalty for offence

15. If a person contravenes or fails to comply with any provision of this Act, the person commits an offence against this Act and, unless another penalty is expressly provided by this Act for that offence, the person is liable on conviction to a fine not exceeding 50,000 shillings.

Publication and service of documents

16. (1) Any document required to be published under a revenue law may be published by advertisement in the county Gazette and in one or more newspapers circulating in the county.

(2) Any document required or authorized to be sent or served under or for the purposes of a revenue law may be sent or served:

(a) by delivering it to the person to or on whom it is to be sent or served; or

(b) by leaving it at the usual or last known place of residence or business of that person, or, in the case of a company, at its registered office; or

(c) by ordinary or registered post; or

(d) by emailing it to the person; or

(e) any other prescribed method.

(3) However, if the receiver of revenue has attempted to send or serve a document by one of the methods mentioned in subsection (2) and is satisfied that such document has not been received by the person to whom it was addressed, the receiver of revenue may advertise, in the manner provided in subsection (1), the general purport of such document, and upon such advertising the document is deemed to have been received by that person.

(4) An advertisement referred to in subsection (3) may refer to one or more documents and to one or more revenue payers.

(5) Any document under a revenue law required or authorized to be served on the owner or occupier of any premises may be addressed by the description “owner” or “occupier” of the premises (naming them), without further name or description.

Guidelines

17. The receiver of revenue may issue guidelines for the purposes of a revenue law.

Rules

18. The county executive committee member responsible for finance may make rules generally for the better carrying out of the provisions and purposes of this Act.

MEMORANDUM OF OBJECTS AND REASONS

The Bill confers a general power and responsibility for the administration of county revenue laws on the receiver of revenue who is to be held accountable for that administration.

To achieve this purpose, the Bill sets out additional administrative and enforcement provisions relating to revenue legislation.

The enactment of this Bill into law does/does not* occasion additional expenditure of public funds.

*delete which does not apply

ANNEX 5

County Model Finance Law

THE **[Insert County Name]** COUNTY FINANCE ACT **[Insert Year]**

ARRANGEMENT OF SECTIONS

- 1—Short title and commencement
- 2—Interpretation
- 3—Property Rates
- 4—Trade licences
- 5—Other fees and charges for services
- 6—No prejudice to national economic policies etc.
- 7—Application of transitional provision
- 8—Fees and charges authorised by contracts etc.

Schedule 1 – Property Rates

Schedule 2 – Fees for Trade Licenses

Schedule 3 – Other fees and charges for services

THE **[Insert County Name]** COUNTY FINANCE ACT **[Insert Year]**

An Act of the County Assembly of **[Insert County Name]** to provide for the revenue raising measures of the County Government of **[Insert County Name]** for **[Insert Year]**, and for connected purposes

MADE by the **[Insert County Name]** County Assembly

Short title and commencement

1. (1) This Act may be cited as the **[Insert County Name]** County Finance Act **[Insert Year]**.

(2) This Act comes into operation on **[Date to be inserted]**.

Interpretation

2. In this Act, unless the context otherwise requires:

[Insert required definitions if any]

Property Rates

3. The revenue raising measures of the county government relating to property rates are set out in Schedule 1.

Trade licences

4. The revenue raising measures of the county government relating to trade licences are set out in Schedule 2.

Other fees and charges for services

5. (1) The revenue raising measures of the county government relating to fees and charges for services are set out in Schedule 3.

(2) This section does not apply to fees payable under the **[Insert County Name]** County Trade Licence Act **[Insert Year]**.

No prejudice to national economic policies etc.

6. The revenue raising measures of the county government provided for by this Act do not in any way prejudice national economic policies, economic activities across county boundaries or the national mobility of goods, services, capital or labour.

Application of transitional provision

7. If any national Act mentioned in Schedule 3 has not been amended to provide for the imposition of fees or charges for services by the county government, then Item 7 of the Sixth Schedule of the Constitution applies in relation to that Act.

Fees and charges authorised by contracts etc.

8. To avoid doubt, nothing in this Act is to be taken to prevent a county government from entering into a contract or agreement or other arrangement to provide a service upon payment of a fee or charge.

Schedule 1 – Property Rates

Section 3

Item 1 – Amount of rates

For the purposes of section 6 of the [Insert name of County] County Rating Act [Insert Year], the amount of a rate payable to the county government in respect of a rateable property for [Insert Year] is [Insert Percentage] percent of the unimproved value of the rateable property.

Item 2 – Discount

For the purposes of section 11 of the [Insert name of County] County Rating Act [Insert Year], a discount of [Insert Percentage] is payable on any rate paid on or before the due date.

Item 3 – Interest

For the purposes of section 12 of the [Insert name of County] County Rating Act [Insert Year], interest at the rate of [Insert Percentage] is payable to the county government on any rate that remains unpaid after the due date.

Schedule 2 – Fees trade licences

Section 4

Item 1 – Fees for grant or renewal of trade licence

For the purposes of section 15 of the [Insert name of County] County Trade Licence Act [Insert Year], the following fees are payable to the county government for the grant or renewal of a trade licence for [Insert Year]:

Item	Category of trade licence	Fee payable for the grant or renewal of a trade licence
1	[insert category of trade licence]	[insert amount of fee]
2		

Item 2 – Additional fees

For the purposes of section 15 of the [Insert name of County] County Trade Licence Act [Insert Year], an additional fee of [insert amount of the fee] is payable to the county government if the fee for the grant or renewal of a trade licence remains unpaid after the due date.

Schedule 3 – Other fees and charges for services

Section 5

Item 1 – Fees or charges for services

1.1 The Acts and Regulations listed in the Table are amended as set out in the Table:

Item	Section of Act or Regulation	Amendment
1	[insert section and short title of Act, or Regulation]	[insert text of amendment]
2	[insert section and short title of a different Act, or Regulation]	[insert text of amendment]
3	etc.	

1.2 For [Insert Year] the following amounts are prescribed for the fees and charges payable to the county government for services provided by the county government:

Item	Amount of fee or charge	Description of fee or charge and service	Section of Act or Regulation imposing fee or charge for service
1	[insert amount]	[insert brief description]	[insert section of imposing Act or Regulation]
2	[insert amount]	[insert brief description]	[insert section of different imposing Act or Regulation]
3	etc.		