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NATIONAL ASSEMBLY BILLS, 2025

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Bill for Introduction into the National Assembly—

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The Privatization Bill, 2025

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THE PRIVATIZATION BILL, 2025
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THE PRIVATIZATION BILL, 2025

A Bill for

AN ACT of Parliament to provide a regulatory framework for the Privatization of public entities; to establish the Privatization Authority; and for connected purposes

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

1. This Act may be cited as the Privatization Act, 2025. Short title.

2. (1) In this Act, unless the context otherwise requires— Interpretation.

“Authority” means the Privatization Authority established under section 8;

“Board” means the Board of the Authority constituted under section 10;

“Cabinet Secretary” means the Cabinet Secretary to the National Treasury;

“Corporation Secretary” means the Corporation Secretary appointed in accordance with section 17;

“Managing Director” means the Managing Director of the Authority appointed under section 16;

“government-linked corporation” means a corporation in which the National Government or a national government entity is a shareholder with less than fifty per centum of the share capital of the corporation;

“Privatization” means a transaction that results in a transfer, other than to a public entity, of the assets and or liabilities of a public entity including the shares in a public entity;

“Privatization programme” means the Privatization programme provided for under section 19;

“Privatization proposal” means a proposal provided for under section 35;

“public entity” includes —

- (a) a national government-linked corporation;
- (b) a subsidiary of a national government corporation;
or
- (c) a state corporation within the meaning of the State Corporations Act;

Cap. 446.

“Appeals Board” means the Appeals Board established under section 51; and

“secondary market” means a financial market in which previously issued financial instruments such as shares and other marketable securities are traded.

3. The objects and purpose of this Act are to—

Objects and
purpose of the
Act.

- (a) provide for the establishment of the Privatization Authority; and
- (b) streamline the regulatory and institutional framework for the implementation of a Privatization.

4. This Act shall not apply to—

Limitation of
application.

- (a) sale of shares in the secondary market;
- (b) sale of shares by a social security fund, compensation fund, superannuation fund, insurance fund or endowment fund under public control for the benefit of its contributors;
- (c) sale of government shares in a government-linked corporation;
- (d) sale of new shares to existing shareholders through a rights issue;
- (e) any balance sheet reorganisation which may lead to dilution of the percentage of shares held by a public entity; or
- (f) sale or transfer of shares by a county government.

5. The implementation of this Act shall be guided by the following principles—

Guiding principles
of the Act.

- (a) the national values and principles of governance set out under Article 10 of the Constitution;
- (b) the principles of public finance provided under Article 201 of the Constitution;

- (c) the promotion of participation by Kenyans in the sustainable development and protection of the economy;
- (d) transparency and accountability;
- (e) efficiency and sustainability; and
- (f) cost effectiveness and value for public resources.

6. The purpose of a Privatization undertaken under this Act shall be to—

Purpose of Privatization.

- (a) implement government fiscal policies and revenue raising measures;
- (b) improve the infrastructure and the delivery of public services through the involvement of private capital and expertise;
- (c) enhance and develop the capital markets in Kenya;
- (d) improve efficiency, profitability and accountability of public entities;
- (e) improve the regulation of the economy by reducing conflicts between the public sector's regulatory functions and commercial functions; and
- (f) broaden the base of ownership in the Kenyan economy by encouraging private ownership of entities.

PART II — CO-ORDINATION AND OVERSIGHT OF PRIVATIZATION MATTERS

7. The Cabinet Secretary shall have the following functions under this Act—

Role of Cabinet Secretary.

- (a) providing policy direction on matters related to Privatization;
- (b) coordinating the adherence to national, regional and international obligations relating to Privatization;
- (c) developing and formulating the Privatization programme; and
- (d) overseeing the administration of this Act.

8. (1) There is established an authority to be known as the Privatization Authority.

Privatization
Authority.

(2) The Authority shall be a body corporate with perpetual succession and a common seal and shall, in its corporate name, be capable of—

- (a) suing and being sued;
- (b) taking, purchasing, charging and disposing of movable and immovable property;
- (c) entering into contracts; and
- (d) doing or performing all other things necessary for the proper discharge of its functions under this Act which may be lawfully done or performed by a body corporate.

9. The Authority shall—

Functions of the
Authority.

- (a) advise the government on all aspects of Privatization of public entities;
- (b) facilitate the implementation of government policies on Privatization;
- (c) implement the Privatization programme;
- (d) implement specific Privatization proposals in accordance with the Privatization programme;
- (e) collaborate with other organisations, within or outside Kenya, as it may consider appropriate in furtherance of the objects of this Act;
- (f) prepare long-term divestiture sequence plan;
- (g) monitor and evaluate the implementation of Privatization programs in Kenya;
- (h) take such measures as are necessary to ensure that the provisions of this Act are complied with; and
- (i) perform any other functions under this Act or any other legislation as may be conferred, from time to time, on the Authority.

10. (1) The Authority shall be managed by a Board which shall consist of—

Board of the
Authority.

- (a) a chairperson appointed by the President;

- (b) the Principal Secretary for the time being responsible for Privatization or a representative designated in writing;
- (c) the Attorney-General or a representative designated in writing;
- (d) six other persons, not being public officers, appointed by the Cabinet Secretary through a competitive process, each possessing a degree in either economics, accounting, finance or any other relevant degree from a recognized institution and having ten years of work experience of which five shall be at senior management level in a relevant field;
- (e) the Managing Director of the Authority, who shall be an *ex-officio* member of the Board with no voting rights.

(2) The chairperson and members of the Board appointed under subsection (1)(d) shall hold office for a term of three years and may be eligible for reappointment for one further term of three years.

(3) In the appointment of the Board, the appointing authority shall ensure that the membership reflects gender and regional balance and an appropriate mix of skills and competencies required to achieve the functions of the Board.

11. (1) The Board shall —

- (a) ensure the proper and effective performance of the functions of the Authority;
- (b) determine the mission, vision, purpose and core values of the Authority;
- (c) set and oversee the overall strategy and approve policies of the Authority; and
- (d) ensure availability of adequate resources for the achievement of the Authority's objectives.

(2) In the performance of its functions under subsection (1), the Board shall have power to—

- (a) subject to the approval of the Cabinet Secretary, invest any of the Authority's funds that are not immediately required for the purposes of this Act;

Functions of the Board.

- (b) monitor and evaluate the performance of the Authority;
- (c) open and operate bank accounts for the funds of the Authority in accordance with the Public Finance Management Act; Cap. 412A.
- (d) receive any grants, gifts, donations or endowments on behalf of the Authority; and
- (e) in consultation with the relevant agencies, determine and specify the terms and conditions for the appointment and emoluments of the staff of the Authority.

12. (1) The office of the chairperson or a member of the Board shall become vacant if the holder— Vacancy in the Board.

- (a) dies;
- (b) resigns from office by notice in writing addressed to the appointing authority;
- (c) is removed from office on any of the following grounds—
 - (i) absence from three consecutive meetings of the Board without a reasonable explanation;
 - (ii) incapacitation due to prolonged physical or mental illness and inability to discharge the duties of his or her office;
 - (iii) failure to comply with the provisions of this Act relating to disclosure of interest;
 - (iv) being adjudged bankrupt;
 - (v) being convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months; or
 - (vi) being otherwise unable or unfit to discharge the functions of his or her office.

(2) Where a vacancy occurs in the membership of the Board, the appointing authority shall appoint a new member in accordance with the provisions of this Act.

13. The conduct of the business and affairs of the Board shall be as set out in the First Schedule.

Conduct of
business and
affairs of the
Board.

14. The Board may, by resolution either generally or in a particular case, delegate to a subcommittee of the Board or to a member, officer, employee or agent of the Authority, the exercise of any of the powers or performance of any of the functions of the Board.

Delegation by the Board.

15. The chairperson and members of the Board, other than the Managing Director, shall be paid out of the funds of the Authority such allowances or other remuneration as the Cabinet Secretary, on the advice of the Salaries and Remuneration Commission, determines.

Remuneration of the members.

16. (1) There shall be a Managing Director of the Authority who shall be competitively recruited and appointed by the Board on such terms as may be specified in the instrument of appointment.

Managing Director.

(2) The Managing Director shall, under the direction of the Board, be responsible for—

- (a) the day-to-day management of the affairs of the Authority;
- (b) the exercise and performance of the objectives, functions and duties of the Authority, and the general administration of the Authority; and
- (c) performing such other duties as may be determined by the Board.

(3) A person shall be qualified to be appointed as the Managing Director if the person—

- (a) holds a degree in either economics, accounting, finance, or any other relevant degree from a recognized institution;
- (b) has ten years of work experience of which five shall be at senior management level in a relevant field;
- (c) meets the requirements of Chapter six of the Constitution.

(4) The Managing Director shall be appointed for a term of four years and may be eligible for reappointment for one further term not exceeding four years.

17. (1) There shall be a Corporation Secretary who shall be competitively recruited and appointed by the Board

Corporation Secretary.

on such terms as the Board, on the advice of the Salaries and Remuneration Commission, determines.

(2) The Corporation Secretary shall—

- (a) provide secretariat services to the Board;
- (b) record and keep minutes and other records of the Board;
- (c) ensure that members of the Board are aware of all relevant laws affecting the Authority; and
- (d) carry out such other functions as may be assigned from time to time by the Board or the Managing Director.

(3) The Corporation Secretary shall be responsible to the Managing Director.

18. The Authority shall have such staff as it may require for the proper discharge of its functions under this Act, on such terms and conditions of service as the Board may determine.

Staff of the
Authority.

PART III — PRIVATIZATION PROGRAMME

19. (1) There shall be a programme to be known as the Privatization programme.

Privatization
programme.

(2) The Privatization programme shall —

- (a) be formulated by the Cabinet Secretary in accordance with this Act and approved by the Cabinet;
- (b) specify the public entities identified and approved for Privatization; and
- (c) serve as the basis upon which a Privatization shall be undertaken.

(3) The formulation of the Privatization programme under subsection (2)(a) shall be in accordance with section 12 of the Public Finance Management Act.

Cap. 412A.

20. (1) During the formulation of the Privatization programme, the Cabinet Secretary shall make appropriate consultations with persons who are likely to be affected by the Privatization of a public entity.

Consultation in
formulation of the
programme.

(2) The persons envisaged under subsection (1) shall include—

- (a) persons with expertise in fields relevant to the entities to be included in the Privatization programme;
- (b) organisations representing persons who are likely to be affected by the proposed Privatization; and
- (c) members of the public.

21. (1) The Cabinet Secretary shall identify and determine the entities to be included in the Privatization programme.

Identification of entities for the programme.

(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary shall, in the identification and determination of entities for Privatization, take into consideration—

- (a) the relevant government policies in respect of Privatization;
- (b) the strategic priorities and policy goals to be achieved by the Privatization;
- (c) the strategic nature of the public entity to be privatised;
- (d) the need to avoid a Privatization that may result in an unregulated monopoly;
- (e) the need to avoid a Privatization that may accord the new owners' special protection or access to credit on concessionary terms as a result of the National Government's sovereign status;
- (f) the extent of regulatory adjustments required;
- (g) the need to reduce budget drain on government resources;
- (h) the expected benefits to be gained from a proposed Privatization; and
- (i) any other relevant consideration.

22. (1) Subject to section 19(2)(a), the Cabinet Secretary shall submit the Privatization programme to the National Assembly for approval.

Approval by the National Assembly.

(2) The request for approval under subsection (1) shall be accompanied by an explanatory memorandum indicating—

- (a) a brief description of the public entity to undergo Privatization;
- (b) a brief explanation of the reasons for undertaking the Privatization;
- (c) the benefits to be gained from the proposed Privatization including the estimated revenue to be obtained; and
- (d) any other relevant information.

23. The National Assembly shall consider a privatization programme within sixty days of receipt.

Period for consideration.

24. The National Assembly shall be guided by principles of public finance under Article 201 of the Constitution, principles of good governance, the criteria for identification of entities specified under section 21 and any other relevant consideration.

Criteria for consideration.

25. The National Assembly shall—

Decision of the National Assembly.

- (a) approve the programme for implementation;
- (b) approve the programme with amendments; or
- (c) decline the programme.

26. (1) The Clerk shall notify the Cabinet Secretary of the decision of the National Assembly within seven days of the decision.

Notification of the decision.

(2) Where the National Assembly approves a privatization programme with amendments under section 25 (b) the notice shall state the proposed amendments and the reasons.

(3) Where the National Assembly declines a privatization programme under section 25(c), the Clerk shall state the reason in the notification.

27. The Cabinet Secretary shall, upon receipt of the notice under section 25 (b), amend the privatization programme and publish the same in accordance with section 28 of this Act.

Cabinet Secretary to amend.

28. The approved Privatization programme shall be published in the *Kenya Gazette*.

Publication of programme.

29. (1) A Privatization programme shall be valid for a period not exceeding eight years from the date of gazettelement.

Validity of the programme.

(2) If, on expiry of the programme under subsection (1), the implementation of the programme has not been completed, the Cabinet Secretary may include the affected entities in another Privatization programme formulated and approved in accordance with this Act.

30. The Cabinet Secretary may amend the Privatization programme and the provisions of this Part relating to formulation and approvals shall apply with respect to any such amendments.

Amendment of the programme.

PART IV — IMPLEMENTATION OF THE PRIVATIZATION PROGRAMME

Preliminaries

31. The Privatization programme shall be implemented by the Authority in accordance with this Act.

Implementation of the programme.

32. (1) Any person, whether Kenyan or non-Kenyan, is eligible to participate in a Privatization:

Eligibility in a Privatization.

Provided that this section shall not affect the application of any other law imposing restrictions on participation by non-Kenyans.

(2) Notwithstanding subsection (1), the Cabinet Secretary may direct the Authority to—

(a) limit participation in any Privatization to Kenyans; or

(b) ensure that there is a specified minimum level of participation by Kenyans in any Privatization.

(3) A national government-owned entity is not eligible to participate in a Privatization.

(4) Subsection (3) shall not prevent a social security fund, compensation fund, superannuation fund, insurance fund or endowment fund under government control from purchasing shares for the benefit of its contributors.

33. (1) For each Privatization, there shall be a steering committee to implement the Privatization on behalf of the Authority subject to any directions of the Authority.

Steering Committee.

(2) A steering committee shall comprise the following members—

- (a) the members of the Authority described in paragraphs (b) and (c) of section 10(1);
- (b) the Principal Secretary of the ministry with responsibility over the asset or service being privatised; and
- (c) two members of the Board as provided in section 10(d).

34. The methods of Privatization shall include—

Methods of
Privatization.

- (a) initial public offer of shares;
- (b) sale of shares by public tender;
- (c) sale resulting from the exercise of pre-emptive rights; or
- (d) such other method determined by the Cabinet.

Privatization proposal

35. (1) Where an entity has been identified for Privatization under this Act, the Authority shall prepare a Privatization proposal on the entity.

Privatization
proposal.

(2) The Privatization proposal shall specify—

- (a) the purpose for the establishment or existence of the entity to be privatised and the extent to which that purpose or operation has been met including any inadequacies in meeting that purpose;
- (b) any rights or other entitlements and resources that have been provided to meet the purpose for the establishment or existence of the entity to be privatised;
- (c) any recommendations for continuing to meet the purpose for establishment or existence of the entity to be privatised;
- (d) the financial position of the entity to be privatised;
- (e) the recommended method of Privatization;
- (f) the estimated costs of implementing the proposed Privatization;
- (g) any recommendations for dealing with the employees directly affected by the proposed Privatization including any benefits they are entitled to;

- (h) where applicable, a recommendation on how to undertake socio-economic investments to the host community;
- (i) the benefits to be gained from the proposed Privatization;
- (j) a work plan for the proposed Privatization;
- (k) any information relating to the repeal, amendment or enactment of any law for the proposed Privatization to be carried out;
- (l) any proposals on how Kenyans can participate in the transaction; and
- (m) any other relevant information.

36.(1) For each Privatization included in the Privatization programme, the Authority shall make a specific proposal for Privatization to the Cabinet Secretary.

Approval of Privatization proposal.

(2) The Cabinet Secretary shall present the Privatization proposal specified in subsection (1) to the Cabinet for approval.

37.(1) Upon approval of a Privatization proposal under section 36, the determined and approved method of Privatization shall be effected in the manner specified in the Second Schedule.

Implementation of a finalized Privatization.

(2) The method of Privatization specified in section 34 shall be effected in the manner determined by the Cabinet.

Valuation

38.(1) The Authority shall undertake a business and assets valuation for each Privatization, to assist in the implementation of the Privatization proposal.

Valuation required for each Privatization.

(2) The valuation shall be performed by a qualified person appointed by the Authority.

Restrictions and obligations on entities scheduled for Privatization

39. The restrictions set out under this Part shall begin to apply upon publication of Privatization programme under section 28.

Application of restrictions.

40. A public entity to which this section applies shall not—

General restrictions.

- (a) allow the assets of the public entity to be dissipated;
- (b) incur any liabilities or procure any assets, other than in the ordinary course of business, without the prior written approval of the Cabinet Secretary; or
- (c) disclose information, other than publicly, if there is a reasonable risk that the disclosure would give an advantage to a person who might compete in the Privatization.

41. A public entity undergoing Privatization shall not undertake any new capital investment or disposal, other than those under ordinary course, had been approved prior to the entry into the Privatization programme, or are critical to business continuity, unless approved by the Cabinet Secretary.

Control of investments.

42. The public entity undergoing Privatization shall not extend credit or provide financing for the purchase of the shares.

No credit on sale of shares.

43. A public entity undergoing Privatization shall —

Obligation for record keeping.

- (a) keep up-to-date business records and books of accounts;
- (b) continue to operate in its ordinary course of business without prejudice to the Government or potential purchaser;
- (c) maintain an up-to-date register of all fixed assets; and
- (d) document all legal and other obligations of the entity.

PART V — PRIVATIZATION AGREEMENT

44. Upon approval and implementation of a Privatization under Part IV, an agreement to give effect to a Privatization shall not be binding unless executed by the registered owner of the shares and countersigned by the Cabinet Secretary.

Privatization agreement.

45. (1) An agreement to give effect to a Privatization shall not be signed until the period for filing an objection has lapsed.

Limits on when agreement may be signed.

(2) Where a review or appeal has been lodged in accordance with section 50 or 51, the agreement to give effect to the Privatization shall not be executed until —

- (a) a determination with respect to the objection or appeal has been made; and
- (b) the time for filing a notice of appeal has expired without such a notice being filed.

46. Where a proposed Privatization may result in a monopoly, the Authority shall, subject to the Competition Act —

Regulation of monopolies.

Cap.504.

- (a) ensure that the agreement to give effect to the Privatization provides for the regulation of the monopoly; and
- (b) seek the approval of the Cabinet Secretary on the agreement.

47.(1) After an agreement to give effect to a Privatization becomes binding on the public entity, the Authority shall promptly publish a notice of the Privatization in the *Kenya Gazette*.

Notification of finalised Privatization.

(2) The notice under subsection (1) shall specify —

- (a) a description of the entity being privatised;
- (b) a summarised description of the transaction used to give effect to the Privatization;
- (c) the names and addresses of the persons to whom the shareholding is being transferred:

Provided that this paragraph shall not apply to a Privatization undertaken through initial public offer of shares; and

- (d) such other information as the Authority considers appropriate.

PART VI — PROCEEDS OF PRIVATIZATION

48. Any proceeds from the sale of a direct National Government shareholding shall be paid into the Consolidated Fund.

Proceeds from sale of direct government shareholding.

49. Any proceeds from the sale of a public entity's shareholding shall be deposited in a special interest-bearing

Proceeds from the sale of a public entity's

account established for that public entity's Privatization and the proceeds shall be credited into the Consolidated Fund Account within ninety days.

shareholding.

PART VII — REVIEWS AND APPEALS

50. (1) A person who is dissatisfied by the Authority's decision on implementation of the Privatization programme may apply in writing to the Authority for a review of that decision.

Review.

(2) The Authority may consider the application under subsection (1) where—

- (a) the applicant presents new information that could not be presented at the time the decision was made by the Authority; or
- (b) there is an error apparent on the record of the decision for which a review has been applied.

(2) A review under this section shall be lodged and determined in accordance with the Procedures set out in the Third Schedule.

51. (1) A person who is dissatisfied with a decision of the Authority on the implementation of the privatization programme may appeal to the Privatization Appeals Board.

Appeals.

(2) An appeal under this section shall be lodged and determined in accordance with the Procedures set out in the Third Schedule.

(3) A person aggrieved by the decision of the Appeals Board under this section may appeal to the High Court.

52. There is established a board to be known as the Privatization Appeals Board to determine disputes and appeals under this Act or any other written law.

Establishment of the Privatization Appeals Board.

53. (1) The Appeals Board shall consist of the following members—

Members of the Appeals Board.

- (a) a chairperson appointed by the President who shall be qualified to be appointed as a judge of the High Court;
- (b) an accredited arbitrator registered with the Chartered Institute of Arbitrators (Kenyan Chapter) and with experience in commercial

dispute resolution appointed by the Cabinet Secretary; and

- (c) three other persons appointed by the Cabinet Secretary, each of whom shall be a person with knowledge or experience in commercial transactions.

(2) A member of the Appeals Board shall hold office for a term of—

- (a) four years in the case of the chairperson; and
- (b) three years in the case of any other member,

(3) A member of the Appeals Board may be eligible for re-appointment for one further term.

(4) A person shall be qualified for appointment under subsection (1) if that person—

- (a) is a citizen of Kenya;
- (b) holds a degree from a university recognised in Kenya;
- (c) is a member in good standing of the relevant professional association, where applicable; and
- (d) meets the requirements of leadership and integrity set out in Chapter Six of the Constitution.

54. The office of the chairperson or a member of the Appeals Board shall become vacant—

Vacancy in the Appeals Board.

- (a) where the chairperson or a member dies;
- (b) where the chairperson or a member resigns from office;
- (c) if the chairperson or member is otherwise unable or unfit to discharge the functions of his or her office; or
- (d) if the chairperson or member accepts any office the holding of which would make him or her ineligible for appointment to the office of member of the Appeals Board.

55. The Cabinet Secretary shall designate a public officer to be the secretary to the Appeals Board.

Secretary to the Appeals Board.

56. Unless otherwise provided, the Appeals Board shall regulate its own procedures.

Conduct of proceedings of the Appeals Board.

57. The chairperson and members of the Appeals Board shall be paid such remuneration or allowances as the Cabinet Secretary may, in consultation with the Salaries and Remuneration Commission, determine.

Remuneration of the Appeals Board.

58. Where the chairperson or a member of the Review Board has a direct or indirect interest in a matter before the Review Board, the chairperson or member shall declare the interest and shall not participate in any proceedings of the Review Board on the matter.

Conflict of interest.

PART VIII — FINANCIAL PROVISIONS

59. The funds of the Authority shall consist of—

Funds of the Authority.

- (a) monies appropriated by the National Assembly for the purposes of the Authority;
- (b) monies accruing to or vesting in the Authority in the course of the exercise of its powers or the performance of its functions;
- (c) grants, donations, bequests or other gifts made to the Authority; and
- (d) monies from any other source provided for, donated or loaned to the Authority.

60. The financial year of the Authority shall be the period of twelve months ending on the thirtieth June in each year.

Financial year.

61.(1) At least three months before the commencement of each financial year and in accordance with the Public Finance Management Act, the Board shall cause to be prepared the estimates of revenue and expenditure of the Authority for the financial year.

Annual estimates.

Cap 412A.

(2) The annual estimates shall provide for all the estimated expenditure of the Authority for the financial year, and in particular, shall provide for—

- (a) the payment of salaries, allowances and other charges in respect of the staff of the Authority;
- (b) the payment of pensions, gratuities and other charges in respect of the staff of the Authority;

(c) the maintenance of buildings, other equipment and other property of the Authority; and

(d) the acquisition, maintenance, repair and replacement of the equipment and other movable or immovable property of the Authority.

62. (1) The Board shall cause to be kept proper books of accounts of the income, expenditure, assets and liabilities undertakings, activities, transactions and other business of the Authority.

Accounts and audit.

(2) The accounts of the Authority shall be audited in accordance with the Public Audit Act.

Cap. 412C.

PART IX — MISCELLANEOUS PROVISIONS

63. (1) Within three months after the end of each financial year, the Authority shall prepare and submit to the Cabinet Secretary an annual report of the Authority for the immediately preceding financial year.

Annual report.

(2) The report under subsection (1) shall include information on —

(a) the operations of the Authority for the immediately preceding financial year;

(b) activities undertaken under the Privatization programme in each financial year; and

(c) any other relevant information.

(3) The annual report submitted under subsection (1) shall form part of the annual report on Privatization which shall be tabled in Parliament by the Cabinet Secretary.

64. The Authority shall maintain updated records of each Privatization undertaken under this Act.

Records.

65. No matter or action done by a member of the Board or by any officer, employee, or agent of the Authority shall, if the matter or action is done in good faith in the execution of the functions, powers or duties of the Authority under this Act, render the member, officer, employee or agent personally liable to any action, claim or demand.

Protection from personal liability.

(2) The provisions of subsection (1) shall not relieve the Authority of any liability to pay compensation or damages for any injury or damage caused by the exercise of any power under this Act or any other written law or by the failure, wholly or partially, of any works.

66. (1) In the implementation of this Act, a public entity to which this Act applies shall provide the Authority with such information as may be necessary to effectively implement the Privatization.

Information to the Authority.

(2) The information given, furnished or maintained or required to be given, furnished or maintained under this Act shall be true, complete and accurate.

(3) Any information required under subsection (1) shall be submitted to the Authority within fourteen days of receipt of a request for information.

(4) Any person who contravenes this section commits an offence and is liable, upon conviction, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding five years or to both.

67. (1) Any information issued to or sought by the Authority under this Act is confidential and shall not be disclosed unless with the written approval of the Authority.

Confidential information.

(2) No person carrying out duties or responsibilities under this Act shall disclose any information or other data of a confidential nature obtained by virtue of their said authority, duties and responsibilities to any other person without the approval of the Authority.

68. A person who—

Offences.

- (a) falsifies or omits material information from the Privatization proposal;
- (b) provides false or misleading information that results in a wrong or erroneous valuation of an entity to be privatised;
- (c) provides false or misleading information to a person carrying out a duty or function under this Act;

- (d) discloses insider information, otherwise than in the performance of their duties and under this Act or with the written consent of the Authority, that may give an advantage to a person who might compete in the Privatization;

commits an offence and is liable, on conviction, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding two years and payment of an equivalent amount of the gain made or loss incurred.

69. The Cabinet Secretary may make Regulations generally for the better carrying out of the provisions of this Act. Regulations.

PART X — REPEALS, SAVINGS AND TRANSITIONAL PROVISIONS

70. (1) In this Part—

Interpretation of Part.

“Commission” means the Privatization Commission established under the repealed Act;

“Tribunal” means the Privatization Appeals Tribunal established under the repealed Act; and

“repealed Act” mean the Privatization Act, 2005.

Cap.485B

(2) The Authority shall be the successor to the Commission existing immediately before the commencement of this Act.

71. The Privatization Act is repealed.

Repeal of Cap.
485B.

72. (1) Any rights and obligations of the Commission existing at the commencement of this Act shall, by virtue of this subsection, vest in the Authority.

Transitional
provisions.

(2) Any reference in any written law, document or instrument to the Commission shall be deemed to be a reference to the Authority.

(3) Any rights and obligations vested in or enforceable by or against the Commission shall, by virtue of this subsection, be vested in, or become enforceable by or against the Authority.

(4) Any asset and liabilities held or imposed on the Commission shall, by virtue of this subsection vest in the Authority.

73. Upon commencement of this Act, the Privatization of entities published under Gazette Notice No. 8739 of 14th August 2009 shall be finalised in accordance with this Act.

Ongoing
Privatizations.

74. Any person who was a member of the Commission immediately before the commencement of this Act shall be deemed to be a member of the Board of the Authority for the unexpired period of that person's tenure.

Members of the
Commission.

75. Any person who immediately before the commencement of this Act was an officer or employee of the Commission shall be deemed to be a member of staff of the Authority based on the terms and conditions of employment.

Staff of the
Commission.

FIRST SCHEDULE

(s. 13)

CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

1. Meetings

(1) The Board shall meet in plenary as often as may be necessary for the carrying out of its business but it shall meet at least once every three calendar months.

(2) The chairperson shall preside over all meetings and in the absence of the chairperson, a person elected by the Board at the meeting for that purpose shall preside.

(3) The Board may invite any person to attend any of its meetings and to participate in its deliberations, but such person shall not have a vote in any decision of the Board.

2. Conflict of interest and disclosure

(1) If a person is present at a meeting of the Board or any committee at which any matter is the subject of consideration and in which matter that person is directly or indirectly interested in a private capacity, that person shall as soon as is practicable after becoming aware of the conflict and in any case at the commencement of the meeting, declare such interest.

(2) The person making the disclosure of interest under subsection (1) shall not, unless the Board or committee otherwise directs, take part in any consideration or, discussion of, or vote on any question touching on the matter.

(3) A disclosure of interest made under subparagraph (1) shall be recorded in the minutes of the meeting at which it is made.

(4) No member of the Board or officer, employee or agent of the Authority shall enter into a service contract or trade with the Authority.

3. Quorum

The quorum for the conduct of business at a meeting of the Board shall be two-thirds of all the total members of the Board.

4. Resolution of the Board

A decision of the Board shall be by a majority of the members present and voting and, in the case of an equality of votes, the person presiding at the meeting shall have a casting vote.

5. Rules of procedure

Subject to this Act, the Board shall determine the procedure for the conduct of its business and cause to be kept records of minutes of its proceedings and decisions.

SECOND SCHEDULE

(s. 34)

METHODS OF PRIVATIZATION

1. Initial public offering of shares

Where the selected method of Privatization is through initial public offer of shares, the offering of shares shall be undertaken in accordance with the Capital Markets Act, Cap 485A.

2. Sale of shares by public tendering

Where the selected method of Privatization is through sale of shares by public tendering, the following procedure shall apply —

Invitation of expression of interest

(1) The Authority shall prepare a notice inviting interested persons to submit expressions of interests.

(2) The notice inviting expressions of interests shall specify —

- (a) a brief description of the entity to be privatized;
- (b) the eligibility and qualifications necessary to be invited to submit a proposal;
- (c) an explanation of where and when the expressions of interests shall be submitted;
- (d) information on the timelines for closure of bids; and
- (e) any other relevant information

(3) The Authority shall advertise the notice inviting the expressions of interests in the Government tenders' portal, or on the Authority's website and in at least two newspapers of nationwide circulation.

Evaluation of EOIs

(4) The Managing Director shall constitute a technical committee, of not less than three persons and not more than five persons to evaluate successfully submitted bids.

(5) Upon closure of the period for submission of bids, the committee constituted under paragraph (4) shall evaluate the successfully submitted bids in accordance with the procedures and criteria set out in the expressions of interests.

(6) Upon completion of the evaluation, the Managing Director shall submit to the Board a detailed report of all shortlisted persons for its approval within seven days after the evaluation.

Request for Proposal to qualified persons

(7) Upon approval of the evaluation report by the Board, the Managing Director shall—

- (a) issue all shortlisted persons with a request for proposal; and
- (b) concurrently notify persons not shortlisted of the outcome of the evaluation indicating the reasons thereof.

(8) The shortlisted persons referred to under subparagraph 7(a) shall fill and submit their proposal as may be determined by the Authority.

(9) The request for proposal referred to subparagraph 7(a) shall set out the following—

- (a) instructions for the preparation and submission of the proposal;
- (b) evidence of qualifications of the persons submitting the proposal;
- (c) an explanation of where and when proposals shall be submitted;
- (d) a statement of the period during which proposals shall remain valid; and
- (e) the procedures and criteria to be used to evaluate and compare the proposals.

Evaluation of proposals

(10) The Managing Director shall constitute a technical committee of not less than three persons and not more than five persons to evaluate successfully submitted request for proposals.

(11) Upon closure of the period for submission of request for proposals, the committee constituted under paragraph (10) shall, within thirty days of opening of the proposals, evaluate the successfully submitted request for proposals in accordance with the procedures and criteria set out in the request for proposals.

(12) The successful proposal shall be the responsive proposal with the highest ranked bidder, subject to the reserve price.

(13) Upon completion of the evaluation, the Managing Director shall, within twenty-one days, submit to the Board a detailed report containing a summary of the evaluation and comparison of tenders for approval.

(14) The recommendations of the Board under paragraph (13), together with a draft agreement, shall, within thirty days, be submitted to the Cabinet Secretary for approval.

Notification to tenderers

(15) Upon approval by the Cabinet Secretary, the Managing Director shall, within seven days, notify the successful tenderer and concurrently notify the unsuccessful tenderers of the outcome of the tender indicating the reasons.

3. Sale resulting from the exercise of pre-emptive rights

(1) Where the selected method of Privatization is through sale resulting from the exercise of pre-emptive rights, the sale shall be undertaken in accordance procedure specified in the respective entity's constituting instruments.

(2) Where the constituting instruments of the entity do not provide a procedure for exercising and sale of a pre-emptive right, the provisions of the relevant laws shall apply.

THIRD SCHEDULE

(S. 49)

**THE ADMINISTRATIVE PROCEDURES FOR THE
ADMINISTRATION OF REVIEWS AND APPEALS UNDER THE
PRIVATIZATION ACT****1. Citation**

These procedures may be cited as the Administrative Procedures for the Administration of Reviews and Appeals under the Act.

2. Definitions

In these Procedures, unless the context otherwise requires—

“Act” means the Privatization Act, 2025;

“Authority” means the Privatization Authority;

“Appeals Board” means the Privatization Appeals Board;

“working day” means a day other than a Saturday, Sunday or public holiday.

3. Reviews

(1) Pursuant to section 50 of the Act, any person who is dissatisfied by the Authority’s decision on implementation of the Privatization programme may apply in writing to the Authority for a review of that decision

(2) An application under paragraph (1) shall be made in writing to the Authority—

- (a) within fifteen days of the determination by the Authority;
- (b) indicating the details of the person making the application;
- (c) stating precisely grounds and reasons for the application; and
- (d) provide such other relevant information as may be necessary to support the application.

(3) Where an application meets the criteria under paragraph 3(2), the Authority shall make a determination within fifteen days of receipt of complete application.

(4) Upon making a determination under paragraph 3(3), the Authority shall notify the applicant of its decision indicating the reasons for the decision.

4. Appeals

(1) Pursuant to section 51 of the Act, A person who is dissatisfied with a decision of the Authority on the implementation of the privatization programme may appeal to the Privatization Appeals Board.

(2) An appeal shall be lodged with the Appeals Board by notice of appeal within fifteen days of receipt or notification of the determination by the Authority.

(3) The notice of appeal shall —

- (a) be signed by the appellant;
- (b) state the appellant's initial application;
- (c) be accompanied by a copy of the decision of the Authority in the application; and
- (d) concisely set out the grounds for the appeal.

(4) The notice of appeal shall be filed with the Appeals Board within fifteen days of receipt or notification of the determination and a copy served on the Authority.

(5) The Authority shall file a response to the notice of appeal with the Appeals Board within fifteen days after being served with the notice of appeal.

(6) The Appeals Board shall hear and determine the appeal within thirty days of receipt of response to the notice of appeal from the Authority and notify the applicant and the Authority of its decision stating the reasons thereof.

(7) On determination of a matter on appeal, the Appeals Board may—

- (a) annul anything done in the Privatization process, including annul the Privatization process in its entirety;
- (b) issue directions with respect to anything to be done or repeated in the Privatization process; or
- (c) order the payment of costs between the parties to the appeal.

5. Further appeal

(1) Pursuant to section 52 of the Act, a person aggrieved by the decision of the Appeals Board in an appeal under this section may appeal to the High Court.

(2) An appeal to the High Court shall be made within fifteen days of receipt or notification of the determination by the Appeals Board.

6. Conduct of procedures

Unless otherwise provided, the Appeals Board shall determine its own procedure.

7. Powers of the Appeals Board

The Appeals Board shall have the power to issue directions to secure the attendance of persons, require the production of documents and require a party to provide security for costs as a condition of participating in an appeal.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to repeal and re-enact the regulatory framework for the Privatization of public entities with a view to improving the efficiency of public entities.

The Bill provides as follows:

Part I (Clauses 1-6) of the Bill provides for preliminary matters including the short title and interpretation of terms used in the Bill. It further sets out the transactions to which the Act shall not apply, the guiding principles of the Act and the purpose of undertaking Privatization.

Part II (Clauses 7-18) of the Bill provides for the coordination and oversight of Privatization matters. It outlines the functions of the Cabinet Secretary; provides for the establishment, functions and administration of the Privatization Authority and the appointment and functions of the Managing Director, the Corporation Secretary and staff of the Authority.

Part III (Clauses 19-30) of the Bill deals with the Privatization programme. It makes provisions for the formulation of the programme which includes identification of entities to be included in the programme in line with the considerations, public consultations during development and ratification by Parliament before implementation of the programme.

It further specifies the validity period of the programme as not exceeding eight years from the date of gazettelement.

The Bill also set out the role of the National Assembly in the privatization process.

Part IV (Clauses 31-43) of the Bill makes provision for the implementation of the programme. It mandates the Privatization Authority to implement the programme and empowers the Authority to constitute technical advisory committees in the implementation of a Privatization.

It further provides for eligibility to participate in a Privatization; the methods of Privatization; the development of a Privatization proposal which shall include stakeholder engagement on the individual Privatizations and the approval of the Privatization proposal by the Board of the Authority and the Cabinet Secretary before implementation.

Additionally, the Part provides for restrictions, and obligations on entities scheduled for Privatization.

Part V (Clauses 44- 47) of the Bill provides for Privatization agreement specifying who and when an agreement can be executed. It further provides for publication of finalised Privatization.

Part VI (Clauses 48-49) of the Bill provides for the manner in which the proceeds of Privatization shall be handled.

Part VII (Clauses 50-58) of the Bill provides for review and appeals. It provides the procedure for lodging review and appeal; establishment and the Appeals Board.

Part VIII (Clauses 59-62) of the Bill provides the financial provisions in respect of the Authority including the sources of funds, the financial year of the Authority, annual estimates, accounts and audit of the financial affairs of the Authority.

Part IX (Clauses 63-69) of the Bill provides the miscellaneous provisions. It provides for the annual report on the Privatization programme; protection from personal liability; submission of information to the Authority; offences under Act and the power of the Cabinet Secretary to make Regulations.

Part X (Clauses 70-76) of the Bill contains repeals, savings and transitional provisions. It provides for the effect of its enactment on existing legislation and for the repeal of the Privatization Act, 2005.

First Schedule to the Bill provides for the conduct of business and affairs of the Board.

Second Schedule to the Bill sets out provisions on the methods of Privatization.

Third Schedule to the Bill sets out the Administrative Procedures for the administration of objections and appeals under the Act.

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

The Bill confers on the Cabinet Secretary the powers to make Regulations under the Act for the purposes of operationalizing the Act in order to implement the objectives.

The Bill does not limit any fundamental rights or freedoms.

Statement on how the Bill concerns county governments

The Bill does not concern county governments as it does not affect the functions and powers of county governments as set out in the Fourth Schedule to the Constitution.

Statement of the Bill as a money Bill within the meaning of Article 114 of the Constitution

The Bill may occasion additional expenditure of public funds and is a Money Bill within Article 114 of the Constitution.

Dated the 15th July, 2025.

KIMANI ICHUNG'WAH,
Leader of Majority Party.



