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CONTENT

Bill for Introduction into the National Assembly—

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THE NATIONAL INFRASTRUCTURE FUND BILL, 2026

ARRANGEMENT OF CLAUSES

Clause

A Bill for

AN ACT of Parliament to provide the establishment and management of the National Infrastructure Fund and for matters connected therewith or incidental thereto

ENACTED by the Parliament of Kenya, as follows—

PART I— PRELIMINARY

Short title and commencement.

1. This Act may be cited as the National Infrastructure Fund Act, 2026 and shall come into operation on such day as the Cabinet Secretary may, by notice in the *Gazette*, appoint.

Interpretation.

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

"Administrator" means the administrator of the Fund designated under section 16;

"Board' means the Board the Fund under section 6;

"Cabinet Secretary" means the Cabinet Secretary for the time being responsible for the National Treasury;

"Chief Executive Officer" means a person appointed in accordance with section 15 ;

"Fund" means National Infrastructure Fund established under section 5;

"Government" means the national government.

Object of the Act

3. The object of this Act is to provide a legal framework for the establishment and the management of the National Infrastructure Fund.

Purpose of the Fund.

4. The purpose of the Fund is –

(a) to scale up and accelerate development of catalytic national infrastructure including, national highway and railway networks, air and sea ports, electricity generation, transmission and distribution, water reservoirs, irrigation and agribusiness infrastructure;

(b) to mobilize private capital and non-traditional sources of infrastructure finance including domestic pension funds and collective investment schemes, sovereign wealth funds, climate finance;

(c) to reduce the reliance of public debt for the financing of commercial viable infrastructure investments;

(d) to strengthen the national capacity for origination, structuring and execution of large and complex infrastructure projects.

PART II—ESTABLISHMENT AND FUNCTIONS OF THE NATIONAL INFRASTRUCTURE FUND

Establishment of the Fund

5. (1) There is established the National Infrastructure Fund.

(2) The Fund 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) purchasing, charging and disposing of movable and immovable property;

(c) borrowing money;

(d) entering into contracts;

(e) doing or performing all such other acts necessary for the proper performance of its functions under this Act.

Board of Directors.

6. (1) The Fund shall be managed by a Board of Directors which shall consist of—

(a) a chairperson, who is an independent director;

(b) the Cabinet Secretary to the National Treasury or a representative designated in writing;

(c) four persons, who are independent directors;

(d) two persons who have proven experience in senior leadership roles in development banking; and

(e) the chief executive office who shall be an *ex-officio* member of the Board.

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(2) The Independent Directors under paragraph (c) and (d) shall be recruited competitively in accordance with section 13 of the Government Owned Enterprises Act.

(3) The directors shall be appointed by Cabinet Secretary by notice in the *Gazette*.

Qualifications for appointment as a chairperson or member of a Board.

7. A person shall be eligible for appointment as a chairperson or member of the Board of the Fund, if the person—

(a) has proven business leadership or relevant professional experience;

(b) has served in a senior management or leadership position for a period of at least fifteen years; and

(c) meets the requirements of Chapter six of the Constitution.

Disqualification.

8. (1) A person is not qualified to be appointed as an independent director of the Fund, if that person—

(a) was employed by a Government Owned Enterprise or its related parties, including its major shareholders, in the preceding five years;

(b) was an employee of the National Government for the preceding five years;

(c) is an advisor or consultant to the Fund or its related parties and is affiliated with a company that is an advisor or consultant to the Fund or its related parties;

(d) is affiliated with a significant customer or supplier of the Fund or its related parties, including banks or other financial institutions owned by the Government or any of its major shareholders;

(e) has personal service contracts with the Fund, its related parties, or its senior management;

(f) is affiliated with any organisation, that receives significant funding from the Fund or its related parties;

(g) is employed as an executive of another company where any of the Fund's executives serve on that company's board of directors;

(h) is a member of the immediate family of an individual who is, or has been during the immediately preceding five years, employed by a Government Owned Enterprise or its related parties as an executive officer;

(i) is, or has in the immediately preceding five years has been, affiliated with or employed by a present or former auditor of the Fund or of a related party;

(j) has been affiliated with a political party in the immediately preceding five years.

(2) For purposes of this section—

(a) "immediate family members" means parents, children and siblings; and

(b) "affiliated with" means having an official connection to, in the case of a political party, to a governing body of a political party or has identified with a political party for purposes of vying for a political office".

Conduct of meetings.

9. (1) The Chairperson shall preside at the meeting of the Board.

(2) Where the Chairperson is absent from a meeting, the members of the Board present may elect one among themselves to preside over the meeting.

(3) The quorum of a meeting of the Board shall be five directors.

(4) The Chairperson shall have a casting vote.

(5) Subject to the provisions of subsection (2), the decision of the majority of the directors present at a meeting of the Board shall be the decision of the Board.

Tenure of directors.

10. (1) An independent director shall serve for a term of three years, renewable once.

(2) A person shall cease to be an independent director ,if the person—

(a) becomes incapacitated to discharge the duties of a director;

(b) is adjudged bankrupt by a competent court of law;

(c) becomes absent from three consecutive meeting of the Board without the directors' permission;

(d) resigns by written notice given to the other directors or to the Fund;

(e) is prohibited from being a director by a written law;

(f) is convicted of a criminal offence by a competent court of law;

(g) becomes a holder of a political office;

(h) becomes an employee of the Government or a Fund; and

(i) ceases to meet the qualifications of an independent director in the manner stipulated in section 7 (1).

Role of the Board.

11. The Board shall be responsible for—

(a) mobilizing resources for the Fund;

(b) entering into contracts on behalf of the Fund;

(c) appointment and removal of the Chief Executive Officer;

(d) determination of the terms and conditions of employment of the staff of the Fund, subject to such guidelines as the Cabinet Secretary may issue;

(e) setting of the Fund strategic direction and approval of strategic plans;

(f) approving of annual budgets and the related funding for Fund level;

(g) setting key performance indicators for the Chief Executive Officer;

(h) establishment of risk governance and risk management systems and processes;

(i) establishing and overseeing internal control systems;

(j) performance evaluation of the Chief Executive Officer; and

(k) the succession management framework .

Powers of the Board

12. The Board may—

(a) invest in projects, including by way of equity investment, or debt based on the bankability of the project, or any other project finance mechanism;

(b) acquire and hold security or a security interest, including, a right in a security, of any kind and in

any form for the due discharge of obligations under an investment or agreement that it makes;

(c) surrender the security, security interest or right in the security and acquire and hold, in exchange, security or a security interest, including, a right in a security, of any kind and in any form;

(d) realize the security, security interest or right in the security made, acquired or held by it on the investment or agreement;

(e) exchange, sell, assign, convey or otherwise dispose of, or lease, the investment, agreement, security, security interest or right in a security;

(f) enter into arrangements or agreements with, and act as agent or mandatory for, any department or agency of the government of Kenya, or any other body or person, for the development of infrastructure projects to, by, on behalf of or jointly with that institution and deliver financial assistance on their behalf under the arrangement or agreement;

(g) accept any interest or rights in real property or personal property or any rights in immovable or movables as security for the due performance of any arrangement or agreement with the Fund;

(h) determine the form of compensation for services provided by the Fund in the exercise of its powers or the performance of its functions under this Act;

(i) acquire and dispose of any interest or right in any entity by any means; and

(j) acquire, hold, exchange, sell or otherwise dispose of, or lease, any interest or rights in real property.

(2) Without prejudice to sub-section (1), the Board shall–

(a) not borrow or take credit against its balance sheet;

(b) only undertake project financing in accordance with this Act.

Remuneration.

13. The remuneration of directors shall be governed by the remuneration structure and guidelines issued by the Cabinet Secretary from time to time.

Audit Committee.

14. (1) The Board shall establish an audit committee and majority of the members, including its chairperson, shall be independent directors.

(2) The audit committee shall be responsible for—

(a) oversight of the internal audit function and other assurance providers;

(b) engagement with external auditors;

(c) assurance on appropriateness of measures to safeguard the assets of Fund's assets;

(d) the review of all reports and communication with external auditors;

(e) the review of annual financial statements of the Fund, prior to their approval by the Board;

(f) ensuring coordination between the internal and external auditors of the Fund; and

(g) overall assurance to the Board on the system of internal control, risk governance and compliance systems.

Chief Executive Officer.

15. (1) There shall be a Chief Executive Officer of the Fund who shall be competitively recruited and appointed by the Board on such terms and conditions as may be specified in the instrument of appointment.

(2) A person shall qualify for appointment as a Chief Executive Officer, if such person—

(a) holds a degree in the relevant field from a university recognized in Kenya;

(b) has at least ten years work experience in a relevant field;

(c) has served in a position of senior management for a period of at least five years; and

(d) meets the requirements of Chapter Six of the Constitution.

(3) A person shall not qualify for appointment as a Chief Executive Officer if such person—

(a) is a member of Parliament or County Assembly;

(b) is a member of a governing body of a political party;

(c) is an undischarged bankrupt;

(d) has been convicted of a felony; or

(e) has been removed from public office for contravening the provisions of the Constitution or any other written law.

(4) The Chief Executive Officer shall hold office for a term of four years and shall be eligible for reappointment for one further term.

(5) The Chief Executive Officer shall—

(a) be responsible to the Board of the Fund for the day-to-day management of the affairs of the Fund; and

(b) perform such other functions as the Board may direct.

(6) The Chief Executive Officer may be removed from office on any of the following grounds—

(a) violation of the Constitution or other law;

(b) gross misconduct;

(c) physical or mental incapacity to perform the functions of the office;

(d) unsatisfactory performance; or

(e) bankruptcy.

(7) Before removal under subsection (7), the Chief Executive Officer—

(a) may be suspended from office by the Board;

(b) shall be informed, in writing, of the reasons for the intended removal; and

(c) shall be given an opportunity to put in a defence against any such allegations.

Administrator of the Fund. *Cap.412A.*

16. The Cabinet Secretary may designate a person to be the Administrator of the Fund in accordance with section 24 (5) of the Public Finance Management Act.

17. The Board may appoint such officers may be necessary for the proper discharge of the functions of the Fund and upon such terms and conditions as the Board may determine, subject to such guidelines as the Cabinet Secretary may issue. Staff of the Fund.

PART III—PERFORMANCE EVALUATION

18. (1) The Board shall, prior to the commencement of a financial year, adopt an investment plan based on the national strategic objectives. Investment plan.

(2) The investment plan shall be effective on the first day of the financial year to which it applies.

(3) The investment plan shall form the basis of annual performance contracts to be signed between the Cabinet Secretary and the Fund.

19. (1) The Cabinet Secretary shall by means of performance contracts convey to the Fund performance targets for the specified period. Performance management.

(2) The Board shall enter into performance contracts with the Cabinet Secretary.

(3) The performance contracts under subsection (1) shall be designed to enhance the commercial performance of the Fund in ways that—

(a) safeguards the long-term sustainability of the Fund;

(b) enables the Fund to make a return commensurate with the level of investment made in the Fund; and

(c) minimizes the fiscal cost and risks emanating from the Fund to the national exchequer.

20. (1) The Cabinet Secretary shall be responsible for performance evaluation of the Fund and for purposes of performance evaluation, may co-opt relevant external experts that may include those from relevant Ministries. Performance evaluation.

(2) The performance evaluation of the Fund under subsection (1) may be based on audited financial statements and any other parameters as the Cabinet Secretary may determine.

(3) The Board shall be responsible for evaluation of performance of the Chief Executive Officer.

(4) The Cabinet Secretary may determine a performance incentive system for Board.

(5) The Board may determine a performance incentive system for the Chief Executive Officer and the rest of the staff of the Fund.

PART IV—PROJECT PREPARATION AND IMPLEMENTATION

Investment Policy.

21. (1) The Board shall develop an Investment Policy for approval by Cabinet.

(2) The Investment Policy shall specify-

(a) priority sectors proposed for development;

(b) proposed projects;

(c) any existing incomplete projects from the previous investment policy;

(d) expected rate of return on investment on specific projects;

(e) asset allocation and portfolio distribution; and

(f) exposure limits per sector and project.

(3) An Investment Policy shall be valid for a period of five years.

Project Preparation.

22. (1) The Fund shall develop sufficient capacity to undertake the structuring and implementation project phases including —

(a) overseeing the conduct of feasibility studies;

(b) preparing the project investment plans; and

(c) negotiating investment agreements for the projects.

(2) The Fund may engage development finance institutions, which Kenya is a member, to leverage on their project preparation, structuring and finance capabilities or such other expertise as may be necessary for the implementation of this Act.

Feasibility Studies.

23. (1) The Fund shall undertake feasibility studies on investment projects to determine the commercial viability of the project.

(2) The Fund shall consider the following matters when undertaking the feasibility study—

(a) the technical requirements of the investment project;

(b) the legal requirements to be met by the parties to the investment project;

(c) the social, economic and environmental impact of the project;

(d) the affordability and value for money proposition in the project; and

(e) the project's land requirements and required site preparatory activities necessary for effective and efficient project initiation.

Standards and procedures.

24. (1) The Cabinet Secretary may, on recommendation of the Board, prescribe the standards and procedures for the identification and selection of investment projects under this Act.

(2) Without prejudice to the generality of subsection (1), the Cabinet Secretary shall prescribe standards and procedures—

(a) on practice elements in the development of the investment plan;

(b) on the conduct of competitive tender processes under this Act;

(c) on disclosure requirements at every stage of a project;

(d) on procedures for benchmarking and market testing;

(e) for public participation and stakeholder engagement during project development stages;

(f) on hiring of transaction advisors;

(g) on the management of conflicts of interest;

(h) on standardised evaluation criteria templates;

(i) on feasibility studies;

(j) on timelines for project development; and

(k) any other relevant matter required for the better implementation of this Part.

Government Support Measures

25. (1) The Cabinet Secretary may issue Government support measures to investment projects of the Fund, including—

(a) a binding undertaking;

(b) a letter of support;

(c) a letter of credit;

(d) a credit guarantee, whether partial or full;

(e) approval for issuance of partial risk guarantees and political risk insurance; or

(f) any other instrument that Cabinet Secretary responsible for matters relating to finance may, on the advice of the Board, determine:

Provided that the instrument shall comply with the provisions of the law relating to public finance management.

(2) The Cabinet Secretary may only issue Government support measures under this section—

(a) where it is necessary to support a project to lower premiums factored for the profiling of political risks; or

(b) to underwrite approved commercial risks under a negotiated project investment agreement.

(3) The Cabinet Secretary may prescribe guidelines for the issuance of Government support measures under this section.

PART V – REPORTING AND DISCLOSURE

Reporting.

26. (1) The Fund shall make quarterly and annual reports to the Cabinet Secretary in such manner as may be prescribed.

(2) The Cabinet Secretary may make half-yearly reports on the Fund to the Cabinet and annually to the National Assembly.

(3) The Cabinet Secretary shall with respect to make, based on publicly available information, analysed annual reports to Cabinet and the National Assembly.

Disclosure

27. (1) The Cabinet Secretary shall make publish and publicize on the National Treasury website or such other information platforms as may be accessible to the public—

(a) audited annual reports of the Fund;

(b) annual performance evaluation results of the Fund; and

(c) reports on appointment of independent directors of the Fund and the procedures followed in arriving at such appointments.

(2) The Fund shall publish, on their individual websites or on such other platforms as may be accessible to the public—

(a) audited annual reports;

(b) annual performance evaluation results; and

(c) annual report on anti-corruption activities completed.

Financial transparency.

28. The Board shall ensure that the Fund, keeps financial records that—

(a) correctly record and explain its transactions and financial position and performance;

(b) enable financial statements to be prepared and be audited; and

(c) clearly identify and disclose any transactions undertaken by the Fund with any director or their close relatives, either directly or indirectly and comprising a pecuniary or non-pecuniary benefit through a company or other business established by such director.

PART VI—FINANCIAL PROVISIONS

Funds.

29. The funds of the Fund shall include—

(a) proceeds from privatization and disposal of government assets;

(b) such monies as may be appropriated into the Fund by Parliament;

(c) such fees, monies or assets as may accrue to or vest in the Fund in the course of the exercise of its

powers or the performance of its functions under this Act or under any written law; and

(d) monies from any other source provided for or donated or lent to the Fund.

Financial year.

30. Except as otherwise provided, the financial year of a Fund shall be the period of twelve months ending on the thirtieth June in each year.

Bank Accounts.

31. (1) The Administrator of the Fund shall cause to be opened bank accounts in the name of the Fund to be maintained in a bank regulated by the Central Bank of Kenya.

(2) The Administrator shall ensure that the bank accounts are not overdrawn.

Expenditure and commitments of the Fund.

32. The Administrator of the Fund shall ensure that in any financial year, the expenditure and commitments of the Fund shall not exceed the annual income of the fund together with any surplus income brought forward from the previous year.

Withdrawals from the Fund.

33. Withdrawals from the Fund shall only be for the purposes for which the Fund is established.

Investment of surplus funds.

34. The Board may, with approval of the Cabinet Secretary, invest such surplus funds in Government securities.

Annual estimates. Cap. 412A

35. The annual estimates of Fund shall be prepared in accordance with the Public Finance Management Act.

Audit.

36. (1) The Administrator of the Fund shall cause to be kept all proper books and records of accounts of the income, expenditure and assets of the Fund.

(2) Within a period of four months from the end of each financial year, the Board shall submit to the Auditor-General the accounts of the Board together with—

Cap. 412B.

(a) a statement of the income and expenditure of the Fund during that year; and

(b) a balance sheet of the Fund on the last day of that year.

(3)The accounts of the Fund shall be audited and reported upon in accordance with the Public Audit Act

PART VII– MISCELLANEOUS PROVISION

Regulations.

37. (1)The Cabinet Secretary may make regulations generally for the better carrying into effect of the provisions of this Act.

(2) For the purposes of Article 94 (6) of the Constitution—

(a) the purpose and objective of delegation under this section is to enable the Cabinet Secretary to make regulations to provide for the better carrying into effect of the provisions of this Act ;

(b) the authority of the Cabinet Secretary to make regulations under this Act will be limited to bringing into effect the provisions of this Act and to fulfil the objectives specified under this section;

(c) the principles and standards applicable to the regulations made under this section are those set out in the Interpretation and General Provisions Act and the Statutory Instruments Act, 2013.

(3) The Regulations under subsection (1) may prescribe—

(a) investment policy for Fund;

(b) government support measures;

(c) standards and procedures;

(d) any other matter necessary for the implementation of this Act.

MEMORANDUM OF OBJECTS AND REASONS

The principal object of this Bill is to provide for the establishment, management, and performance of the National Infrastructure Fund.

PART I of the Bill provides for the preliminary provisions.

PART II of the Bill seeks to provide for the establishment management and functions of National Infrastructure Fund.

Clause 5 provides for establishment of the Fund and clause 6 7 and 8 provide for constitution of the Board, Board qualifications and disqualification from the Board.

Clause 9 provides for conduct of Board meetings and clause 10 provides for tenure of the directors, while clause 11 sets out the roles of Board of Directors while Clause 15 provides for role of the Chief Executive Officer.

PART III of the Bill provides for the performance evaluation of the Fund. Clause 18 of the Bill provides for the Investment Plan. Further clause 19 provides for performance management.

Clause 20 provides for performance evaluation.

PART IV of the Bill seeks to provide for project preparation and implementation of projects of the Fund.

Clause 21 requires the Board to develop an Investment policy which shall be valid for five years, and clause 22 seeks to provide for project preparation while clause 23 of the Bill provides for Feasibility studies.

Clause 25 provides for Government Support measures.

PART V of the Bill seeks to provide for reporting and disclosure. Clause 26 and 27 provides for reporting and disclosure respectively and clause 28 provides for financial transparency.

PART VI of the Bill provides for financial provisions. Clause 29 provides for funds for the Fund, financial year, and annual estimates.

PART VII of the Bill contains clause 37 which sets out the power by the Cabinet Secretary to make Regulations for the effective implementation of 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 16th January, 2026.

KIMANI ICHUNG'WAH,
Leader of Majority Party