

Approved  
D/SNA  
3/3/2026

Hon. Speaker  
All orders for  
COPA  
3/3/26  
Tabing



**THE NATIONAL ASSEMBLY**

**THIRTEENTH PARLIAMENT - FIFTH SESSION - 2026**

**DIRECTORATE OF DEPARTMENTAL COMMITTEES**

**DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING**

**REPORT ON:  
THE CONSIDERATION OF THE NATIONAL INFRASTRUCTURE FUND BILL, 2026 (NATIONAL ASSEMBLY BILLS NO. 1 OF 2026)**

Published by:

The Directorate of Departmental Committees

Clerk's Chambers

Parliament Buildings

NAIROBI

MARCH, 2026

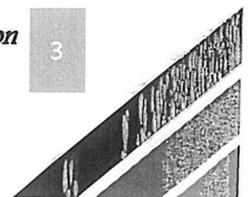
	
<b>THE NATIONAL ASSEMBLY PAPERS LAID</b>	
DATE: 03 MAR 2026	
DAY: Tuesday	
TABLED BY:	Hon. FCPA Kunia Kinsari (Chairperson, Finance and National Planning Committee)
CLERK AT THE TABLE:	Miriam Mado

## TABLE OF CONTENTS

<b>ANNEXURES</b> .....	4
<b>CHAIRPERSON'S FOREWORD</b> .....	5
<b>CHAPTER ONE</b> .....	6
<b>I PREFACE</b> .....	6
<b>1.1 ESTABLISHMENT AND MANDATE OF THE COMMITTEE</b> .....	6
<b>1.2 COMMITTEE MEMBERSHIP</b> .....	8
<b>1.3 COMMITTEE SECRETARIAT</b> .....	9
<b>CHAPTER TWO</b> .....	10
<b>2.0 OVERVIEW OF THE NATIONAL INFRASTRUCTURE FUND BILL, 2026     (NATIONAL ASSEMBLY BILLS NO. 1 OF 2026)</b> .....	10
<b>2.1 Background</b> .....	10
<b>2.2 Summary of Legal Provisions</b> .....	10
<b>CHAPTER THREE</b> .....	18
<b>3. PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE     BILL</b> .....	18
<b>3.1 LEGAL FRAMEWORK ON PUBLIC PARTICIPATION</b> .....	18
<b>3.2 MEMORANDA RECEIVED ON THE BILL</b> .....	18
General Submissions.....	18
<b>3.2.1 The National Treasury</b> .....	18
<b>3.2.2 Office of the Controller of Budget (OCoB)</b> .....	20
<b>3.2.3 Liberal Democratic Party (LDP)</b> .....	21
<b>3.2.4 Institute of Economic Affairs (IEA)</b> .....	22
<b>3.2.5 Okoa Uchumi</b> .....	23
<b>3.2.6 Bunge la Mwananchi</b> .....	23
<b>3.2.7 Edwin Nyakwara</b> .....	24
<b>3.2.8 Clause By Clause Submission</b> .....	24
<b>CHAPTER FOUR</b> .....	103
<b>4. COMMITTEE OBSERVATIONS</b> .....	103
<b>CHAPTER FIVE</b> .....	105
<b>5. COMMITTEE RECOMMENDATION</b> .....	105

## LIST OF ABBREVIATIONS AND ACRONYMS

CDH	-	Cliffe Decker Hofmeyr
CEO	-	Chief Executive Officer
CMA	-	Capital Markets Authority
COB	-	Controller of Budget
COK	-	Constitution of Kenya
IAS	-	International Accounting Standards
ICPAK	-	Institute of Certified Public Accountants of Kenya
IEA	-	Institute of Economic Affairs
IFRS	-	International Financial Reporting Standards
IPF	-	Institute of Public Finance
IPSAS	-	International Public Sector Accounting Standards
KAM	-	Kenya Association of Manufacturers
MP	-	Member of Parliament
NSE	-	Nairobi Securities Exchange
OAG	-	Office of the Auditor-General
OCOB	-	Office of the Controller of Budget
ODM	-	Orange Democratic Movement
FWC	-	PricewaterHouseCoopers Limited
UDA	-	United Democratic Alliance



## **ANNEXURES**

Annexure 1: Adoption Schedule

Annexure 2: Minutes

Annexure 3: The National Infrastructure Fund Bill, 2026 (National Assembly Bills No. 1 of 2026)

Annexure 4: Advertisement inviting the public to submit memoranda on the Bill

Annexure 5: Letter from the Clerk of the National Assembly inviting relevant stakeholders to attend the public participation forum

Annexure 6: Memoranda by Stakeholders



## **CHAIRPERSON'S FOREWORD**

This report contains the proceedings of the Departmental Committee on Finance and National Planning on its consideration of the National Infrastructure Fund Bill, 2026 (National Assembly Bills No. 1 of 2026). It was published in the Kenya Gazette Supplement No. 8 of 23<sup>rd</sup> January, 2026 and it was read for a first time on 12<sup>th</sup> February, 2026. The Bill was committed to the Committee for consideration and tabling of the report to the House pursuant to Standing Order 127.

The principal object of the Bill is to provide a legal framework for the establishment and the management of the National Infrastructure Fund. The Fund is proposed to achieve several purposes: 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. To mobilize private capital and non-traditional sources of infrastructure finance including domestic pension funds and collective investment schemes, sovereign wealth funds, climate finance; and to reduce the reliance of public debt for the financing of commercially viable infrastructure.

In compliance with Article 118 (1) (b) of the Constitution and Standing Order 127(3), the Clerk of the National Assembly placed an advertisement in the print media on 16<sup>th</sup> February, 2026 inviting the public to submit memoranda by way of written statements on the Bill. In addition, the Clerk of the National Assembly vide letter Ref. No. NA/DDC/F&NP/ 042/043/041/044 dated 18<sup>th</sup> February 2026 invited key stakeholders to submit views on the Bill and attend a public participation forum on 24<sup>th</sup> February 2026. The memoranda were to be received on or before 28<sup>th</sup> February 2026 at 5.00 pm (East African Time).

The Committee is grateful to the Offices of the Speaker and Clerk of the National Assembly for the logistical and technical support accorded to it during its consideration of the Bill. Similarly, I wish to express my appreciation to the Honourable Members of the Committee and the Committee Secretariat who made invaluable contributions towards the preparation and production of this report.

On behalf of the Departmental Committee on Finance and National Planning and pursuant to the provisions of Standing Order 199(6), it is my pleasure to report that the Committee has considered the National Infrastructure Fund Bill, 2026 (National Assembly Bills No. 1 of 2026) and wish to report to this August House with the recommendation that the House Approves the Bill.



**Hon. FCPA. Kuria Kimani, CBS, M.P.**  
**Chairperson, Departmental Committee on Finance and National Planning**

## CHAPTER ONE

### I PREFACE

#### I.1 ESTABLISHMENT AND MANDATE OF THE COMMITTEE

1. The Departmental Committee on Finance and National Planning is one of twenty departmental committees of the National Assembly established under **Standing Order 216** whose mandate pursuant to the **Standing Order 216 (5)** is as follows:
  - a) *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
  - b) *To study the programme and policy objectives of ministries and departments and the effectiveness of the implementation;*
  - c) *To, on a quarterly basis, monitor and report on the implementation of the national budget in respect of its mandate;*
  - d) *To study and review all legislation referred to it;*
  - e) *To study, assess and analyse the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;*
  - f) *To investigate and inquire into all matters relating to the assigned ministries and departments as they may deem necessary, and as may be referred to them by the House;*
  - g) *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order 204 (Committee on Appointments);*
  - h) *To examine treaties, agreements and conventions;*
  - i) *To make reports and recommendations to the House as often as possible, including recommendations of proposed legislation;*
  - j) *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and*
  - k) *To examine any questions raised by Members on a matter within its mandate.*
2. The Second Schedule to the National Assembly Standing Orders assigns the Committee the mandate to consider matters in relation to public finance, public audit policies, monetary policies, financial institutions, economy, investment policies, competition, banking, insurance, national statistics, population, revenue policies including taxation, national planning and development, digital finance, including digital currency.



3. In executing its mandate, the Committee oversees the following Ministries/Departments:

- a) The National Treasury.
- b) State Department for Economic Planning.
- c) The Commission on Revenue Allocation (CRA)
- d) Office of the Controller of Budget

## I.2 COMMITTEE MEMBERSHIP

I. The Departmental Committee on Finance and National Planning was constituted by the House on 27th October 2022 and comprises of the following Members:

### **Chairperson**

Hon. CPA Kuria Kimani, CBS, MP  
Molo Constituency  
**UDA Party**

### **Vice-Chairperson**

Hon. (Amb.) CPA Langat Benjamin Kipkirui, CBS, MP  
Ainamoi Constituency  
**UDA Party**  
**Members**

Hon. Peter Kaluma, CBS, MP  
Homa Bay Town Constituency  
**ODM Party**

Hon. Sunkuyia, R. George, MP  
Kajiado West Constituency  
**UDA Party**

Hon. CPA Oyula, Joseph H. Maero, MP  
Butula Constituency  
**ODM Party**

Hon. Betty N. Maina, MP  
Murang'a County  
**UDA Party**

Hon. Mboni, David Mwalika, MP  
Kitui Rural Constituency  
**WDM Party**

Hon. Sheikh Umul Sheikh, MP  
Mandera County  
**UDM Party**

Hon. Okuome Adipo Andrew, MP  
Karachuonyo Constituency  
**ODM Party**

Hon. (Dr.) Shadrack Mwiti, MP  
South Imenti Constituency  
**Jubilee Party**

Hon. Chiforomodo, Munga, MP  
Lunga Lunga Constituency  
**UDM Party**

Hon. (Dr.) Ariko John Namoi, MP  
Turkana South Constituency  
**ODM Party**

Hon. CPA Rutto Julius Kipletting, MP  
Kesses Constituency  
**UDA Party**

Hon. Machele M. Soud, MP  
Mvita Constituency  
**ODM Party**



### **I.3 COMMITTEE SECRETARIAT**

4. The Committee is facilitated by the following staff:

**Mr. Benjamin Magut  
Principal Clerk Assistant II /Head of Secretariat**

**Ms. Jennifer Ndeto  
Deputy Director Legal Services**

**Mr. Benson Kamande  
Clerk Assistant III**

**Mr. Salem Lorot  
Senior Legal Counsel**

**Ms. Winfred Kambua  
Clerk Assistant III**

**Mr. George Ndenjeshe  
Fiscal Analyst II**

**Mr. James Macharia  
Media Relations Office**

**Mr. Andrew Jumanne Shangarai  
Principal Serjeant-At-Arms**

**Ms. Joyce Wachera  
Hansard Reporter II**

**Mr. Benson Muthuri  
Assistant Serjeant-At-Arms**

**Ms. Nelly W. Ondieki  
Research Officer III**

**Mr. Mwangi Muchiri  
Audio Officer III**

**Mr. Allan Ngugi  
Committee Intern**

**Ms. Penninah Simiren  
Legal Counsel II**

**Mr. Steve Jeremy Kamau  
Committee Intern**

## CHAPTER TWO

### 2.0 OVERVIEW OF THE NATIONAL INFRASTRUCTURE FUND BILL, 2026 (NATIONAL ASSEMBLY BILLS NO. 1 OF 2026)

#### 2.1 Background

5. The National Infrastructure Fund Bill, 2026 (National Assembly Bills No. 1 of 2026) is a National Assembly Bill sponsored by the Leader of Majority Party of the National Assembly. It was published on 23<sup>rd</sup> January, 2026 and it was read for a first time on 12<sup>th</sup> February, 2026. It was then committed to the Departmental Committee on Finance and National Planning for its consideration and tabling of report.

#### 2.2 Summary of Legal Provisions

6. The principal object of the Bill is to provide a legal framework for the establishment and the management of the National Infrastructure Fund. The Fund is proposed to achieve several purposes:
  - 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**
  - to mobilize private capital and non-traditional sources of infrastructure finance including domestic pension funds and collective investment schemes, sovereign wealth funds, climate finance
  - to reduce the reliance of public debt for the financing of commercially viable infrastructure investments to strengthen the national capacity for origination, structuring and execution of large and complex infrastructure projects

#### **Panoramic view of the Bill**

7. The Bill contains 6 parts and 37 clauses majorly providing for the establishment of the National Infrastructure Fund, its oversight by Board of Directors, performance evaluation of the Fund, statutory requirements on project preparation and implementation and reporting and disclosure, and financial provisions.

#### **Establishment of the Fund and Board composition**

8. Clause 5 of the Bill provides for the National Infrastructure Fund which shall be a body corporate with its attendant attributes.
9. Clause 6 of the Bill provides that the Fund shall be managed by a Board of Directors consisting of eight (8) persons (including the chairperson). They will be as follows:
  - a chairperson (an independent director)
  - the Cabinet Secretary to the National Treasury or a representative designated in writing
  - four persons (independent directors)



- two persons who have proven experience in senior leadership roles in development banking
10. The Independent Directors shall be recruited competitively in accordance with section 13 of the Government Owned Enterprises Act which provides for the appointment of an independent search and selection panel by the Cabinet Secretary. The search and selection panel shall conduct a structured, transparent and competitive process of search and selection of persons suitable as independent Directors.
11. The eligibility for appointment as a chairperson or member of the Board under clause 7 of the Bill is three-fold: proven business leadership or relevant professional experience; having served in a senior management or leadership position for a period of at least fifteen years; and meeting the requirements of Chapter six of the Constitution.
12. Clause 8 of the Bill provides for the disqualification of a person from being appointed as an independent director of the Fund. These are if the person:
- was employed by a Government Owned Enterprise or its related parties, including its major shareholders, in the preceding five years
  - was an employee of the National Government for the preceding five years
  - 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
  - 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
  - has personal service contracts with the Fund, its related parties, or its senior management
  - is affiliated with any organisation, that receives significant funding from the Fund or its related parties
  - is employed as an executive of another company where any of the Fund's executives serve on that company's board of directors
  - 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
  - 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
  - has been affiliated with a political party in the immediately preceding five years

## Role of the Board

13. Clause 11 of the Bill provides for the role of the Board. Below is the categorisation of the roles.

Strategic and policy role	Fundraising role	Recruitment and human resource oversight role	Health and system checks
<ul style="list-style-type: none"> <li>• Setting of the Fund strategic direction and approval of strategic plans</li> <li>• Approving of annual budgets and the related funding for Fund level</li> </ul>	<ul style="list-style-type: none"> <li>• Mobilizing resources for the Fund</li> <li>• Entering into contracts on behalf of the Fund</li> </ul>	<ul style="list-style-type: none"> <li>• Appointment and removal of the Chief Executive Officer;</li> <li>• Determination of the terms and conditions of employment of the staff of the Fund</li> <li>• Setting key performance indicators for the Chief Executive Officer</li> <li>• Performance evaluation of the Chief Executive Officer</li> </ul>	<ul style="list-style-type: none"> <li>• Establishment of risk governance and risk management systems and processes</li> <li>• Establishing and overseeing internal control systems</li> <li>• Establishing the succession management framework</li> </ul>

## Powers of the Board

14. Clause 12 of the Bill provides for the powers of the Board. In this respect, the Board has the power to—

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

- 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
- realize the security, security interest or right in the security made, acquired or held by it on the investment or agreement
- exchange, sell, assign, convey or otherwise dispose of, or lease, the investment, agreement, security, security interest or right in a security
- 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
- 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
- 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
- acquire and dispose of any interest or right in any entity by any means
- acquire, hold, exchange, sell or otherwise dispose of, or lease, any interest or rights in real property

### Audit Committee

15. Clause 14 of the Bill provides for the establishment of an audit committee whose membership will consist of independent directors being the majority. The functions of the committee will be to oversight of the internal audit function and other assurance providers; engage with external auditors; assure on appropriateness of measures to safeguard the assets of Fund's assets; review all reports and communication with external auditors; among others.

### Chief Executive Officer

16. Clause 15 of the Bill provides for 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.

Qualification requirements	Disqualification
<ul style="list-style-type: none"> <li>• Hold a degree in the relevant field from a university recognized in Kenya</li> </ul>	<ul style="list-style-type: none"> <li>• is a member of Parliament or County Assembly</li> </ul>

<ul style="list-style-type: none"> <li>• Have at least ten years work experience in a relevant field</li> <li>• Served in a position of senior management for a period of at least five years</li> <li>• meets the requirements of Chapter Six of the Constitution.</li> </ul>	<ul style="list-style-type: none"> <li>• is a member of a governing body of a political party</li> <li>• is an undischarged bankrupt</li> <li>• has been convicted of a felony</li> <li>• has been removed from public office for contravening the provisions of the Constitution or any other written law.</li> </ul>
--	--

### Administrator of the Fund

17. Clause 16 provides that 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. Section 24(5) of PFMA provides that the Cabinet Secretary shall designate a person to administer every national public fund.

### Staff of the Fund

18. Clause 17 of the Bill provides that 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.

### Performance evaluation

19. Clauses 18, 19, and 20 set out the requirements of adopting an investment plan, entering into performance contracts, conducting performance evaluation, and determination of the performance incentive system for the Board, CEO and staff of the Fund.

Investment Plan	Performance Contracts	Performance Evaluation	Performance incentive system
<ul style="list-style-type: none"> <li>• Board to adopt an investment plan</li> <li>• Effective on 1<sup>st</sup> day of the financial year</li> <li>• Basis of annual performance contracts</li> </ul>	<ul style="list-style-type: none"> <li>• Board to enter performance contract with the Cabinet Secretary</li> <li>• Geared towards propelling Fund's commercial</li> </ul>	<ul style="list-style-type: none"> <li>• CS given role of Fund's performance evaluation</li> <li>• CS has discretion to co-opt relevant external experts</li> <li>• Fund's performance</li> </ul>	<ul style="list-style-type: none"> <li>• CS to determine Board's a performance incentive system</li> <li>• Board to determine CEO's and staff's</li> </ul>

	performance, make commensurate rates and minimise risks	evaluation may be based on audited financial statements <ul style="list-style-type: none"> <li>• Board evaluates CEO's performance</li> </ul>	performance incentive system
--	---	--	------------------------------

**Project preparation and implementation**

20. Part IV of the Bill provides directives on the steps to be undertaken to ensure that the projects intended to be implemented are executed well. Further, it provides for the Government support measures for the projects.
21. Clause 21 of the Bill assigns the Board the role of developing an Investment Policy for approval by Cabinet providing pertinent details on incomplete and proposed projects. The Investment Policy shall specify priority sectors proposed for development; proposed projects; any existing incomplete projects from the previous investment policy; expected rate of return on investment on specific projects; asset allocation and portfolio distribution; and exposure limits per sector and project. The Investment Policy will be valid for a period of five years.
22. Clause 22 of the Bill provides that the Fund shall develop sufficient capacity to undertake the structuring and implementation project phases including overseeing the conduct of feasibility studies; preparing the project investment plans; and negotiating investment agreements for the projects. Further, the Fund will be at liberty to 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 the Act.
23. Clause 23 of the Bill provides that the Fund shall undertake feasibility studies on investment projects to determine the commercial viability of the project. The Fund will be required to consider the following matters when undertaking the feasibility study:
- the technical requirements of the investment project
  - the legal requirements to be met by the parties to the investment project
  - the social, economic and environmental impact of the project
  - the affordability and value for money proposition in the project
  - the project's land requirements and required site preparatory activities necessary for effective and efficient project initiation

24. Under clauses 24 and 25 of the Bill, the Cabinet Secretary has been assigned the role to:

- prescribe the standards and procedures for the identification and selection of investment projects under this Act. This will be on the recommendation of the Board.
- issue Government support measures to investment projects of the Fund, including a binding undertaking; a letter of support; a letter of credit; among others.

### **Reporting and disclosure**

25. Clauses 26, 27, and 28 of the Bill provides for the reporting and disclosure on the operations of the Fund. The Fund will be required to make quarterly and annual reports to the Cabinet Secretary in such manner as may be prescribed. The Cabinet Secretary will also make half-yearly reports on the Fund to the Cabinet and annually to the National Assembly.

26. The Cabinet Secretary shall publish and publicize on the National Treasury website or such other information platforms as may be accessible to the public audited annual reports of the Fund; annual performance evaluation results of the Fund; and reports on appointment of independent directors of the Fund and the procedures followed in arriving at such appointments.

27. The Fund shall publish, on their individual websites or on such other platforms as may be accessible to the public audited annual reports; annual performance evaluation results; and annual report on anti-corruption activities completed.

28. Further, the Board shall ensure that the Fund keeps financial records that correctly record and explain its transactions and financial position and performance; enable financial statements to be prepared and be audited; and 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.

### **The funds of the Fund**

29. Clause 29 of the Bill provides for the funds of the Fund which shall include—

- proceeds from privatization and disposal of government assets
- such monies as may be appropriated into the Fund by Parliament

- 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 monies from any other source provided for or donated or lent to the Fund

## CHAPTER THREE

### 3. PUBLIC PARTICIPATION AND STAKEHOLDER ENGAGEMENT ON THE BILL

#### 3.1 LEGAL FRAMEWORK ON PUBLIC PARTICIPATION

30. Article 118 (1)(b) of the Constitution provides that:

*“Parliament shall facilitate public participation and involvement in the legislative and other business of Parliament and its Committees.”*

31. The National Assembly Standing Order 127 (3) and (3A) stipulates that:

*“(3) The Departmental Committee to which a Bill is committed shall **facilitate public participation on the Bill** through an appropriate mechanism including-*

- (a) inviting submission of memoranda;*
- (b) holding public hearings;*
- (c) consulting relevant stakeholders in a sector; and*
- (d) consulting experts on technical subjects.*

*(3A) The Departmental Committee shall take into account the views and recommendations of the public under paragraph (3) in its report to the House.”*

#### 3.2 MEMORANDA RECEIVED ON THE BILL

32. Pursuant to the aforementioned provisions of law, the Clerk of the National Assembly placed an advertisement in the print media on 16<sup>th</sup> February, 2026 inviting the public to submit memoranda on the Bill. Further, the Clerk of the National Assembly vide letter Ref. No. NA/DDC/F&NP/ 042/043/041/044 dated 18<sup>th</sup> February 2026 invited key stakeholders to submit views on the Bill and attend a public participation forum on 24<sup>th</sup> February, 2026 respectively.

33. The Committee received memorandum from the stakeholders as Annexed.

#### General Submissions

##### 3.2.1 The National Treasury

The National Treasury appeared before the Committee and submitted as follows;

34. The National Treasury requested the Committee to consider and approve the National Infrastructure Fund (NIF) Bill in order to facilitate establishment and operationalization of the Fund as an innovative financing mechanism for commercially viable infrastructure investments in Kenya. In its presentation, the Cabinet Secretary, emphasized that the NIF seeks to shift Kenya from traditional debt-heavy public financing models toward blended, investment-led financing frameworks capable of



crowding in private capital while reducing reliance on taxation and sovereign borrowing.

35. The Ministry noted that global benchmarks demonstrate the viability of infrastructure funds as catalytic investment vehicles. Reference was made to South Africa's Infrastructure Fund operating under the Development Bank of South Africa as a ring-fenced blended finance unit; India's National Investment and Infrastructure Fund (NIIF), which mobilizes government and global institutional capital under a structured governance framework; Canada's long-term infrastructure financing programs supporting housing and critical minerals; Saudi Arabia's National Infrastructure Fund facilitating private sector participation in strategic projects; and Singapore's blended finance ecosystem promoting capital mobilization and infrastructure bankability. These international precedents were cited to demonstrate that well-governed infrastructure funds can attract pension funds, sovereign wealth funds, private equity, and multilateral development financing while maintaining structured oversight.
  
36. With respect to Kenya, the National Treasury submitted that the Bill establishes a legal framework for the creation and management of the National Infrastructure Fund to mobilize up to Ksh5 trillion in capital through asset monetization, capital market deployment, and crowding-in of domestic and international institutional investors. The strategy aims to ring-fence privatization proceeds for reinvestment, democratize national ownership through capital markets, and leverage private participation at an estimated ratio of ten-to-one for every shilling invested by Government, thereby accelerating development of highways, railways, air and seaports, electricity generation and transmission, irrigation systems, and agribusiness infrastructure.
  
37. The Ministry submitted that the Bill further outlines governance structures including a Board of Directors with independent members recruited under the Government Owned Enterprises Act, defined powers to mobilize resources, invest in bankable projects through equity or structured finance mechanisms, appoint management, and approve strategic plans and budgets. It also provides for performance evaluation frameworks linked to national strategic objectives, feasibility studies and structured project preparation, and adoption of investment plans forming the basis of annual performance contracts. The National Treasury emphasized that the proposals are informed by international best practice and are intended to establish a professionally managed, commercially oriented infrastructure financing vehicle aligned with Kenya's long-term development objectives.

### **3.2.2 Office of the Controller of Budget (OCoB)**

38. The OCOB noted that the Bill provides for parliamentary appropriations to the Fund and authorises expenditure for investment and project financing purposes. However, it does not expressly require authorisation by the Controller of Budget for withdrawals of funds, as required under Article 206(4) of the Constitution. They stated that the Bill should expressly provide that all withdrawals of appropriated funds shall be subject to authorisation by the Controller of Budget in accordance with the Constitution and the PFMA.
39. Additionally, they noted that the Bill empowers the Cabinet Secretary to issue guarantees, letters of credit, partial risk guarantees, political risk insurance and other support instruments. These instruments may create contingent liabilities for the national government. Under Articles 211 and 214 of the Constitution and Part IV of the PFMA, public debt and guarantees are subject to strict approval, reporting and disclosure requirements, including parliamentary oversight and inclusion in debt sustainability analysis.
40. They submitted that the Bill does not expressly provide for parliamentary approval before the issuance of guarantees, the recording and disclosure of contingent liabilities in fiscal risk statements, or their integration into the public debt management framework. Given the scale of infrastructure financing transactions, failure to embed these safeguards may expose the Exchequer to unmanaged fiscal risks. They proposed expressly aligning issuance of guarantees and risk instruments with constitutional and statutory debt management provisions.
41. Further, OCOB noted that although the Bill provides that annual estimates shall be prepared in accordance with the PFMA, it does not clearly articulate the linkage between the annual budget process under Articles 220–221 of the Constitution, parliamentary appropriation, release of funds and expenditure control mechanisms. COB proposed the Bill to expressly provide that allocations to the Fund shall form part of the Appropriation Act, disbursements shall be subject to approved cash flow plans, expenditure shall conform to approved programme-based budgets, and that the Fund shall operate within fiscal ceilings established by the National Treasury. This clarification will ensure compliance with Article 201 on openness, accountability, and the prudent use of public resources.



### **3.2.3 Liberal Democratic Party (LDP)**

#### **Introduction**

42. Reject the Bill in its current form due to structural, fiscal, and governance risks. While infrastructure is essential, Kenya suffers from weak execution, poor prioritization, and governance deficits, not a lack of funds. Creating a new fund risks compounding these structural failures rather than addressing them.

#### **Constitutional Concerns**

##### **a) Violation of Public Finance Principles**

43. Ensure that all public funds remain within the Consolidated Fund under parliamentary oversight. The Bill creates a parallel financial structure outside established safeguards, diluting parliamentary control and potentially undermining Articles 201, 206, and 212 of the Constitution governing public finance and debt management. Public assets cannot be transferred to quasi-corporate structures without strict constitutional guardrails.

##### **b) Asset Disposal without Adequate Sovereign Safeguards**

44. Prohibit monetization or privatization of strategic national assets to finance Fund projects. Selling stakes in telecommunications, pipelines, energy, and logistics trades long-term dividends for short-term liquidity, reduces state control, risks undervaluation, and weakens national bargaining power. Strategic assets are sovereign levers and cannot be used as mere financing tools.

#### **Governance and Misuse Risks**

45. Reject creation of a semi-autonomous fund with broad discretionary powers. Kenya already has Treasury, State corporations, PPP frameworks, bonds, and sovereign structures. Without strict safeguards, the Fund could become a politically controlled vehicle for asset stripping, creating fiscal opacity. Public trust deficits further amplify systemic risk; credibility cannot be legislated but must be earned.

#### **Prioritization of National Development**

46. Focus government efforts on high-impact, low-cost infrastructure and social priorities. Infrastructure is a tool, not an end. Urgent priorities include youth employment, education, healthcare, food security, and household purchasing power. Large institutional vehicles cannot substitute for execution-focused governance that addresses these fundamental needs.

#### **Alternative Solutions to Infrastructure Financing**

- i. Strengthen and optimize existing mechanisms rather than create a new fund to:
- ii. Expand transparent infrastructure bonds and leverage regulated pension and insurance capital.

- iii. Improve fiscal discipline, rationalize expenditure, and renegotiate high-cost debt.
- iv. Reform and streamline PPPs instead of duplicating structures.
- v. Improve project execution by addressing procurement inefficiencies, corruption, contract mismanagement, and political interference.
- vi. Targeted interventions yield higher returns than establishing a new fund without addressing root execution issues.

### **Constitutional Red Flags – Article 206**

47. Ensure all revenue flows through the Consolidated Fund, with parliamentary appropriation and oversight. Transferring revenue or asset proceeds directly to the Fund bypasses parliamentary control, potentially violating Articles 206, 201, and 212. Centralization of fiscal power in a semi-autonomous corporate vehicle risks off-balance-sheet financing, shadow budgeting, and concentration of authority outside constitutional oversight.

### **Public Trust and Credibility**

48. Do not enact the Bill until public trust is restored and oversight mechanisms are robust. Major asset restructuring and fund management require high public confidence. Current deficits in transparency, independence, political neutrality, and accountability make the creation of a powerful fund risky. Public confidence must precede institutional transformation.

### **Conclusion**

49. Reject the National Infrastructure Fund Bill, 2026, in its current form.

The Bill:

- i. Risks violating constitutional provisions, especially Article 206.
- ii. Enables disposal of strategic national assets.
- iii. Duplicates existing financial mechanisms.
- iv. Increases governance and misuse risks.
- v. Ignores more urgent national priorities.
- vi. Fails to address root causes of fiscal distress.

50. Kenya needs disciplined governance, prioritization, and execution, not additional financial vehicles. Under LDP administration, if the Bill is enacted, reversing it will be a priority executive action to restore constitutional and fiscal safeguards.

### **3.2.4 Institute of Economic Affairs (IEA)**

51. The Institute of Economic Affairs submitted that it does not support the establishment of the National Infrastructure Fund as proposed. They stated that given Kenya's tight fiscal position, characterised by high public debt, rising debt-servicing costs, liquidity constraints, and mounting pending bills, the creation of a standalone fund with



independent borrowing powers is fiscally imprudent. By shifting infrastructure financing outside the Consolidated Fund, the Bill weakens budget transparency, turning the Fund into a mechanism for obscuring debt rather than strengthening fiscal discipline. However, should the Fund nonetheless proceed, the following proposals are advanced to mitigate the attendant fiscal, governance, and accountability risks.

### 3.2.5 Okoa Uchumi

52. Ensure that the Bill establishes clear mandate precision, robust governance arrangements, and fiscal safeguards in alignment with international best practice. Kenya may benefit from a well-structured infrastructure financing vehicle if it is firmly anchored within constitutional public finance frameworks. As currently drafted, the Bill risks creating a parallel institutional solution that may not address underlying constraints, potentially resulting in a costly and complex experiment without commensurate benefits.

### 3.2.6 Bunge la Mwananchi

53. The stakeholder, expressed conditional support for the National Infrastructure Fund Bill, 2026 since infrastructure development is essential for economic growth, job creation, and national transformation; however, such support is dependent upon strengthening governance safeguards because weak oversight structures, political interference, and constitutional non-compliance may expose public resources to misuse and financial risk. The stakeholder proposed amending governance framework to clearly define ultimate financial oversight and align the Fund strictly with Parliament, the Auditor-General, and the Controller of Budget since explicit constitutional anchoring would enhance accountability and prevent the Fund from operating outside Public Finance Management controls.

54. Additionally, they recommended that all major borrowings and guarantees be subjected to mandatory parliamentary approval since debt sustainability must align with Chapter 12 of the Constitution; additionally, strict ring-fencing provisions were proposed to ensure that Fund resources are used exclusively for approved infrastructure projects, with diversion attracting criminal liability, because fiscal discipline and public trust depend on clear legal safeguards. The stakeholder also recommended that project eligibility be subjected to rigorous economic viability and social impact assessments, together with independent technical review, performance-based disbursement, and transparent procurement through open competitive tendering and a publicly accessible digital disclosure portal, since professional evaluation and real-time transparency would reduce corruption risks and ensure value-for-money.

55. Bunge la Mwananchi further urged mandatory oversight by the Controller of Budget prior to withdrawals, annual and special forensic audits by the Auditor-General, and regular reporting to parliamentary committees since constitutional fiscal controls safeguard public resources. Safeguards were also proposed to protect pension and institutional investments through risk diversification requirements and independent investment committees, because excessive exposure to high-risk ventures may endanger retirement savings. Finally, the stakeholder recommended insertion of strong anti-corruption provisions including automatic investigation triggers for unexplained cost overruns, personal liability for Board members and accounting officers, lifestyle audit provisions, structured public participation, county government consultation where devolved functions are affected, and whistleblower protection, since sustainable infrastructure financing must be anchored on transparency, accountability, professionalism, and constitutional compliance in order to serve wananchi effectively.

### **3.2.7 Edwin Nyakwara**

56. The stakeholder opposed the establishment of the National Infrastructure Fund Bill in its entirety. He stated that while infrastructure development is important, he is concerned about the legality, transparency, fiscal impact, and governance structure of the Fund. In particular, the creation of an additional board risks unnecessarily expanding government bureaucracy and increasing administrative costs at a time when public expenditure should be rationalised.
57. He urged the Committee to ensure full constitutional compliance, meaningful public participation, financial transparency, and strong oversight before proceeding. Any duplication of existing institutional mandates should be avoided.

### **3.2.8 Clause by Clause Submission**

#### **Long Title**

#### **Katiba Institute**

58. Amend the long title to specifically cite Article 206(1) (a) of the Constitution as the basis for the Bill's enactment.

#### **Committee Observation**

The Committee agreed to provide for the definition of “national infrastructure”.

## Clause 2

### ICPAK

59. The stakeholder proposed amendments to the clause by introducing additional definitions intended to enhance legal clarity, minimise ambiguity in implementation, and reinforce the operational framework of the Fund.

*“Development Fund” means a sovereign development and infrastructure investment fund whose primary objective is to generate risk-adjusted commercial returns while catalysing private capital for national infrastructure.*

*“Fiscal risk” means any actual or potential liability, explicit or implicit, arising from guarantees, letters of support, undertakings, or other Government support measures.*

*“National Infrastructure Pipeline” means the Cabinet-approved list of priority infrastructure projects aligned to national development plans.*

### Committee Observation

**The Committee noted the stakeholder’s proposal but was not persuaded to include the new definitions as a consequent of not agreeing with the stakeholder on substantive provisions in which the definitions have been applied.**

### IPF

60. The stakeholder proposed amending the clause by inserting a new clear definition of what constitutes National Infrastructure. They stated that for avoidance of the fund being employed to other infrastructural projects apart from those mentioned in the bill, it is necessary that an explicit definition of “National Infrastructure” be included, mentioning what it entails.

### Committee Observation

**The Committee agreed to provide for the definition of “national infrastructure”.**

### KENYA ASSOCIATION OF MANUFACTURERS (KAM)

61. The stakeholder proposed amending Clause 2 by inserting a definition of “infrastructure” to expressly include: roads, rail, maritime, electricity, airports, water, and irrigation. The Bill does not define infrastructure, creating ambiguity in scope and application. The Fourth Medium-Term Plan (MTP IV) identifies key infrastructure-related sub-sectors, including roads and transport, energy and petroleum, ICT and

digital economy, land and urban development, and water and irrigation. Clearly defining infrastructure will limit the scope of the Fund, align it with national priorities, and promote the optimal use of scarce financial resources.

**Committee Observation**

**The Committee agreed to provide for the definition of “national infrastructure”.**

**Okoa Uchumi**

62. Insert a definition of “infrastructure” to clearly outline the scope of projects the Fund may finance. The Bill does not currently specify which categories of infrastructure are covered, creating uncertainty about the Fund’s mandate. Clear definitions align the Fund with national planning priorities and prevent duplication or misallocation of resources.

**Committee Observation**

**The Committee agreed to provide for the definition of “national infrastructure”.**

**Clause 3**

**ICPAK**

63. The stakeholder proposed the insertion of a new sub-clause in order to align the Fund with international best practices relating to climate considerations, mobilisation of private capital, and fiscal sustainability.

*“(c) to ensure that the fund operates with operational independence, commercial discipline, and transparency consistent with international best practice for sovereign development funds.”*

**Committee Observation**

**The Committee noted the stakeholder’s proposal but was of the view that as conceptualized in the Bill, the Fund will have several players performing certain roles: the Cabinet Secretary for the National Treasury, the Board, the Cabinet, among others. Therefore, the proposal for the independence of the Fund may not be feasible. Further, clause 3 provides for the objects of the Act and for which the proposal does not neatly fit in.**

**Clause 4**

**Cliffe Dekker Hofmeyr (CDH)**

64. The stakeholder proposed an amendment by inserting the following sub-clause to strengthen safeguards for institutional investors and protect contributors' funds when mobilising capital from institutional investment sources.

*“(2) Where the Fund mobilises capital from institutional investors, including pension funds or collective investment schemes, it shall:*

*(a) conduct due diligence and risk assessment to ensure that investments are consistent with the trustees' fiduciary duties;*

*(b) adopt a formal risk management framework for each project, including limits on leverage, guarantees, and contingent liabilities;*

*(c) provide regular reporting to investors on project performance, risk exposure, and liquidity; and*

*(d) ensure defined exit mechanisms or structured arrangements to protect investors' capital.”*

#### **Committee Observation**

**The Committee agreed with the stakeholder but noted that since clause 4 of the Bill provides for the purposes of the Fund, the proposed amendment might not fit in the clause. The Committee therefore recommended that the safeguards proposed be included as functions of the Board under clause 11 of the Bill.**

#### **PWC**

65. The stakeholder proposed inserting a new clause requiring consultation with affected County Governments during project identification, feasibility studies and implementation phases.

#### **Committee Observation**

**The Committee noted that the Bill relates to National Infrastructure and further this is not a Bill concerning county governments and therefore there is no need to require consultation.**

#### **ICPAK**

66. The stakeholder recommended the introduction of additional sub-clauses to align the Fund with global standards on climate action, private capital mobilization and fiscal sustainability.

*“(e) to mobilize private capital through co-investment structures with pension funds, sovereign wealth funds and institutional investors.”*

*“(f) to support climate-resilient and sustainable infrastructure in line with national climate commitments.”*

*“(g) to ensure long-term financial sustainability and avoid undue fiscal risks.”*

### **Committee Observation**

**The Committee agreed with the stakeholder except on the proposal under paragraph (f) which has already been addressed in the Bill.**

### **KNCCI**

67. The stakeholder recommended amendment of the clause through insertion of the following paragraph since the Bill lacks an explicit catalytic leverage requirement and therefore risks crowding out private capital.

*“The Fund shall mobilize private capital through a prescribed minimum leverage ratio of private-to-public investment,”*

### **Committee Observation**

**The Committee observed that clause 4 of the Bill sets out the purpose of the Fund. The Committee noted the stakeholder’s proposal but was of the view that it was prescriptive and that the same may be provided for in the investment policy.**

### **KAM**

68. The stakeholder proposed amending Clause 4 by inserting a new sub-clause (e) to provide that the Fund shall facilitate the development of industrial parks, Special Economic Zones (SEZs) and value-addition infrastructure to support the Kenya Industrial Transformation Programme. Manufacturing is globally recognized as a key driver of economic growth, productivity, exports and quality employment. Kenya’s manufacturing sector has declined to approximately 7.3% of GDP, underscoring the need for deliberate intervention. Explicitly including industrial parks and SEZs will strengthen domestic production capacity, enhance integration into global value chains and support long-term industrial transformation.

### **Committee Observation**

**The Committee appreciated the important role played by the manufacturing sector however, the proposal would unduly expand the purposes of the Fund.**

### **Okoa Uchumi**

69. Amend Clause 4 to clarify that the Fund is intended to support long-term development and economic transformation through strategic infrastructure projects. While the Bill establishes the Fund procedurally, it does not clarify its developmental objectives or alignment with national priorities. Explicitly stating the purpose strengthens mandate precision, ensures coherence with the national development agenda and safeguards public interest.

#### **Committee Observation**

**The Committee noted the stakeholder’s proposal but noted that the broad object of the Bill was sufficient for legislation.**

**Office of the Attorney General**

70. The AG noted that although Clause 4 provides for a multi-sectoral mandate of the Fund, the Board composition is limited to Cabinet Secretary for the National Treasury and independent directors. They noted that under clause 6 of the Bill, the Board has no representation for the sectors specified under clause 4.

#### **Committee Observation**

**The Committee noted the stakeholder’s proposal but was of the view that incorporating additional representatives for different ministries as contemplated by the purposes of the Fund under clause 4(a) of the Bill would unduly expand the Board composition. In any case, as conceptualized, the Fund will not be the implementer but the existing government institutions and other entities.**

#### **We Care**

71. Insert a new paragraph (e):  
(e) to ensure that infrastructure financed under the Fund promotes environmental sustainability, affordability of essential services, youth employment creation and equitable access to public goods.

#### **Committee Observation**

**The Committee observed that the purpose of the Fund as provided for in the clause was adequate.**

#### **PPRA**

72. Insert a new sub clause “(f) promote sustainable, resilient, and inclusive infrastructural investment and development.” This is aimed at ensuring the incorporation of sustainability in the planning, designing and constructing of infrastructural systems that are environmentally friendly, economically viable and socially inclusive over their entire life cycle.

#### **Committee Observation**

**The Committee observed that the purpose of the Fund as provided for in the clause was adequate.**

#### **Clause 4(a)**

##### **IPF**

73. The stakeholder proposed providing a clear definition of “Catalytic National Infrastructure”. IPF stated that for purposes of transparency and accountability to the public, the Bill should provide a clear and operational distinction between “infrastructure” and “catalytic infrastructure,” specifying the criteria that differentiate the two categories.

##### **Committee observation**

**The Committee agreed to delete the word “catalytic” to eliminate any ambiguity.**

##### **Katiba Institute**

74. Amend to include County Governments in the definition of ‘Government’ under Clause 2 and provide mechanisms to ensure county governments’ participation in the operationalisation of the Fund including in the identification and implementation of infrastructure projects across the 47 counties.
75. Amend the Memorandum of Objects and Reasons to re-classify the Bill as a Bill concerning Counties under Article 110(1)(a) hence requiring the concurrence of the Senate.

##### **Committee Observation**

**The Committee noted that the Bill is not intended to affect the functions and powers of county governments as set out in the Fourth Schedule to the Constitution. Therefore, the Committee recommended that the definition “national infrastructure” be inserted in clause 2 of the Bill to provide clarity.**

##### **PPRA**

76. Amend the clause to include ICT infrastructure and research innovation. They stated that the World is transitioning to the provision and consumption of electronic services (e-services), thus ICT is a viable sector. It is mainly through innovation that a country can prosper.

##### **Committee Observation**

**The Committee was of a different view that the stakeholder’s proposal would unduly expand the purposes of the Fund and whittle down the main object of the Fund.**

**Clause 4(c)**  
**Katiba Institute**

77. Amend to reclassify the Bill as a one concerning county governments hence requiring the Senate's concurrence. Alternatively, amend to remove all references to borrowing and the issuance of government support measures.

**Committee Observation**

The Committee noted that the Bill is not intended to affect the functions and powers of county governments as set out in the Fourth Schedule to the Constitution. Therefore, the Committee recommended that the definition "national infrastructure" be inserted in clause 2 of the Bill to provide clarity.

**Clause 4(b)**  
**IPF**

78. The stakeholder noted that with the requirement of the section 15(2), of the PFM Act, there ought to be an addition mentioning that it aims to mobilize funds in the most prudent manner that ensures fiscal sustainability, ensuring that such financing mechanisms minimize adverse impacts on the budget. They proposed amending the clause by inserting the following statement; -

"In the most prudent manner and in accordance with the Privatization Act and PFM Act."

**Committee Observation**

The Committee agreed with the stakeholder but to the extent that the clause could be amended to reference it to Article 206(1)(a) of the Constitution and the Public Finance Management Act, Cap. 412A.

**Clause 5**

**IEA**

79. The stakeholder proposed amending the clause by requiring all bond-related cashflows to comply with Public Finance Management Act. This will require all bond-related operations to comply with Public Finance Management Act.

**Committee Observation**

The Committee observed that the Committee's proposed amendment to clause 4 for the Bill to be carried out in accordance with the provisions of the Public Finance Management Act would address the stakeholder's concerns.

### **Office of the Auditor General**

80. OAG noted that while the Fund can borrow money, the lack of explicit alignment with Article 206 of the Constitution and the Public Finance Management Act Cap 412A may lead to loopholes in the management and oversight of public funds. They also noted that the Bill needed to align with the provisions of the Investment Promotion Act Cap. 485B on matters relating to investment policy.

### **Committee Observation**

**The Committee noted the stakeholder's proposal and has recommended an amendment to clause 4 of the Bill to cross-reference the Act to Article 206(1)(a) of the Constitution and the Public Finance Management Act, Cap. 412A. The Committee further noted that the Bill does not conflict with the provisions of the Investment Promotion Act, Cap. 485.**

### **PWC**

81. The stakeholder proposed providing clarity on which corporate governance/regulatory framework applies to the Fund (for example, specifying that the Fund's governance shall be exclusively governed by Government Owned Enterprises Act No. 25 of 2025. They noted that the bill appears to create a hybrid entity that does not fit neatly into any category as provided under the Public Finance Management Act, Cap 412A.

### **Committee Observation**

**The Committee noted the stakeholder's proposal and to address the concern, it has recommended an amendment to clause 4 to give clarity that the legal framework of the Fund will be in accordance with the provisions of the Public Finance Management Act, Cap. 412A.**

### **ICPAK**

82. The stakeholder suggested the addition of a new sub-clause aimed at safeguarding operational independence and reducing the risk of politically influenced investment decisions.

*“(3) The Fund shall be operationally independent and shall not be subject to direction on specific investments by any person or authority, except as provided under this Act.”*

### **Committee Observation**

**The Committee noted the stakeholder's proposal but was of the view that as conceptualized in the Bill, the Fund will have several players performing**

**certain roles: the Cabinet Secretary for the National Treasury, the Board, the Cabinet, among others. Therefore, the proposal for the independence of the Fund may not be feasible. Further, clause 3 provides for the objects of the Act and for which the proposal does not neatly fit in.**

#### **KAM**

83. The stakeholder proposed amending Clause 5 to establish a two-tier governance structure by introducing a Board of Trustees as legal custodians of the Fund's assets, separate from the Board of Directors. A Board of Trustees would provide fiduciary oversight, safeguard assets, and ring-fence resources from diversion. Separating custodial and operational functions reduces concentration of authority, strengthens checks and balances, minimizes conflicts of interest, and enhances public confidence in governance.

#### **Committee Observation**

**The Committee noted the stakeholder's proposal but was of the view that the proposal would add another layer of bureaucracy and carries with it additional financial costs.**

#### **Okoa Uchumi**

84. Clarify the institutional relationship between the Fund and existing public investment management processes, ensuring it operates as a complementary financing instrument rather than a parallel entity. The Bill does not define how the Fund integrates with existing institutions, creating risk of fragmented accountability, duplication of mandates and misalignment with broader public finance objectives. A clearly defined institutional role ensures coherence, effective oversight and prudent use of public resources.

#### **Committee Observation**

**The Committee noted the stakeholder's concerns and observed that the Fund does not seek to create parallel entity but to utilize the existing institutions to carry out the infrastructure projects. The Committee will propose amendments to the Bill to bring out this clarity.**

#### **Office of the Attorney General**

85. The stakeholder stated that the bill establishes the Fund as a body corporate with perpetual succession, capable of holding property, borrowing, contracting and litigating in its own name. This implies the Fund is perpetual in nature and has under clause 15 appointed a Chief Executive Officer, whilst under clause 16 of the Bill the Cabinet Secretary for the National Treasury is required to designate a person to be the

Administrator of the Fund in accordance with section 24(5) of the Public Finance Management Act.

86. They noted that the responsibilities of the Chief Executive Officer specified under clause 15 (5) (a) which is to inter alia includes to manage the day-to-day affairs of the Fund may overlap with that of the proposed Administrator of the Fund. Therefore, the proposed a need for clarity whether the Bill is a national public fund established pursuant to section 24 of the Public Finance Management Act or it is a perpetual Fund established by statute.

**Committee Observation**

**The Committee agreed with the stakeholder and to resolve the matter, recommended that the CEO be also the Administrator of the Fund designated by the Cabinet Secretary for the National Treasury under section 24(4) of the Public Finance Management Act, Cap. 412A.**

**Clause 5(2)**

**Kituo cha Sheria**

87. The stakeholder submitted that the Fund be converted into a statutory public fund under the Public Finance Management Act since a corporate structure may circumvent Articles 201 and 206 of the Constitution on public finance accountability. The Fund should operate as a statutory fund so as to strengthen parliamentary oversight and fiscal responsibility.

**Committee Observation**

**The Committee agreed with the stakeholder's concerns and to clarify this, it has recommended that clause 4 of the Bill be amended to link the Fund to Article 206(1)(a) of the Constitution and section 24(4) of the Public Finance Management Act, Cap. 412A.**

**Clause 5(2)(c)**

**Kituo cha Sheria**

88. The stakeholder proposed that the clause be amended to require prior parliamentary approval for borrowing since unrestricted borrowing powers may expose the Fund to unsustainable debt exposure; therefore, any borrowing should be subject to parliamentary scrutiny so as to align with Article 206 of the Constitution and the Public Finance Management Act.



#### **Committee Observation**

The Committee noted the stakeholder's concerns and recommended to delete paragraph (c) in clause 5(2) of the Bill which provides for one of the powers of the Fund as borrowing money.

#### **Federation of Kenya Employers**

89. Amend Clause 5(2)(c) by inserting after the word "borrowing": "*The Fund may borrow money only in accordance with Article 206 of the Constitution and the provisions of the Public Finance Management Act, 2012. The Fund's borrowing may create liabilities for the National Government.*" This amendment is necessary because, without statutory controls, borrowing could occur outside the established public debt management framework, creating fiscal and contingent liability risks for the National Government.

#### **Committee Observation**

The Committee noted the stakeholder's concerns and recommended to delete paragraph (c) in clause 5(2) of the Bill which provides for one of the powers of the Fund as borrowing money.

#### **Clause 5(2) (c)**

#### **Katiba Institute**

90. Amend to clearly detail the borrowing powers of the Fund, the forms of borrowing permitted and the pre-conditions for any borrowing including making the obtaining of a national government guarantee a prerequisite for any borrowing. A financial threshold should also be set for when the approval of both Houses of Parliament will be required in order the Fund to borrow.

#### **Committee Observation**

The Committee noted the stakeholder's concerns and recommended to delete paragraph (c) in clause 5(2) of the Bill which provides for one of the powers of the Fund as borrowing money.

#### **Part II Section 5(2)**

#### **Federation of Kenya Employers**

91. Amend Part II Section 5(2) by inserting a new subsection immediately after (e): "*(f) In the exercise of its powers relating to investment and asset management, the Fund shall not be subject to the direction or control of any person or authority except as expressly provided under this Act.*" Operational independence is critical to align with global best practice, protect long-term infrastructure capital from political interference, and improve investor confidence.

### **Committee Observation**

The Committee noted the stakeholder's proposal but was of the view that as conceptualized in the Bill, the Fund will have several players performing certain roles: the Cabinet Secretary for the National Treasury, the Board, the Cabinet, among others. Therefore, the proposal for the independence of the Fund may not be feasible. Further, clause 3 provides for the objects of the Act and for which the proposal does not neatly fit in.

### **Clause 6**

#### **Office of the Auditor General**

92. OAG noted that there may be need to have some non-independent Directors, with knowledge of matters on national infrastructure development, in addition to the Principal Secretary to the National Treasury.

### **Committee Observation**

The Committee agreed with the stakeholder to provide for the relevant skills necessary in the infrastructure and funding ecosystem.

### **KNCCI**

93. The stakeholder noted that since directors are currently appointed solely by the Cabinet Secretary without structured private sector representation, this may expose the Fund to politicization. There is need for safeguards to strengthen governance independence and enhance investor confidence. Accordingly, the stakeholder proposed that there be a provision to: -
- i. provide for at least one director nominated by a recognized national private sector body with countrywide reach;
  - ii. require National Assembly approval for the Chairperson; and
  - iii. prescribe mandatory expertise in infrastructure finance, capital markets, PPPs, and risk management,

### **Committee Observation**

The Committee agreed with the stakeholder to provide for the relevant skills necessary in the infrastructure and funding ecosystem.

### **ICPAK**

94. The stakeholder recommended the insertion of a new sub-clause to strengthen fiduciary oversight, enhance financial integrity and risk management, and bolster investor confidence.

*“(4) The Board shall reflect a skills matrix including expertise in project finance, infrastructure engineering, law, risk management, investment management, and ESG.”*

#### **Committee Observation**

**The Committee agreed with the stakeholder to provide for the relevant skills necessary in the infrastructure and funding ecosystem.**

#### **KAM**

95. The stakeholder proposed amending Clause 6 to include two Directors representing leading business membership organizations. The private sector is a key beneficiary of improved infrastructure and a critical partner in investment mobilization. Representation on the Board enhances collaboration, ensures market-informed decision-making, and strengthens public-private alignment.

#### **Committee Observation**

**The Committee was of the view that the proposed representation in the Board was adequate.**

#### **Okoa Uchumi**

96. Strengthen governance safeguards by:
- i. Clearly defining the roles and responsibilities of the Board and Cabinet Secretary; and
  - ii. Ensuring parliamentary oversight in line with constitutional principles.
97. Current provisions concentrate authority in the executive, which may undermine accountability and transparency. Robust governance arrangements prevent institutional imbalance, reduce risks of misuse, and ensure decisions reflect public interest rather than political priorities.

#### **Committee Observation**

**The Committee noted the stakeholder’s concerns and recommended that parliamentary oversight be imbedded in the investment plan and investment policy in clauses 18 and 21 respectively. The Committee noted that the Bill clearly spells out the functions of different actors.**

#### **Federation of Kenya Employers**

98. Amend Section 6 by inserting a new paragraph: *“(f) Three persons nominated by recognized national private sector umbrella bodies, including the Federation of Kenya Employers, KEPSA, and the Kenya Bankers Association.”* This ensures meaningful private

sector representation on the Board, aligns the Fund's investment strategy with employer and investor priorities, and facilitates effective mobilization of private capital for infrastructure projects.

#### **Committee Observation**

**The Committee was of the view that the proposed representation in the Board was adequate.**

#### **Katiba Institute**

99. Amend to expressly require that the composition of the Board complies with the two-thirds gender principle and provide for the representation of persons with disabilities.

#### **Committee Observation**

**The Committee noted the stakeholder's proposal and agreed to provide for gender balance, disability representation and regional diversity.**

#### **New Clause – Administrative Costs**

##### **KAM**

100. Insert a new clause providing that the administrative costs of the Fund shall not exceed 0.5% of the Fund. Capping administrative expenditure ensures that the bulk of resources are directed toward infrastructure investment rather than recurrent operational costs. Without a cap, administrative spending may gradually erode capital available for development, undermining the Fund's impact and efficiency.

#### **Committee Observation**

**The Committee agreed in principle that the administrative costs of the Fund be should be capped but was wary of setting out a percentage since the amounts might be excessive. The Committee therefore agreed to have the provision in a modified form.**

#### **NGEC**

101. The Stakeholder proposed amending the clause by including a second director representing the Cabinet Secretary in charge of Roads and Transport, indicate the Chairperson will be appointed by the President, provide for gender balance and fair disability representation and include provisions on the corporation secretary. They noted that the Roads and Transport Ministry (Infrastructure) is a major stakeholder in infrastructure and its additions as a director will bring the total Membership to 9 which is compliance with the *Mwongozo Code* for good governance. Additionally, a second government representative will create fair balance between the two categories of directorship.

#### **Committee Observation**

The Committee noted the stakeholder's proposal and agreed to provide for gender balance, disability representation and regional diversity. However, on the proposed amendment to add an additional member from the Roads and Transport Ministry, the Committee was of the view that there will be a corresponding need to also include additional ministries' representatives as contemplated under clause 4(a) of the Bill thereby overshooting the composition of the Board. The Committee therefore recommended that clause 6(1)(c) of the Bill be amended to increase an additional one independent director.

#### **Office the Attorney General**

102. The stakeholder stated that the inclusion of the Cabinet Secretary for the National Treasury Secretary as a Board member under Clause 6(1)(b) undermines the Boards' independence, as the Cabinet Secretary for the National Treasury is also responsible for performance evaluation under clause 20, signing performance contracts under clause 19, and approving investment policy under clause 21. The grant of oversight and participation in governance on the Cabinet Secretary for the National Treasury creates a governance conflict that may compromise the Fund's operational integrity.

#### **Committee Observation**

The Committee observed that the presence of the Cabinet Secretary for the National Treasury in the Board would not necessarily undermine the Board's independence since Board's decisions are voted upon. Further, the Committee has recommended amendment of clause 21 of the Bill to provide for the National Assembly's approval of the investment policy thus addressing the stakeholder's concerns.

#### **Nairobi International Financial Centre Authority (NIFCA)**

103. The stakeholder proposed amending the clause by inserting the following new paragraph (ca) immediately after paragraph (b) to read as follows-
- "(ca) the Chief Executive Officer of the Nairobi International Financial Centre Authority established under the Nairobi International Financial Centre Act, (Cap 495), or a representative designated in writing;"

#### **Committee Observation**

The Committee was of a different view that the provision in the Bill is adequate.

**Clause 6(1)**  
**ICPAK**

104. The stakeholder observed that a well-composed Board is better positioned to oversee management performance, evaluate risks, ensure regulatory compliance, and uphold fiduciary duties. Consequently, the stakeholder proposed the addition of the following sub-clauses:

*“(f) one person with expertise in climate finance or ESG risk management.”*

*“(g) one person nominated by the Accountancy Professional Body.”*

**Committee Observation**

**The Committee agreed with the stakeholder to the extent of providing for the relevant skills and competencies on infrastructure and funding ecosystem within the board.**

**Nakuru County Public Opinion Consultative Initiative**

105. The stakeholder proposed amending the clause to provide for a lean governance structure of seven (7) Board members since a smaller board would enhance efficiency and decision-making effectiveness; consequently, it was recommended that independent directors be reduced from four to two since reduced numbers would strengthen governance control and operational agility.

**Committee Observation**

**The Committee noted the stakeholders proposal and was of the view that board composition is guided by the Mwongozo Code of Governance on State Corporations.**

**IPF**

106. The stakeholder noted that the bill should explicitly ensure at least one third of either gender is represented on the board in accordance with article 27 of the constitution. Kenya has progressively incorporated the two-thirds gender rule into various pieces of legislation establishing public bodies. Omitting it from this Bill would be a regression from that trend and would likely invite constitutional challenge. They proposed amending the clause.

**Committee Observation**

**The Committee agreed with the stakeholder.**

### Clause 6(1)(c)

#### We Care

107. Amend Clause 6(1) (c) to read:

“(c) four persons, who are independent directors, at least one of whom shall have expertise in youth employment, social infrastructure planning, or labour market development.”

#### Committee Observation

**The Committee noted the stakeholder’s proposal and recommended that the clause be amended to provide for the relevant skills necessary in the infrastructure and funding ecosystem within the Board.**

#### PPRA

108. Amend 6(1), on the composition to include the Cabinet Secretary in charge of Roads and transport, and the Attorney General. They noted that the Cabinet Secretary for roads and transport is to ensure harmony in the investment approaches and projects. The AG is to ensure that in all the operations of the Fund, the Government is not legally exposed.

#### Committee Observation

**The Committee noted the stakeholder’s proposal but was of the view that adopting the proposal would in turn require additional members based on the different infrastructural projects encapsulated in clause 4(a) of the Bill. This would unduly expand the Board’s composition. In any case, as conceptualized, the Fund will not be the implementer but the existing government institutions.**

#### Clause 6 (2) & (3)

#### PWC

109. PWC proposed amending the clause to require that the appointment of directors be subject to vetting by the relevant committee of the National Assembly, and approval by Parliament. Given the significant public funds and strategic national infrastructure at stake, parliamentary oversight of key appointments would enhance accountability, transparency, and public confidence in the Fund's governance. This aligns with constitutional principles of checks and balances and mirrors practices for other significant state appointments in Kenya.

#### Committee Observation

**The Committee noted the stakeholder’s proposal but was of the view that enhancing the competencies of the Board members will address the concerns of the stakeholder. Further, National Assembly oversight of the**

**Fund would be a continuous obligation thus fostering public confidence in the Fund.**

#### **Kituo cha Sheria**

110. The stakeholder recommended that recruitment of Board members be conducted through merit-based competitive recruitment through the Public Service Commission since this would strengthen institutional accountability and reduce politicization risks; therefore, appointments should be professionally and transparently conducted.

#### **Committee Observation**

The Committee noted the stakeholder's proposal and agreed with the stakeholder. However, the Committee recommended that the recruitment of the first Board be done by the Public Service Commission then the subsequent ones be done by a search and selection panel. Thus, the Committee recommended the amendment of clause 6(2) of the Bill to reflect this.

#### **Office of the Attorney General**

111. The AG noted that Section 13 of the Government Owned Enterprises Act prescribes a competitive recruitment process for independent directors of Government Owned Enterprises. However, the National Infrastructure Fund is not a 'Government Owned Enterprise by virtue of section 2 of that Act, since a Government Owned Enterprise is defined as a self-financing and self-sustaining company engaged in commercial activities, whereas the Fund is a public fund established by statute with broad development objectives.

#### **Committee Observation**

The Committee agreed with the stakeholder and recommended that the clause be amended to provide that the inaugural Board be recruited by the Public Service Commission then the subsequent recruitments be done through a search and selection panel.

#### **Clause 6(3)**

##### **MIZANI 254**

112. The stakeholder proposed amending Clause 6(3) to provide that the appointment of the Chairperson and Independent Directors shall be subject to vetting and approval by the National Assembly. Subjecting appointments to parliamentary approval enhances accountability and ensures broader representation in governance. Concentrating appointment powers solely in the Cabinet Secretary creates an institutional imbalance and weakens oversight mechanisms.



### **Committee Observation**

**The Committee noted the stakeholder’s proposal but was of the view that enhancing the competencies of the Board members will address the concerns of the stakeholder. Further, the National Assembly oversight of the Fund would be a continuous obligation thus fostering public confidence in the Fund.**

### **Clause 7**

#### **Cliffe Dekker Hofmeyr (CDH)**

113. The stakeholder proposed an additional paragraph to refine and strengthen governance without excluding experienced leaders, reducing the risk of poorly informed decision-making, and align the Fund with international best practice for infrastructure and sovereign investment funds.

*“(d) possesses demonstrable expertise relevant to the financing, development, management, or regulation of large-scale infrastructure projects.”*

### **Committee Observation**

**The Committee agreed with the stakeholder.**

### **ICPAK**

114. The stakeholder proposed expanding the qualification criteria by inserting an additional sub-clause to ensure that Board members demonstrate the necessary competence, integrity, experience, and professional judgment.

*“(d) meets the fit-and-proper criteria prescribed in regulations, including integrity, competence, and financial soundness.”*

### **Committee Observation**

**The Committee was of the view that prescribing the fit and proper criteria in regulations would delay the constitution of the Board of Directors and the implementation of the Fund.**

### **PPRA**

115. Amend clause 7(a) to read as follows: - “possesses a degree in finance, commerce, economics, project management, engineering, law, or related fields.” They noted that the chairperson must be sufficiently qualified in academic professional and entrepreneurial skills. This is to stewardship and leadership of the Fund.

### **Committee Observation**

**The Committee agreed with the stakeholder to provide for the relevant skills necessary in the infrastructure and funding ecosystem within the Board.**

### **Clause 7(a)**

#### **Cliffe Dekker Hofmeyr (CDH)**

116. CDH proposed deleting the clause to strengthen the qualification requirements by introducing sector-specific expertise. The new clause should read as follows;
- “(a) has proven business leadership and demonstrable professional experience in infrastructure development, infrastructure finance, project finance, public finance, economics, engineering, risk management, or a related field;”*

#### **Committee Observation**

**The Committee agreed with the stakeholder.**

#### **Office of the Attorney General**

117. The AG noted that that the clause has omitted details on the academic qualifications of the independent Board members as compared to the academic qualification provided for the Chief Executive Officer specified under clause 15 (2) of the Bill. Additionally, they proposed that the bill should provide the grounds for removal for the chairperson and Board members since such grounds have been provided for the Chief Executive Officer under clause 15 (6) of the Bill.

#### **Committee Observation**

**The Committee agreed with the stakeholder.**

### **Clause 7(b)**

#### **Nakuru County Public Opinion Consultative Initiative**

118. The stakeholder proposed an amendment of the clause to increase the required work experience from fifteen (15) years to twenty (20) years since management of the Fund requires highly experienced financial and infrastructure governance expertise so as to strengthen institutional capacity.

#### **Committee Observation**

**The Committee noted that the fifteen years’ experience was already onerous enough and that there was need to reduce it to ten years in order to tap into the pool of youthful professionals.**

#### **Federation of Kenya Employers**

119. Amend Section 7 by inserting a new subsection: “7(d) holds a degree from a university recognized in Kenya.” This amendment ensures the Board Chair possesses minimum



educational qualifications and strategic oversight credibility. While the Board does not engage in daily management, these qualifications safeguard fund performance, strengthen governance, and enhance stakeholder confidence.

#### **Committee Observation**

**The Committee agreed with the stakeholder.**

#### **Clause 8**

#### **Cliffe Dekker Hofmeyr (CDH)**

120. The stakeholder observed that this provision does not sufficiently address conflicts of interest that may arise during a director's tenure. The stakeholder proposed retaining the provision as drafted but recommended inserting a new sub-section to provide additional safeguards as follows: -

*“(3) An independent director who has a direct or indirect personal, financial, or other interest in any matter under consideration by the Board shall—*

*(a) disclose the nature of that interest to the Board as soon as it arises; and*

*(b) not participate in any deliberation or decision of the Board relating to that matter.*

*(4) Each independent director shall submit an annual declaration of interests to the Board, including any direct or indirect financial, professional, or familial relationships that could create a conflict of interest.*

*(5) An independent director shall not acquire a material interest in any entity that provides services to or receives funding from the Fund without first obtaining Board approval and disclosing the interest to the Board.*

*(6) An independent director shall not accept employment, consultancy, or advisory roles with any entity that is a significant counterparty to the Fund within one year of leaving the Board.*

*(7) The Board shall establish a Conflict of Interest and Ethics Committee to review shareholdings, advisory roles, related-party transactions, or changes in personal circumstances.*

*(8) A breach of the disclosure or recusal obligations under this section may result in removal from the Board in accordance with Clause 10(2), or referral to the relevant ethics authority.”*

#### **Committee Observation**

**The Committee agreed with the stakeholder but recommended that the proposal should not be overly prescriptive.**

### **Federation of Kenya Employers**

121. Amend Section 8 by inserting a new subsection: “8(k) serves on not more than three other public or state corporation boards at the time of appointment.” Limiting the number of boards ensures that directors can dedicate sufficient time and attention to Fund oversight, attend meetings, and participate effectively in committee work.

### **Committee Observation**

**The Committee agreed with the stakeholder but recommended that restriction on service in other public or state corporation boards be two and above.**

### **Clause 8(1)(c)(j)**

### **Nakuru County Public Opinion Consultative Initiative**

122. The stakeholder supported these provisions since they adequately safeguard the Fund from conflicts of interest and potential abuse of office by ensuring ethical governance standards are maintained.

### **Clause 8(1)(f)**

### **OCOB**

123. The stakeholder noted that there is a need to clarify what affiliation means and the level of significance of the financing. COB also proposed the affiliation to a political party be amended to require it to be in an official capacity.

### **Committee Observation**

**The Committee agreed with the stakeholder.**

### **Clause 8(f) & (g)**

### **Federation of Kenya Employers**

124. Amend Section 8 to clarify conflict-of-interest provisions for independent directors: in subsection 8(f), replace “significant” with “any”: “8(f) is affiliated with any organization that receives any funding from the Fund or its related parties.” In subsection 8(g), replace “as an executive of” with “in”: “(g) is employed in another company where any of the Fund’s executives serve on that company’s board of directors.” These changes remove ambiguity, close potential loopholes, and protect the impartiality and credibility of the Fund’s Board.



**Committee Observation**

**The Committee agreed with the stakeholder.**

**Clause 8(1)**

**ICPAK**

125. The stakeholder proposed the inclusion of additional sub-clauses to reinforce integrity standards and strengthen conflict-of-interest safeguards.

*“(k) has been found culpable of corruption or unethical conduct by a competent authority.”*

*“(l) has beneficial ownership in any entity that seeks to transact with the Fund unless such interest is fully disclosed and managed under a conflict-of-interest framework.”*

**Committee Observation**

**The Committee agreed with the stakeholder.**

**Clause 9**

**ICPAK**

126. The stakeholder recommended strengthening corporate governance practices through the insertion of the following sub-clause:

*“(6) The Board shall adopt and publish Board charters and committee charters.”*

**Committee Observation**

**The Committee noted the stakeholder’s proposal and noted that these are general best practices for Boards, however the same need not be set out in legislation.**

**Clause 9(2)**

**Nakuru County Public Opinion Consultative Initiative**

127. The stakeholder proposed amending the clause to require automatic resignation of any Director who misses three (3) consecutive meetings since persistent absenteeism undermines governance effectiveness and public interest accountability.

**Committee Observation**

**The Committee agreed with the stakeholder.**

**Clause 10**

**KNCCI**

128. The stakeholder raised a concern that removal safeguards are not sufficiently insulated from executive discretion, which may undermine institutional stability; it was therefore recommended that a provision be inserted requiring due process and tabling of removal reasons before Parliament so as to protect board independence and strengthen accountability.

**Committee Observation**

**The Committee recommended inclusion of ground for removal of Board members to safeguard against arbitrary removal.**

**Nakuru County Public Opinion Consultative Initiative**

129. The stakeholder proposed amending the clause to provide for a single non-renewable term of five (5) years since a single term would provide sufficient time for delivery of mandate while preventing governance stagnation and entrenchment.

**Committee Observation**

**The Committee noted that the tenure provided for an independent director under clause 10(1) of the Bill was in line with the Mwangozo Code of Governance of State Corporation.**

**Clause 11**

**ICPAK**

130. The stakeholder proposed broadening the Board's mandate and oversight responsibilities by adding the following sub-clauses:

*“(l) approve an annual fiscal risk assessment for all projects involving Government support measures.”*

*“(m) ensure compliance with ESG, climate, and integrity standards.”*

*“(n) approve ex-post evaluations of completed projects.”*

**Committee Observation**

**The Committee agreed with the stakeholder.**

**IPF**

131. The stakeholder proposed amending the clause to include an explicit obligation on the Board to consider equitable regional distribution of infrastructure investments as part of its strategic direction-setting function. They submitted that this would align the Fund with the equitable development principles in the Constitution, which speaks to reducing regional disparities and ensuring balanced development across Kenya.

### **Committee Observation**

The Committee noted that clause 11 of the Bill provides for the powers of the Board. The Committee further noted that clause 4 of the Bill gives guidance on the purpose of the Fund and direction on how it will be carried out.

### **Nairobi International Financial Centre Authority (NIFCA)**

132. The stakeholder proposed amending the clause by inserting the following new paragraph (aa) immediately after paragraph (a)-

"(aa) mobilizing domestic and International capital for the Fund through structured engagement with capital markets, institutional investors, and development finance Institutions, in consultation with the Nairobi International Financial Centre Authority."

### **Committee Observation**

The Committee noted the stakeholder's proposal but was of the view that the clause was adequate.

### **Clause 11**

#### **We Care**

133. To prevent projects from raising tariffs or creating contingent liabilities without social safeguards.

Insert new paragraph (l):

"(l) to ensure that all Fund-financed projects undergo affordability, employment impact, and fiscal risk assessments before approval."

### **Committee Observation**

The Committee noted the stakeholder's proposal and noted that the provisions of the PPP framework address the stakeholder's concerns.

### **PPRA**

134. Amend the clause by adding. "(a) to read, mobilizing resources for the Fund in line with the Investment Policy and Plan with national infrastructure priorities. The investment Plan shall be accompanied by the procurement strategy for the identified projects."

### **Committee Observation**

The Committee observed that the provision was adequate.

### **Clause 12**

#### **Cliffe Dekker Hofmeyr (CDH)**

135. The stakeholder proposed inserting the following provisions to introduce oversight limits and formal risk management requirements.

*“(3) Any investment, borrowing, guarantee, financial commitment, or arrangement entered into by the Fund, including where the Fund acts as agent or provides financial assistance on behalf of another entity, exceeding Kenya Shillings one billion, or creating obligations exceeding ten (10) years, shall require prior approval by the National Assembly.*

*“(4) The Fund shall establish a formal risk management framework, approved by the National Treasury, to identify, measure, monitor, and manage financial and contingent liabilities, and ensure all investments and commitments comply with the Public Finance Management Act, the Privatisation Act, and any other applicable law.”*

#### **Committee Observation**

**The Committee noted the stakeholder’s proposal but was of the view that the fund projects were likely to exceed the proposed one billion shillings per projects and therefore the proposal would lead to unnecessary bureaucracy. However, to ensure that there is parliamentary oversight in the Fund, the Committee recommended for approval of the investment plan and investment policy by the National Assembly.**

#### **Office of the Auditor General**

136. OAG submitted that Clause 12 fails to be specific on procedural safeguards, specifically on competitive bidding or public auction, as required under the provisions of the Public Procurement and Asset Disposal Act, Cap. 412C, potentially enabling inherent governance risks upon implementation.

#### **Committee Observation**

**The Committee observed that as conceptualized in the Bill, the Fund is not envisaged to be the implementer of the infrastructural projects but existing institutions. The Committee noted that section 4 of the Public Private Partnerships Act, Cap. 430, addresses the concerns raised by the stakeholder.**

#### **ICPAK**

137. The stakeholder proposed the insertion of a new sub-clause intended to institutionalise checks and balances and promote informed and timely investment decisions.

*“(3) The Board shall establish the following committees:  
(a) Investment Committee;*

- (b) Risk and Compliance Committee;
- (c) Nomination and Remuneration Committee;
- (d) Audit Committee."

#### **Committee Observation**

The Committee noted the stakeholder's proposal but was of the view that clause 14 of the Bill be deleted, noting that Boards have powers to establish such committees as are necessary.

#### **Kituo cha Sheria**

138. The stakeholder suggested that Clause 12 be amended to require that all investments by the Board be conducted in accordance with the Public Procurement and Asset Disposal Act since the Bill fails to provide procedural safeguards for competitive bidding, whereas adherence to procurement law would enhance transparency, accountability, and fairness in project selection.

#### **Committee Observation**

The Committee observed that as conceptualized in the Bill, the Fund is not envisaged to be the implementer of the infrastructural projects but existing institutions. The Committee noted that section 4 of the Public Private Partnerships Act, Cap. 430, addresses the concerns raised by the stakeholder.

#### **Nairobi International Financial Centre Authority (NIFCA)**

139. The stakeholder proposed amending the clause by inserting the following new paragraph (fa) Immediately after paragraph (f)

"(fa) establish special purpose vehicles, pooled investment vehicles, infrastructure funds or other capital market instruments for purposes of mobilizing private capital, including vehicles domiciled within the Nairobi International Financial Centre."

#### **Committee Observation**

The Committee agreed with the stakeholder but recommended that the references to the Nairobi International Financial Centre be deleted.

#### **Clause 12(1)**

#### **PWC**

140. Insert a new subsection requiring the Board to observe prudential investment limits, including:

- (a) Maximum exposure to any single project (e.g. not exceeding a specified percentage of total Fund assets);
- (b) Maximum sectoral concentration limits;
- (c) A requirement that investment limits be specified in the investment policy under clause 21 and reviewed annually by the audit committee.

141. They noted that whilst clause 21(2)(f) references "exposure limits per sector and project" as a matter for the investment policy, there is no statutory floor or ceiling embedded in the Bill itself. This leaves the Fund vulnerable to excessive concentration risk and potential pressure to invest disproportionately in favoured projects. Statutory guardrails would enhance fiscal discipline and protect public funds.]

#### **Committee Observation**

**The Committee was of a different view that clause 21(2)(f) of the Bill was adequate.**

142. Further, insert a new subsection requiring that the exercise of powers under clause 12(1)(b) to (f) be subject to prior approval by the relevant Committee of the National Assembly and Parliament, where—
- (a) The transaction value exceeds a prescribed threshold (to be specified in the Bill or regulations);
  - (b) The transaction involves the acquisition or disposal of a controlling interest in any entity;
  - (c) The transaction involves acting as agent for, or delivering financial assistance on behalf of, any private person or body;
  - (d) The transaction involves the disposal of strategic national infrastructure assets; or
  - (e) The transaction involves the acquisition or disposal of real property above a prescribed value.

#### **Committee Observation**

**The Committee noted the stakeholder's proposal and was of the view that National Assembly oversight could be imbedded in the investment plans and investment policies to be developed as proposed in the Bill.**

#### **Clause 12(1) (a)**

#### **PWC**

143. The stakeholder noted that the bill does not specify what proportion of the Fund may be deployed as concessional or loss capital to support the de-risking of capital projects. They submitted that de-risking mechanisms, including first-loss capital, are essential to mobilizing private investment in infrastructure, particularly for projects with developmental but uncertain commercial returns.



#### **Committee Observation**

**The Committee noted the stakeholder's proposal but was of the view that the safeguards will be imbedded in the investment plan and investment policy which the Committee recommends National Assembly's approval. The oversight mechanism will address the stakeholder's concern.**

#### **KAM**

144. Amend Clause 12 by renumbering to include subclause (1) and introducing a cap on the equity share the Fund may hold in any public infrastructure project where cheaper commercial financing is available. Infrastructure finance principles require projects to utilize the cheapest available capital aligned to the risk profile. Where affordable commercial debt is available, excessive equity participation by the Fund is financially suboptimal and crowds out private capital. A cap ensures capital leveraging, maximizes the number of projects supported, and prevents politically motivated over-equitization.

#### **Committee Observation**

**The Committee noted the stakeholder's proposal but was of the view that the proposal is too prescriptive and that this could be addressed in the parliamentary oversight during approval of the investment plan and investment policy.**

#### **New Clause – Ring-Fencing the Fund**

#### **KAM**

145. Insert a clause providing that the assets and cash of the Fund shall be strictly ring-fenced and not diverted to expenditures outside defined infrastructure projects. Ring-fencing safeguards the Fund's mandate and prevents diversion to recurrent expenditure or politically driven projects. It enhances credibility and attracts co-investment from development partners, pension funds, and institutional investors who require assurance of proper use of funds.

#### **Committee Observation**

**The Committee noted the stakeholder's proposal, appreciated the concerns raised and was of the view that establishment of a public fund constitutes ring fencing of funds.**

## **Clause 12 (1) €**

### **PWC**

146. The stakeholder noted that long-term sustainability requires the Fund to recycle capital by exiting mature investments and reinvesting proceeds. The absence of statutory guidance on exits creates a risk that the Fund will hold investments indefinitely, reducing capital efficiency, or that exit proceeds will be diverted for other purposes. Clear exit and reinvestment provisions would ensure the Fund operates as a revolving vehicle for infrastructure development.
147. The proposed inserting a new clause requiring:
- (a) The Fund to develop exit strategies for all investments at the time of initial investment approval;
  - (b) The investment policy to specify investment horizons and conditions for exit, including target holding periods and triggers for divestment.
  - (c) All proceeds from investment exits to be reinvested into the Fund, unless otherwise directed by Parliament;
  - (d) The Board to report annually on investment exits, including proceeds realised and reinvestment decisions; and
  - (e) The Cabinet Secretary to make regulations prescribing detailed criteria for investment horizons, exit conditions, and reinvestment procedures.

### **Committee Observation**

**The Committee agreed with the stakeholder and recommended that the Bill be amended to provide that all proceeds from investment exits to be reinvested into the Fund.**

## **Clause 12(2)(a)**

### **KNCCI**

148. The stakeholder proposed deletion of the clause and insert a new subclause to enable blended finance, co-investment structures, and capital market instruments while maintaining fiscal safeguards. The new provision should read as follows; -
- “The Board may borrow subject to compliance with the Public Finance Management Act and parliamentary approval above prescribed thresholds,”*

### **Committee Observation**

**The Committee noted that stakeholder’s proposal and noted that the proposed deletion of paragraph (c) in clause 5(2) of the Bill addresses the stakeholder’s concern.**



## **ICPAK**

149. The stakeholder observed that requiring parliamentary approval would reinforce checks and balances by ensuring that any borrowing or leverage is subjected to appropriate scrutiny, justification, and compliance with national legal frameworks. Accordingly, the stakeholder proposed inserting the following words:

*“not borrow or take credit against its balance sheet except as expressly approved by Parliament under the Public Finance Management Act.”*

### **Committee Observation**

**The Committee observed that the proposed amendment to clause 4 of the Bill providing that the provisions of the Public Finance Management Act, Cap. 412A, would apply addresses the stakeholder’s concerns.**

## **Katiba Institute**

150. Amend to clearly detail the borrowing powers of the Fund, the forms of borrowing permitted and the pre-conditions for any borrowing including making the obtaining of a national government guarantee a prerequisite for any borrowing. A financial threshold should also be set for when the approval of both Houses of Parliament will be required in order the Fund to borrow.

### **Committee Observation**

**The Committee noted that the concerns raised by the stakeholder will be addressed through amendments to the Bill that cross-reference contingent liabilities safeguards under the PPP framework.**

## **Clause 13**

### **Office of the Auditor General**

151. The OAG noted that the Bill vests the mandate of remuneration of the Directors to the Cabinet Secretary, The National Treasury and does not mention the need for consultation with the Salaries and Remuneration Commission (SRC), and or upon receiving advisories from SRC as provided under Article 230(4) of the Constitution.

## **OCOB**

152. The stakeholder noted that the remuneration in the bill shall be as determined by the Cabinet Secretary in the Guidelines. However, the setting of remuneration and benefits of public officers is the purview of the Salaries and Remuneration Commission.

## **Kituo cha Sheria**

153. The stakeholder submitted that the clause be amended to require that determination of remuneration, allowances, and benefits of Board members be done in consultation with the Salaries and Remuneration Commission since Article 230 of the Constitution vests SRC with authority over remuneration of state officers, whereas such consultation would ensure constitutional compliance.

**Federation of Kenya Employers**

154. Amend Clause 13 by inserting a new subsection: “(13)(i) The remuneration and benefits payable to the Chairperson and members of the Board shall be determined by the Cabinet Secretary in consultation with and upon the advice of the Salaries and Remuneration Commission established under Article 230 of the Constitution.” This amendment ensures constitutional compliance, prevents potential legal challenges to remuneration decisions, and reinforces transparency and accountability in the governance of the Fund.

**Committee Observation**

**The Committee agreed with the stakeholders.**

**Clause 13**

**Katiba Institute**

155. Provide an amendment providing that the remuneration and allowances of the Directors be determined by or based on the advice of the SRC in accordance with Article 230 of the Constitution.

**Committee Observation**

**The Committee agreed with the stakeholder.**

**NGEC**

156. The stakeholder proposed amending the clause for remuneration be in consultation with the Salaries and Remuneration Commission (SRC).

**Office of the Attorney General**

157. The stakeholder noted the remuneration and benefits of the directors are required to be determined by the Public Service Commission on the advice of the Salaries and Remuneration Commission.

**Committee Observation**

**The Committee agreed with the stakeholder.**

**Clause 14**

**Katiba Institute**



158. Amend to ensure clarity and consistency on the fact that all audits relating to the Fund must be conducted by the Auditor-General in accordance with Article 229(4)(b) of the Constitution.

**Committee Observation**

**The Committee recommended deletion of clause 14.**

**Clause 15(4)**

**OCOB**

159. OCOB noted that the clause provides that the tenure of the Chief Executive Officer shall be 4 years. To align with the prevailing best practice, they proposed amending the Clause to provide for a term of five (5) years. Additionally, the stakeholder noted that the governance structure mirrors that of a state corporation, however, the Bill does not expressly state whether the Fund is subject to the State Corporations Act. COB noted that clarification may be necessary to avoid regulatory ambiguity.

**Committee Observation**

**The Committee was of a different view of amending clause 15(4) of the Bill to provide for the tenure of the CEO as 3 years in line with the Mwongozo Code of Governance on State Corporations.**

**Clause 15 & 16**

**Office of the Auditor General**

160. The stakeholder noted that the National Infrastructure Fund as proposed to be established under Clause 5 of the Bill, does not make reference to Section 24(4) of the PFM Act, 2012. They proposed creating two (2) parallel executive lines; a Chief Executive Officer appointed by the Board and an “Administrator of the Fund” designated by the Cabinet Secretary under Section 24(5) of the PFM Act, 2012.

**Committee Observation**

**The Committee agreed with the stakeholder and resolved that the CEO shall be the Administrator of the Fund designated by the Cabinet Secretary for the National Treasury under section 24(4) of the Public Finance Management Act, Cap. 412A.**

**Clause 15**

**ICPAK**

161. The stakeholder proposed the addition of a sub-clause to promote professional and merit-based appointment of the Chief Executive Officer.

*“(8) The CEO shall be appointed through a transparent, competitive process conducted by the Board.”*

**Committee Observation**

**The Committee agreed with the stakeholder.**

**Clause 16**

**OCOB**

162. OCOB noted that the clause provides that the Cabinet Secretary *may* designate a person as an Administrator of the Fund. However, section 24(5) of the PFMA is couched in mandatory terms, requiring the Cabinet Secretary to designate an administrator for a public fund.

**Committee Observation**

**The Committee agreed with the stakeholder.**

**Nakuru County Public Opinion Consultative Initiative**

163. The stakeholder proposed replacing the word “may” with “shall” to ensure mandatory compliance by the Cabinet Secretary since discretionary language weakens policy enforcement; therefore, the clause should read with binding obligation.

**IPF**

164. The stakeholder stated that the use of the word ‘may’ suggests the appointment of an administrator is discretionary rather than mandatory. They proposed amending the clause by changing the word ‘may’ to ‘shall’. Additionally, there is no specified qualification criteria for administrator in the bill as is the case for Chief Executive Officer and the board members. The bill should specify minimum qualifications for the person delegated as the fund’s administrator. This will ensure the fund has a clear identified administrator with explicit defined roles to avoid duplication of roles with the CEO and the board.

**Committee Observation**

**The Committee agreed with the stakeholder.**

**PWC**

165. The stakeholder noted that the structural ambiguity created may impede effective governance, create accountability gaps, and potentially deter the private investment



the Fund is designed to attract. The Bill should adopt one model or the other, with appropriate consequential amendments throughout.

166. The Bill should either—

- (a) remove the reference to section 24(5) of the PFMA and establish a bespoke administrator role appropriate for a corporate entity (even if National Treasury is a shareholder), or
- (b) restructure the Fund as a Treasury-administered national fund without corporate status.

#### **Committee Observation**

**The Committee observed that the fund is established under Article 206(1)(a) of the Constitution and section 24(4) of the Public Finance Management Act, Cap. 412A. The Committee was of the opinion that there was no structural ambiguity.**

#### **ICPAK**

167. The stakeholder proposed inserting additional wording to clearly define the respective roles and responsibilities.

*“The Administrator shall be the accounting officer for purposes of the Public Finance Management Act but shall not interfere with investment decisions, which remain the responsibility of the Board.”*

#### **Committee Observation**

**The Committee noted the stakeholder’s proposal and to resolve the potential overlap and conflicts, recommended that the CEO be the administrator of the Fund designated by the Cabinet Secretary under section 24(5) of the Public Finance Management Act, Cap. 412A.**

#### **NGEC**

168. The stakeholder proposed the deletion of the clause in its entirety and amending clause 15(5) to indicate that the Chief Executive Officer shall be the Administrator. They noted that the bill clearly states the duties of the Administrator. The duties of the administrator which include clause 31-opening of bank accounts, Clause 32-expenditure of the fund and clause 36-keeping books of records are ordinarily the conventional duties of the Chief Executive Officer.

#### **Committee Observation**

**The Committee agreed with the stakeholder.**

**Clause 17**

**Cliffe Dekker Hofmeyr (CDH)**

169. The stakeholder proposed an insertion of a new subsection to strengthen public sector recruitment governance.

*“(2) The recruitment of officers and staff of the Fund shall be undertaken through the Public Service Commission in accordance with the Constitution and applicable written law.”*

**Committee Observation**

**The Committee was of a different view and recommended that the Board retains the role of recruitment of its staff.**

**Clause 18**

**KNCCI**

170. The stakeholder submitted that the Bill has no requirement for stakeholder consultation in development of investment plan therefore an addition of a provision mandating structured stakeholder private sector consultation before approval, was suggested to improve project bankability and ensure a responsive investment pipeline.

**Committee Observation**

**The Committee noted the stakeholder’s proposal and was of the view that the Committee’s proposed amendment to clauses 18 and 21 of the Bill providing for the investment plan and investment policy respectively being approved by the National Assembly would address stakeholder consultation since the parliamentary processes imbed public participation requirements in consideration of businesses before it.**

**ICPAK**

171. The stakeholder recommended the inclusion of a sub-clause to enhance public participation and ensure alignment with national infrastructure planning.

*“(4) The Investment Plan shall be subject to public consultation and shall be aligned to the National Infrastructure Pipeline.”*

**Committee Observation**

**The Committee noted the stakeholder’s proposal and was of the view that the Committee’s proposed amendment to clauses 18 and 21 of the Bill providing for the investment plan and investment policy respectively being approved by the National Assembly would address stakeholder**

**consultation since the parliamentary processes imbed public participation requirements in consideration of businesses before it.**

#### **IPF**

172. The stakeholder proposed including mandatory minimum contents for the investment plan like prioritization criteria. Moreover, the clause should also include a defined requirement to publish the approved plan. They noted that this enhances public oversight, improves transparency, investor confidence, and aligns with open government and accountability norms. Inserting a defined time not only improves transparency but also promotes accountability and public trust in the investment plan. Additionally, ensuring that Parliament approves the plan promotes oversight and ensures effective participation in the utilisation of funds.

#### **Committee Observation**

**The Committee was of the view that the provisions in the clause were adequate.**

#### **Clause 18**

#### **We Care**

173. Inserting new subsections:

“(4) The Investment Plan shall be submitted to the National Assembly for approval before implementation.

(5) The Investment Plan shall be subjected to public participation, including targeted youth consultation forums.”

#### **Committee Observation**

**The Committee agreed with the stakeholder.**

#### **PPRA**

174. Insert new sub clauses

“(f) the procurement strategy or approach for the project.

(g) the life cycle assessment and costing of the infrastructural project(s)”

#### **Committee Observation**

**The Committee was of the view that the provision was adequate in light of the proposed amendments by the Committee to cross-reference the Bill to the Public Private Partnerships Act, Cap. 430.**

#### **Clause 18(1)**

## **KAM**

175. Amend Clause 18(1) to require that the Board adopt an investment plan based on the Medium-Term Plan (MTP). Aligning the Fund's investment plan with the Medium-Term Plan ensures coherence with national development priorities, prevents the proliferation of uncoordinated projects, and strengthens strategic planning.

### **Committee Observation**

**The Committee observed that the stakeholder's concerns are already taken care of. In any case, the National Assembly oversight to be imbedded in the process would address the concerns raised.**

## **Clause 19**

### **KNCCI**

176. The stakeholder observed that Performance metrics are not clearly linked to development impact. A provision to provide that performance contracts include both financial return metrics and development impact metrics (jobs, MSME participation, export growth, regional integration) was recommended to aligns the Fund performance with national economic transformation goals.

### **Committee Observation**

**The Committee observed that the provision was adequate.**

## **Cliffe Dekker Hofmeyr (CDH)**

177. The stakeholder proposed safeguarding operational independence while maintaining accountability by inserting a new subclause.

*"(4) Performance contracts entered into under this section shall be based on the Investment Policy approved under Section 21 and the investment plan adopted under Section 18, shall be limited to strategic, financial, and risk management objectives, and shall not interfere with or override the Board's statutory powers or independence in making investment and operational decisions under this Act."*

### **Committee Observation**

**The Committee observed that the provision was adequate.**

## **ICPAK**

178. The stakeholder proposed inserting a sub-clause to ensure that performance evaluations reflect national development priorities and long-term economic objectives.

*"(4) Performance contracts shall include financial, developmental, ESG, and private capital mobilization targets."*

### **Committee Observation**

**The Committee observed that the provision was adequate.**

### **Nakuru County Public Opinion Consultative Initiative**

179. The stakeholder proposed amending the clause by addition of a subsection to provide that performance contract signing be conducted in public forums accessible to citizens since public participation enhances transparency and accountability; further, the Controller of Budget should exercise oversight over Fund utilization since constitutional fiscal oversight mechanisms must be strengthened.

### **Committee Observation**

**The Committee observed that the provision was adequate.**

### **Clause 19(3)(c)**

#### **MIZANI 254**

180. The stakeholder proposed amending Clause 19(3)(c) by requiring that performance contracts be structured to minimize fiscal costs, contingent liabilities, and risks to the National Exchequer, and that Parliament be provided with an annual statement detailing all outstanding guarantees and associated fiscal risks. Regular parliamentary reporting strengthens accountability and transparency in the management of Government support measures. Without structured fiscal safeguards and clear disclosure requirements, exposure may remain uncapped, thereby undermining debt sustainability and increasing long-term fiscal vulnerability.

### **Committee Observation**

**The Committee observed that the provision was adequate.**

### **Clause 20**

#### **IEA**

181. The stakeholder proposed amending the clauses to require that the investment plan, performance management framework and performance evaluations include indicators that measure project timeline adherence, cost performance, milestone progress and the projected effect of these factors on the Fund's capacity to meet its bond-repayment commitments. They noted that without KPIs linked to repayment capacity, the Fund may fail to detect emerging cost pressures, schedule delays or underperformance that weaken the cashflows required for timely debt servicing. This

exposes the Fund to liquidity stress, increases the likelihood of repayment shortfalls and undermines financial credibility.

#### **Committee Observation**

**The Committee observed that the provision was adequate.**

#### **Clause 20**

##### **KNCCI**

182. The stakeholder observed that performance evaluation is centralized under the Cabinet Secretary and therefore may limit independent oversight, hence it was proposed that the clause be amended to require submission of annual performance reports to the relevant Parliamentary Committee so as to strengthen transparency and accountability.

##### **ICPAK**

183. To strengthen legislative oversight and accountability, the stakeholder proposed adding the following sub-clause:

*“(6) The Cabinet Secretary shall table the annual performance evaluation report before the National Assembly within 90 days of completion.”*

#### **Committee Observation**

**The Committee noted the stakeholders’ proposal but was of the view that the National Assembly approval mechanisms for the investment plan and investment policy recommended by the Committee will address some of the concerns of the stakeholder.**

#### **Clause 21**

##### **KNCCI**

184. The stakeholder raised concern that the clause does not provide caps on sector exposure, leverage frameworks, Environmental, Social, and Governance (ESG) requirements, or public consultation mechanisms, which may expose the Fund to concentration and sustainability risks. Therefore, to strengthen investor confidence and promote prudent portfolio management, the stakeholder recommended that the provision be amended to provide for:

- i. sector exposure limits;
- ii. project exposure caps;
- iii. minimum leverage ratios;
- iv. ESG and climate sustainability standards; and
- v. mandatory public consultation prior to adoption.

### **Committee Observation**

**The Committee noted the stakeholder’s proposal and agreed to adopt the minimum leverage ratios to be provided for under clause 21(2) of the Bill.**

### **KAM**

185. Insert a new subclause requiring that at least 40% of construction materials for projects funded by the Fund be sourced locally, with preference for local firms, technology transfer, and labour utilization. Mandatory local sourcing stimulates domestic manufacturing, enhances value addition, creates employment, and strengthens Kenya’s industrial base. Predictable demand encourages capacity expansion, technology upgrading, and competitiveness in both domestic and export markets.

### **Committee Observation**

**The Committee agreed with the stakeholder but did not agree to specify a specific percentage.**

### **Okoa Uchumi**

186. Include requirements that the Fund’s investment policy:
- i. Aligns with principles of transparency, accountability, and prudent use of public resources;
  - ii. Establishes clear mechanisms for monitoring fiscal risk and contingent liabilities.
187. Although the Bill provides a statutory foundation, it does not fully ensure constitutional compliance on substantive principles of public finance. Clear fiscal safeguards prevent the accumulation of hidden obligations and protect long-term sustainability.

### **Committee Observation**

**The Committee observed that the National Assembly approval mechanisms recommended by the Committee will address the stakeholder’s concerns.**

### **Federation of Kenya Employers**

188. Amend Section 21 by inserting a new subsection 21A as follows:
- “21A (i) In developing the Investment Policy and entering into or monitoring investment agreements under this Act, the Board shall ensure compliance with the provisions of the Investment Promotion Act and any other written law relating to investment and*

*infrastructure development. (ii) The Board shall consult relevant regulatory authorities and national agencies responsible for investment promotion, infrastructure planning, and public-private partnerships. (iii) The Investment Policy developed under this section shall be aligned with national infrastructure plans and shall be published in the Gazette and on the official website of the Fund.”*

189. Structured coordination ensures technical soundness, policy alignment, prevents duplication of mandates, and enhances the credibility and transparency of the Fund’s investment operations.

#### **Committee Observation**

**The Committee observed that the National Assembly approval mechanisms recommended by the Committee will address the stakeholder’s concerns.**

#### **Clause 21**

##### **We Care**

190. There are no sustainability or lifecycle cost requirements. Insert new paragraph (g):

“(g) life cycle costing analysis, climate resilience assessment, and projected maintenance obligations for each proposed project.”

#### **Committee Observation**

**The Committee was of the view that the provision was adequate in light of the proposed amendments by the Committee to cross-reference the Bill to the Public Private Partnerships Act, Cap. 430.**

#### **Nairobi International Financial Centre Authority (NIFCA)**

191. The stakeholder proposed amending the clause by inserting the following three new sub-clauses 2A, 2B and 2C immediately after sub-clause 2-

"(2A) In developing the Investment Policy, the Board shall consult the Nairobi International Financial Centre Authority on matters relating to capital mobilization strategy, structuring of investment vehicles, international investor participation, and market access mechanisms.

(2B) The Fund shall leverage the Nairobi International Financial Centre as a platform for-

- a) international investor outreach;
- b) structuring and domiciliation of investment vehicles;

- c) engagement with institutional investors; and
- d) facilitation of cross-border capital flows.

(2C) Nothing in this section shall derogate from the fiduciary responsibility of the Board of the Fund or its accountability under this Act and other applicable public finance laws."

#### **Committee Observation**

**The Committee did not agree with the stakeholder and was of the view that the provisions of the Bill were adequate.**

#### **Clause 21(I)**

##### **Nakuru County Public Opinion Consultative Initiative**

192. The stakeholder proposed amending the clause to require mandatory nationwide public participation in development of the investment policy since public infrastructure investment must reflect citizen priorities so as to enhance legitimacy and accountability.

#### **Committee Observation**

**The Committee observed that the Committee's recommendation that the clause be amended to provide for the National Assembly's approval would address the stakeholder's concerns.**

#### **IPF**

193. The stakeholder proposed amending the clause by inserting requirements for Annual and mid-term review and require publication of the approved Investment Policy as suggested in the above clauses. This keeps policy responsive while retaining long-term direction and promoting accountability.

#### **MIZANI 254**

194. The stakeholder proposed amending Clause 21(I) to require that the Investment Policy be tabled before the National Assembly for review before Cabinet approval. Tabling the Investment Policy before Parliament ensures that the strategic direction of the Fund is aligned with national priorities and subject to representative oversight. Parliamentary involvement guarantees that the voices and interests of the public are reflected in the Fund's operations, rather than decisions being driven solely by executive or political priorities.

#### **Committee Observation**

**The Committee observed that the Committee’s recommendation that the clause be amended to provide for the National Assembly’s approval would address the stakeholder’s concerns.**

#### **Clause 21(2)**

##### **ICPAK**

195. The stakeholder proposed introducing additional sub-clauses to reinforce sustainable investment decision-making.

*“(g) ESG and climate-risk integration standards.”*

*“(h) minimum private capital mobilization thresholds for commercially viable projects.”*

##### **Committee Observation**

**The Committee agreed with the stakeholder.**

##### **KAM**

196. Amend Clause 21(2) to provide that priority sectors and proposed projects shall be guided exclusively by the Medium-Term Plans. The Medium-Term Plans provide a nationally approved development blueprint. Ensuring exclusive alignment promotes coherence, avoids duplication, and anchors the Fund within established national planning frameworks.

##### **Committee Observation**

**The Committee observed that the Committee’s recommendation that the clause be amended to provide for the National Assembly’s approval would address the stakeholder’s concerns.**

#### **Clause 21(2)(f)**

##### **MIZANI 254**

197. The stakeholder proposed amending Clause 21(2)(f) by inserting a requirement that the Investment Policy shall provide for exposure limits on Government guarantees, including defined limits per sector and per project; establish a national exposure ceiling for all Government support measures; and ensure that guarantee issuance is aligned with debt sustainability thresholds under the Public Finance Management Act. The Bill currently does not provide for a national exposure ceiling



or a clear linkage to debt sustainability thresholds. Without clearly defined limits, the Fund may accumulate significant off-balance-sheet obligations, thereby exposing public finances to elevated fiscal risk and potential long-term fiscal pressure.

#### **Committee Observation**

**The Committee observed that the provision was adequate.**

#### **Clause 21(3)**

#### **Cliffe Dekker Hofmeyr (CDH)**

198. The stakeholder proposed extending the investment policy cycle to accommodate long-term infrastructure financing by deleting the proposal and replacing therefor with:-

*“An Investment Policy shall be valid for a period of ten years and may provide for long-term projects whose investment horizon and recovery period extend beyond the policy period, subject to periodic review.”*

#### **Committee Observation**

**The Committee observed that the validity period proposed in the Bill was reasonable as it is in line with the medium-term plan.**

#### **Office of the Auditor General**

199. The stakeholder noted that the Bill provides a wide mandate to the Board on developing an investment policy and monitoring the investment agreements, without making reference to the Investment Promotion Act (Cap 485B), which through Section 27, provides similar powers to the National Investment Council. Additionally, they stated that the functions of the Board as proposed under Clause 21 undermine or overlap on the mandate and functions of the National Treasury under the Directorate of Public Investment and Portfolio Management.

#### **Committee Observation**

**The Committee observed that there was no overlap between the mandate of the Board and the Investment Promotion Act.**

#### **PWC**

200. The stakeholder proposed amending the clause by inserting a new sub-clause requiring the investment policy to specify—

- (a) maximum proportion of Fund assets that may be allocated as loss capital or first-loss capital to de-risk projects;

- (b) the criteria and approval process for deploying loss capital, including Board approval and disclosure requirements; and
- (c) reporting obligations on the utilisation and performance of loss capital in the Fund's annual report.

#### **Committee Observation**

**The Committee observed that the provision was adequate.**

#### **Clause 22**

##### **KNCCI**

201. The stakeholder recommended that this provision requires publication of feasibility studies and project preparation summaries (subject to commercially sensitive redactions) so as to enhance investor confidence and accelerate financing processes.

##### **PWC**

202. PWC proposed amending the clause by establishing a Project Preparation Facility (“PPF”) as a distinct allocation within the Fund; and require the Board to develop guidelines, subject to Cabinet Secretary approval, for recovering PPF costs from project developers upon financial close or project commencement. They noted that project preparation is a critical but often underfunded phase of infrastructure development. Without a ring-fenced allocation and recovery mechanism, there is a risk that preparation costs will erode the Fund's capital base or that the Fund will under-invest in preparation, leading to poorly structured projects.

##### **KAM**

203. Insert a subclause establishing a mandatory Asset Transfer Framework and clear exit clauses for all projects. The Bill is silent on asset lifecycle management and transition procedures. A defined exit and transfer framework ensure orderly handover of mature assets to relevant Government Ministries, Departments, or Agencies, safeguarding public interest and operational continuity.

##### **Okoa Uchumi**

204. Mandate that all Fund projects be integrated within the national planning and budgeting framework to ensure alignment with the Medium-Term Plan (MTP) and other public investment processes. International experience shows that infrastructure funds are most effective when fully integrated with existing planning systems. Without such integration, accountability may be fragmented, and off-budget contingent liabilities could arise.

#### **Committee Observation**

The Committee noted the stakeholders' concerns and noted that there was need to cross-reference section 31(1) of the Public Private Partnerships Act since clause 22 replicates the provision. The Committee observed that the Fund will not be an implementer but will use the existing institutions to carry out the purpose of the Fund. Therefore, the administrative proposals would be addressed during implementation in tandem with the existing Acts, for instance the Public Private Partnerships Act.

#### **Clause 22(1)**

#### **ICPAK**

205. The stakeholder recommended the insertion of a new sub-clause to improve project preparation quality and enhance implementation success.

*“(3) The Fund shall maintain a Project Preparation Facility to ensure high-quality feasibility studies and structuring.”*

#### **Committee Observation**

The Committee noted that this is administrative and will be addressed during implementation.

#### **Clause 22**

#### **Office of the Auditor General**

206. The stakeholder proposed that the bill should make explicit cross-references to the Public Private Partnership Act, Cap.430, on value-for-money, affordability and contingent-liability limits, and to the Public Finance Management Regulations, 2015 on multi-year commitments. This will ensure viable, bankable projects that pass Kenya's fiscal guardrails.

#### **Committee Observation**

The Committee agreed with the stakeholder.

#### **Clause 23**

#### **Cliffe Dekker Hofmeyr (CDH)**

207. The stakeholder proposed an insertion of a new sub-clause to strengthen public sector recruitment governance

*“(3) In undertaking feasibility studies, the Fund shall assess the public interest in the project, including the social, economic, and developmental impacts on communities, counties, and the nation, and shall conduct public participation in accordance with the*

*Constitution and consult relevant county governments to ensure alignment with public policies and county development plans.”*

**Committee Observation**

**The Committee noted that clause is a replica of section 31(2) of the Public Private Partnerships Act, thus it proposed the deletion of clause 23 of the Bill. The stakeholder’s concerns are addressed in the PPP framework.**

**PWC**

208. PWC proposed amending the Clause to include mandatory consideration of relevant county governments. Many infrastructure projects will traverse or directly impact county jurisdictions. Excluding county governments risks duplication of efforts, conflict with devolved functions, and undermines the constitutional framework of devolution.

**Committee Observation**

**The Committee noted that clause is a replica of section 31(2) of the Public Private Partnerships Act, thus it proposed the deletion of clause 23 of the Bill. The stakeholder’s concerns are addressed in the PPP framework.**

**KNCCI**

209. The stakeholder observed that commercial viability assessments are not explicitly linked to fiscal risk management. Accordingly, the stakeholder recommended an additional provision that requires that all feasibility studies to include value-for-money, fiscal risk, and affordability assessments to protect public finances and enhance project discipline.

**Committee Observation**

**The Committee observed that the provision, together with the Committee’s proposed amendments, would address the stakeholder’s concerns.**

**Nakuru County Public Opinion Consultative Initiative**

210. The stakeholder proposed amending the clause to require feasibility studies to include project completion timelines and analysis of economic shocks including inflationary pressure and currency depreciation since financial sustainability requires risk forecasting; further, land acquisition should be undertaken by the National Land Commission since its constitutional mandate ensures prompt and fair compensation to affected persons.

**IPF**



211. IPF proposed deleting the proposal in its entirety. They noted that the Fund's role in reviewing and screening large-scale projects for feasibility and viability mirrors the mandate of the Public Investment Management Unit (PIMU). Such duplication not only creates institutional ambiguity but also threatens to dilute accountability by dispersing responsibility across multiple bodies with substantially similar functions.

#### **MIZANI 254**

212. The stakeholder proposed amending Clause 23 to require that all feasibility studies and value-for-money analyses conducted under this Clause be published on a publicly accessible platform before final investment approval, including key findings on technical, legal, environmental, affordability, and value-for-money assessments.

213. Infrastructure projects are long-term and capital-intensive, often creating significant fiscal commitments over many years. Mandatory publication enhances transparency, promotes informed public scrutiny, and reduces the risk of economically unviable or politically driven "white elephant" projects. Public access to feasibility studies strengthens investor confidence.

#### **Committee Observation**

**The Committee agreed with the stakeholders to delete the clause.**

#### **Clause 23(2)**

#### **ICPAK**

214. The stakeholder proposed additional sub-clauses to promote fiscally prudent and economically sound investment decisions.

*"(f) a value-for-money assessment comparing delivery options including PPPs, concessions, and public procurement."*

*"(g) a fiscal risk assessment consistent with the Public Finance Management Act."*

#### **Committee Observation**

**The Committee agreed to delete the clause because it is a replica of section 31(2) of the Public Private Partnerships Act. The recommendation is to retain the PPP Directorate and the attendant safeguards under the Act.**

#### **Clause 23 (2)**

#### **We Care**

215. The clause mentions environmental and economic impacts, but not fiscal exposure or tariff affordability. Amend Clause 23(2) to add new paragraphs:

- “(f) assessment of contingent fiscal liabilities to the national government;
- (g) projected tariff or service cost impacts on households;
- (h) expected youth employment creation and skills transfer outcomes.”

#### **Committee Observation**

**The Committee agreed to delete the clause because it is a replica of section 31(2) of the Public Private Partnerships Act. The recommendation is to retain the PPP Directorate and the attendant safeguards under the Act.**

#### **Clause 23 (2)**

##### **We Care**

216. The clause mentions environmental and economic impacts, but not fiscal exposure or tariff affordability. Amend Clause 23(2) to add new paragraphs:

- “(f) assessment of contingent fiscal liabilities to the national government;
- (g) projected tariff or service cost impacts on households;
- (h) expected youth employment creation and skills transfer outcomes.”

#### **Committee Observation**

**The Committee agreed to delete the clause because it is a replica of section 31(2) of the Public Private Partnerships Act. The recommendation is to retain the PPP Directorate and the attendant safeguards under the Act.**

#### **Clause 24**

##### **IEA**

217. The stakeholder proposed amending the clause by inserting a new sub-clause requiring that all feasibility or economic appraisal study reports be undertaken by an independent expert and be published on the Fund’s website, published and publicized and submitted to Parliament within thirty days of completion for review and approval. They noted that the absence of such a requirement has in the past enabled the approval of loss-making and poorly structured projects. A mandatory, rigorous feasibility or economic appraisals threshold will prevent non-viable projects from proceeding and safeguard the Fund’s capital base.

#### **Office of the Auditor General**

218. The stakeholder noted that the clause should align with the provisions of the Public Procurement and Asset Disposal Act (PPADA), 2015 and its 2020 Regulations,

*Report of the Departmental Committee on Finance and National Planning on the Consideration of The National Infrastructure Fund Bill, 2026 (National Assembly Bill No. 1 of 2026)*



including mandatory e-GP usage; and, where a transaction is structured as a Public Private Partnership, the Public Private Partnerships Act, 2021 must prevail.

#### **PWC**

219. The stakeholder proposed amending the clause to require that all procurement by the Fund comply with the Public Procurement and Asset Disposal Act Cap. 412C with any sector-specific modifications being made through regulations issued under PPADA, rather than under the Bill.

#### **KNCCI**

220. The stakeholder submitted that procurement safeguards are currently dependent on subsidiary regulations, which may create risks of opaque project allocation; therefore, it was recommended that the clause be amended to require all projects to be procured through open, competitive, and transparent processes consistent with applicable procurement and PPP laws so as to enhance integrity and investor confidence.

#### **IPF**

221. The stakeholder proposed amending the proposal to include Parliament oversight in the approval of the standards. They noted there is need set boundaries on the powers of the Cabinet Secretary and require all procedures to be consistent with existing procurement, PPP and PFM frameworks not under discretion of the cabinet secretary.

#### **Committee Observation**

The Committee noted the stakeholder's concerns and recommended the deletion of the clause and to provide for the Cabinet Secretary for the National Treasury to prescribe standards and procedures on practice elements in the development of the investment plan and any other relevant matter. The Committee was of the view that as currently couched, there is need to have substantive provisions prescribed and for the operational roles to be left to the PPP framework.

#### **Clause 24(e)**

##### **Nakuru County Public Opinion Consultative Initiative**

222. The stakeholder supported public participation provisions however, they proposed amending to require structured public participation in accordance with the Public Participation Act, 2025 since structured engagement enhances consistency and legal compliance.

#### **Committee Observation**

The Committee noted the stakeholder's concerns and recommended the deletion of the clause and to provide for the Cabinet Secretary for the National Treasury to prescribe standards and procedures on practice

elements in the development of the investment plan and any other relevant matter. The Committee was of the view that as currently couched, there is need to have substantive provisions prescribed and for the operational roles to be left to the PPP framework.

#### **Clause 24 (2)**

##### **PWC**

223. The stakeholder proposed amending the clause by inserting a new clause mandating public participation at the project identification and feasibility stages, and all matters in clause 24 with clear timelines and mechanisms for public input.

##### **ICPAK**

224. The stakeholder proposed the insertion of a new sub-clause to enhance transparency and accountability.

*“(I) mandatory publication of project summaries, feasibility study findings, and Government support measures, except where disclosure would compromise national security or commercial confidentiality.”*

#### **Kenya Federation of Employers**

225. Amend Section 24(2) to read: *“The Cabinet Secretary may issue general policy guidelines to the Fund, but such guidelines shall not extend to specific investment decisions, asset allocation, or project approvals.”* This amendment maintains operational independence at the board level while allowing strategic alignment with national development objectives. Insulating investment and project decisions from direct government intervention preserves financial integrity and prevents politicization of Fund operations.

#### **Committee Observation**

The Committee noted the stakeholder’s concerns and recommended the deletion of the clause and to provide for the Cabinet Secretary for the National Treasury to prescribe standards and procedures on practice elements in the development of the investment plan and any other relevant matter. The Committee was of the view that as currently couched, there is need to have substantive provisions prescribed and for the operational roles to be left to the PPP framework.

#### **Clause 24 (2)**

##### **Katiba Institute**

226. Amend to provide that the Cabinet Secretary prescribes general standards and procedures for public participation and stakeholder engagement applicable to all stages of a project, including planning, development, implementation, monitoring and evaluation. This ensures active and meaningful involvement of the people throughout a project cycle.

#### **Committee Observation**

The Committee noted the stakeholder's concerns and recommended the deletion of the clause and to provide for the Cabinet Secretary for the National Treasury to prescribe standards and procedures on practice elements in the development of the investment plan and any other relevant matter. The Committee was of the view that as currently couched, there is need to have substantive provisions prescribed and for the operational roles to be left to the PPP framework. The public consultation concerns will be addressed under the PPP regime.

#### **We Care**

227. Public participation is mentioned but not defined or enforceable. Insert a new subsection:

“(3) Regulations made under this section shall prescribe minimum public disclosure standards, including publication of feasibility studies, projected project costs, financing structure, and expected fiscal exposure.”

#### **Committee Observation**

The Committee noted the stakeholder's concerns and recommended the deletion of the clause and to provide for the Cabinet Secretary for the National Treasury to prescribe standards and procedures on practice elements in the development of the investment plan and any other relevant matter. The Committee was of the view that as currently couched, there is need to have substantive provisions prescribed and for the operational roles to be left to the PPP framework. The public consultation concerns will be addressed under the PPP regime.

#### **Clause 24(2)(c)**

#### **MIZANI 254**

228. The stakeholder proposed amending Clause 24(2)(c) to require the Cabinet Secretary to prescribe mandatory disclosure requirements, including timelines, formats, and minimum public disclosure periods for feasibility studies and project assessments. Further require that a summary of the cost-benefit analysis and projected rate of return prepared under Clause 21(2)(d) be tabled before Parliament and made

public before approval. No project above a prescribed financial threshold shall be approved unless feasibility findings have undergone a minimum public disclosure period.

229. Additionally, structured disclosure requirements and parliamentary tabling enhance accountability and oversight in project approval processes. A mandatory public disclosure period ensures that large-scale projects are subjected to adequate scrutiny before binding financial commitments are made. These safeguards promote value for money, improve decision-making, and strengthen protection of the National Exchequer. helps prevent inflated project costs and protects taxpayers from unsustainable financial obligations.

#### **Committee Observation**

**The Committee noted the stakeholder's concerns and recommended the deletion of the clause and to provide for the Cabinet Secretary for the National Treasury to prescribe standards and procedures on practice elements in the development of the investment plan and any other relevant matter. The Committee was of the view that as currently couched, there is need to have substantive provisions prescribed and for the operational roles to be left to the PPP framework.**

#### **Clause 25**

##### **OCOB**

230. OCOB noted that the clause gives the Cabinet Secretary the power to issue Government support measures, including guarantees, letters of credit, partial risk guarantees, and political risk insurance. However, these instruments have fiscal implications and may create contingent liabilities for the Government as the Bill does not expressly provide for:
- a. Parliamentary approval of guarantees as required under Article 211 of the Constitution and the PFMA; and
  - b. Recording and reporting of contingent liabilities.
231. COB proposed aligning the Bill with section 50 of the PFMA on public debt and issuance of guarantees.

#### **Committee Observation**

**The Committee noted that clause 25 of the Bill provides for Government Support Measures. The Committee recommended that the provision needed to be aligned to the Public Private Partnerships Act, including section 36, on the limitation of contingent liabilities and the necessary safeguards to address the stakeholders' concerns.**



## Office of the Auditor General

232. The stakeholder noted that to prevent generation of off-balance-sheet liabilities and hidden debt. They proposed that the bill should make issuance of debt instruments conditional on the National Treasury's ex-ante fiscal-risk clearance and the annual Debt Management Strategy under the PFM Act, 2012. Additionally, it should also require full compliance with the Public Private Partnerships Act 2021, tests on value-for-money, affordability and contingent-liability limits before any support is granted and mandate annual disclosures to Parliament of all outstanding support. This will enhance private capital without compromising fiscal transparency or debt sustainability.

### Committee Observation

**The Committee noted that clause 25 of the Bill provides for Government Support Measures. The Committee recommended that the provision needed to be aligned to the Public Private Partnerships Act, including section 36, on the limitation of contingent liabilities and the necessary safeguards to address the stakeholders' concerns.**

## PWC

233. The stakeholder proposed amending the clause by:

- (1) Inserting a new subsection requiring that all contingent liabilities arising from government support measures be—
  - (a) Disclosed in the Fund's annual reports, with details of the nature, value, beneficiary, and risk profile of each guarantee or support instrument; and
  - (b) Reported in the National Treasury's annual debt management report to Parliament.
- (2) Inserting a new subsection specifying that the aggregate value of contingent liabilities arising from government support measures shall be subject to the national debt ceiling established under the Public Finance Management Act;
- (3) Requiring the Cabinet Secretary to make regulations prescribing:
  - (a) The materiality threshold above which parliamentary approval is required;
  - (b) The form and content of disclosures;
  - (c) The methodology for valuing and reporting contingent liabilities.

### Committee Observation

The Committee noted that clause 25 of the Bill provides for Government Support Measures. The Committee recommended that the provision needed to be aligned to the Public Private Partnerships Act, including section 36, on the limitation of contingent liabilities and the necessary safeguards to address the stakeholders' concerns.

#### **KNCCI**

234. The stakeholder raised a concern that there is no cap on contingent liabilities or mandatory disclosure framework. To protect fiscal sustainability and enhance transparency, it was recommended that the clause be amended to:
- i. introduce ceilings on contingent liabilities subject to parliamentary approval;
  - ii. require independent risk assessment prior to issuance; and
  - iii. mandate annual public disclosure of guarantees issued,

#### **Committee Observation**

The Committee noted that clause 25 of the Bill provides for Government Support Measures. The Committee recommended that the provision needed to be aligned to the Public Private Partnerships Act, including section 36, on the limitation of contingent liabilities and the necessary safeguards to address the stakeholders' concerns.

#### **ICPAK**

235. The stakeholder recommended insertion of new sub-clauses to strengthen fiscal risk management and transparency as follows:-
- “(4) All Government support measures shall be recorded, disclosed, and managed within national contingent liability ceilings.”*

*“(5) The Cabinet Secretary shall publish an annual statement of fiscal risks arising from Government support measures.”*

#### **Committee Observation**

The Committee noted that clause 25 of the Bill provides for Government Support Measures. The Committee recommended that the provision needed to be aligned to the Public Private Partnerships Act, including section 36, on the limitation of contingent liabilities and the necessary safeguards to address the stakeholders' concerns.

#### **MIZANI 254**

236. The stakeholder proposed amending Clause 25 to provide that any Government support measures, including guarantees issued by the Cabinet Secretary, shall be subject to the exposure limits and risk management framework established under the Investment Policy; that the Act shall prescribe an explicit aggregate ceiling on the total Government support measures that may be issued under this Clause; and that all guarantees issued shall be incorporated into the Medium-Term Debt Strategy and reported as contingent liabilities. They stated that in the absence of an aggregate cap, contingent liabilities may crystallize into direct public debt, thereby creating hidden fiscal pressures for future taxpayers. Integrating guarantees into the Medium-Term Debt Strategy enhances transparency and ensures that exposure is assessed within the broader public debt management framework, consistent with the principles of fiscal responsibility under the Public Finance Management Act.
237. Additionally, the stakeholder proposed the amendment to require that any Government Support Measure which exposes the Government to contingent liabilities above a prescribed financial threshold shall receive prior approval of the National Assembly before issuance. The Fund may issue guarantees that create future debt obligations. Parliamentary approval for high-value contingent liabilities strengthens fiscal oversight and ensures that significant financial commitments are subjected to democratic scrutiny, consistent with Article 201 of the Constitution of Kenya, which requires public finance to promote accountability and transparency.

#### **Committee Observation**

**The Committee noted that clause 25 of the Bill provides for Government Support Measures. The Committee recommended that the provision needed to be aligned to the Public Private Partnerships Act, including section 36, on the limitation of contingent liabilities and the necessary safeguards to address the stakeholders' concerns.**

#### **Okoa Uchumi**

238. Introduce provisions to:
- i. Limit exposure to contingent fiscal liabilities;
  - ii. Require parliamentary review or approval of high-risk support measures;
  - iii. Incorporate risk management frameworks in the Fund's operations.
239. The Bill does not currently address long-term fiscal risks. Without limits and oversight, the Fund could generate off-balance-sheet obligations that create hidden fiscal pressure for future taxpayers. Parliamentary involvement ensures transparency and accountability in line with constitutional public finance principles.

#### **Committee Observation**

**The Committee noted that clause 25 of the Bill provides for Government Support Measures. The Committee recommended that the provision needed to be aligned to the Public Private Partnerships Act, including section 36 on the limitation of contingent liabilities and the necessary safeguards to address the stakeholders' concerns.**

**Clause 25  
We Care**

240. Insert new subsections:

“(4) Government support measures issued under this section shall not exceed 1.5 percent of Gross Domestic Product in any financial year.

(5) Any guarantee exceeding KShs10 billion shall require prior approval of the National Assembly.”

**Committee Observation**

**The Committee noted that clause 25 of the Bill provides for Government Support Measures. The Committee recommended that the provision needed to be aligned to the Public Private Partnerships Act, including section 36, on the limitation of contingent liabilities and the necessary safeguards to address the stakeholders' concerns.**

**Clause 25(1) – Government Support Measures**

**KAM**

241. Delete paragraph (a) of subclause (1) relating to binding undertakings. Binding undertakings may crystallize into public debt and obscure the Government's true fiscal exposure if not transparently recorded. Deletion safeguards fiscal sustainability, preserves parliamentary oversight, and protects public resources from unintended contingent liabilities.

**Committee Observation**

**The Committee noted that clause 25 of the Bill provides for Government Support Measures. The Committee recommended that the provision needed to be aligned to the Public Private Partnerships Act, including section 36 on the limitation of contingent liabilities and the necessary safeguards to address the stakeholders' concerns.**

**New Provision**

**Cliffe Dekker Hofmeyr (CDH)**



242. The stakeholder proposed insertion of a new clause immediately after Clause 25 as follows: -

*“25A. (1) The Fund shall undertake all procurement of goods, works, and services through the Government e-Government Procurement system in accordance with applicable procurement regulations.*

*(2) The Fund shall ensure that all projects undertaken under its approved work plan are procured and implemented in accordance with the Public Procurement and Asset Disposal Act (Cap. 412C) and any other applicable written law.”*

**Committee Observation**

**The Committee noted the stakeholder’s proposal and noted that the provisions of the PPP framework address the stakeholder’s concerns.**

**Clause 25 (2)**

**Katiba Institute**

243. Amend to provide that any Government Support Measures issued by the Cabinet Secretary, or the guidelines governing their implementation, shall be submitted to and approved by the National Assembly. This ensures parliamentary oversight and safeguards against the accumulation of contingent liability hence facilitating sustainable development provided for under Article 10 of the Constitution.

**Committee Observation**

**The Committee noted that clause 25 of the Bill provides for Government Support Measures. The Committee recommended that the provision needed to be aligned to the Public Private Partnerships Act, including section 36, on the limitation of contingent liabilities and the necessary safeguards to address the stakeholders’ concerns.**

**Clause 26**

**OCOB**

244. OCOB noted that the Bill does not expressly provide for the submission of quarterly and annual reports to the Controller of Budget given the constitutional mandate of the COB to report on budget implementation. They proposed amending the clause to provide for the Fund Administrator to submit quarterly reports to the Controller of Budget.

**Committee Observation**

**The Committee noted the stakeholder’s proposal.**

### **Cliffe Dekker Hofmeyr (CDH)**

245. The stakeholder proposed an amendment to the provision by inserting new subsections so as to strengthen direct parliamentary oversight and transparency.

*“(4) The Fund shall submit quarterly financial and performance reports directly to the National Assembly within thirty (30) days of the end of each quarter.”*

*“(5) The annual report of the Fund shall be submitted to the National Assembly within three (3) months after the end of each financial year and shall be laid before the National Assembly by the Cabinet Secretary within fourteen (14) days of receipt.”*

*“(6) Reports submitted under this section shall include information on the implementation of the approved investment plan, performance against applicable performance contracts, financial position, risk exposure, and contingent liabilities of the Fund.”*

### **Committee Observation**

**The Committee noted that the clause was adequate.**

### **KNCCI**

246. The stakeholder recommended that project-level dashboards be published showing financial performance, implementation progress, cost overruns, and return metrics so as to strengthen public accountability and market confidence.

### **ICPAK**

The stakeholder proposed an addition of a new sub-clause to the clause to promote openness and stakeholder access to financial information.

*“(4) The Fund shall publish quarterly investment performance reports on its website.”*

### **Committee Observation**

**The Committee noted that the clause was adequate.**

### **We Care**

247. Insert a new subsection:

*“(4) The Fund shall submit quarterly fiscal risk exposure reports to the National Assembly and publish them on its website.”*

### **Committee Observation**

**The Committee agreed with the stakeholder to the extent of publication of the reports on the National Treasury’s website.**

## Clause 26(2)

### OCOB

248. The stakeholder submitted that Clause 26(2) of the Bill provides that the Cabinet Secretary *may* make half-yearly reports to Cabinet and annually to the National Assembly. However, COB noted that Article 201(a) & (e) specifically provide for fiscal reporting which requires submission of quarterly and annual budget implementation reports to the Controller of Budget. This is a mandatory constitutional duty therefore, they proposed amending the clause to require the Cabinet Secretary to submit quarterly budget implementation reports to the Controller of Budget.

### Committee Observation

**The Committee noted the stakeholder's proposal.**

### Katiba Institute

249. Amend to have the word “may” replaced with “shall”, to make the provision of reports mandatory. Increase the reporting to quarterly and require all reports to be submitted to cabinet and both Houses of Parliament, unless the elements rendering the Bill concerning counties are eliminated.

### Committee Observation

**The Committee agreed with the stakeholder on the proposal to replace the word “may” with “shall”. However, it disagreed with the stakeholder on the view that the Bill concerns county governments thus requiring reports to be submitted to both Houses of Parliament.**

## Clause 27

### KNCCI

250. The stakeholder recommended amendment of the clause to require publication of investment agreements (subject to confidentiality protections) since disclosure provisions are not sufficiently detailed, whereas publication would enhance investor predictability and public accountability.

### Katiba Institute

251. Amend to require the publication and publicizing in not only the National Treasury's Website but also in two newspapers of nation-wide circulation.

### Committee Observation

**The Committee agreed with the stakeholder.**

## We Care

252. Disclosure requirements are limited to financial statements.

Insert a new paragraph:

“(d) a register of all government guarantees, letters of support, and contingent liabilities to be issued under the Fund.”

**Committee Observation**

**The Committee was of a different view that the proposal needed not be provided for in the Bill.**

**Clause 27(1)**

**Cliffe Dekker Hofmeyr (CDH)**

253. The stakeholder noted that a clear and precise legislative drafting is essential to avoid ambiguity and ensure effective implementation. Accordingly, the stakeholder proposed an amendment to correct a grammatical error, enhance clarity, consistency, and ease interpretation by deleting the word “make” so that it reads: -

*“The Cabinet Secretary shall publish and publicise on the National Treasury website or such other information platforms as may be accessible to the public.”*

**Committee Observation**

**The Committee agreed with the stakeholder.**

**ICPAK**

254. The stakeholder proposed introducing additional sub-clauses to strengthen sustainable finance reporting standards.

- “(a) portfolio composition by sector and instrument;*
- (b) investment performance against benchmarks;*
- (c) project-level impact indicators;*
- (d) ESG and climate-risk disclosures.”*

**Committee Observation**

**The Committee was of the view that the provision was adequate.**

**Clause 28**

**KNCCI**

255. The stakeholder recommended amendment of the clause to require annual independent performance audits in addition to financial audits since financial audits alone do not assess operational efficiency or value-for-money, whereas performance audits would strengthen institutional accountability.

**Committee Observation**

**The Committee noted the stakeholder’s proposal but was of the view that the Public Audit Act provides for the stakeholder’s concerns.**

#### **ICPAK**

256. The stakeholder recommended inserting a sub-clause to reinforce integrity and enhance governance transparency.

*“(d) maintain a public register of all related-party transactions and conflict-of-interest disclosures.”*

#### **Committee Observation**

**The Committee observed that the proposal fell outside the scope of the provision.**

#### **Clause 28(c)**

#### **Nakuru County Public Opinion Consultative Initiative**

257. The stakeholder proposed insertion of strict ethical safeguards to bar directors from using Fund resources to advance personal, family, or associated corporate interests since conflict of interest undermines integrity of public funds; accordingly, such conduct should be expressly prohibited.

#### **Committee Observation**

**The Committee noted the stakeholder’s concerns but was of the view that the provision was adequate.**

#### **Clause 29**

#### **OCOB**

258. OCOB stated that Clause 29 provides that the sources of funds include proceeds from privatisation and the disposal of government assets. However, the Bill does not explicitly provide for the exclusion of money from the Consolidated Fund. They proposed that these proceeds first be deposited into the Consolidated Fund before being transferred to the Infrastructure Fund. Additionally, the COB noted that the Fund is not established as a Fund under Section 24 of the Public Finance Management Act (CAP 412A), but as a corporate entity. Therefore, the exclusion under Article 206(1)(a) of the Constitution does not apply.

259. Further, the COB noted that the provisions under clauses 5 & 29 of the Bill raise concerns, particularly regarding, the applicability of the PFMA to the Fund, oversight by the Controller of Budget (COB) and treatment of withdrawals and expenditure.

#### **Committee Observation**

**The Committee noted the stakeholder's concerns and to provide clarity recommended that clause 4 of the Bill be amended to clearly provide that the Fund is established under Article 206(1)(a) of the Constitution and section 24(4) of the Public Finance Management Act, Cap. 412A.**

#### **Office of the Auditor General**

260. The stakeholder noted that the bill has not made provision for budget estimates of the Fund and in particular, fails to provide that the Estimated shall be submitted to the Cabinet Secretary for review and submitted to the National Assembly in accordance with Article 221 of the Constitution. Additionally, funds appropriated by Parliament will be deemed to be withdrawn from the Consolidated Fund in accordance with Article 206 of the Constitution and require approval of the Controller of Budget and audit by the Auditor-General.

#### **Committee Observation**

**The Committee agreed with the stakeholder.**

#### **PWC**

261. The stakeholder proposed amending the clause by clarifying that only proceeds from privatisations specifically designated by Parliament for the Fund may be credited to the Fund. Additionally, require annual reporting to Parliament on the source and quantum of privatization proceeds received. Without this limitation, there is a risk that privatisation proceeds intended for other purposes (such as deficit reduction or social programmes) could be diverted to the Fund without parliamentary scrutiny. Clarity and reporting requirements would enhance fiscal transparency and accountability.

#### **Committee Observation**

**The Committee was of a different view not to adopt the proposal and that the provision in the Bill was adequate.**

#### **KNCCI**

262. The stakeholder recommended amendment of the clause through insertion of a clause ring-fencing funds exclusively for capital investments and project preparation and prohibiting use for recurrent expenditure since absence of statutory restrictions may allow diversion of funds, whereas ring-fencing would protect the infrastructure financing mandate.
263. Additionally, the stakeholder recommended amendment of the clause to require allocation of at least 10% of annual funds to project preparation and feasibility

development since the Bill does not guarantee pipeline funding, whereas reserving such allocations would strengthen project bankability and readiness.

#### **Committee Observation**

**The Committee was of a different view not to adopt the proposal and that the provision in the Bill was adequate.**

#### **ICPAK**

264. The stakeholder proposed inserting a sub-clause to ensure predictable capital inflows while balancing debt management considerations.

*“(e) a minimum of 70% of net privatization proceeds shall be transferred to the Fund, with the balance applied to public debt reduction.”*

#### **Committee Observation**

**The Committee was of a different view not to adopt the proposal and that the provision in the Bill was adequate.**

#### **IPF**

265. The stakeholder proposed deleting the clause in its entirety. They noted that this proposal directly contradicts the framework established under section 54 of the Privatization Act 2025, which provides that proceeds from privatization are to be channeled into the Consolidated Fund. Redirecting privatization proceeds to the NIF through subsidiary legislation or an ordinary statutory clause would create legal conflict and undermine legislative coherence. In the absence of a formal amendment to the Privatization Act, such a provision would be legally untenable.

#### **Committee Observation**

**The Committee agreed with the stakeholder.**

#### **We Care**

266. To prevent the Fund from becoming an unchecked fiscal drain. Insert new subsection:

*“(2) Appropriations from public funds to the Fund shall not exceed 0.5 percent of Gross Domestic Product (GDP) in any financial year without approval from the National Assembly.”*

#### **Committee Observation**

**The Committee noted the stakeholder’s proposal but noted that adequate checks are in the Bill to address the stakeholder’s concerns.**

#### **Katiba Institute**

267. Re-classify the Bill as a Bill concerning county governments. Amend the Bill to make provision for an intergovernmental process relating to planning, and implementation of projects under the Fund.
268. Amend the Clause to specify that parliament appropriated funds for the Fund shall be drawn from the National Government’s equitable share of revenue raised nationally.

#### **Committee Observation**

**The Committee noted that the Bill is not intended to affect the functions and powers of county governments as set out in the Fourth Schedule to the Constitution.**

#### **Clause 29 (b)**

#### **Jude Muthee**

269. The stakeholder stated that clause 29 (b) is unconstitutional as the National Assembly is the legal entity mandated to appropriate funds.

#### **Committee Observation**

**The Committee was of a different view that clause 29(b) is not unconstitutional as it falls within the mandate of the National Assembly under Article 95(4)(b) of the Constitution.**

#### **Nakuru County Public Opinion Consultative Initiative**

270. The stakeholder proposed amending the clause to require Parliament to appropriate five percent (5%) of the National Government annual budget to the Fund since predictable financing would ensure sustainable infrastructure development. Further, the stakeholder recommended that three percent (3%) of Fund resources be allocated for administrative expenses since operational sustainability requires reasonable administrative funding controls.

#### **Committee Observation**

**The Committee was of a different view that the provision was adequate.**

#### **Clause 31**

#### **Katiba Institute**

Amend to expressly require that the Fund's bank accounts be opened and maintained at the Central Bank of Kenya. Require also that any and all accounts operated by the Fund be linked to the National Treasury Single Account.

#### **Committee Observation**

The Committee observed that the Public Finance Management Act, Cap. 412A, addresses the stakeholder's concerns. Section 28(1) of the PFM Act provides that, "The National Treasury shall authorise the opening, operating and closing of bank accounts and sub accounts for all national government entities in accordance with regulations made under [the] Act" whereas section 28(2) provides that, "The National Treasury shall establish a Treasury Single Account into which all revenues received by national government entities shall be deposited and from which all payments of money to or on behalf of national government entities shall be made". The Committee's proposed amendment to clause 4 to provide that the PFM Act to apply to the Fund would address the stakeholder's proposal.

#### **Kenya Federation of Employers**

271. Amend Section 31(3) by inserting a new subsection: "(3) The monies, assets, investments, and income of the Fund shall be ringfenced and shall not be commingled with other public funds." Statutory ringfencing prevents diversion or reallocation of funds for unrelated purposes, strengthens investor assurance, and ensures that capital contributions are applied exclusively for infrastructure investment.

#### **Committee Observation**

The Committee was of a different view that the provision was adequate and that the stakeholder's concerns are rightfully addressed.

#### **New sub clause 32 (b)**

##### **IEA**

272. The Institute proposed inserting Clause 32B requiring prompt payment within set timelines and quarterly reporting of pending bills. They noted that introducing prompt-payment and pending-bill reporting requirements promotes predictable cash-flow management and financial discipline. This approach aligns with governance expectations applied to other national funds.

#### **Committee Observation**

The Committee was of a different view that prompt payment is addressed in other legal regimes, for instance the Public Procurement and Asset Disposal Regulations, and that there was no need to provide for it in the Bill.

#### **Sunset Clause**

273. The institute submitted that the Bill contains no sunset, expiry or mandatory review clause. Without a sunset or mandatory review clause, the Fund may continue indefinitely even if it becomes financially unsustainable, accumulates contingent liabilities, underperforms on investments or exhibits governance failures. This exposes the State to escalating fiscal risk, erosion of public value and long-term debt-servicing vulnerability.
274. They proposed inserting a new Clause 38 – Sunset and Mandatory Review, requiring a statutory review after five years to assess investment performance, governance, contingent liabilities and bond-repayment capacity, with provisions for Parliamentary renewal, amendment or discontinuation and a structured six-month wind-down trigger.

#### **Committee Observation**

**The Committee was of a different view that there was no need to provide for sunset or review clause in order to boost investor confidence in the Fund. In any case, there are safeguards in case the Fund fails to carry out its statutory mandate.**

#### **Clause 32 & 33**

##### **Office of the Auditor General**

275. The stakeholder noted that the structure as proposed bypasses the Controller of Budget's mandate to authorize withdrawals from public funds. This creates a legal loophole where funds could be moved without the constitutional and PFM Act, 2012 thresholds.

#### **Committee Observation**

**The Committee noted the stakeholder's proposal.**

#### **Clause 33**

##### **Cliffe Dekker Hofmeyr (CDH)**

276. The stakeholder recommended deletion of the proposal and substitution thereof with: -

*“Withdrawals from the Fund shall only be for the purposes for which the Fund is established under this Act and shall not be used to finance social, political, or other non-commercial initiatives unrelated to the Fund's infrastructure investment mandate.”*

#### **ICPAK**



277. The stakeholder recommended an amendment by inserting a new subclause. This proposal strengthens fiduciary accountability and financial discipline.

*“(2) Withdrawals shall be guided by a withdrawal policy approved by the Board and consistent with long-term sustainability.”*

#### **Kituo cha Sheria**

278. The Stakeholder proposed that the provision be amended to expressly require authorization by the Controller of Budget and audit verification by the Auditor-General since unrestricted withdrawals may facilitate off-budget expenditure, whereas such safeguards would uphold Articles 228 and 229 of the Constitution.

#### **Committee Observation**

**The Committee noted the stakeholders’ concerns and agreed to amend the Bill to address the issues raised.**

#### **Clause 34**

#### **IPF**

279. The stakeholder proposed amending the provision to clearly define what constitutes “surplus funds,” and mandate the development of a comprehensive investment policy to guide decision-making. They submitted that the proposal fails to define what constitutes “surplus funds,” thereby creating ambiguity in interpretation and implementation. Without a clear statutory definition tied to actuarial assessments or liquidity thresholds, the provision may expose the Fund to inconsistent or imprudent application as evidenced even with other funds such as the Affordable Housing Levy.

#### **KAM**

280. Delete Clause 34. Given Kenya’s significant infrastructure financing deficit, it is unlikely that the Fund will generate surplus resources. Removing this provision ensures focus remains on catalytic infrastructure delivery rather than surplus generation.

#### **Committee Observation**

**The Committee noted the stakeholders’ concerns but was of the view that the provision should be retained to cater for instances of surplus funds in the Fund.**

#### **Katiba Institute**

281. Amend to expressly provide that any investment of surplus funds by the Board shall be undertaken strictly in accordance with the Public Finance Management Act, its regulations, and the guidelines issued by the National Treasury.

### **Committee Observation**

**The Committee noted the stakeholders' concerns but was of the view that the provision should be retained to cater for instances of surplus funds in the Fund.**

### **Clause 35**

#### **Office of the Auditor General**

282. The stakeholder noted that Clause 35 should require granular disclosure of the Fund's operating and capital budgets, advisory fees, performance-linked fees, platform costs, and transaction expenses, and cross-reference PFM Act formats. Such transparency improves Parliamentary scrutiny and market confidence, while avoiding hidden cost build-ups in complex transactions.

### **Committee Observation**

**The Committee noted the stakeholder's proposal but was of the view that the provision was adequate and since it cross-references the Public Finance Management Act, Cap. 412A, the safeguards are imbedded in the statute.**

### **Clause 36**

#### **Office of the Auditor General**

283. The stakeholder noted that to avoid a parallel regime and protect audit quality there is need of identifying the Accounting Officer given the ambiguity created under Clause 15 and 16 on parallel executive lines. Additionally, they proposed adding explicit performance-audit reach over Fund Special Purpose Vehicle that receives public support.

### **Committee Observation**

**The Committee agreed with the stakeholder on the need to provide clarity on the accounting officer.**

### **Kenya Federation of Employers**

284. Amend Section 36 by inserting new subsections 36A and 36B to address mismanagement and misuse of Fund resources as follows:

*"36A. Any person who*

- (i) misappropriates, diverts, or uses the Fund resources for purposes other than authorized infrastructure projects commits an offence and is liable, on conviction, to a fine not exceeding five million shillings or to imprisonment for a term not exceeding three years and payment of five times the value of the misappropriated funds;*

- (ii) negligently manages the Fund in a manner that results in financial loss commits an offence and is liable, on conviction, to imprisonment for a term not exceeding three years and a fine of up to two times the value of the financial loss incurred;
- (iii) breaches fiduciary duties or acts in conflict-of-interest contrary to the Fund's governance rules commits an offence and is liable, on conviction, to a fine not exceeding one million shillings and disqualification from holding state office for a period of five years."

285. Providing for punitive penalties directly in the Bill ensures immediate enforceability, deters corruption and reckless management, and strengthens overall accountability and governance.

**Committee Observation**

**The Committee agreed with the stakeholder**

**Katiba Institute**

286. Amend the clauses of the Act referring to the use of any external auditor not directly engaged by the Auditor General to ensure harmony with the Constitutional role of the Auditor General. All external audit under the Act should be undertaken by the Auditor General in line with the Constitution and the Public Audit Act.

287. Additionally, the Bill should expressly provide for Parliament's oversight role, including in overseeing the implementation of audit recommendations and reporting on compliance.

**Committee Observation**

**The Committee was of a different view that the provision was proper.**

**Clause 36(2)**

**Office of the Auditor General**

288. The stakeholder submitted that the clause requires submission of the Fund's financial statements to the Auditor-General within four months after the end of each financial year. This contravenes the provisions of Section 47(1) of the Public Audit Act, Cap. 412B, 2015, that requires that Accounting Officers to submit their accounts to the Auditor-General within three months after the end of the financial year, in the form and manner prescribed under the PFM framework.

**Committee Observation**

**The Committee agreed with the stakeholder.**

## **Clause 37**

### **KNCCI**

289. The stakeholder recommended amendment of the clause to require that all regulations under the Act be tabled and approved by the National Assembly before taking effect since broad regulatory powers are granted to the Cabinet Secretary, whereas parliamentary approval would enhance democratic oversight and prevent regulatory overreach.

### **ICPAK**

290. The stakeholder submitted an amendment by adding the below sub-clauses to strengthen governance architecture and sustainable Fund management.

- “(d) fit-and-proper criteria for Board members and senior management;*
- (e) ESG and climate-risk standards;*
- (f) fiscal risk assessment methodology;*
- (g) conflict-of-interest and integrity framework.”*

### **Committee Observations**

**The Committee noted that the stakeholder’s concerns on whether the regulations will be tabled and approved by the National Assembly are addressed by the Statutory Instruments Act, 2013.**

## **Clause 37**

### **We Care**

291. Delegates wide powers to the Cabinet Secretary without sufficient parliamentary safeguards. We therefore recommend inserting a new subsection:

**“(4) Regulations made under this Act shall be tabled before the National Assembly within fourteen days of publication and shall not take effect unless approved.”**

### **Katiba Institute**

292. Amend the clause to require the approval of Parliament on any regulations.

### **Committee Observation**

**The Committee noted that the stakeholder’s concerns on whether the regulations will be tabled and approved by the National Assembly are addressed by the Statutory Instruments Act, 2013.**

## **Memorandum of Objects and Reasons**

### **Katiba Institute**

293. Amend to re-classify the Bill as one concerning County Governments within the meaning of Article 110(1) of the Constitution. The legislative process should therefore comply with the constitutional requirements for such Bills, including concurrence by the Senate.

### **Committee Observation**

**The Committee noted that the Bill is not intended to affect the functions and powers of county governments as set out in the Fourth Schedule to the Constitution. In any case, the Committee observed that the memorandum does not form part of the Bill.**

### **Part VII – Miscellaneous Provisions (Penalties)**

#### **KAM**

294. Insert new clauses establishing offences and penalties for misappropriation of funds, including repayment, fines, imprisonment, and personal liability for losses. Strong penalty provisions enhance accountability, deter misappropriation, and reinforce fiduciary discipline in management of public resources. Clear sanctions are essential to safeguard the integrity and credibility of the Fund.

#### **IPF**

295. The stakeholder noted that the NIF Bill must be strengthened to include clear, comprehensive, and enforceable criminal and offences provisions in order to safeguard the integrity, transparency, and accountability of the Fund. They proposed offences to extend to:

- i. Misuse or misapplication of Fund resources.
- ii. Authorization of unlawful investments or expenditures.
- iii. Failure to disclose conflicts of interest.
- iv. Falsification or concealment of financial records.
- v. Obstruction of audits, investigations, or parliamentary oversight.
- vi. Breach of statutory investment or procurement principles.

### **Committee Observation**

**The Committee agreed with the stakeholder.**

### **Nakuru County Public Opinion Consultative Initiative**

296. The stakeholder proposed amending the provision by inserting a new subsection to require the Cabinet Secretary to prioritize formulation of regulations and subject

them to mandatory nationwide public participation since delegated legislation must comply with constitutional principles of public participation.

#### **Committee Observation**

**The Committee noted that the stakeholder's concerns are already addressed in the Statutory Instruments Act, 2013.**

#### **Kituo cha Sheria**

297. The stakeholder recommended that the clause be amended to require that all regulations be subjected to parliamentary approval and public participation before coming into force since delegated legislation must comply with constitutional democratic oversight principles, whereas parliamentary scrutiny would strengthen accountability.

#### **MIZANI 254**

298. The stakeholder proposed amending Clause 37 to provide that Regulations made by the Cabinet Secretary shall be tabled before Parliament for approval in accordance with statutory instruments procedures. Given the wide regulatory authority granted under this Clause, parliamentary scrutiny is necessary to prevent excessive concentration of power and to maintain institutional checks and balances.

#### **Committee Observation**

**The Committee noted that the stakeholder's concerns are already addressed in the Statutory Instruments Act, 2013.**

#### **Kenya Federation of Employers**

299. Amend Part VI by inserting a new subsection: "(2) *The Fund shall not guarantee liabilities unrelated to its statutory mandate.*" This amendment restricts the Fund from pledging or using its assets as security for public debt without prior approval of Parliament and the Board. It preserves mandate discipline, protects the Fund's resources for infrastructure financing, and maintains investor confidence and long-term capital sustainability.

#### **Committee Observation**

**The Committee noted that the concerns raised by the stakeholder will be addressed through amendments to the Bill that cross-reference contingent liabilities safeguards under the PPP framework.**

#### **NGEC**

300. The stakeholder noted that the bill does not provide for offences and penalties. They proposed to provide for both criminal sanctions and civil liability. These offences would include-;

- i. Misappropriation or diversion of funds
- ii. Fraudulent reporting
- iii. Breach of fiduciary duties
- iv. Conflict of interests

301. Sanctions will boost investor confidence, promote transparency, protect public funds and deter misconduct by directors and other staff.

**Committee Observation**

**The Committee agreed with the stakeholder.**

**New Proposals**

**PWC**

302. Amend the Bill to insert a new clause establishing a conflict-of-interest regime applicable to the Cabinet Secretary's exercise of powers under the Bill, including mandatory disclosure, mandatory recusal and delegation in cases of recusal.

**Committee Observation**

**The Committee agreed with the stakeholder.**

303. Insert a new part (or new clauses within Part IV or Part VII) establishing an independent review and appeal mechanism, such as an internal review request by any project sponsor, contractor, investor, or other affected party aggrieved by a decision of the Board or the Fund (including decisions relating to project selection, procurement, investment terms, or refusal of Government support).

**Committee Observation**

**The Committee did not support the stakeholder's proposal due to the nature and functions of the Fund which does not anticipate disputes to arise.**

304. Insert a Part on Transitional Provisions specifying:

- (a) the process for transferring existing projects and assets to the Fund;
- (b) the treatment of pre-existing contractual liabilities; and
- (c) timelines for the Board to assume full operational control.

**Committee Observation**

**The Committee was of the view that the transitional provisions proposed are not applicable to the Bill.**

### **KNCCI**

305. The stakeholder further recommended: -

- i. Coordination clause with the PPP Directorate be cleared to avoid duplication.
- ii. The Bill be aligned with Kenya's AFCFTA trade corridor strategy.
- iii. Mandatory local content and MSME participation thresholds in supply chains.
- iv. Adoption of international blended finance best practices to attract pension and sovereign wealth capital.

#### **Committee Observation**

**The Committee agreed with the stakeholder that the Bill needs to be amended to align it to the Public Private Partnerships Act.**

#### **Kituo cha Sheria**

306. The stakeholder proposed a new clause on offences and penalties to be inserted to deter financial mismanagement since protection of public resources is anchored under Articles 10, 73, 201, and 232 of the Constitution. Accordingly, any person who misappropriates, diverts, authorizes irregular disbursement, or knowingly approves unlawful investment of Fund resources commits an offence; and upon conviction shall be liable to:

- i. imprisonment for a term not less than ten (10) years;
- ii. a fine equivalent to twice the amount misappropriated or unlawfully authorized; and
- iii. disqualification from holding public office or serving on the Board."

#### **Committee Observation**

**The Committee agreed with the stakeholder.**

#### **Kituo cha Sheria**

307. The stakeholder recommended that whistleblower protection provisions be incorporated since protection of informants enhances early detection of financial irregularities and prevents systemic loss, whereas protection mechanisms would strengthen institutional integrity and accountability.

#### **Committee Observation**

**The Committee noted the stakeholder's concerns but was of the view that this could be addressed in a separate legal regime.**

### **Samson Nzevela**

308. He submitted that the Bill presents a historic opportunity to establish a sovereign-grade development financing system for Kenya, and urged Parliament to strengthen the Fund beyond its current design.
309. Mr. Nzevela submitted that Kenya's current model of infrastructure financing, which relies heavily on external debt and foreign currency borrowing, is unsustainable. He proposed that the Fund be redesigned to reduce this reliance, preserve and grow national wealth, enhance fiscal and monetary stability, support equitable development across all counties, mobilise domestic and diaspora resources, and secure prosperity for future generations.
310. Additionally, proposed the creation of a National Resilience and Capital Authority (NRCA) to steward national assets, stabilisation reserves, intergenerational savings, and strategic investments, with the National Infrastructure Fund operating as a sub-fund under this authority. He further proposed that all national revenues be consolidated into a Single National Income Aggregation Account, from which allocations to the Fund, the national government, and county governments would be made through a transparent, rules-based formula rather than on a discretionary basis.
311. On capitalisation, Mr. Nzevela proposed that the Fund receive defined contributions from shares of national revenue, county contributions, State Business Unit revenues, investment returns, asset monetisation proceeds, and voluntary diaspora participation. He also proposed that all capital investment contracts for nationally significant infrastructure be denominated in Kenya Shillings to protect against foreign currency risk, and that foreign investors participate through equity or hedged arrangements rather than structures that impose foreign-currency repayment obligations on Kenya.
312. Mr. Nzevela submitted that the Fund's mandate be expanded to include two social programmes: a compulsory one-year National Youth Skills Bridging and Service Programme, and a monthly support payment for Kenyan citizens aged 65 and above who have no pension coverage. He submitted that the latter gives effect to Article 57 of the Constitution.
313. He identified affordable housing, trade and logistics infrastructure (including Special Economic Zones, dry ports, and rail-aligned freight systems), and eco-tourism as priority sectors for investment under the Fund. He also proposed that the Government develop new sovereign revenue streams including GIS and national addressing systems, airspace and maritime rights, blue economy development, data licensing, and livestock digitisation.
314. On public expenditure, Mr. Nzevela proposed that the Government lease rather than purchase vehicles, transition to hybrid and electric government fleets, adopt

transparent procurement, and eliminate wasteful spending, as measures to create fiscal space to support the Fund.

315. Mr. Nzevela presented a clause-by-clause amendment schedule to the Bill. He proposed amendments to Clauses 1 through 12, covering staggered commencement, insertion of new definitions, designation of the Fund as a sovereign-grade institution, expansion of the Fund's objects to include wealth preservation and resilience, rules-based revenue transfers, strengthened governance and integrity vetting, a mandatory risk-managed investment policy, transparency and audit requirements, a Capital Preservation Rule, a Local Currency Rule requiring Kenya Shilling denomination for infrastructure contracts, integration into a sovereign wealth framework, and a requirement that regulations be finalised before the Fund becomes operational.
316. The stakeholder noted that with a Vision 2060 framework built around seven pillars: Sovereign Capital Management, Infrastructure-Led Growth, Human Capital Excellence, Environmental Sustainability, Fiscal Stability, Innovation Economy, and Social Cohesion, describing this as a long-term aspiration for a resilient Kenya founded on disciplined stewardship of national assets.

#### **Committee Observation**

The Committee noted the stakeholder's proposals and noted that the views could be addressed administratively in the implementation of the Act.



## CHAPTER FOUR

### 4. COMMITTEE OBSERVATIONS

317. The Committee made the following observations:

#### **Principal object of the Bill**

318. The principal object of the Bill is to provide a legal framework for the establishment and the management of the National Infrastructure Fund whose purpose shall be to scale up and accelerate development of national infrastructure, among other objects.

319. There is need to provide clarity on the object of the Bill to provide for projects within the national government functions in accordance with Part I of the Fourth Schedule to the Constitution.

#### **National Assembly oversight mechanisms**

320. There is need to enhance National Assembly over the Fund, by amending clauses 18 and 21 of the Bill to provide for the approval by the National Assembly of the investment plan and investment policy respectively.

#### **Clarification on whether the fund is an implementer of project or funding mechanism**

321. The Fund as conceptualized in the Bill will not be the implementer of the infrastructural projects but will utilize the existing government departments and institutions to carry out its objects. Therefore, the existing regimes, including the Public Private Partnerships Act, would be utilized to carry out the objects of the Fund.

#### **Clarification on the nature of the Fund**

322. There is need to anchor the Bill on Article 206 of the Constitution and section 24 the Public Finance Management on establishment of public funds and to take into account the legal safeguards already set out in the Public Finance Management Act.

323. Being a public fund under the PFM, the fund will be subject to existing PFM regulations including budgeting and submission of estimates, audit by the Auditor-General and reporting to the National Assembly.

### **Innovative approaches to funding infrastructure projects**

324. The Bill proposes innovative ways of financing national infrastructure projects to cure the dilemma of the need for infrastructure developments within the tight fiscal space.

### **Ringfencing of funds for infrastructure projects**

325. The Bill is responsive to the views received by both the Departmental Committee on Finance and National Planning and the Select Committee during public participation on the Sessional Paper No. 3 of 2025 on Partial Divestiture in Safaricom PLC by Government of Kenya in which the members of the public proposed that the proceeds from the partial divestiture be ring-fenced in a public fund established through an Act of Parliament and used specifically for infrastructure development.

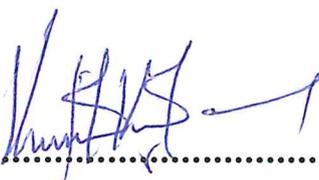
### **Offences and penalties**

326. There is need to provide for offences relating to misappropriation and other economic crimes related to handling public funds.

## CHAPTER FIVE

### 5. COMMITTEE RECOMMENDATION

327. The Committee, having considered the National Infrastructure Fund Bill, 2026 (National Assembly Bills No. 1 of 2026) recommends that the House approves the Bill with amendments.

SIGNED..........DATE 3<sup>rd</sup> March, 2026

**HON. FCPA KURIA KIMANI, CBS, MP**  
**CHAIRPERSON**  
**DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL**  
**PLANNING**

 <b>THE NATIONAL ASSEMBLY</b> <b>PAPERS LAID</b>	
<b>DATE:</b> 03 MAR 2026	<b>DAY:</b> Tuesday
<b>TABLED BY:</b>	Hon. FCPA Kuria Kimani (Chairperson, Finance and National Planning Committee)
<b>CLERK-AT THE-TABLE:</b>	Miriam Mado





THIRTEENTH PARLIAMENT  
FIFTH SESSION – 2026

**ADOPTION OF THE REPORT OF THE DEPARTMENTAL COMMITTEE ON  
FINANCE AND NATIONAL PLANNING ON THE CONSIDERATION OF THE  
NATIONAL INFRASTRUCTURE FUND, 2026 (NATIONAL ASSEMBLY BILL  
NO.1 OF 2026)**

We, the undersigned Members of the Departmental Committee on Finance and National Planning hereby append our signatures to adopt this Report today, Monday, <sup>MARCH</sup> 2<sup>nd</sup> February 2026.

	Name	Designation	Signature
1.	Hon. FCPA. Kuria Kimani, CBS, MP	Chairperson	
2.	Hon. FCPA (Amb.) Benjamin Kipkirui Langat, CBS, MP	Vice-Chairperson	
3.	Hon. Peter Kaluma, CBS, MP	Member	
4.	Hon. CPA Dr. John Ariko Namoit, MP	Member	
5.	Hon. Andrew Adipo Okuome, MP	Member	
6.	Hon. FCPA. Joseph Maero Oyula, MP	Member	
7.	Hon. David Mwalika Mboni, MP	Member	
8.	Hon. Chiforomodo Munga Mangale, MP	Member	
9.	Hon. CPA. Julius K. Rutto, MP	Member	
10.	Hon. Umul Ker Sheikh Kassim, MP	Member	
11.	Hon. (Dr.) Shadrack Mwiti Ithinji, MP	Member	
12.	Hon. Paul Kibichiy Biego, MP	Member	
13.	Hon. Betty N. Maina, MP	Member	
14.	Hon. George Sunkuyia Risa, MP	Member	
15.	Hon. Mohamed Soud Machele, MP	Member	

