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**THE NATIONAL ASSEMBLY**

**THIRTEENTH PARLIAMENT – FOURTH SESSION – 2025**


**DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING  
AND THE SELECT COMMITTEE ON PUBLIC DEBT AND PRIVATIZATION**

**REPORT ON:  
THE CONSIDERATION OF THE PRIVATIZATION BILL, 2025 (NATIONAL  
ASSEMBLY BILL NO. 36 OF 2025)**

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**AUGUST 2025**

 <b>THE NATIONAL ASSEMBLY PAPERS LAID</b>			
<b>DATE: 01 OCT 2025</b>			
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<b>TABLED BY:</b>	Hon. Abdi Shire (Chairperson, Public Debt & Privatization Committee)		
<b>CHIEF CLERK:</b>	Wills Obiero		

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## **LIST OF ABBREVIATIONS AND ACRONYMS**

COK	-	Constitution of Kenya
CS	-	Cabinet Secretary
ICPAK	-	Institute of Certified Public Accountants
KEPSA	-	Kenya Private Sector Alliance
LSK	-	Law Society of Kenya
MP	-	Member of Parliament
ODM	-	Orange Democratic Movement
PwC	-	PricewaterhouseCoopers Limited
UDA	-	United Democratic Alliance

## **ANNEXURES**

Annexure 1: Adoption Schedule

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Annexure 3: The Privatization Bill, 2025 (National Assembly Bill No. 36 of 2025)

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## CHAIRPERSONS' FOREWORD

This report contains the proceedings of the Departmental Committee on Finance and National Planning and the Select Committee on Public Debt and Privatization on the consideration of the Privatization Bill, 2025 (National Assembly Bill No. 36 of 2025). The Bill was published in the Kenya Gazette Supplement No. 127 of 16<sup>th</sup> July, 2025 and read a first time on 5<sup>th</sup> August, 2025. The Bill was committed to the Departmental Committee on Finance and National Planning and the Select Committee on Public Debt and Privatization for consideration and tabling of the report to the House pursuant to Standing Order 127.

The principal object of the Bill is to repeal and re-enact the regulatory framework for the privatization of public entities with a view to improving the efficiency and effectiveness of the process of privatizing public entities. It provides for the establishment of the Privatization Authority, sets out the functions of the Cabinet Secretary in privatization matters and lays out the process of implementation of the privatization programme. The Bill also provides for the procedure to be followed on reviews and appeals in instances when a person is dissatisfied by the Privatization Authority's decision.

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 7<sup>th</sup> August 2025, inviting the public to submit memoranda by way of written statements on the Bill.

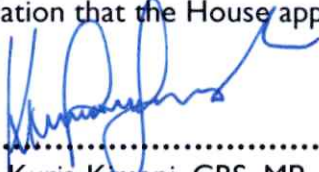
In addition, the Clerk of the National Assembly vide letter Ref. No.NA/DDC/F&NP/2025/071 dated 7<sup>th</sup> August 2025 invited key stakeholders to submit views on the Bill and attend a public participation forum on Thursday, 14<sup>th</sup> August 2025. The memoranda were to be received on or before Thursday, 14<sup>th</sup> August 2025 at 5.00 pm (East African Time). By the close of the submission deadline, the Committee had received nine memoranda.

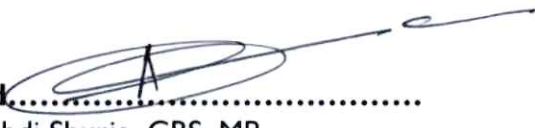
Further, the Clerk of the National Assembly placed an advertisement in the print media on 14<sup>th</sup> August, 2025, giving notification to the public of public hearings on the Bill in twenty four (24) counties from 18<sup>th</sup> August, 2025 to 21<sup>st</sup> August, 2025. The two Committees successfully conducted public hearings in those counties.

On behalf of the Departmental Committee on Finance and National Planning and the Select Committee on Public Debt and Privatization and pursuant to the provisions of Standing Order 199(6), it is our singular honour to present to this House the Joint Report of the two Committees on their consideration of the Privatization Bill, 2025(National Assembly Bill No. 36 of 2025). The Committees are 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.

Finally, we wish to express our appreciation to the Honourable Members of the two Committees and the Committee Secretariat who made invaluable contributions towards the preparation and production of this report.

It is our pleasure to report that the Committees have considered the Privatization Bill, 2025 (National Assembly Bill No. 36 of 2025) and wish to report to this August House with the recommendation that the House approves the Bill with amendments.

  
**Signed**.....  
Hon. CPA. Kuria Kimani, CBS, MP

  
**Signed**.....  
Hon. Abdi Shurie, CBS, MP  
**Chairperson**

**Chairperson**  
Departmental Committee on Finance and  
National Planning  
**Date**..... 1<sup>st</sup> Oct 2025

Select Committee on Public Debt and  
Privatization  
**Date**..... 1<sup>st</sup> Oct 2025

## CHAPTER ONE

### I. BACKGROUND

1. This is the report of the Departmental Committee on Finance and National Development and Select Committee on Public Debt and Privatization on their joint consideration of the Privatization Bill, 2025 (National Assembly Bills No. 36 of 2025)

### I.1 ESTABLISHMENT AND MANDATE OF THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING.

2. Article 124(1) of the Constitution provides that each House of Parliament may establish Committees and shall make Standing Orders for the orderly conduct of its proceedings, including the proceedings of its committees.
3. The Departmental Committee on Finance and National Planning is established pursuant to standing order 216 whose mandates pursuant to the standing order 216 (5) are 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) 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 analyze the relative success of the ministries and departments as measured by the results obtained as compared with their stated objectives;
  - (f) 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);
  - (g) To examine treaties, agreements and conventions;
  - (h) To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;
  - (i) To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution; and
  - (j) To examine any questions raised by Members on a matter within its mandate.

## **I.2 MEMBERSHIP OF THE COMMITTEE**

4. The National Assembly Departmental Committee on Finance and National Planning comprises 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. CPA Oyula, Joseph H. Maero, MP  
Butula Constituency

**ODM Party**

Hon. Mboni, David Mwalika, MP  
Kitui Rural Constituency

**WDM Party**

Hon. Okuome Adipo Andrew, MP  
Karachuonyo Constituency

**ODM Party**

Hon. Chiforomodo, Munga, MP  
Lunga Lunga Constituency

**UDM Party**

Hon. CPA Rutto Julius Kipletting, MP  
Kesses Constituency

**UDA Party**

Hon. Paul Biego, MP  
Chesumei Constituency

**UDA Party**

Hon. Sunkuyia, R. George, MP  
Kajiado West Constituency

**UDA Party**

Hon. Betty N. Maina, MP  
Murang'a County

**UDA Party**

Hon. Sheikh Umul Sheikh, MP  
Mandera County

**UDM Party**

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

**Jubilee Party**

Hon. (Dr.) Ariko John Namoit, MP  
Turkana South Constituency

**ODM Party**

Hon. Machele M. Soud, MP  
Mvita Constituency

**ODM Party**

## **I.2.1 COMMITTEE SECRETARIAT**

5. The Finance and National Planning Committee is facilitated by the following staff:

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

Ms. Jenifer 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. Benson Muthuri  
**Assistant Serjeant-At-Arms**

Mr. Mwangi Muchiri  
**Audio Officer III**

Mr. Steve Jeremy Kamau  
**Committee Intern**

Mr. Allan Ngugi  
**Committee Intern**

### **I.3 ESTABLISHMENT AND MANDATE OF THE SELECT COMMITTEE ON PUBLIC DEBT AND PRIVATIZATION**

6. The powers of each House of Parliament to establish committees and to make Standing Orders for the orderly conduct of its proceedings are provided for under Article 124 of the Constitution of Kenya, 2010.
7. To ensure effective oversight on matters concerning public debt, debt guarantees, public-private partnerships, and the privatization of national assets, the National Assembly Standing Order 207A establishes the Public Debt and Privatization Committee, which is tasked with specific mandates such as:
  - i. Oversight of public debt and guarantees, pursuant to Article 214 of the Constitution
  - ii. Examine matters relating to debt guarantees by the National government;
  - iii. Oversight Consolidated Fund Services excluding audited accounts;
  - iv. Examine reports on the status of the economy in respect of the public debt;
  - v. Oversight of public-private partnership programs by the national government with respect of the public debt; and
  - vi. Oversight privatization of national assets
8. This Committee is therefore mandated, among other functions, to examine the privatization of public entities and propose recommendations to the House for adoption.

### **I.3.1 MEMBERSHIP OF THE COMMITTEE**

9. The Public Debt and Privatization Committee as currently constituted, comprises the following Members of Parliament: -

#### **CHAIRPERSON**

Hon. Abdi Shurie, CBS, M.P.  
Balambala Constituency  
**Jubilee Party**

#### **VICE-CHAIRPERSON**

Hon. Njoki Irene Mrembo, M.P.  
Bahati Constituency  
**Jubilee Party**

Hon. Omboko Milemba M.P.  
Emuhaya Constituency  
**ANC Party**

Hon. (CPA) Suleka, H. Harun. M.P.  
Nominated MP  
**UDM Party**

Hon. (Dr.) Irene Kasalu M.P.  
Kitui County  
**Wiper Party**

Hon. Kipkoros Joseph Makilap M.P.  
Baringo North Constituency  
**UDA Party**

Hon. Kwenya, Thuku Zachary, M.P.  
Kinangop Constituency  
**Jubilee Party**

Hon. Chege Njuguna M.P.  
Kandara Constituency  
**UDA Party**

Hon. Muiruri Muthama Stanley, M.P.  
Lamu West Constituency  
**Jubilee Party**

Hon. Abdi Ali Abdi, M.P.  
Ijara Constituency  
**NAP-K**

Hon. Aden Daud, EBS, M.P.  
Wajir East Constituency  
**Jubilee Party**

Hon. Kirwa Abraham Kipsang, M.P.  
Mosop Constituency  
**UDA Party**

Hon. (Dr.) Daniel Manduku, M.P.  
Nyaribari Masaba Constituency  
**ODM Party**

Hon. Letipila Dominic Eli, M.P.  
Samburu North Constituency  
**UDA Party**

Hon. Barongo Nolfason Obadiah, M.P.  
Bomachoge Borabu Constituency  
**ODM Party**

### I.3.2 COMMITTEE SECRETARIAT

10. The Committee is supported by the following Secretariat:

Mr. Leonard Machira  
**Principal Clerk Assistant II & Head of Secretariat**

Mr. Chacha Machage  
**Senior Fiscal Analyst / Clerk Assistant**

Mr. Job Mugalavai  
**Fiscal Analyst II/ Clerk Assistant**

Mr. Julie Mwithiga  
**Senior Fiscal Analyst**

Mr. Timothy Chiko  
**Research Officer III**

Ms. Audrey Ogutu  
**Legal Counsel II**

Ms. Mwanaasha Juma  
**Assistant Serjeant-at-Arms**

Ms. Edith Chepngeno  
**Media Relations Officer III**

Mr. Danton Nirvana  
**Audio Officer III**

Mr. George Mbaluka  
**Office Assistant**

## CHAPTER TWO

### 2.0 OVERVIEW OF THE PRIVATIZATION BILL, 2025 (NATIONAL ASSEMBLY BILLS NO. 36 OF 2025)

#### 2.1 BACKGROUND

11. Kenya has a wide range of State-Owned Enterprises (SOEs) operating across key sectors of the economy. These entities were created by the government to deliver essential services, drive economic growth, and support national development objectives, while also helping to stabilize markets for critical public goods.
  12. Recognizing the importance of improving their effectiveness, the Government of Kenya has taken steps to strengthen the efficiency and performance of SOEs. Reforms have focused on enhancing corporate governance, transparency, and accountability. In addition, the government has pursued public-private partnerships (PPPs) and divestiture initiatives to encourage greater private sector involvement in select SOEs.
  13. Privatization in Kenya has been a significant aspect of the country's economic reforms and development strategy. Since the 1990s, Kenya has implemented various privatization initiatives aimed at transferring control of State Owned Enterprises (SOEs) to the private sector. The main objectives of privatization in Kenya have been to enhance efficiency, attract investments, stimulate economic growth, and reduce the government's financial burden.
  14. The Privatization Bill, 2025 (National Assembly Bills No. 36 of 2025) is a National Assembly Bill sponsored by the Leader of Majority Party of the National Assembly. It was published on 16<sup>th</sup> July 2025 and it was read for a first time on 5<sup>th</sup> August, 2025. It was then committed to both the Departmental Committee on Finance and National Planning and Select Committee on Public Debt and Privatisation for their joint consideration.
  15. In **Nairobi Constitutional Petition No. E491 of 2023 Orange Democratic Movement Party Vs. The Cabinet Secretary, National Treasury and Economic Planning & 2 Others (As Consolidated with Petition E010 of 2024 and E025 of 2025)**, the High Court on 24<sup>th</sup> September 2024 declared the Privatisation Act, 2023 to be unconstitutional, null and void. The High Court made the following Declarations and Orders:
    - i. *That the National Assembly did not conduct reasonable, meaningful, adequate and or effective public participation before passing the Privatisation Act, 2023. The entire Privatisation Act, 2023 was therefore unconstitutional, null and void.*
    - ii. *That Section 22(5) of the Privatisation Act, 2023 was inconsistent with the Constitution and was unconstitutional, null and void.*
    - iii. *That the decision to privatise Kenyatta International Conference Centre, (Kenya International Convention Centre) a national monument, contravenes Article 11(2) of the*
- Joint Report of the Departmental Committee on Finance and National Planning and the Select Committee on Public Debt and Privatization on the Consideration of The Privatization Bill, 2025 (National Assembly Bill No. 36 of 2025)*

*Constitution as read with the provisions of the Monuments and Heritage Act and was, therefore, unconstitutional, unlawful null and void.*

16. The then Privatisation Bill, 2023 (National Assembly Bills No. 22 of 2023), sponsored by the Leader of Majority Party, sought to repeal the Privatization Act, 2005 (Cap. 485B) and provide a new regulatory regime on privatization. It was published on 24th May, 2024. Its First Reading in the National Assembly was on 6th June, 2023 and was then Committed to the Departmental Committee on Finance and National Planning for its consideration and tabling of its report pursuant to Standing Order 127. Its Second Reading, Committee of the whole and Third Reading was conducted on 14th September, 2023 and was passed by the House with amendments.
17. On 9th October, 2023, the President assented to the Privatisation Bill, 2023 as the Privatisation Act, 2023 (No. 11 of 2023).
18. The Privatization Bill, 2025, as published, and largely similar to the now repealed Privatisation Act, 2023, has sought to address the unconstitutionality of section 22(5) of the Privatisation Act, 2023 by deleting the provision. Section 22(5) of the repealed Act provided that where the National Assembly does not make a decision either to ratify or refuse to ratify within 90 days, the privatisation programme shall be deemed to have been ratified. Section 22(5) of the Act provided as follows:

*(5) Where the National Assembly does not make a decision under subsection (3) within ninety days, the privatisation programme shall be deemed to have been ratified.*

19. Paragraph 138 of the Judgement expounded on the unconstitutionality of section 22(5) in the following words—

*“138. The Constitution as the supreme law of the land, assigned to the 4th respondent the role of oversight over State organs, including the executive. The purpose of seeking ratification under the Act, is to give the 4th respondent, as the people’s representative, an opportunity to check whether the proposed privatisation is in the public interest. Although the intendment of section 22(3) is to ensure that the 4th respondent makes a prompt decision on the request to ratify the privatisation programme without delay, the effect of section 22(5) to deem ratification to have been given on expiry of ninety days, is to side step role of the National Assembly to check whether the privatisation programme is really in the best interest of the people.”*

## **2.2 OVERVIEW OF THE BILL**

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

21. Part I (Clauses 1-6) of the Bill provides for preliminary matters including the short title and interpretation of terms used in the Bill. It further sets out the transactions to which the Act shall not apply, the guiding principles of the Act and the purpose of undertaking privatisation.
22. Clause 3 of the Bill provides for the objects and purpose of the Act as to provide for the establishment of the Privatisation Authority; and to streamline the regulatory and institutional framework for the implementation of a privatisation.
23. Clause 4 of the Bill provides for the limitations of the Act. It provides that the Act shall not apply to—
  - i. sale of shares in the secondary market
  - ii. sale of shares by a social security fund, compensation fund, superannuation fund, insurance fund or endowment fund under public control for the benefit of its contributors
  - iii. sale of government shares in a government-linked corporation
  - iv. sale of new shares to existing shareholders through a rights issue
  - v. any balance sheet reorganisation which may lead to dilution of the percentage of shares held by a public entity
  - vi. sale or transfer of shares by a county government.
24. Further, the clause provides that the National Treasury may, on its own or through the Authority, provide technical support and assistance to county governments with regard to privatisation by county governments.
25. Clause 6 of the Bill provides for the purpose of a privatisation as to—
  - i. implement government fiscal policies and revenue raising measures
  - ii. improve the infrastructure and the delivery of public services through the involvement of private capital and expertise
  - iii. enhance and develop the capital markets in Kenya
  - iv. improve efficiency, profitability and accountability of public entities
  - v. improve the regulation of the economy by reducing conflicts between the public sector's regulatory functions and commercial functions
  - vi. broaden the base of ownership in the Kenyan economy by encouraging private ownership of entities.
26. Part II (Clauses 7-17) of the Bill provides for the coordination and oversight of privatisation matters. It outlines the functions of the Cabinet Secretary; provides for the establishment, functions and administration of the Privatisation Authority and the appointment and functions of the Managing Director, the Corporation Secretary and staff of the Authority.
27. Clause 7 of the Bill provides for the functions of the Cabinet Secretary such as+58—

- i. providing policy direction on matters related to privatisation
  - ii. co-ordinating the adherence to national, regional and international obligations relating to privatisation
  - iii. developing and formulating the privatisation programme
  - iv. overseeing the administration of the Act
28. Clause 8 of the Bill provides for the establishment of the Privatisation Authority as a corporate entity.
29. Clause 9 of the Bill provides for the functions of the Privatisation Authority as follows—
- i. to advise the government on all aspects of privatisation of public entities
  - ii. to facilitate the implementation of government policies on privatisation
  - iii. to implement the privatisation programme
  - iv. to implement specific privatisation proposals in accordance with the privatisation programme
  - v. to collaborate with other organisations, within or outside Kenya, as it may consider appropriate in furtherance of the objects of the Act
  - vi. to take such measures as are necessary to ensure that the provisions of this Act are complied with
  - vii. to perform any other functions under the Act or any other legislation as may be conferred, from time to time, on the Authority
30. Clause 10 of the Bill provides for the Board of the Privatization Authority, consisting of 9 persons. These are:
- i. a chairperson appointed by the President
  - ii. the Principal Secretary for the time being responsible for privatisation or a representative designated in writing
  - iii. the Attorney-General or a representative designated in writing
  - iv. six other persons, not being public officers, appointed by the Cabinet Secretary through a competitive process, each possessing a degree in either economics, accounting, finance or any other relevant degree from a recognized institution and having ten years of work experience of which five shall be at senior management level in a relevant field.
31. Part III (Clauses 19-30) of the Bill deals with the privatization programme. It makes provisions for the formulation of the programme which includes identification of entities to be included in the programme in line with the considerations, public consultations during development and approval by the National Assembly before implementation of the programme.

32. It further specifies the validity period of the programme as not exceeding five years from the date of gazette; and such validity may be extended for a period not exceeding twelve months.
33. Clause 19 of the Bill provides that the privatization programme shall be formulated by the Cabinet Secretary in accordance with the Act and approved by the Cabinet; specify the public entities identified and approved for privatization; and serve as the basis upon which a privatization shall be undertaken. The formulation of the privatization programme shall be in accordance with section 12 of the Public Finance Management Act, Cap. 412A.
34. Clause 21 of the Bill provides that the Cabinet Secretary shall, in the identification and determination of entities for privatization, take into consideration:
  - i. the relevant government policies in respect of privatization
  - ii. the strategic priorities and policy goals to be achieved by the privatization
  - iii. the strategic nature of the public entity to be privatized
  - iv. the need to avoid a privatization that may result in an unregulated monopoly
  - v. the need to avoid a privatization that may accord the new owners' special protection or access to credit on concessionary terms as a result of the National Government's sovereign status
  - vi. the extent of regulatory adjustments required
  - vii. the need to reduce budget drain on government resources
  - viii. the expected benefits to be gained from a proposed privatization
  - ix. any other relevant consideration
35. Clause 22 of the Bill provides that the Cabinet Secretary shall submit the privatization programme to the National Assembly for approval. The request for approval shall be accompanied by an explanatory memorandum indicating—
  - i. a brief description of the public entity to undergo privatization
  - ii. a brief explanation of the reasons for undertaking the privatization
  - iii. the benefits to be gained from the proposed privatization including the estimated revenue to be obtained
  - iv. any other relevant information.
36. Clause 23 of the Bill provides that the National Assembly shall consider a privatization programme within sixty days of receipt.
37. Clause 24 of the Bill provides that the National Assembly shall be guided by principles of public finance under Article 201 of the Constitution, principles of good governance, the criteria for identification of entities specified under section 21 and any other relevant consideration.

38. Clause 25 of the Bill provides that the National Assembly shall approve the programme for implementation; approve the programme with amendments; or decline the programme.
39. Clause 26 of the Bill provides that the Clerk is required to notify the Cabinet Secretary of the decision of the National Assembly within seven days of the decision. Further, where the National Assembly approves a privatization programme with amendments, the notice shall state the proposed amendments and the reasons. Also, where the National Assembly declines a privatization programme, the Clerk shall state the reason in the notification.
40. Clause 27 of the Bill provides that the Cabinet Secretary shall, upon receipt of the notice of approval of the programme with amendments, amend the privatization programme and publish it in the Kenya Gazette.
41. Clause 28 of the Bill provides that the approved privatization programme shall be published in the Kenya Gazette.
42. Clause 29 of the Bill provides that a privatization programme shall be valid for a period not exceeding eight years from the date of gazettment. If, on expiry of the programme, the implementation of the programme has not been completed, the Cabinet Secretary may include the affected entities in another privatization programme formulated and approved in accordance with the Act.
43. Clause 30 of the Bill provides that the Cabinet Secretary may amend the privatization programme. In such a case, the provisions of the Part relating to formulation and approvals shall apply with respect to any such amendments.
44. Part IV (Clauses 31-43) of the Bill makes provision for the implementation of the programme. It mandates the Privatization Authority to implement the programme and provides for the establishment of a steering committee to implement the privatization on behalf of the Authority.
45. It further provides for who is eligible to participate in a privatization; the methods of privatization; the development of a privatization proposal which shall include stakeholder engagement on the individual privatizations and the approval of the privatization proposal by the Board of the Authority and the Cabinet Secretary before implementation.
46. Additionally, the Part provides for restrictions, and obligations on entities scheduled for privatization.
47. Clause 31 of the Bill provides that the privatization programme shall be implemented by the Authority in accordance with the Act.
48. Clause 32 of the Bill provides that any person, whether Kenyan or non-Kenyan, is eligible to participate in a privatization. Further, it provides that the Cabinet Secretary may direct the

Authority to limit participation in any privatization to Kenyans; or ensure that there is a specified minimum level of participation by Kenyans in any privatization. The clause also provides that a national government-owned entity is not eligible to participate in a privatization but this shall not prevent a social security fund, compensation fund, superannuation fund, insurance fund or endowment fund under government control from purchasing shares for the benefit of its contributors.

49. Clause 33 of the Bill provides that in the implementation of a privatisation, there shall be a steering committee comprising the following members—
- i. the Principal Secretary for the time being responsible for privatization or a representative designated in writing;
  - ii. the Attorney-General or a representative designated in writing;
  - iii. the Principal Secretary of the ministry with responsibility over the asset or service being privatised
  - iv. two members of the Board as provided in section 10(4) (*although this provision is not there in the Bill*)
50. Clause 34 of the Bill provides for methods of privatization which shall include:
- i. initial public offer of shares
  - ii. sale of shares by public tender
  - iii. sale resulting from the exercise of pre-emptive rights
  - iv. such other method as the Board shall, with the approval of the Cabinet Secretary, determine
51. Clause 35 of the Bill provides for the contents to be included in the privatization proposal. It provides that where an entity has been identified for privatization under the Act, the Authority shall prepare a privatization proposal on the entity. The privatization proposal shall specify—
- i. the purpose for the establishment or existence of the entity to be privatized and the extent to which that purpose or operation has been met including any inadequacies in meeting that purpose
  - ii. any rights or other entitlements and resources that have been provided to meet the purpose for the establishment or existence of the entity to be privatized
  - iii. any recommendations for continuing to meet the purpose for establishment or existence of the entity to be privatized
  - iv. the financial position of the entity to be privatized
  - v. the recommended method of privatization
  - vi. the estimated costs of implementing the proposed privatization

- vii. any recommendations for dealing with the employees directly affected by the proposed privatization including any benefits they are entitled to
  - viii. where applicable, a recommendation on how to undertake socio-economic investments to the host community
  - ix. the benefits to be gained from the proposed privatization
  - x. a work plan for the proposed privatization
  - xi. any information relating to the repeal, amendment or enactment of any law for the proposed privatization to be carried out
  - xii. an evaluation of the entity to be privatized
  - xiii. any proposals on how Kenyans can participate in the transaction
  - xiv. any other relevant information.
52. Clause 37 of the Bill provides that upon approval of a privatization proposal under section 36, the determined and approved method of privatisation shall be effected in the manner specified in the Second Schedule to the Act.
53. Clause 38 of the Bill provides that the Privatization Authority shall undertake a valuation for each privatization, to assist in the implementation of the privatization proposal. The valuation shall be performed by a qualified person appointed by the Authority.
54. Clause 40 of the Bill provides for general restrictions. It provides that a public entity to which the section applies shall not—
- i. allow the assets of the public entity to be dissipated
  - ii. incur any liabilities, other than in the ordinary course of business, without the prior written approval of the Cabinet Secretary
  - iii. disclose information, other than publicly, if there is a reasonable risk that the disclosure would give an advantage to a person who might compete in the privatisation
55. Clause 41 of the Bill provides that a public entity undergoing privatization shall not undertake any new capital investment or disposal unless approved by the Cabinet Secretary.
56. Clause 42 of the Bill provides that the National Government or the public entity undergoing privatization shall not extend credit or provide financing for the purchase of the shares.
57. Clause 43 of the Bill provides that a public entity undergoing privatization shall—
- i. keep up-to-date business records and books of accounts
  - ii. maintain an up-to-date register of all fixed assets
  - iii. document all legal and other obligations of the entity

58. Part V (Clauses 44- 47) of the Bill provides for privatization agreement specifying who and when an agreement can be executed. It further provides for publication of finalised privatization.
59. Part VI (Clauses 48-49) of the Bill provides for the manner in which the proceeds of privatization shall be handled.
60. Part VII (Clauses 50-58) of the Bill provides for reviews and appeals. It provides the procedure for reviews and appeal; establishment and conduct of the Privatization Appeals Board.
61. Part VIII (Clauses 59-62) of the Bill provides for the financial provisions in respect of the Authority including the sources of funds, the financial year of the Authority, annual estimates, accounts and audit of the financial affairs of the Authority.
62. Part IX (Clauses 63-69) of the Bill provides the miscellaneous provisions. It provides for the annual report on the privatisation programme; protection from personal liability; submission of information to the Authority; offences under Act and the power of the Cabinet Secretary to make Regulations.
63. Part X (Clauses 70-75) of the Bill contains repeals, savings and transitional provisions. It provides for the effect of its enactment on existing legislation and for the repeal of the Privatization Act, 2005.
64. The First Schedule to the Bill provides for the conduct of business and affairs of the Board.
65. The Second Schedule to the Bill sets out provisions on the methods of privatization.
66. The Third Schedule to the Bill sets out the Administrative Procedures for the administration of reviews and appeals under the Act.

## CHAPTER THREE

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

#### 3.1 LEGAL FRAMEWORK ON PUBLIC PARTICIPATION

67. 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.”*

68. 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

69. Pursuant to the aforementioned provisions, the Clerk of the National Assembly placed an advertisement in the print media on 7<sup>th</sup> August 2025 inviting the public to submit memoranda on the Bill. Further, the Clerk of the National Assembly vide letter Ref. No. NA/DDC/F&NP/2025/071 dated 7<sup>th</sup> August 2025 invited key stakeholders to submit views on the Bill and attend a public participation forum on 13<sup>th</sup> August 2025 and 14<sup>th</sup> August 2025. Further, Explaners on the Bill were availed to the public in English and Kiswahili to facilitate better understanding on the Bill and are annexed to this report as Annexure 6.

70. The Committees received memoranda from stakeholders whose memoranda are annexed to this report as Annexure 7. They stated as follows:

#### 3.3 CLAUSE BY CLAUSE SUBMISSION

##### Clause 2

##### PricewaterhouseCoopers (PwC)

71. PwC proposed the amendment of the definition of 'public entity' to include a county government linked corporation. The current Bill doesn't include sub-sovereign entities such as county government entities in the definition of a public entity.

#### **Committees Observation**

**The Committees noted that the Bill only deals with privatization of national government assets and does not extend to county governments. Therefore, the Committees did not agree to the proposed amendment.**

72. The stakeholder proposed the amendment of the definition of 'Secondary Market' to provide that the markets where tradable securities shall be traded are both local and international financial markets. The stakeholder provided that this will provide for transactions that might be conducted outside Kenya.

#### **Committees Observation**

**The Committees were of a different view that the definition was sufficient.**

#### **Institute of Certified Public Accountants of Kenya (ICPAK)**

73. The stakeholder proposed the introduction of the term 'divestiture' to mean "Disposing of whole or part of the assets and or shares of a public enterprise". The stakeholder noted that this would ensure ease of interpretation and flexibility in government interests.

#### **Committees Observation**

**The Committees agreed to the proposed amendment.**

### **Clause 3**

#### **Institute of Certified Public Accountants of Kenya (ICPAK)**

ICPAK proposed the amendment of the objects and purpose of the Bill to provide comprehensiveness of the Authority's regulatory mandate by adding the following new paragraphs:

"c) prohibit restrictive or unfair trade practices in the privatization process.

d) Promote openness and public participation in privatization programmes in Kenya."

#### **Committees Observations**

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- i. The Committees agreed to the proposed new paragraph (c) providing for an additional object of the Act to prohibit restrictive or unfair trade practices in the privatization process; and
- ii. The Committees agreed to the proposed new paragraph (d) and recommended that the paragraph be further amended to refer to Article 10 of the Constitution that provides for national values and principles of public governance.

#### **Clause 4**

##### **PricewaterhouseCoopers (PwC)**

74. PwC proposed amending Clause 4 (c) to harmonize it with the definition of a 'Government-linked corporation', 'public entity', and 'privatization'. The stakeholder submitted that this would eliminate ambiguity regarding the applicability of the Act to share transactions involving government-linked corporations. According to PwC, the Bill intends to exclude only sales to government-linked corporations, while sales of shares by these corporations or sales to private parties remain regulated under the Bill.

##### **Committees Observation**

The Committees noted that the Bill defined a public entity to include a national government-linked corporation yet clause 4 of the Bill sought to exclude sale of government shares in a government-linked corporation from the ambit of the Bill/Act. The Committees therefore recommended that clause 4(c) of the Bill be deleted to bring national government-linked corporations within the purview of the Bill/Act.

#### **Clause 5(f)**

75. The Institute proposed amending Clause 5(f) to enhance clarity in the implementation of the principles of privatization. ICPAK proposed that the clause be amended to read as follows:

*"f) effective, efficient, economical and transparent;"*

##### **Committees Observation**

The Committees observed that the proposals were already provided for in the Bill and in particular, under paragraphs (d), (e) and (f).

#### **Clause 6**

## **PricewaterhouseCoopers (PwC)**

76. Amend the Clause to provide a new paragraph (g) to read as follows.

*“(g) ensure that privatization initiatives contribute to economic inclusivity and poverty reduction”*

77. The stakeholder submitted that privatization processes have significant socio-economic impacts, which ensure inclusivity, help to address disparities, and enhance the participation of marginalized groups in the economy. Additionally, this would create opportunities for employment, ownership, access to services, and a reduction of poverty levels.

### **Committees Observation**

**The Committees were of a different view that the stakeholder’s proposal is already provided for in the Bill.**

## **Clause 6(d)**

### **Institute of Certified Public Accountants of Kenya (ICPAK)**

78. The stakeholder proposed the amendment of Clause 6(d) to read as follows:

*“d) Improve efficiency, sustainability and accountability of public entities”*

79. The Institute submitted that the term 'profitability' as applied in the Bill conflicts with the government's core mandate of service delivery, and thus the submission to align the Bill with the government's mandate.

### **Committees Observation**

**The Committees were of a different view that once an entity had been privatised, the post-privatization outcome would not be within the ambit of the government. It was therefore the intention of the Bill to state that one of the purposes of the privatization was to improve profitability of such entities.**

## **Clause 7**

### **Institute of Certified Public Accountants of Kenya (ICPAK)**

80. ICPAK proposed the deletion of Clause 7 in its entirety, arguing that it creates an overlap between the roles of the Cabinet Secretary and those of the Authority's Board. According

to the stakeholder, the proposed amendment will enhance clarity and efficiency of the Board's responsibility and delink the Government from the process.

### **Committees Observation**

**The Committees were of a different view that there was no overlap between the roles of the Cabinet Secretary and the Board of the Privatization Authority. This was to be looked at from the lens of the roles of the responsibilities of the National Treasury as provided for under section 12 of the Public Finance Management Act, Cap. 412A.**

### **Clause 9**

#### **PricewaterhouseCoopers (PwC)**

81. PwC proposed the inclusion of new Clauses to provide for the independence of the Authority as follows: -

*“9A. Independence of the Authority*

*(1) The Authority shall be independent and free of control by government, political, or commercial interests in the exercise of its powers and the performance of its functions.*

*(2) In fulfilling its mandate, the Authority shall be guided by the national values and principles of governance in Article 10 and the values and principles of public service in Article 232(1) of the Constitution.”*

82. The stakeholder submitted that the omission of independence creates the risk that the Authority could be subject to political interference or biased decision-making, which undermines the integrity and effectiveness of the privatization process.

### **Committees Observations**

- i. **The Committees observed that the proposed subclause (1) of clause 9A sought to provide for the independence of the Privatization Authority. The proposal misses the important role of government, particularly the Cabinet Secretary for the National Treasury, in privatization matters within the provisions of section 12 of the Public Finance Management Act, Cap. 412A. Therefore, the Committees were not persuaded by the proposal.**
- ii. **The Committees, however, agreed to the proposal under subclause (2).**

### **Institute of Certified Public Accountants of Kenya (ICPAK)**

83. Amend the Clause to provide for additional roles of the Authority. ICPAK noted that important roles such as record management, liaison, publicity, or monitoring and evaluation had been left out. They proposed additional roles as listed below:

- a) seek potential investors in public enterprises.
- b) to prepare the long-term divestiture sequence plan
- c) maintain records, safeguard information, and establish such administrative procedures as shall ensure confidentiality of information.
- d) maintain close liaison with all relevant institutions in the process of privatization.
- e) publicize activities of the privatization programme.
- f) monitor and evaluate the implementation of privatization programmes in Kenya.

### **Committees Observation**

**The Committees did not agree to the proposal by the stakeholder as the functions of the Authority are adequately provided for in the Bill.**

### **Clause 10(1)(d)**

### **Institute of Certified Public Accountants of Kenya (ICPAK)**

84. The stakeholder proposed the amendment of the qualifications of Board members to include that the candidates should meet the requirements of Chapter six of the Constitution and a fit and proper test. They provided that this is in line with the *Mwongozo* guidelines and best practices observed in similar Boards.

### **Committees Observation**

**The Committees agreed to the stakeholder's proposal.**

### **New Proposal (Clause 10)**

### **Institute of Certified Public Accountants of Kenya (ICPAK)**

85. The stakeholder proposed the introduction of a new Clause 10(4) to prescribe the powers to coopt the Board. ICPAK proposed that the new Clause read as follows:

*'The Board may, by resolution either generally or in a particular case, co-opt an additional member with relevant expertise for purposes of performance of any of the functions of the Board.'*

## **Committees Observation**

**The Committees agreed to the proposed amendment.**

### **Clause 14**

#### **PricewaterhouseCoopers (PwC)**

86. PwC proposed the inclusion of new subclauses to provide the formal requirements for delegation terms, revocation, and accountability to mitigate the risks of misuse and governance gaps. The stakeholder proposed new sub-clauses as follows: -

*(2) Every such subcommittee, officer, employee, or agent shall be appointed by the Authority in writing, setting out the duration of the appointment, the duties, reporting requirements, functions, authority, and powers so conferred.*

*(3) The Authority may at any time revoke a **delegation** under this section.*

*(4) A delegation conferred under this section shall not prevent the Authority from **performing the delegated function.**"*

## **Committees Observation**

**The Committees did not agree to the proposal on the grounds the clause in the Bill was adequate and that additional provisions would be too prescriptive.**

### **Clause 17 (3)**

#### **Kenya Private Sector Alliance (KEPSA)**

87. The stakeholder noted that there is need to have specific number of years the corporate secretary can serve the Authority. This will deter abuse of the loophole that exist in the current Clause 17 of Privatization Bill 2025. The new clause should read as follows;

*17 (4). The corporation secretary shall be appointed for a term of four years and may be eligible for reappointment for one further term not exceeding four years.*

## **Committees Observation**

**The Committees were of a different view that the tenure of the corporation secretary could not be set out in the Bill since he/she was not a member of the Board and that the instruments of appointment would provide for the terms and conditions of service.**

### **Clause 19(2)(a)**

#### **Institute of Certified Public Accountants of Kenya (ICPAK)**

88. ICPAK proposed amending the Clause to give the role of formulation of the Privatization programme to the Authority and not the Cabinet Secretary, as indicated. ICPAK proposed that Clause 19(2)(a) be amended to read as follows:

*“be formulated by the Authority and submitted to the Cabinet Secretary for concurrence and to the National Assembly for approval.”*

89. According to ICPAK, this will ensure the independence of the process in line with proper governance.

#### **Committees Observation**

**The Committees were of a different view that the role of the Cabinet Secretary for the National Treasury needed to be appreciated within section 12 of the Public Finance Management Act, Cap. 412A, and as such the Cabinet Secretary could not be divorced from the privatization process, particularly formulation of the privatization programme.**

#### **Clause 20(1)**

#### **Institute of Certified Public Accountants of Kenya (ICPAK)**

90. ICPAK proposed that the words ‘Cabinet Secretary’ be replaced with ‘Authority’s Board’. The Clause requires the Cabinet Secretary to make consultations with persons likely to be affected by the Privatization of a public entity. The stakeholder submitted that the proposed amendment would ensure alignment of the function with the responsible office.

#### **Committees Observation**

**The Committees were of a different view and noted that the Bill already provides for designated functions for the Cabinet Secretary and the Privatization Authority. Further, the role of the Cabinet Secretary for the National Treasury needed to be appreciated within section 12 of the Public Finance Management Act, Cap. 412A, and as such the Cabinet Secretary could not be divorced from the privatization process, particularly formulation of the privatization programme.**

#### **Clause 20 (2) (c)**

#### **Kenya Private Sector Alliance (KEPSA)**

91. KEPSA noted that Clause 20 (2)(c) is not clear on how the CS will carry out consultation with members of the public. Public participation is vital in matters regarding privatization of public entities. They highlighted that in the context whereby, the public is not involved, this indicates that there is no transparency in that respective privatization program. They

proposed amending the clause to include the phrase “through public participation”. The new proposal should read as follows;

*c) Members of the public through public participation.*

### **Committees Observation**

**The Committees agreed to the proposal.**

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

#### **Institute of Certified Public Accountants of Kenya (ICPAK)**

92. Amend the Clause to provide for public participation by stakeholders. The stakeholder submitted that the Bill has not provided for public participation as enshrined in Article 201 of the Constitution. Additionally, the Institute cited that public participation helps build public trust and design and implement more effective government policies. ICPAK proposed that the Clause be amended to read as follows:

*a) Stakeholders shall provide input and representations on a draft privatization programme for consideration before implementation within 14 days of the formulation of the programme*

*b) The Cabinet Secretary shall provide feedback on the incorporation of stakeholder comments within 7 days at the end of the stakeholder engagement exercise.*

*c) Where its deemed or established by a relevant National Assembly Committee that there was no stakeholder engagement or input, the programme shall be suspended.*

### **Committees Observation**

**The Committees noted that Article 118 of the Constitution obligates Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its committees. Further, under the National Assembly Standing Orders, the National Assembly conducts public participation on businesses before it and the consideration of the privatization programme would not be an exception. Therefore, the Committees were of the view that the requirement needed not to be provided for in the Bill.**

### **Clause 23**

#### **PricewaterhouseCoopers (PwC)**

93. The stakeholder proposed the introduction of a provision that provides a clear consequence for inaction beyond the prescribed sixty-day timeframe for the consideration period of the Privatisation programme by the National Assembly. The stakeholder cited that the absence

of a clear provision may undermine accountability and delay decision-making. The stakeholder proposed the inclusion of a new sub-clause 23 (b) to read as follows: -

23(b).

*Where the Privatization Programme is not considered within sixty days, the National Assembly must provide written justification within five days and conclude consideration within a further period not exceeding thirty days.*

### **Committees Observation**

**The Committees observed that previously in the annulled Privatisation Act, 2023, section 22(5) had provided for a “deeming provision” where if Parliament had failed to ratify the privatization programme, then it would have been deemed to have been approved. This provision was declared unconstitutional and the Bill does not have a similar provision. Instead, it specifies the specific timeframe within which the National Assembly shall consider the privatization programme. Therefore, the Committees recommended that the timeline be increased from 60 days to 90 days.**

### **Clause 25**

#### **Law Society of Kenya (LSK)**

94. LSK submitted that there is need for the national Assembly to conduct public participation for any Privatization Programme because the Executive might ignore submissions by some stakeholders or have different opinions that the National Assembly can rationalize. Some changes might occur between public participation by the CS and time for consideration by the National Assembly. The public, has the right to influence the decisions of the National Assembly through positive feedback for or against the program, despite the Executive proposal. The public can also suggest a better programme, which would result in approval with amendments. Including this ensures citizens have a say in major decisions involving public assets.

95. The new sub-clause should read as follows:-

(d) conduct public consultations and stakeholder engagement on the proposed programme before making a decision under paragraphs (a), (b), and (c)

### **Committees Observation**

**The Committees noted that Article 118 of the Constitution obligates Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its committees. Further, under the National Assembly Standing**

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**Orders, the National Assembly conducts public participation on businesses before it and the consideration of the privatization programme would not be an exception. Therefore, the Committees were of the view that the requirement needed not to be provided for in the Bill.**

## **Clause 29**

### **Law Society of Kenya (LSK)**

96. The stakeholder noted that there is need to uphold constitutional mandates for oversight, to promote transparent and accountable implementation of privatization. They highlighted that this will allow adaptive management of complex programmes, and safeguard public interests throughout the privatisation process. They proposed inserting a mandatory clause for review by the CS once every two years. The new sub-clause should read as follows:

*2) The Cabinet Secretary shall conduct a mandatory review of the progress of each Privatization programme at least once every two years from the date of gazettelement. The review shall assess the level of implementation, challenges encountered, and recommend actions including continuation, amendment, or re-inclusion of affected entities in another programme.*

*(3) Where, upon the expiry of a programme under subsection (1), the implementation of the programme has not been fully completed, the Cabinet Secretary may*

*a) extend the validity of the programme for a period not exceeding two years.*

*b) include affected entities in another Privatization programme formulated and approved in accordance with this Act*

*c) publish a report in the Kenya Gazette and submit a copy to the National Assembly, indicating the status of implementation and the intended actions under paragraph (a) & (b).*

*4) Any decision made under subsection (3) shall be guided by principles of public finance, accountability, and efficiency, and shall be subject to oversight by the National Assembly.*

### **Committees Observation**

**The Committees noted that clause 29 of the Bill provides for the validity period of a privatization programme capped at 8 years. Further, clause 30 of the Bill provides for the mechanisms of amending the privatisation programme with proper safeguards on formulation and approvals. Therefore, the Committees were of the view that the provisions were adequate. In addition, oversight as the mandate of the**

**National Assembly as per Articles 94 and 95 of the Constitution would address the concerns raised by the stakeholder.**

#### **Clause 29(1)**

##### **Institute of Certified Public Accountants of Kenya (ICPAK)**

97. The stakeholder proposed that the validity period of a Privatization Programme be amended to five years from the eight years in the Bill, citing that the eight-year execution period was too long and needed to fall within the tenure of the Board.

#### **Committees Observation**

**The Committees agreed to the stakeholder's proposal to reduce the validity period to five years. However, the Committees further recommended that the clause be amended to provide for four years.**

#### **Clause 32 (1)**

##### **PricewaterhouseCoopers (PwC)**

98. The stakeholder proposed the insertion of new sub-clauses to provide contextual criteria for limiting foreign public participation. The stakeholder submitted that this would ensure that potential risks of foreign participation such as threats to national security, economic exclusion of citizens, or foreign dominance of strategic assets, are assessed transparently and case-by-case. PwC proposed the insertion of the following: -

*32(1) Any person, whether Kenyan or non-Kenyan, is eligible to participate in a Privatization, subject to the provisions of this Act and any other applicable law.*

*32(1A). In determining whether to limit or restrict the participation of non-Kenyan persons in a specific Privatization, the Cabinet Secretary, in consultation with the Authority, shall consider the following:*

*(a) the strategic nature of the asset or service to be privatized;*

*(b) national security interests;*

*(c) economic empowerment and inclusion of Kenyan citizens;*

*(d) the potential impact on public welfare, service delivery, or access;*

*(e) the risk of foreign dominance or monopolistic control; and*

*(f) The consistency of the privatization with national development goals and policies*

#### **Committees Observation**

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**The Committees agreed to the proposal.**

**Clause 32(2)(a)**

**Institute of Certified Public Accountants of Kenya (ICPAK)**

99. Amend the Clause by replacing the word 'limit' with 'restrict'. The stakeholder provided that this will enhance clarity, as the term 'limit' is subject to misinterpretation.

**Committees Observation**

**The Committees were of a different view that the two terms are similar and could be used interchangeably.**

**Clause 32(2)**

100. The stakeholder proposed that Clause 32(2) be amended to provide a criterion for concurrence with the Privatization Authority to inform the Cabinet Secretary's decision. The stakeholder cited that the Bill grants the Cabinet Secretary overly broad discretion to limit or prescribe Kenyan participation in privatization without clear criteria, institutional checks, or transparency requirements. The provision was proposed to read as below: -

*32(2) The Cabinet Secretary may, in consultation with the Authority and subject to public interest considerations, direct the Authority to:*

*(a) limit participation in any privatization to Kenyan citizens; or*

*(b) ensure that there is a specified minimum level of participation by Kenyan citizens in any privatization:*

*Provided that any such direction shall —*

*(i) be based on clearly defined and published criteria, including but not limited to:*

*(a) protection of national security interests;*

*(b) safeguarding strategic economic sectors;*

*(c) promotion of inclusive economic empowerment, including participation of youth, women, persons with disabilities, and marginalized communities;*

*(d) enhancement of local enterprise development and job creation;*

*(e) prevention of monopolistic or anti-competitive practices;*

*(ii) be preceded by a public stakeholder consultation process in line with Article 10 of the Constitution;*

(iii) be accompanied by a written statement of reasons, and published in the Kenya Gazette within 14 days of issuance.

#### **Committees Observation**

**The Committees agreed to the proposal but to the exclusion of the proposals on public stakeholder consultations and accompaniment of a written statement of reasons.**

#### **Clause 32 (2) (b)**

#### **Kenya Private Sector Alliance (KEPSA)**

101. The stakeholder was of the view that the minimum fraction of Kenyans who participate in the privatization should be specified to avoid ambiguity. They proposed amending the clause by inserting the words “above 50% level of participations by Kenyans.” The new sub-clause should read as follows;

*b) Ensure that the level of participation by Kenyans is above 50% in any Privatization program.*

#### **Committees Observation**

**The Committees were of a different view that fixing a specific percentage of participation by Kenyans in law would be counter-intuitive and may not be practicable in certain circumstances. The Committees noted that the broad parameters were adequate.**

#### **Clause 32(3)**

#### **Institute of Certified Public Accountants of Kenya (ICPAK)**

102. Delete the Clause on restricting government entities from taking part in privatization. The stakeholder cited that this would avoid conflict of interest and ensure that the main objective of delinking government is upheld.

#### **Committees Observation**

**The Committees were of a different view that clause 32(3) of the Bill should be retained. The Committees were not persuaded by the reasons given for the deletion since the subclause is intended to restrict national government-owned entities from say, participating in purchasing initial public offer of shares.**

## Clause 38

### Institute of Certified Public Accountants of Kenya (ICPAK)

103. ICPAK proposed the introduction of a new sub-clause 3 to read as follows—

*'(1) The Authority shall appoint such a number of reputable valuers, comprising the relevant experts in the sector in which the entity is domiciled, to carry out the valuation of the public entity identified for privatization.*

*(2) The independent valuers envisaged under subsection (1) may include financial experts, Management consultants, legal experts, Tax experts, Actuarial firms, Property valuers, Plant & machinery valuers' plant & equipment valuers properly value the fixed assets, technical experts or Environmental auditors*

*(3) The valuers shall prepare a comprehensive report containing-*

*(a) historical financial performance as well as future earnings potential and strategic value of the public entity;*

*(b) any unique assets and liabilities, contractual obligations, or litigation risks should be identified and factored into the valuation.*

*(c) recommended fair market valuation range as well as the underlying methodology, analyses, assumptions and limitations;*

*(d) The reserve price or minimum price for the sale of the enterprise assets or shares.*

*(4) The Authority may recommend restating the valuation exercise if market conditions change materially post-valuation.*

*(5) Any changes to valuation scope or assumptions must be approved by the Authority before revising the valuation conclusions.*

*(6) The details on the valuation process shall be prescribed in Regulations.'*

104. ICPAK submitted that these proposed amendments would enhance professionalism, objective valuation, and protection of public interest. Additionally, the Institute noted that the omnibus provision that valuation be done by a qualified person appointed by the authority negates professionalism and may be subject to abuse.

### Committees Observation

**The Committees were of a different view that the provision was adequate and that details on how the process would be carried out should not be set out in the Bill. In any case, if need be, this could be provided for in regulations.**

## **Clause 38(2)**

### **Kenya Private Sector Alliance (KEPSA)**

105. The stakeholder proposed deleting the words “a qualified person” and replacing with “an independent Audit Firm”. They noted that the privatization process needs to be transparent on asset valuation. In the event there are no guideline in terms of how the audit is conducted or public disclosure of valuation reports, there is a risk that the respective assets might be sold below their respective market value hence benefiting private entities at the expense of the taxpayers. The new sub-clause should read as follows;

*2)The Valuation shall be performed by an independent Audit Firm appointed by the Authority.*

### **Committees Observation**

**The Committees were of a different view that the clause was adequate.**

### **PricewaterhouseCoopers (PwC)**

106. The stakeholder proposed the deletion of clause 38(2) and replacing it with the following:

*“All valuations shall be conducted by an independent third-party firm/agent selected through a competitive process and approved by the Authority.”*

107. The stakeholder submitted that this will ensure objectivity and protect public interest in the valuation process.

### **Committee observation**

**The Committees were of a different view that the clause was adequate.**

## **Clause 41**

### **Institute of Certified Public Accountants of Kenya (ICPAK)**

108. The institute proposed that the Cabinet Secretary define and provide key elements that constitute ‘critical business continuity’ during privatization. The stakeholder submitted that the term ‘critical business continuity’ as provided in the Bill is subject to misuse in the context of capital investment or disposal during privatization.

### **Committees Observation**

The Committees were of a different view that there was no need to define the term “business continuity”. Further, the stakeholder had not proposed a definition of the term.

#### Clause 45 (1)

##### Kenya Private Sector Alliance (KEPSA)

109. The stakeholder was of the view that the privatization process leads to loss of jobs or reduced labour protection since most private entities prioritize profits. They highlighted that there is need for provision that safeguards the rights of workers such as guarantees of continued employment post-privatization or severance packages. The stakeholder proposed amending the clause by inserting the following words “in instances where matters regarding the workers’ rights have not been addressed and where the period for filing an objection has lapsed”.

110. The new clause should read as follows;

*1. An agreement to give effect to a Privatization shall not be signed in instances where matters regarding the workers rights have not been addressed and where the period for filing an objection has lapsed.*

#### Committees Observation

The Committees observed that clause 35(g) of the Bill provides for employee protection mechanism. Therefore, the Committees were of the view that this was adequate.

#### Clause 45(1)

##### Kenya Private Sector Alliance (KEPSA)

111. Amend the Bill to provide specified timelines within which an objection may be filed. The stakeholder proposed that the Clause be amended to read as follows:

*‘An agreement to give effect to a Privatization shall not be signed until the 21-day period for filing an objection has lapsed.’*

#### Committee Observation

The Committee observed that Part VII of the Bill provides for reviews and appeals and that the mention of objections in the clause appeared erroneous. Further, the Third Schedule to the Bill provides for administrative details

including timelines. Therefore, the Committee did not agree to provide for the timelines.

### **Law Society of Kenya (LSK)**

#### **Clause 45**

112. LSK proposed amending the clause to provide an Objection Schedule. In their view, providing a clear objection schedule establishes certainty on timelines and procedures thereby preventing delays caused by ambiguity. The new section should read as follows:-

- 1) A person may file, with the Authority, an objection on the privatization agreement
- 2) An objection may not be filed later than seven days after the approval of the privatization agreement
- 3) The Authority shall make a decision with respect to the objection and give a copy of its decision to the objector within seven days after receiving the objection.
- 4) The Authority's decision shall set out the reasons for the decision.

#### **Committees Observation**

**The Committees observed that the clause provides for objections which appears to be erroneous since Part VII of the Bill provides for reviews and appeals. Despite that, the Third Schedule to the Bill provides for details on conduct of reviews and appeals, setting out timelines. Therefore, the Committees were of the view that the Bill already addresses the stakeholder's concerns.**

113. Additionally, LSK proposed amending Clause 45 by inserting the words "under the Schedule" immediately after the word "objection" so that the clause reads as follows: An agreement to give effect to privatization shall not be signed until the period for filing an objection under the schedule has lapsed. This will be in tandem with their proposal on the objection schedule.

#### **Committees Observation**

**The Committees agreed to the proposed amendment. However, they observed that the clause provides for objections which appears to be erroneous since Part VII of the Bill provides for reviews and appeals. The cross-reference to the Third Schedule to the Bill would therefore provide clarity on the period of filing a review.**

## **Clause 47(2)**

### **PricewaterhouseCoopers (PwC)**

114. The stakeholder proposed the inclusion of a provision requiring the Authority to publish in the Kenya Gazette payments made to advisors supporting the Authority in the execution of its mandate. The PwC submitted that this would provide transparency on the costs incurred in the Privatization process.

### **Committees Observation**

**The Committees noted that the Bill had not provided for advisors and their payments, hence this could not be expressly provided for in the Kenya Gazette. In any case, clause 47(2)(d) provides for “such other information as the Authority considers appropriate” which could fall within the stakeholder’s proposal.**

## **Clause 49**

### **PricewaterhouseCoopers (PwC)**

115. PwC proposed amending the Clause to read as follows: -

*“The proceeds from privatization of any public entity shall be deposited into the Consolidated Fund as required by this Act. However, up to 20% of the total proceeds may be allocated to the entity that is subject to privatization for the purposes of transition support.”*

*“The allocation must be approved by the Cabinet Secretary for the National Treasury and Economic Planning or an authorised person as per the Act with equivalent roles and obligations as those of the Cabinet secretary.”*

116. Alternatively, PwC proposed the introduction of a provision creating a Privatization Facilitation Fund. Consequently, the stakeholder proposed the introduction of a definition of the “Privatization Facilitation Fund” in section 2 of the Bill.

### **Committees Observation**

**The Committees observed that the proposal was problematic as it would eat into the proceeds from the sale of a public entity’s shareholding and defeat the purposes of privatization as envisaged in clause 6 of the Bill. Further, the Committees were not persuaded with the proposed establishment of a Privatization Facilitation Fund, its objects and noted that it would have financial**

implications. The Committees therefore did not agree to the proposals. However, they noted that the proceeds should be paid into the Consolidated Fund and not deposited in a special interest-bearing account.

### **Clause 51(3)**

#### **PricewaterhouseCoopers (PwC)**

117. PwC proposed amending the clause to read as follows: -

*“Any person or entity may file an appeal or objection with the High Court within 15 days of the Authority’s decision. The Authority must stay execution of privatization until the High Court determines the matter”*

118. According to the stakeholder, this provision will not only uphold and strengthen procedural fairness but also provide an essential legal recourse to prevent rushed or unfair decisions.

#### **Committees Observation**

**The Committees agreed with the stakeholder in principle for an aggrieved person to appeal the Authority’s decision at the High Court or to apply to the High Court if dissatisfied with the Authority’s decision. The Committees noted that the timelines would be provided for in the Third Schedule to the Bill. The Committees recommended deletion of provisions providing for the establishment, composition, functions and conduct of the Privatization Appeals Board as it falls within the ambit of tribunals within the Judiciary as provided for under Article 169(1) (d) of the Constitution and the need for the quasi-judicial body to be independent from the executive.**

### **Clause 53**

119. LSK noted that the appointment of the Chairperson and members of the Privatization Appeals Board should be made by the Chief Justice, rather than by the President and the Cabinet Secretary. This is to uphold the principles of independence, impartiality, and separation of powers as enshrined in the Constitution. They proposed amending the clause.

#### **Committees Observation**

**The Committees recommended to delete clauses 52, 53, 54, 55, 56, 57, and 58 of the Bill providing for the establishment, functions, composition, conduct and related provisions on the Privatization Appeals Board. The deletions are informed by the following reasons:**

- (a) In *Okoti v Judicial Service Commission & 2 others; Katiba Institute (Interested Party) (Petition 197 of 2018) [2021] KEHC 461 (KLR)*, the petitioner sought various reliefs from the court with respect to the constitution, composition and operations of tribunals established pursuant to article 169(1)(d) of the Constitution of Kenya, 2010. The High Court held that local tribunals created under article 169(1)(d) of the Constitution are subordinate Courts in Kenya; the appointment and removal of members of the local tribunals created under article 169(1)(d) of the Constitution by the Executive violates the principle of separation of powers, contravenes the right to fair hearing under article 50 of the Constitution and infringes on the independence of the Judiciary; and that the local tribunals under article 169(1)(d) of the Constitution must be transited to the Judiciary and the appointment and removal of their members be undertaken by the Judicial Service Commission.
- (b) Although the Bill names the appeals body a Privatization Appeals Board, there is a danger that the Board may not be aligned to the High Court declarations in *Petition 197 of 2018* which was also upheld at the Court of Appeal in *Attorney General v Okoti & 3 Others (Civil Appeal E416 of 2021 [2025] KECA 309 (KLR))*.
- (c) The appointment of the members of the Privatization Appeals Board by the Executive violates the principle of separation of powers and contravenes the right to fair hearing. Further, as provided in the Bill, the Board would lack independence.
- (d) The proposed Appeals Board has financial implications and this would impose extra financial burden in the operationalization of the Act.

#### Clause 58

##### Institute of Certified Public Accountants of Kenya (ICPAK)

120. Amend the Bill by replacing the word 'Review Board' with 'Appeals Board'. According to ICPAK, this is a typo, and the proposed amendment would enhance clarity.

##### Committees Observation

The Committees recommended to delete clauses 52, 53, 54, 55, 56, 57, and 58 of the Bill providing for the establishment, functions, composition, conduct and related provisions on the Privatization Appeals Board.

#### Clause 59(2)

##### PricewaterhouseCoopers (PwC)

*Joint Report of the Departmental Committee on Finance and National Planning and the Select Committee on Public Debt and Privatization on the Consideration of The Privatization Bill, 2025 (National Assembly Bill No. 36 of 2025)*

121. The stakeholder proposed the insertion of a new Clause 59(2) to provide for disclosure requirements for all donations, grants, and gifts made to the authority. The stakeholder proposed that Clause 59(2) be amended to read as follows: -

*“The authority shall disclose the funds highlighted in sub-clause (c) and (d), stating its source and intended purpose.”*

122. The stakeholder submitted that public disclosure of the Authority’s external funding allows for transparency since their financial dealings are open to public scrutiny, ensuring funds are used accordingly.

#### **Committees Observation**

**The Committees did not agree to the stakeholder’s proposal because the Public Finance Management Act, Cap. 412A, already provides for financial reporting.**

#### **Clause 61(2)**

##### **PricewaterhouseCoopers (PwC)**

123. PwC proposed the inclusion of a new Clause 61(2)(e) to ensure the Authority factors in payments to external technical consultants when preparing its annual estimates as it would be an expense of the Authority. The proposed new clause would read as follows: -

*“(e) the payment of the salaries, allowances and other charges in respect to external technical consultants.”*

#### **Committees Observation**

**The Committees did not agree to the proposal due to the financial implications of the proposal and was not persuaded with the rationale given.**

#### **Clause 63(2)**

##### **PricewaterhouseCoopers (PwC)**

124. PwC proposed amending the Clause to provide for the inclusion of an impact assessment and performance of the privatized entities in the annual report of the Authority as this would allow for transparency and accountability by ensuring the Authority reports on the outcomes of privatization. PwC proposed the inclusion of new subclauses as follows: -

*“(c) socio-economic impact assessments of privatized entities, including effects on employment, local communities, and market competition;*

*(d) performance of privatized entities, including financial performance, service delivery outcomes, and compliance with post-privatization obligations”*

### **Committees Observation**

**The Committees observed that clause 63 of the Bill provides for submission by the Privatization Authority of its annual report to the Cabinet Secretary. The proposals include items which would not be within the purview of the Authority since it extends its mandate post-privatization. The privatised entities would answerable to their shareholders. The Committees therefore did not agree to the proposals.**

### **Clause 68(d).**

#### **Institute of Certified Public Accountants of Kenya (ICPAK)**

125. The stakeholder proposed the amendment of the Clause to align penalties in terms of amounts and imprisonment. ICPAK submitted that there was an inconsistency in the penalties, and the proposed amendment would enhance ease of application.

### **Committees Observation**

**The Committees noted the stakeholder’s concerns but was of the view that the penalties were not inconsistent. In addition, the stakeholder had not given alternative proposals on aligning the penalties.**

### **Clause 69**

#### **PricewaterhouseCoopers (PwC)**

126. The stakeholder proposed that the Clause be amended to provide that the Cabinet Secretary shall conduct public participation and stakeholder engagement before making any regulations under the proposed Act. The proposed new clause 69(2) would read as follows:-

“(2) The Cabinet Secretary shall, prior to making any regulations under the Act, publish draft regulations to invite public consultations.”

### **Committees Observation**

**The Committees observed that the Statutory Instruments Act, Cap. 2A, provides for the need for making appropriate consultations before a statutory instrument is made. Section 5(1) provides as follows—**

**5.(1) Before a regulation-making authority makes a statutory instrument, and in particular where the proposed statutory instrument is likely to—**

**(a) have a direct, or a substantial indirect effect on business; or**

**(b) restrict competition;**

**the regulation-making authority shall make appropriate consultations with persons who are likely to be affected by the proposed instrument.**

**Therefore, the Committees were of the view that it was not necessary to provide for the consultations since this is already catered for.**

### **First Schedule**

#### **PricewaterhouseCoopers (PwC)**

127. The stakeholder proposed that the First Schedule to the Bill which provides for the conduct of business and affairs of the board be amended to address the loss of quorum that may arise in the board proceedings. The stakeholder submitted that paragraph 3 be amended to read as follows: -

*“3. Quorum*

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

*(b) When there is no quorum at or for the continuation of a meeting of the Board only because of the exclusion of a member of the Board under paragraph 3(a), the other members present may, if they deem it expedient so to do—*

*(1) postpone the consideration of that matter until there is a quorum; or*

*(2) proceed to consider and decide the matter as if there was a quorum”*

128. According to the stakeholder, the Board may face frequent delays or an inability to decide on matters due to quorum loss. This sub-paragraph clarifies procedures where quorum issues arise from conflict-of-interest exclusions, ensuring operational flexibility.

### **Committees Observation**

**The Committees were of a different view that paragraph 3 of the Schedule was adequate.**

## **New Proposal**

### **Kenya Private Sector Alliance (KEPSA)**

129. The stakeholder highlighted that the strategic national assets are the pride of the nation hence the ownership need to be spread across the population. This will deter rent seekers from acquiring strategic assets via Sale of shares by public tender. They propose amending the section by inserting the words “privatization of entities deemed as strategic national assets, should be done through initial public offering”. The new Section should read as follows:

#### ***1. Initial Public Offering of shares.***

*Where the selected method of privatization is through initial public offer of shares, the offering of shares shall be undertaken in accordance with Capital Markets Act, Cap 485A, privatization of entities deemed as strategic national assets, should be done through initial public offering.*

## **Committees Observation**

**The Committees noted that clause 34 of the Bill provides for the different methods of privatization, including initial public offer of shares. The Committees further noted the stakeholder’s concerns which are addressed in the Bill and through amendments to be proposed by the Committees in safeguarding strategic national assets. The Committee has proposed amendment to clause 21(2) to include strategic national assets as one of the considerations during identification and determination of entities for privatization. Further, clause 22 of the Bill provides safeguards by providing for the approval by the National Assembly of privatization programme.**

## **New Proposal**

### **Institute of Certified Public Accountants of Kenya (ICPAK)**

130. The institute proposed amendments to provide for privatization monitoring. The stakeholder proposed that the Bill be amended to provide as follows:

*“The Institute proposed a post-privatization monitoring as follows:*

*(1) The Authority shall monitor and oversee the performance of privatized public entities for a period of five years post-transaction.*

- (2) The privatized entities shall be required to submit periodic financial statements, operating statistics, and compliance reports to the Authority to facilitate monitoring.
- (3) The Authority may conduct field visits, inspections, and audits of privatized entities to verify compliance and performance levels.
- (4) Any breach of contractual obligations, which may include investment commitments, service standards, and staff retention, shall be an offence under the Act.
- (5) The Authority may recommend cancellation of contracts, change of management, or divestment or dilution of ownership in circumstances where there is continued breach of terms of the contract.
- (6) The Authority may receive and consider any complaints during the post-privatization period.
- (7) The Authority shall annually publish consolidated monitoring reports on privatized entities and table them before Parliament.
- (8) Suitable amendments should be made in relevant regulations to require privatized entities to provide information required by the commission for monitoring.
- (9) The commission may hire industry experts/consultants to assist with monitoring privatized entities in the infrastructure and public service sectors.
- (10) The Authority may enforce through imposing penalties, cancellation of privatization or re-nationalization as per the provisions in the contract, for any non-compliance.”

### **Committees Observation**

**The Committees observed that clause 9(g) of the Bill provides for one of the functions of the Privatization Authority as to monitor and evaluate the implementation of privatization program in Kenya. The Committee was of the view that this was adequate and that once entities were privatized, the Authority’s role should not extend into the affairs of those entities.**

### **New Proposal**

#### **Institute of Certified Public Accountants of Kenya (ICPAK)**

131. Amend the Bill to provide a transitional clause to safeguard job security in privatized entities. The Government should ensure that there is a framework for the retention of staff as a result of privatization processes. Hence, a need for a transitional clause in the Bill.

### **Committees Observation**

The Committees observed that clause 35(g) of the Bill provides for employee protection mechanism. Further, the Employment Laws would apply on employee matters. Therefore, the Committees were of the view that clause 35(g) of the Bill was sufficient. Separately, clause 75 of the Bill provides for the transition of staff of the Privatization Commission to the proposed Privatization Authority.

### **Institute of Certified Public Accountants of Kenya (ICPAK)**

132. The accounting officers of the state-owned enterprises affected by privatization should have roles clearly defined during the signing of the privatization agreement. This will be important as they will be the ones fully in charge of implementing the agreement.

### **Committees Observation**

The Committees noted that the obligations of accounting officers are clearly spelt out in relevant laws including the Public Finance Management Act, Cap. 412A. Therefore, the Committees were of the view that these obligations would not need to be replicated in the Bill.

## **3.4 GENERAL SUBMISSIONS**

### **3.4.1 NAIROBI COUNTY**

#### **KENYATTA INTERNATIONAL CONVENTION CENTRE (KICC)**

The two Committees engaged the residents of Nairobi County at Kenyatta International Convention Centre (KICC). The public was sensitized on clauses of the Bill and thereafter allowed to give views on the Bill. They submitted as follows:

#### **Mau Mau Children Post Colonial Elites – Coastal Region**

133. The stakeholder proposed the establishment of a Veteran Integration Fund which shall receive 1-2 percent of net privatization proceeds from parastatals in the Coast. The stakeholder submitted that this would cater for pension top-ups, health insurance, housing grants and vocational training for veterans and their dependents.
134. The stakeholder proposed that parastatals and the new investors should reserve a minimum hiring quota for registered Mau Mau veterans and their households.
135. The stakeholder submitted that low value contracts should be reserved for enterprises owned by veterans or veteran groups to supply goods and services in parastatals. It was

further submitted that proceeds from privatization should be used for capacity building, business development services and preferential access to microfinance.

136. The stakeholder proposed a mandatory provision for veteran housing or community land trusts where privatization includes land transfers.
137. Include Mau Mau veteran representation in County Advisory Committees which shall oversee post privatization community benefits.

### **Mau Mau Children Post Colonial Elites – North Eastern Region**

138. The stakeholder proposed a mandatory Social Economic Impact Assessment in ASAL counties which shall be made public, addressing how service delivery shall be affected by any privatization.
139. The stakeholder further proposed consultation with counties before transaction approval. It was submitted that county assemblies should also submit binding recommendations which must be addressed.
140. The stakeholder submitted that the sale documents should include enforceable local content, employment and training obligations with measurable KPIs and financial penalties for noncompliance.
141. It was proposed that a schedule that enables share allocation, procurement set asides and specific use of proceeds for veteran welfare should be included.
142. The stakeholder proposed that a proportion of transaction proceeds should be allocated to registered county community development trusts or a national fund to facilitate inter county projects, including infrastructure, livelihood programmes and veteran welfare.
143. The stakeholder further proposed that functions that are strategic for national resilience in ASALs such as bulk water storage for drought response, should be identified and excluded from sale, unless there is a satisfactory alternative arrangement.
144. The stakeholder submitted that Parliament Oversight Committees should conduct post transaction audits and performance reviews and subsequently publicize the findings. additionally, it was proposed that there should be an independent ombudsman to receive community grievances.
145. The stakeholder proposed the establishment of a local grievance mechanism and a fund to address transitional claims such as employment disputes for at least three years after transfer.

### **Mau Mau Children Post Colonial Elites – West Pokot Region**

146. The stakeholders proposed that there should be 5 – 10 percent community equity or perpetual benefit trust from privatization involving assets physically located in West Pokot.

It was further proposed that this shall be managed by an independent run community development trust.

147. The stakeholders submitted that there should be binding targets for local content and jobs. It was proposed that at least 40 percent should be set aside for nonspecialized jobs and 20 percent for skilled jobs. For local content, it was proposed that 60 percent of goods and routine services should be from MSMEs registered in the county.
148. The stakeholders submitted that each privatized entity should sign a county social impact compact enumerating annual obligation to the region such as water points, bursaries and climate adaptation assets.
149. It was further submitted that there should be tariffs and service quality floors for utilities and essential services, performance linked caps and service level agreements. Additionally, it the stakeholder proposed that, noncompliance should trigger penalties or step in rights.
150. The stakeholders submitted that there should be land and resettlement protections that conform with existing laws and international safeguards. It was submitted that this may include; free, prior and informed consultation as well as grievance committees at sub county level.
151. The stakeholders submitted that where revenue streams depend on assets linked with local natural resources including; local water, land and forests; the community development trust should receive 2-5 percent to facilitate public goods in the region.
152. The stakeholders proposed that veterans should be allowed an access window in hiring, training, housing and procurement.
153. The stakeholders submitted that information memoranda, evaluation criteria, winning bids and annual impact audits should be published in an open data portal to enable monitoring by citizens.

### **Mau Mau Children Post Colonial Elites – Nyanza Region**

154. The stakeholders proposed the establishment of a Nyanza Community and Veterans Trust which shall receive 3 percent non-dilutable equity stake or 1.5 percent gross revenue share in each privatized asset in the region.
155. The stakeholders proposed social impact assessments as a condition for every privatization. Additionally, provision of local jobs, procurement quotas, skills transfer, environmental safeguards and public score cards were also proposed by the stakeholder.
156. The stakeholders submitted that 5- 10 percent of privatization proceeds should be preserved into a regional stabilization and transition fund to finance smallholder upgrading, MSME incubation, veterans welfare and last mile service expansion.
157. The stakeholders proposed land and resettlement protections where public or trust land is implicated.

158. The stakeholders submitted that the Warehouse Receipts System should be integrated to provide linkages for rice and maize value chains in the region. It was further submitted that service floor obligations for underserved communities should be enforced.

### **Committees observations**

**The Committees noted with appreciation the important role that the mau mau veterans played in the struggle for Kenya's independence and their participation in submitting their views on the Bill.**

**The Committees further noted that the Bill provides for the legal framework on privatization and that it contemplates the active involvement of host communities and affected entities in the formulation and implementation of the privatization programme. For instance, clause 20 provides for consultations with organisations representing persons who are likely to be affected by the proposed privatization and involvement of the members of the public. Further, clause 35 provides for the items that the privatization proposal shall contain. In particular, clause 35(1) (h) and (i) provides for a recommendation on how to undertake socio-economic investments to the host community and the benefits to be gained from the proposed privatization respectively.**

**The Committees therefore urged the stakeholders to be active participants when called upon during the implementation of privatization programmes once the Bill becomes law.**

### **3.4.2 KISUMU COUNTY**

The Committees engaged the residents of Kisumu County at Tom Mboya Labour College. The public was sensitized on clauses of the Bill and thereafter allowed to give views on the Bill. They submitted as follows:

159. During the public participation hearings, residents strongly emphasized the need for transparency and accountability in the privatization process. They warned that without openness, the exercise could be prone to corruption, undervaluation of assets, and inequality in the distribution of benefits. Citizens called for clear disclosure of all transactions and insisted that due process be followed to ensure the exercise serves the public good rather than private interests.

160. Concerns were also raised about the welfare of employees in state-owned entities slated for privatization. Residents proposed that the law should provide an explicit roadmap for handling workers, with guarantees to safeguard jobs and protect livelihoods. They also

stressed that service delivery must not be compromised and that privatization should not result in the erosion of essential services for citizens.

161. Participants further cautioned against the sale of strategic government assets, particularly to foreign investors, warning that this could undermine national ownership and weaken sovereignty. They called for strict safeguards to prevent foreign dominance in vital sectors and proposed that the government clarify whether debts of state-owned enterprises will be cleared before transfer to private investors.
162. Additionally, residents underscored the importance of public participation at every stage of the process. They recommended that the Cabinet Secretary be required to seek the views of the public when preparing privatization proposals, ensuring inclusivity and legitimacy. To protect national interests, citizens also urged the government to institute measures that safeguard against political interference, revenue loss, and insider trading, thereby making privatization beneficial to the country as a whole.

### 3.4.3 ISIOLO COUNTY

The Committees engaged the residents of Isiolo County at Catholic Diocese Hall. The public was sensitized on clauses of the Bill and thereafter allowed to give views on the Bill. They submitted as follows:

163. Some residents from Isiolo County supported of the Bill noting that some government-owned enterprises that have incurred losses in the last few years on a regular basis. They argued that such enterprises, which are a drain on public money without any visible benefits, should be privatized to keep the people away from heavy taxation. In their opinion, the bill is an opportune one, in that it seeks to create a broad scheme for addressing the issue posed by such chronic loss-incurring parastatals. The residents also opined that privatization would not only reduce wastage of public funds but also inject efficiency and accountability into the management of such companies. They opined that it is simpler for private investors to introduce innovation, improve efficiency, and secure profitability, as compared to when such companies are still in the public sector, where bureaucratic inefficiencies always mar performance.
164. They also went on to explain that successful privatization under this Bill could ultimately lead to effective delivery of services, job creation, and improved contribution to the economy. The residents also correlated privatization with the country's mounting debt burden. They pointed out that the government continues to borrow heavily to finance expenditures and to support loss-making parastatals, which adds to the national debt problem of the country. Selling or restructuring these loss-making corporations, they pointed out, would generate funds that can be used to repay loans and reduce the debt servicing burden. They argued that, if well handled, proceeds from privatization could free resources that are currently utilized by the government to rescue struggling businesses and could therefore be pumped into sectors such as healthcare, education, and infrastructure.

165. However, other residents of Isiolo County strongly opposed the Bill on the argument that it contains loopholes that are likely to benefit a few political leaders against the common public. They were concerned that this privatization Bill would be used as a tool of vested interests, where current leaders will employ the process for furthering their agendas against common citizens. The residents submitted that while there are a few underperforming state-owned enterprises, privatization need not be the answer. Instead, they called for management changes and improvements to regulation to make sure that public businesses perform well and in an open fashion. They emphasized that the majority of these companies were indeed established to cater to the needs of the public, and therefore, their worth should not be solely measured in terms of money loss.

166. Additionally, the noted that there are high chances privatization will increase the danger of unemployment. The citizens feared that privatization would inevitably lead to massive retrenchments as private investors cut back on personnel to minimize costs, pushing many families away from their means of survival. They argued that the government ought to, first of all, guarantee job protection, especially in an economy where unemployment is already a major issue.

#### **3.4.4 TANA RIVER COUNTY**

The two Committees engaged the residents of Tana River County at the County Hall Hola. The public was sensitized on clauses of the Bill and thereafter allowed to give views on the Bill. They submitted as follows:

167. The residents of Tana River County expressed mixed feelings on the Bill, with some supporting the Bill stating that it will bring efficiency in the government owned corporations while some opposing the Bill stating that it is an avenue for corruption and creation of a monopoly. They argued that the bill will bring economic benefits to the citizens, for both the youth and women, however, they expressed the need for better regulations and control to manage the private sector and its tendency to create monopoly. Further, they expressed the need for accountability, fairness and transparency in the privatization process. Some of the residents were of the view that the government can manage its strategic assets and in case of unlimited resources the government should consider privatizing loss-making entities. Lastly, the public urged the government to conduct effective public participation before any privatization.

#### **3.4.5 KITUI COUNTY**

The Committees engaged the residents of Kitui County at Kitui Multi-purpose Hall. The public was sensitized on clauses of the Bill and thereafter allowed to give views on the Bill. They submitted as follows:

168. The members of the public supported privatization, citing inefficiencies, corruption, and poor service delivery in government-managed entities. They noted that privatization could

enhance efficiency, promote competition, and reduce corruption, ultimately improving services for citizens. The residents proposed adopting a partial privatization model where the government retains some level of control, ensuring share allocations are affordable to ordinary Kenyans, and reserving at least 10% of shares for workers. Additionally, they stressed the importance of public sensitization, transparency, and protection of strategic national assets. Further, residents urged the government to approach privatization cautiously, ensuring that national interests, equitable participation, and improved governance remain at the core of implementation.

169. In contrast, some citizens expressed divergent views on the proposed legislation. A significant number of participants voiced concerns that not all government functions should be privatized, warning that a blanket approach could undermine national interests. They urged the government to first investigate the root causes of parastatal failures, which they attributed largely to poor management, before resorting to privatization. Additionally, the residents expressed reservations on privatization due to the possible loss of national assets to foreign ownership, deterioration of service delivery as entities shift focus to profit-making, and the exclusion of ordinary citizens who may lack the resources or access to information necessary to purchase shares. The issue of worker protection and job security featured prominently, with residents insisting that safeguards be put in place to protect employees during the process.

#### **3.4.6 NAKURU COUNTY**

The Committees engaged the residents of Nakuru County at the Kenya Red Cross Hall- Nakuru. The public was sensitized on clauses of the Bill and thereafter allowed to give views on the Bill. They submitted as follows:

170. The public acknowledged and supported the Bill, recognizing its potential to reduce the financial burden on Government in sustaining non-performing state corporations. However, they emphasized that privatization must be conducted with utmost good faith to safeguard national interests, protect strategic assets, and ensure reversibility where mandates of entities change. Concerns were raised about possible job losses since provisions in the bill do not expressly provide for safeguards. The residents recommended amendments to provide explicit worker protection, involve employees of affected entities in the process, and ensure adherence to the Mwongozo Code of Conduct.

171. They further proposed that priority in share allocation be given to Kenyan citizens, with transparent procedures to prevent insider advantages. Additionally, the composition of the Privatization Authority Board under Clause 8 to include legal experts, women representatives, finance and investment professionals, and formal involvement of the Attorney-General and Auditor-General to enhance oversight, legality, and accountability.

172. The public expressed concerns over possible undervaluation of public enterprises, proposing the use of two or more independent valuers to ensure fairness and accuracy. They had reservations on the appointment of transaction advisors under Clause 23, recommending competitive and transparent procedures free from conflicts of interest. The matter of public disclosure was strongly emphasized, with calls for clear communication on processes, intentions, and proceeds of privatization, as well as alignment with Article 35 of the Constitution on access to information. The residents noted urged that consultations occur before privatization decisions are finalized and privatization to focus on non-performing institutions rather than strategic or profitable ones, and proceeds be managed transparently and accountably.

### **3.4.7 VIHIGA COUNTY**

The Committees engaged the residents of Vihiga County at Praise Centre Church- Mbale. The public was sensitized on clauses of the Bill and thereafter allowed to give views on the Bill. They submitted as follows:

173. A section of participants supported the Bill, arguing that privatization could ease the government's financial burden of sustaining non-performing state corporations, redirecting resources to critical sectors such as healthcare, education, and infrastructure. They noted that private investors could bring efficiency, innovation, and professionalism, thereby improve service delivery and boost economic growth. Additionally, they suggested that revenues generated from privatization could help bridge budget gaps without raising taxes, and encouraged listing privatized entities on the Nairobi Securities Exchange to allow wider citizen participation.

174. However, some residents expressed reservations noting that privatization would mainly benefit a few wealthy individuals and foreign investors, leaving ordinary Kenyans excluded from ownership of national assets. They highlighted that such an outcome would lead to capital flight, undermine economic sovereignty, and expose citizens to higher costs of essential goods and services as privatized entities shift focus from service delivery to profit-making. Further, the residents noted the Bill lacked provisions for employee protection, warning that privatization could lead to widespread job losses and increased unemployment. Moreover, they were of the view that corruption and transparency risks might manipulate the process to acquire undervalued public assets at the expense of national wealth.

### **3.4.8 SIAYA COUNTY IEBC HALL**

The Committees engaged the residents of Siaya County at IEBC Hall. The public was sensitized on clauses of the Bill and thereafter allowed to give views on the Bill. They submitted as follows:

175. The residents in Siaya expressed their support for the bill emphasizing the need to safeguard the interests of Kenyan citizens in any privatization process. They proposed that specific safeguards be put in place to guarantee that Kenyans retain a meaningful stake in privatized entities, warning that without such measures, there is a real risk of national assets falling under the control of foreign investors or a small elite. They noted that, privatization should not merely be about divesting government ownership but must also prioritize citizens' rights to benefit from state resources. They argued that empowering ordinary Kenyans through shareholding would strengthen public trust and ensure that privatization contributes directly to national development and inclusivity.
176. To promote transparency and accountability in the implementation of the Bill, residents recommended the use of e-procurement systems in tendering processes related to privatization. They observed that traditional procurement methods are often vulnerable to manipulation, corruption, and lack of openness, which could compromise the integrity of the entire process. The residents further noted that transparent processes would restore public confidence and reduce suspicions of favoritism or elite capture of state assets. Another critical issue raised was the utilization of proceeds from privatization. Residents proposed that the law explicitly link these proceeds to the achievement of the government's long-term agenda, particularly in priority areas such as job creation, agricultural development, and poverty eradication. They cautioned that if privatization funds are used to finance short-term or unsustainable projects, the impact on citizens would be minimal and the long-term benefits lost.
177. The residents raised concerns about the welfare of employees in state-owned entities earmarked for privatization. They argued that workers often bear the greatest burden of such reforms, facing job losses, retrenchments, or erosion of benefits. They therefore called for the inclusion of strong legal provisions to protect jobs and guarantee fair treatment of employees during and after privatization. According to them, employee protection would not only cushion families against economic hardship but also promote industrial harmony and ensure a smoother transition. The residents highlighted the persistent risk of corruption in the privatization process, warning that without adequate safeguards, the exercise could be captured by powerful interests to the detriment of ordinary citizens. They proposed the establishment of strong anti-corruption mechanisms, strict oversight measures, and penalties for irregular conduct.

### **3.4.9 KAKAMEGA COUNTY MAGHARIBI HALL**

The Committees engaged the residents of Kakamega County at Magharibi Hall. The public was sensitized on clauses of the Bill and thereafter allowed to give views on the Bill. They submitted as follows:

*Joint Report of the Departmental Committee on Finance and National Planning and the Select Committee on Public Debt and Privatization on the Consideration of The Privatization Bill, 2025 (National Assembly Bill No. 36 of 2025)*

178. The residents of Kakamega had mixed but constructive views. Many participants expressed conditional support, acknowledging that privatization could enhance efficiency, spur economic growth, and help reduce the national debt if conducted transparently and inclusively. They emphasized that citizens should be given opportunities to benefit from shareholding and called for mandatory public participation at all stages of the process. The residents also suggested that the government should retain majority ownership in privatized entities to safeguard national interests, particularly in enterprises that symbolize national identity or are of strategic importance.
179. At the same time, participants raised strong concerns about potential risks. They cautioned that privatization could lead to loss of public control, exploitation by private monopolies, and erosion of employee rights, including pensions and gratuities. They noted that corruption and lack of transparency were major threats, and urged the government to implement strict accountability measures, parliamentary oversight, and clear disclosure of entities targeted for privatization. On the other hand some residents argued that instead of privatization, the government should focus on tackling corruption and improving management of state-owned enterprises. Consequently, the residents noted that privatization should only proceed with firm safeguards to protect workers, ensure openness, prevent foreign dominance, and retain majority state ownership in key sectors.

### **3.4.10 MAKUENI COUNTY WOTE GREEN PARK GARDENS**

The Committee engaged the residents of Makueni County at Wote green park gardens. The public was sensitized on clauses of the Bill and thereafter allowed to give views on the Bill. They submitted as follows:

180. The residents of Makueni County supported the Bill arguing that privatization would reduce the misuse of public funds caused by corruption and mismanagement, while also relieving taxpayers of the burden of sustaining dormant parastatals. They noted that privatization could generate revenue for development projects, improve efficiency, and spur economic growth through employment opportunities and better wages. The residents emphasized that priority in asset ownership should be given to Kenyans, particularly through co-operatives and community-based groups, to ensure inclusivity. They proposed having safeguards to protect workers from retrenchment, guarantee fair compensation where job losses occur, and prevent political capture or corruption in the process. They further stressed the need to attract credible investors capable of effectively running the privatized companies.
181. However, some residents expressed deep mistrust in the privatization process, fearing it could be riddled with corruption and benefit a few at the expense of the wider public. They argued that some parastatals should be merged or restructured rather than sold, and that

public assets, being national property, should not be transferred to private hands. Concerns were also raised about the lack of sufficient transition measures for worker protection, the absence of mandatory disclosure and transparency in valuation, and the risk of disenfranchising citizens unable to afford shares. Other residents called for civil society representation in the Privatization Authority, clarity on which entities are earmarked for privatization, and assurances that privatization would be done on a case-by-case basis rather than through a blanket framework. They also emphasized the need to preserve parastatals for future generations and ensure equity so that marginalized groups are not left out of the process.

### **3.4.11 MERU COUNTY KAMUNDE HALL**

The Committees engaged the residents of Meru County at Kamunde Hall. The public was sensitized on clauses of the Bill and thereafter allowed to give views on the Bill. They submitted as follows:

182. During the public participation forum in Meru County on the Privatization Bill, 2025, most residents expressed support, noting that government bailouts of loss-making parastatals have yielded little benefit. They argued that privatization would improve efficiency and performance, as private management is better placed to deliver results. Supporters emphasized that the process must be transparent and inclusive, particularly through mechanisms such as Initial Public Offers (IPOs) that allow ordinary citizens to participate in ownership. They further proposed that Members of Parliament play an active role in all stages of privatization to ensure public views are incorporated. They also called for adequate time to review the Bill and urged that marginalized groups, Persons with Disabilities (PWDs), pastoralists, and people living with HIV be represented on boards and committees overseeing the process.
183. On the other hand, a section of residents opposed the Bill, warning that privatization could make essential services such as electricity, healthcare, water, and agricultural support unaffordable for ordinary citizens. They argued that many parastatals were established to serve public welfare, and shifting them to private ownership would erode their social mandate. Further they feared that privatization could open the door to “selling Kenya,” with key assets in sectors such as energy, transport, and communication falling into the hands of elites or foreign investors, thereby threatening national sovereignty. They also raised concerns about the likelihood of monopolies, where politically connected individuals or firms dominate critical sectors, leading to exploitation through high prices and poor service quality. They cautioned that instead of fostering efficiency, privatization could entrench corruption, deepen inequality, and lock ordinary citizens out of ownership, ultimately concentrating national wealth and resources in the hands of a privileged few.

### **3.4.12 KILIFI COUNTY KILIFI SOUTH NG-CDF OFFICES**

The Committees engaged the residents of Kilifi County at Kilifi South NG-CDF Offices. The public was sensitized on clauses of the Bill and thereafter allowed to give views on the Bill. They submitted as follows:

184. The residents of Kilifi County expressed support for the Bill, stating that the Bill intends to improve efficiency and accountability of state corporations and benefit the citizens. They acknowledged the efficiency of privatized entities, such as Safaricom, which offers better service than Telkom, the government-owned entity. However, residents raised concerns of limited time for both civic education and public participation. They further sought clarifications on the composition of the Privatization Authority, the beneficiaries of privatization and the protection of workers employment in various state corporations earmarked for privatization and workers' rights after privatization.
185. Some of the residents called for proper evaluation and research on different sectors of the economy and the public entities in question before any privatization is considered. They called for safeguards and assurance that strategic national assets will not be lost. Moreover, they requested for more public engagement before any privatization process and the need for Members of Parliament to acknowledge their opinions before they vote and decide on the bill in the House.

### **3.4.13 MOMBASA COUNTY TONONOKA SOCIAL HALL**

The Committees engaged the residents of Mombasa County at Tononoka Social Hall. The public was sensitized on clauses of the Bill and thereafter allowed to give views on the Bill. They submitted as follows:

186. The residents of Mombasa County expressed support for the Bill stating that it will be bring better service delivery for citizens and address the challenges they have been witnessing over the years that intend to cripple state corporations' performance. They emphasized the need for government to exercise transparency and accountability in the privatization process and the benefits and reasons for privatization of state corporations. The residents acknowledged the importance of privatization to ensure they do not lose their state corporations to bad debts and mismanagement, however, insisted they insisted the need for assurance that workers will not lose their jobs. They also advocated for broader participation in the shareholding of privatized state corporations and that ordinary Kenyans should not be excluded in the shareholding process.

187. Many of the residents expressed support for the bill but raised pertinent issues related to the bill including whether the common citizens will benefit from both the proceeds of privatization and upon privatizations of state corporations. They also insisted for elaboration on how the government will benefit from the process and whether they will have control on the operations of the privatized state corporations. The residents urged members of parliament to investigate non-performing government institutions and propose other ways of ensuring recommended performance rather than privatization unless necessary, citing Kenya Airways as an example.

#### **3.4.14 UASIN GISHU COUNTY ELDORET COUNTY HALL**

The Committees engaged the residents of Uasin Gishu County at Eldoret County Hall. The public was sensitized on clauses of the Bill and thereafter allowed to give views on the Bill. They submitted as follows:

188. Residents of Uasin Gishu had mixed views regarding the bill. Supporters argued that privatization would enhance efficiency and effectiveness in public enterprises, reduce the fiscal burden on government, and create employment opportunities. They pointed to collapsed entities within the county, such as the Pyrethrum Board of Kenya, Raymond's, and Rivatex, noting that these could have survived and contributed positively to the economy if they had been privatized. Residents also supported the disposal of non-performing enterprises to redirect resources to more productive sectors, while recommending full disclosure in all privatization agreements. Some proposed the inclusion of a buy-back clause to allow the government to re-acquire underperforming entities after a set period, such as 20 years. Others suggested leasing out non-performing enterprises for a fixed term instead of outright sale, enabling government to regain control once the entities were revitalized.

189. Several proposals were made to strengthen inclusivity, transparency, and accountability. Residents called for amendments to reduce the 10-year professional experience requirement for Privatization Authority board membership to allow broader participation by youth, women, persons with disabilities, and artisans. They stressed the need for representation of all forms of disabilities, including visual and hearing impairments, and recommended that board appointments reflect the country's ethnic diversity. Residents also urged the government to retain at least 51% ownership in privatized entities, establish a list of strategic assets exempted from privatization, and ensure the mandate of privatized institutions is not altered post-transfer. On integrity, they proposed excluding blacklisted companies and corruption-linked investors, while recommending under that the Cabinet, in consultation with Parliament, be allowed to determine additional privatization methods in the future. They further emphasized the need for equitable share allocation to ordinary

Kenyans, oversight of employment practices in privatized entities to safeguard workers' rights, and measures to prevent unjustified increases in the cost of goods and services.

190. Some residents had reservations on privatization of entities. They argued that state corporations should remain under government ownership, with adequate funding from the exchequer to improve performance. In their view, the government should consider borrowing to meet budgetary needs rather than selling public assets. They cautioned that privatization could erode national ownership, limit citizens' access to affordable services, and deprive future generations of the long-term benefits of state-owned enterprises.

### **3.4.15 MACHAKOS COUNTY MACHAKOS SOCIAL HALL**

The Committees engaged the residents of Machakos County at Machakos Social Hall. The was sensitized on clauses of the Bill and thereafter allowed to give views on the Bill. They submitted as follows:

191. During the public participation forum, most residents expressed support for the Privatization Bill, noting that it would prevent the government from continually bailing out underperforming parastatals and allow public resources to be redirected to development programmes. Residents emphasized that Kenyans should be given equal opportunity to acquire shares, with minimum share prices made affordable to the ordinary *mwananchi*, suggested at a threshold of Kshs. 1,000. They also called for transparent valuation processes, safeguards against corruption and political interference, and proper assessment of the strategic importance of investments before privatization. Some residents proposed that managers of failed parastatals earmarked for privatization should be held accountable, while others stressed the need for a clear framework to ensure proceeds are used to reduce the national debt burden. Protection of employees was also highlighted, with calls for job security and continuity of benefits during and after privatization.

192. Those opposed to the Bill raised concerns that the core mandates of many parastatals had not yet been fully realized and that privatization could result in job losses, reduced quality of services, and exclusion of ordinary citizens. They argued that the process might favor politically connected individuals, causing ordinary Kenyans to lose their stake in public assets. They also pointed out the need for the government to clearly list which parastatals are targeted for privatization in the Bill, provide adequate civic education and sensitization to citizens, and avoid duplicating functions already provided for under the Public Finance Management (PFM) Act. Additionally, they proposed having measures protecting parastatals from deliberate mismanagement intended to justify privatization, guaranteeing continuity of services after privatization, and translating the Bill into Kiswahili to enhance public understanding and scrutiny.

### **3.4.16 BUNGOMA COUNTY RED CROSS HALL, KANDUYI**

The Committees engaged the residents of Bungoma County at Red Cross Hall, Kanduyi. The public was sensitized on clauses of the Bill and thereafter allowed to give views on the Bill. They submitted as follows:

193. Many participants expressed their support for the Privatization Bill, 2025, as long as it was implemented with strong transparency, accountability, and fairness. They argued that privatization would be a better option than the current leasing of sugar companies, which has not produced the desired results and has left many communities facing economic uncertainty. Supporters believed that private sector involvement could attract new investments, bring management expertise, and foster innovation in struggling businesses, thereby boosting efficiency and productivity. However, they insisted that the government should keep a majority stake, with many suggesting at least 51% control. This was seen as crucial to protect national interests, prevent foreign dominance, and ensure that Kenyans benefit most from privatization.
194. Supporters also emphasized that the funds generated from privatization should be used wisely. They suggested that these funds should help manage the growing national debt, reduce the fiscal burden on taxpayers, and support essential services like education, healthcare, and infrastructure. Additionally, they insisted that privatization should protect workers from mass layoffs. Citizens highlighted the need to retain jobs, proposing that new investors should legally be required to keep existing employees and create more job opportunities. Local communities, especially those in non-technical roles, were identified as key stakeholders who should continue to gain from these businesses.
195. Conversely, opponents of the Bill raised strong objections. They argued that the government could still effectively manage public enterprises if issues of corruption and mismanagement were addressed. This group viewed privatization as unnecessary and risky because it could enable Initial Public Offerings (IPOs) to be exploited by politically connected individuals and powerful brokers, leaving ordinary Kenyans out of ownership. They also warned about the potential for mass layoffs and the loss of workers' rights, especially in sectors where pensions and gratuities have been secured under government employment.
196. Concerns were also voiced about the lack of communication and awareness regarding the privatization process. Many participants felt that citizens had not been adequately informed about which companies were up for sale, how the process would unfold, and what measures would protect public interests. They argued that this lack of information could cause mistrust and opposition unless it was addressed through inclusive information-sharing.
197. In terms of suggested amendments, the people of Bungoma County provided several constructive recommendations to strengthen the Bill. They proposed that shares meant for institutional investors should only go to those with proven expertise and solid track records

in the relevant industries. This would ensure effective management and deter speculative investors from compromising the long-term stability of the businesses. They also advocated for the privatization process to follow structured and transparent methods, similar to the successful Safaricom IPO, rather than repeating the errors seen in the Mumias Sugar case, which harmed communities.

198. Another significant proposal was for the Capital Markets Authority (CMA) to establish a special category for local communities affected by privatization. For instance, residents near Nzoia Sugar should have a guaranteed chance to gain ownership and share in the benefits due to their historical and economic ties to the company. Furthermore, citizens recommended that the Bill explicitly require full disclosure of the entities designated for privatization and ensure public consultations before any final decisions are made. There should also be measures to protect employee rights, including pensions, gratuities, and job security, to avoid social disruption.

### **3.4.17 NANDI COUNTY KIPCHOGE KEINO STADIUM**

The Committee engaged the residents of Nandi County at Kipchoge Keino Stadium. The public was sensitized on clauses of the Bill and thereafter allowed to give views on the Bill. They submitted as follows:

199. The residents expressed general support for the Bill, noting that it would enhance accountability, profitability, efficiency, and effectiveness of public entities. They observed that privatization would create employment, increase government revenue through taxes, strengthen governance, and even address insecurity by creating more job opportunities. Citing an example of Nyayo Tea Zones located in the County, they observed that they had been run down with corruption and negligence leading to farmers preferring to deal with Private factories which were offering better returns. The residents singled out dormant and non performing public entities should be parastatals for Privatization and not profitable entities which should remain under government control.
200. Additionally, participants proposed several amendments to strengthen it. They recommended that the Government retain a majority stake in strategic enterprises, in line with safeguarding public interests. They further called for the segregation of strategic assets, such as the Kenya Ordnance Factory, from non-strategic ones like the Nyayo Tea Zones, and proposed an amendment to **Clause 29** to provide a standing list of strategic national assets that should be excluded from privatization altogether.
201. To protect employees, the public proposed adding an explicit clause to prevent unjust retrenchment, ensuring that privatization does not threaten livelihoods. Participants suggested modifying the composition of the Privatization Authority Board under **Clause 8** by lowering the experience requirement from ten to three years and removing the degree

requirement to expand eligibility. They also recommended including representatives from special interest groups such as youth, women, and persons with disabilities, and prohibiting individuals who have previously mismanaged public entities from being appointed. Furthermore, they proposed that **Clause 10** be amended to require the Chairperson of the Board to hold at least a master's degree to ensure strong leadership.

202. The residents proposed amending the bill to explicitly require that the majority of shares be offered to Kenyan individuals or companies before any foreign investor can buy in. They also emphasized the need for wider public participation, recommending an extended public participation period and constituency-level consultations to guarantee inclusivity. The Participants also proposed the inclusion of a procedure for investigations of the failed public entities, identification of individuals which had run down the entities and accountability requirements including being charged in a court of law and recovery of public assets.
203. The Public also noted that the root cause for failure of public institutions should be dealt with which was mainly corruption. This, they noted that the well performing private enterprises were being run by Kenyans with the only difference being lack of integrity in the public sector.
204. Some Participants raised concerns about the sustainability of Privatization noting that with time the government will sale all the entities it can sale. In contrast, they proposed that a legislation should be developed to turn around the non performing entities to become more productive and efficient which will have more long-term benefits to the economy.

#### **3.4.18 HOMABAY COUNTY GOVERNOR'S PARK**

The Committees engaged the residents of Homabay County at Governor's Park. The public was sensitized on clauses of the Bill and thereafter allowed to give views on the Bill. They submitted as follows:

205. During the public hearing in Homabay County, residents proposed that the working experience requirement for those seeking appointment to the Privatization Authority be reduced from ten years. They noted that the current provision locks out young people who may not have accumulated such experience, yet have the skills and ideas to contribute meaningfully. By lowering the threshold, they argued, opportunities would be opened up for youth and other qualified individuals outside the public service.
206. Participants also emphasized the need to protect key strategic assets from foreign dominance, warning that allowing foreigners to hold controlling stakes in vital enterprises could undermine national interests. They further recommended that some state-owned entities, given their strategic importance, should remain under government ownership and not be privatized. Residents cited past experiences with the privatization of sugar companies that resulted in massive job losses. They proposed inclusion of explicit provisions to protect

employees' jobs, guarantee fair treatment, and ensure that privatized entities continue to provide services and employment opportunities within local communities.

207. Additionally, the residents underscored that the privatization process must be transparent and firmly safeguarded against corruption, insider trading, and personal interests. They insisted that public interest should be at the core of every decision and that regions hosting entities earmarked for privatization should be clearly informed of the benefits expected to accrue to them. The residents submitted that there is need for inclusivity, urging the government to ensure that Persons with Disabilities, the elderly, and marginalized groups are not left out in share allocations. Residents also urged that citizen sensitization be carried out to educate the public on how to purchase shares and actively participate in ownership once the privatization process is implemented.

### **3.4.19 LAIKIPIA COUNTY NG-CDF HALL, NANYUKI**

The Committees engaged the residents of Laikipia County at NG-CDF Hall, Nanyuki. The public was sensitized on clauses of the Bill and thereafter allowed to give views on the Bill. They submitted as follows:

208. A section of residents in Laikipia County supported the Privatization Bill, noting that many parastatals are loss-making entities that rely on repeated government bailouts. They argued that such bailouts drain taxpayers' money and place an unnecessary burden on citizens. Supporters emphasized that privatization would help ease this fiscal pressure, improve efficiency, and reduce waste in the management of public resources. They further proposed that the Bill be amended to specify that only loss-making parastatals should be privatized, while profitable ones remain under government control to continue contributing to the economy.

209. However, some residents opposed the Bill, insisting that government assets belong to the people of Kenya and not to political leaders. They argued that the main reason many government institutions perform poorly is poor management and political interference, particularly through appointments made on the basis of loyalty rather than merit. According to participants, such politically connected appointees often lack the competence to run parastatals effectively and instead engage in corruption, leading to inefficiency and failure to meet institutional mandates.

210. They further stressed that instead of pushing laws to privatize state-owned enterprises, the government should prioritize reforms aimed at restructuring management, strengthening accountability, and fighting corruption. They cautioned that legislation on privatization risked serving the interests of political elites rather than the ordinary *mwananchi*. For them, true

reform would involve reorganizing governance structures to ensure state corporations work efficiently for the benefit of the public rather than transferring ownership into private hands.

### **3.4.20 KWALE COUNTY**

#### **KWALE CULTURAL CENTRE, MATUGA**

The Committees engaged the residents of Kwale County at Kwale Cultural Centre, Matuga. The public was sensitized on clauses of the Bill and thereafter allowed to give views on the Bill. They submitted as follows:

211. The residents of Kwale County expressed their support for the bill, stating that it intends to benefit the citizens and oversee the efficient running of state corporations. They acknowledge the need to anchor the privatization law into the 2010 constitution and reflect the current status of the society while appreciating how the new law factors in public participation and how it moves to engage the citizens. Moreover, the citizens appreciated that the National Assembly will have more powers in overseeing the privatization process. However, the residents pointed out the need to include community shares whenever a public institution is privatized in the bill and that the institutions should exercise corporate social responsibility for the society and the residents directly impacted by the privatization of public institutions.
212. The residents were concerned about various aspects of the public participation process, including the time factor, where they felt the time allocated for public participation in the Bill was not enough for them to understand, recapitulate and give opinions about the bill. They were also concerned with why their views given during public participation are not considered by the Committee of the Whole House during voting on the bill. The residents emphasized the need for accountability and transparency of the privatization process as not to benefit a few individuals but rather the citizens, and urged the protection of workers' rights affected by the privatization and from exploitation by foreign investors.

### **3.4.21 TRANSZOIA COUNTY**

#### **KITALE MUSEUM**

The Committees engaged the residents of Transzoia County at Kitale Museum. The public was sensitized on clauses of the Bill and thereafter allowed to give views on the Bill. They submitted as follows:

213. Many attendees supported the Privatization Bill. They argued it would help the government generate essential revenue, cut losses from poorly run state-owned enterprises, and create opportunities for local citizens to own shares in public companies. Supporters mentioned that some government agencies suffer from mismanagement, leading to ongoing financial losses. They believed that involving the private sector would bring efficiency, innovation, and responsibility. They also remarked that privatization would be more effective than leasing,

which had not benefited local communities in the past. Some participants were hopeful that locals could buy shares if the pricing was fair and accessible.

214. At the same time, a significant number of participants raised concerns about the Bill. One critical issue was whether privatization would allow private owners to fire employees and what protections would be set up to ensure job security, pensions, and gratuities. Citizens also questioned whether revenues from privatized entities would stay in Kenya or be taken abroad, potentially harming the national economy. Concerns about monopolies were also expressed. Participants worried that wealthy individuals and politically connected elites might dominate share ownership, limiting fair access for ordinary Kenyans.
215. Corruption was a recurring theme, with attendees highlighting the importance of strong oversight and accountability to ensure fair privatization that benefits all shareholders. Citizens demanded a transparent process, warning that secretive or politically motivated deals would undermine public trust.
216. Other worries included whether changes in government during the proposed eight-year privatization program could disrupt or politicize the process. Historical land issues were also mentioned. Citizens insisted that privatizing institutions related to land should first address disputes and prioritize locals or indigenous communities in those areas.
217. Regarding suggestions and amendments, participants proposed several changes to the Bill. They recommended reducing the extensive powers granted to the Cabinet Secretary in the privatization process. Instead, key regulatory functions and approvals should receive parliamentary oversight from the National Assembly. Citizens also suggested reserving a percentage of ownership in privatized companies for locals, especially those living near the locations of state corporations. In cases involving land, priority for ownership should go to indigenous populations.
218. To improve inclusivity, it was suggested that shares be made affordable so ordinary citizens, including youth and persons with disabilities, could participate meaningfully. Participants proposed specific allocations of shares for youth and persons with disabilities, along with including their representatives on the Privatization Board. They also suggested decentralizing the registration of companies and the Nairobi Securities Exchange (NSE) to all 47 counties, making it easier for people at the grassroots level to invest.
219. Additionally, citizens in Trans Nzoia showed suggested that the Agricultural Development Corporation (ADC) and the Kenya Seed Company should also be privatised. They also called for awareness campaigns to inform the public about the privatization process, its benefits, risks, and safeguards to ensure informed participation and prevent misinformation.
220. In summary, the public forum in Trans Nzoia County showcased a blend of support and caution toward the Privatization Bill, 2025. Supporters viewed it as a way to generate revenue, tackle mismanagement, and create local ownership opportunities. In contrast, opponents raised worries about job security, corruption, monopolies, and the exclusion of ordinary citizens. The general sentiment was that privatization could succeed if conducted

transparently, inclusively, and with careful measures to protect workers, local communities, and national interests.

### **3.4.22 KISII COUNTY**

#### **AGRICULTURAL TRAINING COLLEGE, KISII**

The Committees engaged the residents of Kisii County at Agricultural Training College, Kisii. The public was sensitized on clauses of the Bill and thereafter allowed to give views on the Bill. They submitted as follows:

221. During the public participation forum in Kisii County, some residents expressed support for the Privatization Bill, noting its potential to improve efficiency in state-owned enterprises and reduce the government's financial burden of sustaining loss-making institutions. They argued that if implemented transparently, privatization could attract investment, enhance service delivery, and spur economic growth. However, supporters cautioned that for these benefits to be realized, strict safeguards must be put in place. They urged lawmakers to ensure job security for employees of privatized companies, stressing that livelihoods should not be put at risk in the process. They also emphasized the need for robust measures to eliminate corruption, insider trading, and unethical practices, which could otherwise undermine the credibility and effectiveness of the exercise.
222. At the same time, other residents voiced opposition to the Bill, warning that privatization of public entities offering essential services might reduce the quality and accessibility of such services. They argued that private investors, driven primarily by profit, would likely raise the cost of services such as healthcare, water, and electricity, making them unaffordable to ordinary citizens. According to these residents, the original mandate of state-owned enterprises was to provide affordable services to the public, and shifting this responsibility to the private sector could disadvantage low-income households. They cautioned that privatization might create deeper inequality and leave vulnerable groups without access to critical services.

### **3.4.23 ELGEYO MARAKWET COUNTY**

#### **KMTC ITEN**

The Committees engaged the residents of Elgeyo Marakwet County at KMTC Iten. The public was sensitized on clauses of the Bill and thereafter allowed to give views on the Bill. They submitted as follows:

223. During the public participation hearings, residents expressed support for the Privatization Bill, noting that it would reduce the financial burden on government, create employment opportunities, generate fiscal space for development, and increase returns from underutilized public entities. They emphasized that if implemented properly, privatization would enhance efficiency, accountability, and sound management of state enterprises. At the same time,

participants cautioned that the process must be transparent, inclusive, and guided by strong safeguards to protect national interests and prevent abuse.

224. Several recommendations were made to strengthen the Bill. Citizens proposed the inclusion of explicit job security provisions to protect employees during privatization, stressing that livelihoods should not be jeopardized. On the composition of the Privatization Authority Board, they recommended lowering the professional experience requirement to two years and broadening representation to include youth, women, and persons with disabilities. On ownership, they demanded that at least 60% of shares be reserved for Kenyans to ensure citizens remain the primary beneficiaries. Strategic national assets and key sectors such as education, water, energy, and security were identified as essential services that should be excluded from privatization altogether.
225. Participants further called for mandatory full disclosure of all privatization agreements and processes to promote transparency and public trust. They stressed that every entity earmarked for privatization should undergo public participation, with priority given to the regions hosting such entities for example, the Kerio Valley Development Authority in Elgeyo-Marakwet. Concerns were also raised about the risk of privatized entities turning into unregulated monopolies, which could harm the welfare of Kenyans. They urged for adequate safeguards, strong parliamentary oversight, and provisions to ensure that only credible investors acquire state entities, thereby preventing mismanagement, corruption, or loss of jobs.

#### **3.4.24 KAJIADO COUNTY NITA, KITENGELA**

The Committees engaged the residents of Kajiado County at NITA-Kitengela. The public was sensitized on clauses of the Bill and thereafter allowed to give views on the Bill. They submitted as follows:

226. The residents of Kajiado had mixed views concerning the bill. Those in support for privatization stated that they support, primarily on the grounds that it would yield economic benefits for citizens. They argued that proceeds from privatization should be equitably distributed across government projects in different sectors to ensure national impact. Participants also emphasized that individuals or entities acquiring state corporations should be competent and experienced in management to avoid mismanagement. Supporters further noted that privatization could stimulate job creation, enhance operational efficiency, and strengthen investor confidence. They viewed the Bill as a forward-looking policy instrument to attract investment into state-owned companies.
227. However, some residents had reservations on the Bill, citing the risk of job losses and disenfranchisement of ordinary citizens. They argued that the inefficiencies in state corporations stemmed largely from poor management, which could be resolved through

government intervention rather than privatization. Some participants contended that privatization would benefit only a select few at the expense of the wider population.

228. Additionally, other residents highlighted the need for fair valuation of assets, transparent utilization of proceeds, and stronger protection for employees. Plenary discussions echoed these concerns, stressing that public participation should be conducted before any privatization decisions are finalized. Participants also urged government to prioritize good governance over quick fiscal gains, ensuring transparency, insulating the process from political interference, and safeguarding national interests.

### 3.4.25 EMBU COUNTY

Both Committees engaged the residents of Embu County at IFAD Hall. The public was sensitized to the clauses of the Bill and thereafter allowed to give views on the Bill. They submitted as follows:

229. Residents of Embu County expressed support for the Privatization Bill, though their backing was conditional on several safeguards. They proposed that key strategic assets be exempted from privatization, stressing the need to protect institutions vital to national security and sovereignty. Supporters emphasized that the process should be inclusive and transparent, ensuring representation of youth, women, and persons with disabilities in the Privatization Authority. Some further suggested that foreign investors be allowed to acquire shares, reasoning that foreign ownership could potentially improve efficiency and service delivery if guided by clear performance targets.

230. However, other residents were opposed to the Bill, voicing fears that privatization could create monopolies and eliminate subsidies that benefit ordinary citizens. They warned that the transition process might be chaotic, with risks of confusion, unrest, or even conflict if communities felt sidelined in decision-making. Concerns were also raised that private investors would prioritize profits over service delivery, leading to higher costs and reduced access to essential services, while employees in privatized institutions could face job losses. Participants further criticized leaders for pushing the Bill forward too quickly despite persistent shortcomings in service delivery. The residents strongly cautioned against privatizing strategic institutions such as ports and airports, arguing that doing so would threaten national sovereignty and security. They insisted that such entities must remain under government control to safeguard public interest.

## CHAPTER FOUR

### 4 COMMITTEES OBSERVATIONS

231. Having considered the Privatization Bill, 2025 (National Assembly Bill No. 36 of 2025), and evaluated stakeholder submissions on their proposals to the Bill, the Committees made the following observations—

#### **Objects and purposes of the Bill**

232. The Bill seeks to repeal the Privatization Act, 2005 (Cap. 485B) and re-enact the regulatory framework for the privatization of public entities following the declaration of the Privatisation Act, 2023 by the High Court for being unconstitutional in **Nairobi Constitutional Petition No. E491 of 2023 Orange Democratic Movement Party Vs. The Cabinet Secretary, National Treasury and Economic Planning & 2 Others (As Consolidated with Petition E010 of 2024 and E025 of 2025)**.

#### **Role of the National Assembly in the approval of privatization proposals**

233. Whereas the Bill provides for the role of the National Assembly in the approval of privatization programme, it doesn't provide for similar safeguards on privatization proposals. Section 23(3) of the Privatization Act, 2005 (Cap. 485B) provides as follows—

*(3) The Cabinet Secretary shall submit a report in form of a Sessional Paper on a privatization proposal approved by the Cabinet to the National Assembly for consideration.*

234. There was therefore a need to amend the Bill to provide for the approval of the privatisation proposals by the National Assembly.

#### **Reviews and appeals**

235. There was need to delete clauses 52, 53, 54, 55, 56, 57, and 58 of the Bill providing for the establishment, functions, composition, conduct and related provisions on the Privatization Appeals Board. The deletions are informed by the following reasons:

- (a) In **Okoti v Judicial Service Commission & 2 others; Katiba Institute (Interested Party) (Petition 197 of 2018) [2021] KEHC 461 (KLR)**, the petitioner sought various reliefs from the court with respect to the constitution, composition and operations of tribunals established pursuant to article 169(1)(d) of the Constitution of Kenya, 2010. The High Court held that local tribunals created under article 169(1)(d) of the Constitution are subordinate Courts in Kenya; the appointment and removal of members of the local tribunals created under article 169(1)(d) of the Constitution by the Executive violates the principle of separation of powers, contravenes the right to fair hearing under article 50 of the Constitution and infringes on the independence of the Judiciary; and that the local

tribunals under article 169(1)(d) of the Constitution must be transited to the Judiciary and the appointment and removal of their members be undertaken by the Judicial Service Commission.

- (b) Although the Bill names the appeals body a Privatization Appeals Board, there is a danger that the Board may not be aligned to the High Court declarations in *Petition 197 of 2018* which was also upheld at the Court of Appeal in ***Attorney General v Okiiti & 3 Others (Civil Appeal E416 of 2021[2025] KECA 309 (KLR)***.
- (c) The appointment of the members of the Privatization Appeals Board by the Executive violates the principle of separation of powers and contravenes the right to fair hearing. Further, as provided in the Bill, the Board would lack independence.
- (d) The proposed Appeals Board has financial implications and this would impose extra financial burden in the operationalization of the Act.

236. There was also need to amend the Bill to provide for application to the Privatization Authority for review of its decision and subsequent avenue for appeal to the High Court of the Authority's decision on one hand and application to the High Court at the first instance for redress.

#### **Composition of the Board of the Authority**

237. The Bill needs to be amended to provide for similar academic qualifications for the chairperson under subclause (1)(a) as those provided for under subclause (1) (d). In both paragraphs, law should be included as one of the degrees.

238. Further clause 9(3) of the Bill needed to be amended to provide for youths and persons with disabilities to be considered when appointing members of the Board of the Privatization Authority.

239. There was also a need to clearly provide for the qualifications of the members of the Board including satisfaction of the requirements of Chapter Six of the Constitution.

#### **Safeguards on protection of strategic national assets and national security interests**

240. There was need to amend the Bill to provide safeguards on strategic national assets and national security interests during the formulation, identification and implementation of privatization programmes.

#### **Eligibility in a privatization (clause 32)**

241. There was need to amend clause 32 of the Bill (*Eligibility in a privatization*) to provide the parameters within which the Cabinet Secretary may limit or restrict non-Kenyans. The

clause needed to be amended to provide for the following matters to be considered by the Cabinet Secretary—

- (a) the strategic nature of the asset or service to be privatized;
- (b) national security interests;
- (c) economic empowerment and inclusion of Kenyan citizens;
- (d) the potential impact on public welfare, service delivery, or access;
- (e) the risk of foreign dominance or monopolistic control; and
- (f) The consistency of the privatization with national development goals and policies.

### **Protection of employees in privatized entities**

242. The Committees received concerns from stakeholders on fears of job losses upon privatisation of public entities. The Committees observed that clause 35(g) of the Bill provides for employee protection mechanism. Further, the Employment Laws would apply on employee matters. Therefore, the Committees were of the view that clause 35(g) of the Bill was sufficient. In addition, since consultations are envisaged within the privatisation processes including during approval of the privatisation programme by the National Assembly, the Committees were of the view that this could be addressed on a case-by-case basis and within the stages of the implementation of the privatization programme. Separately, clause 75 of the Bill provides for the transition of staff of the Privatization Commission to the proposed Privatization Authority.

### **Bill not to exclude sale of government shares in a government-linked corporation**

243. There was need to amend clause 4 of the Bill (Limitation of application) by deleting paragraph (c) that provides for the exclusion of the sale of government shares in a government-linked corporation within the ambit of the Bill. If allowed, the provision would negate the main purpose of privatisation and the safeguards in the processes of privatisation envisaged in the Bill.

### **Amendments to clause 2 of the Bill (Interpretation)**

244. There was need to amend clause 2 of the Bill to provide for the definition of the term “divestiture” to mean “disposing of whole or part of the assets and/or shares of a public entity”. The proposed amendment will provide clarity on the definition.
245. There was need to delete the definition “Appeals Board” since Both Committees have recommended deletion of the substantive provisions on it.

### **Amendments to clause 3 (objects and purpose of the Act)**

246. There was need to provide for two additional objects of the Act as follows: (a) prohibit restrictive or unfair trade practices in the privatization process; and (b) promote participation of the people, good governance, transparency and accountability in line with Article 10 of the Constitution.

### **Co-option of members**

247. There was need to amend the Bill to provide for co-option of members to the Board to provide the necessary expertise to the Board.

### **Increase of period of consideration of the privatization programme by the National Assembly**

248. There was need to amend clause 23 of the Bill to increase the period within which the National Assembly shall consider a privatization programme from 60 days to 90 days. This will provide the National Assembly adequate time to effectively consider the privatization programme and avoid the need to have a “deeming provision”.

### **Reduction of validity period of privatization programme**

249. There was need to amend clause 29 of the Bill to reduce the validity period of a privatization programme from eight years to four years. The reduced timeframe is aligned to the tenure of the members of the Board of Privatization Authority and seeks to ensure that privatisation is expeditiously concluded. Further, clause 30 of the Bill contains internal safeguards where the Cabinet Secretary can amend a privatization programme.

### **Valuations**

250. There was need to amend clause 38 of the Bill to include the valuation of the parent company and its subsidiary. Further, clause 35(2) of the Bill should be amended to also provide for an initial valuation report as one of the items to be included in the privatization proposal.

### **Amendment of clause 21 (identification of entities for the programme)**

251. There was need to amend clause 21(2)(d) by deleting the word “unregulated” to cure the ambiguity in the paragraph.

### **Amendment of clause 49 (Proceeds from the sale of a public entity's shareholding)**

252. There was need to amend clause 49 of the Bill to remove the requirement of depositing proceeds from the sale of a public entity's shareholding in a special interest-bearing account and instead to have the proceeds paid into the Consolidated Fund.

**The Bill provides the legal framework and most concerns would be addressed in each privatization programme and privatization proposal**

253. Most of the concerns raised by the stakeholders would be best dealt with after the Act comes into force and there is a privatization programme and privatization proposal due for consideration and availed to the public for consultations. The Bill generally provides the legal framework but with clear safeguards on public participation.

**CHAPTER FIVE**

**5 COMMITTEES RECOMMENDATION**

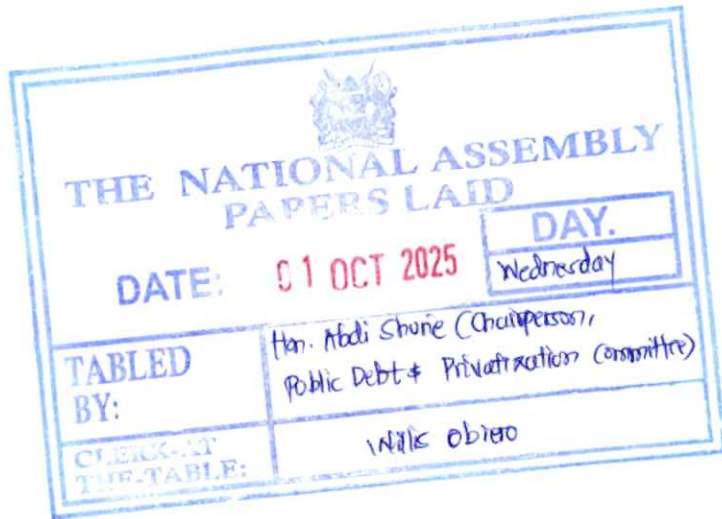
254. Having considered the Privatization Bill, 2025 (National Assembly Bill No. 36 of 2025) the Committees recommends that, the House approves the Bill with amendments.

Signed.....  
Hon. CPA. Kuria Kimani, CBS, MP

Signed.....  
Hon. Abdi Shurie, CBS, MP  
**Chairperson**

**Chairperson**  
Departmental Committee on Finance and National Planning  
Date..... 1/9/2025

Select Committee on Public Debt and Privatization  
Date..... 1<sup>st</sup> Oct 2025






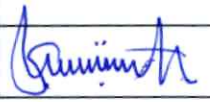
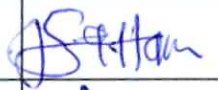
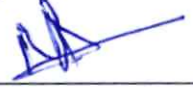


**THIRTEENTH PARLIAMENT  
FOURTH SESSION – 2025**

**ADOPTION OF THE REPORT OF THE DEPARTMENTAL COMMITTEE ON  
FINANCE AND NATIONAL PLANNING AND THE SELECT COMMITTEE ON  
PUBLIC DEBT AND PRIVATIZATION ON THE CONSIDERATION OF THE  
PRIVATIZATION BILL, 2025 (NATIONAL ASSEMBLY BILL NO. 36 OF 2025)**

**We, the undersigned Members of the Departmental Committee on Finance and National Planning and the Select Committee on Public Debt and Privatization do hereby append our signatures to adopt this Report today, Thursday, 28<sup>th</sup> August 2025.**

	<b>Name</b>	<b>Designation</b>	<b>Signature</b>
1.	<b>Hon. Abdi Shurie, CBS M.P</b>	<b>Chairperson</b>	
2.	<b>Hon. CPA. Kuria Kimani, CBS, MP</b>	<b>Chairperson</b>	
3.	<b>Hon. Mrembo Irene Njoki, MP</b>	<b>Vice-Chairperson</b>	
4.	<b>Hon. (Amb.) Benjamin Kipkirui Langat, CBS, MP</b>	<b>Vice- Chairperson</b>	
5.	Hon. Omboko Milemba, CBS, M. P	Member	
6.	Hon. Peter Kaluma, CBS, MP	Member	
7.	Hon. (Dr). Irene Kasalu, M.P.	Member	
8.	Hon. Dr. John Ariko Namoit, MP	Member	
9.	Hon. Kwenya, Thuku Zachary, M.P.	Member	
10.	Hon. Andrew Adipo Okuome, MP	Member	
11.	Hon. Muiruri Muthama Stanley MP	Member	
12.	Hon. CPA. Joseph Maero Oyula, MP	Member	

13.	Hon. Abdi, Ali Abdi , M.P	Member	
14.	Hon. David Mwalika Mboni, MP	Member	
15.	Hon. Aden Daud, EBS. M.P	Member	Aden Daud
16.	Hon. Chiforomodo Munga Mangale, MP	Member	
17.	Hon. Barongo, Nolfason Obadiah, MP	Member	
18.	Hon. (Dr). Daniel Manduku, M.P.	Member	
19.	Hon. Chege Njuguna, M.P	Member	
20.	Hon. CPA. Julius K. Rutto, MP	Member	
21.	Hon. Joseph Makilap, M.P.	Member	
22.	Hon. Umul Ker Sheikh Kassim, MP	Member	U.K.
23.	Hon. Dr. Shadrack Mwiti Ithinji, MP	Member	
24.	Hon. Paul Kibichiy Biego, MP	Member	
25.	Hon. Betty N. Maina, MP	Member	
26.	Hon. Kirwa, Abraham Kipsang, M.P.	Member	
27.	Hon. Letipila, Dominic Eli, M.P.	Member	
28.	Hon. George Sunkuyia Risa, MP	Member	
29.	Hon. (CPA). Suleka H. Harun, M.P.	Member	
30.	Hon. Mohamed Soud Machele, MP	Member	

**SPECIAL ISSUE**

*Kenya Gazette Supplement No. 127 (National Assembly Bills No. 36)*



REPUBLIC OF KENYA

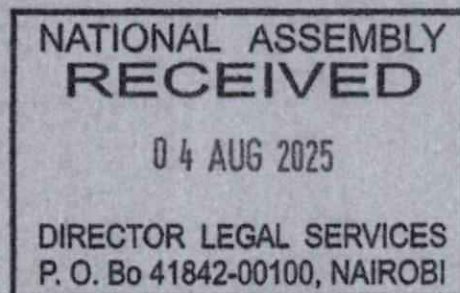
**KENYA GAZETTE SUPPLEMENT**

**NATIONAL ASSEMBLY BILLS, 2025**

**NAIROBI, 16th July, 2025**

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NATIONAL ASSEMBLY  
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P.O. Box 11662-00100 NAIROBI

**THE PRIVATIZATION BILL, 2025**  
**ARRANGEMENT OF CLAUSES**

*Clause*

**PART I—PRELIMINARY**

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- 2— Interpretation.
- 3— Objects and purpose of the Act.
- 4— Limitation of application.
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APPEALS UNDER THE  
PRIVATIZATION ACT**

**THE PRIVATIZATION BILL, 2025**

**A Bill for**

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

**ENACTED** by the Parliament of Kenya, as follows—

**PART I—PRELIMINARY**

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

Short title.

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

Interpretation.

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

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

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

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

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

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

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

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

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

“public entity” includes —

- (a) a national government-linked corporation;
- (b) a subsidiary of a national government corporation;  
or
- (c) a state corporation within the meaning of the State Corporations Act; Cap. 446.

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

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

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

Objects and  
purpose of the  
Act.

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

4. This Act shall not apply to—

Limitation of  
application.

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

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

Guiding principles  
of the Act.

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

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

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

Purpose of Privatization.

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

## **PART II — CO-ORDINATION AND OVERSIGHT OF PRIVATIZATION MATTERS**

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

Role of Cabinet Secretary.

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

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

Privatization  
Authority.

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

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

**9.** The Authority shall—

Functions of the  
Authority.

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

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

Board of the  
Authority.

- (a) a chairperson appointed by the President;

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

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

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

11. (1) The Board shall—

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

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

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

Functions of the Board.

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

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

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

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

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

Conduct of  
business and  
affairs of the  
Board.

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

Delegation by the Board.

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

Remuneration of the members.

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

Managing Director.

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

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

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

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

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

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

Corporation Secretary.

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

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

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

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

Staff of the Authority.

### PART III — PRIVATIZATION PROGRAMME

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

Privatization programme.

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

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

Cap. 412A.

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

Consultation in formulation of the programme.

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

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

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

Identification of entities for the programme.

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

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

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

Approval by the National Assembly.

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

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

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

Period for consideration.

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

Criteria for consideration.

25. The National Assembly shall—

Decision of the National Assembly.

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

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

Notification of the decision.

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

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

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

Cabinet Secretary to amend.

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

Publication of programme.

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

Validity of the programme.

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

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

Amendment of the programme.

#### **PART IV — IMPLEMENTATION OF THE PRIVATIZATION PROGRAMME**

##### *Preliminaries*

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

Implementation of the programme.

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

Eligibility in a Privatization.

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

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

- (a) limit participation in any Privatization to Kenyans; or
- (b) ensure that there is a specified minimum level of participation by Kenyans in any Privatization.

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

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

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

Steering Committee.

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

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

**34.** The methods of Privatization shall include—

Methods of Privatization.

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

*Privatization proposal*

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

Privatization proposal.

(2) The Privatization proposal shall specify—

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

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

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

Approval of Privatization proposal.

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

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

Implementation of a finalized Privatization.

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

#### *Valuation*

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

Valuation required for each Privatization.

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

#### *Restrictions and obligations on entities scheduled for Privatization*

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

Application of restrictions.

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

General restrictions.

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

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

Control of investments.

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

No credit on sale of shares.

43. A public entity undergoing Privatization shall —

Obligation for record keeping.

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

#### PART V — PRIVATIZATION AGREEMENT

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

Privatization agreement.

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

Limits on when agreement may be signed.

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

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

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

Regulation of monopolies.

Cap.504.

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

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

Notification of finalised Privatization.

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

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

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

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

## PART VI — PROCEEDS OF PRIVATIZATION

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

Proceeds from sale of direct government shareholding.

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

Proceeds from the sale of a public entity's

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

### PART VII — REVIEWS AND APPEALS

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

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

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

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

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

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

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

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

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

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

dispute resolution appointed by the Cabinet Secretary; and

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

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

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

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

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

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

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

Vacancy in the Appeals Board.

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

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

Secretary to the Appeals Board.

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

Conduct of proceedings of the Appeals Board.

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

Remuneration of the Appeals Board.

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

Conflict of interest.

### PART VIII — FINANCIAL PROVISIONS

59. The funds of the Authority shall consist of—

Funds of the Authority.

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

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

Financial year.

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

Annual estimates.

Cap 412A.

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

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

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

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

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

Accounts and audit.

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

Cap. 412C.

### PART IX — MISCELLANEOUS PROVISIONS

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

Annual report.

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

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

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

(c) any other relevant information.

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

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

Records.

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

Protection from personal liability.

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

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

Information to the Authority.

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

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

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

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

Confidential information.

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

68. A person who—

Offences.

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

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

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

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

### PART X — REPEALS, SAVINGS AND TRANSITIONAL PROVISIONS

70. (1) In this Part—

*Interpretation of Part.*

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

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

“repealed Act” mean the Privatization Act, 2005. Cap.485B

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

71. The Privatization Act is repealed. Repeal of Cap. 485B.

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

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

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

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

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

Ongoing Privatizations.

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

Members of the Commission.

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

Staff of the Commission.

## FIRST SCHEDULE

(s. 13)

### CONDUCT OF BUSINESS AND AFFAIRS OF THE BOARD

#### 1. Meetings

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

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

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

#### 2. Conflict of interest and disclosure

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

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

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

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

#### 3. Quorum

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

#### 4. Resolution of the Board

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

**5. Rules of procedure**

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

## SECOND SCHEDULE

(s. 34)

### METHODS OF PRIVATIZATION

#### 1. Initial public offering of shares

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

#### 2. Sale of shares by public tendering

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

##### *Invitation of expression of interest*

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

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

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

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

##### *Evaluation of EOIs*

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

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

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

*Request for Proposal to qualified persons*

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

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

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

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

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

*Evaluation of proposals*

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

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

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

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

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

*Notification to tenderers*

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

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

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

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

**THIRD SCHEDULE**

(S. 49)

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

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

**2. Definitions**

In these Procedures, unless the context otherwise requires—

“Act” means the Privatization Act, 2025;

“Authority” means the Privatization Authority;

“Appeals Board” means the Privatization Appeals Board;

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

**3. Reviews**

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

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

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

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

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

#### 4. Appeals

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

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

(3) The notice of appeal shall —

(a) be signed by the appellant;

(b) state the appellant's initial application;

(c) be accompanied by a copy of the decision of the Authority in the application; and

(d) concisely set out the grounds for the appeal.

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

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

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

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

(a) annul anything done in the Privatization process, including annul the Privatization process in its entirety;

(b) issue directions with respect to anything to be done or repeated in the Privatization process; or

(c) order the payment of costs between the parties to the appeal.

#### 5. Further appeal

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

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

#### **6. Conduct of procedures**

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

#### **7. Powers of the Appeals Board**

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

## MEMORANDUM OF OBJECTS AND REASONS

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

The Bill provides as follows:

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

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

The Bill does not limit any fundamental rights or freedoms.

#### **Statement on how the Bill concerns county governments**

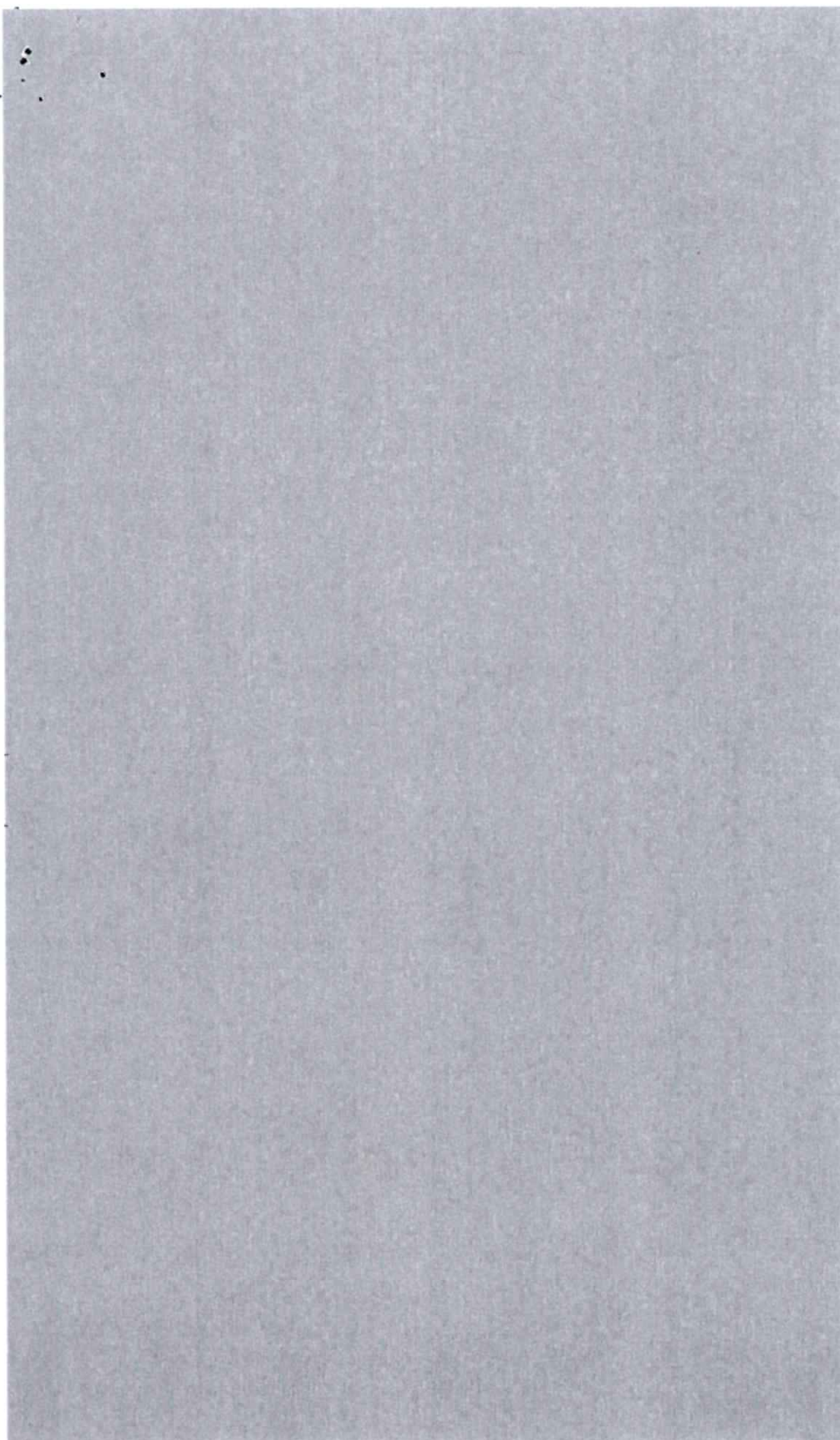
The Bill does not concern county governments as it does not affect the functions and powers of county governments as set out in the Fourth Schedule to the Constitution.

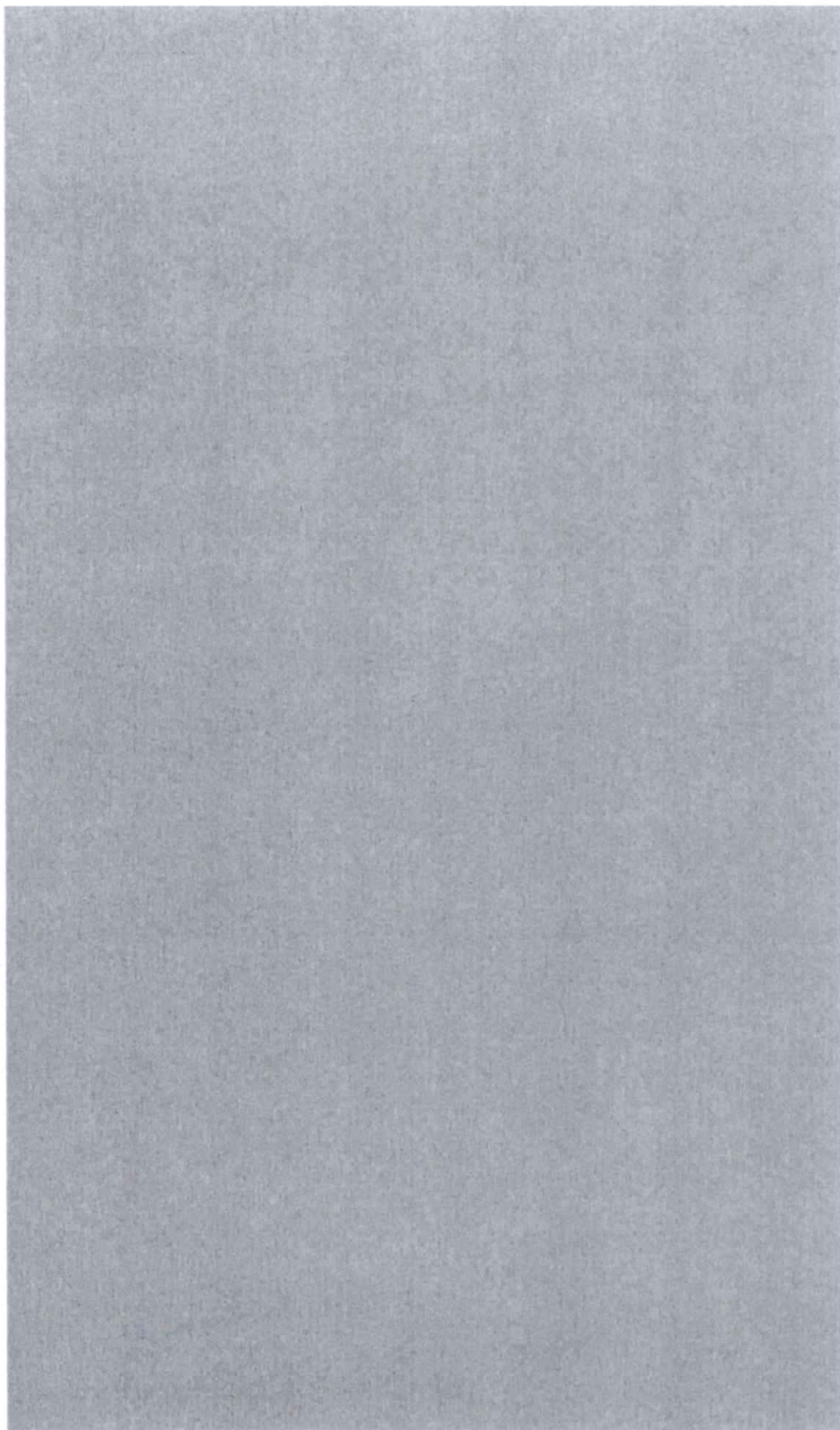
#### **Statement of the Bill as a money Bill within the meaning of Article 114 of the Constitution**

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

Dated the 15th July, 2025.

**KIMANI ICHUNG'WAH,**  
*Leader of Majority Party.*







**REPUBLIC OF KENYA**  
**THE NATIONAL ASSEMBLY**  
**13<sup>TH</sup> PARLIAMENT - FOURTH SESSION – 2025**

IN THE MATTER OF ARTICLE 118 (1)(b) OF THE CONSTITUTION  
AND  
IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF THE PRIVATISATION BILL  
(NATIONAL ASSEMBLY BILL NO. 36 OF 2025)

**NOTIFICATION OF AND INVITATION TO COUNTY PUBLIC HEARINGS**

**WHEREAS**, Article 118(1) (b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees and Standing Order 127(3) of the National Assembly Standing Orders requires House Committees considering Bills to facilitate public participation;

**AND WHEREAS**, the **Privatisation Bill, (National Assembly Bill No. 36 of 2025)** was read a First Time and committed to the **Departmental Committee on Finance and National Planning** and the **Select Committee on Public Debt and Privatization** for consideration and reporting back to the House;

**IT IS NOTIFIED** that in addition to **receipt of written memoranda, engaging relevant stakeholders and consulting experts**, the **Departmental Committee on Finance and National Planning** and the **Select Committee on Public Debt and Privatization** have resolved to hold **PUBLIC HEARINGS** on the Bill in the Counties as per the below schedule—

S/No.	COUNTY	VENUE	DATE	TIME
1	Vihiga	Praise Centre Church, Mbale	18 <sup>th</sup> August, 2025	10.00 am
2	Kakamega	Magharibi Hall	19 <sup>th</sup> August, 2025	10.00 am
3	Bungoma	Red Cross Hall, Kanduyi	20 <sup>th</sup> August, 2025	10.00 am
4	Transzoia	Kitale Museum	22 <sup>nd</sup> August 2025	10.00 am
5	Kisumu	Tom Mboya Labour College	18 <sup>th</sup> August, 2025	10.00 am
6	Siaya	IEBC Hall	19 <sup>th</sup> August, 2025	10.00 am
7	Homabay	Governor's Park	21 <sup>st</sup> August, 2025	10.00 am
8	Kisii	Agricultural Training College, Kisii	22 <sup>nd</sup> August 2025	10.00 am
9	Nakuru	Kenya Red cross Hall, Nakuru	18 <sup>th</sup> August, 2025	10.00 am
10	Uasin Gishu	Eldoret County Hall	19 <sup>th</sup> August, 2025	10.00 am
11	Nandi	Kipchoge Keino Stadium	20 <sup>th</sup> August, 2025	10.00 am
12	Elgeyo Marakwet	KMTC Iten	22 <sup>nd</sup> August 2025	10.00 am
13	Kitui	Kitui Multi-purpose Hall	18 <sup>th</sup> August, 2025	10.00 am
14	Makueni	Wote Green Park Gardens	19 <sup>th</sup> August, 2025	10.00 am
15	Machakos	Machakos Social Hall	20 <sup>th</sup> August, 2025	10.00 am
16	Kajiado	NITA, Kitengela	22 <sup>nd</sup> August 2025	10.00 am
17	Isiolo	Catholic Diocese Hall	18 <sup>th</sup> August, 2025	10.00 am
18	Meru	Kamunde Hall	19 <sup>th</sup> August, 2025	10.00 am
19	Laikipia	NG-CDF Hall Nanyuki	21 <sup>st</sup> August, 2025	10.00 am
20	Embu	IFAD Hall	22 <sup>nd</sup> August 2025	10.00 am
21	Tana River	County Hall Hola	18 <sup>th</sup> August, 2025	10.00 am
22	Kilifi	Kilifi South NG-CDF Office	19 <sup>th</sup> August, 2025	10.00 am
23	Mombasa	Tononoka Social Hall	20 <sup>th</sup> August, 2025	10.00 am
24	Kwale	Kwale Cultural Centre Matuga	21 <sup>st</sup> August 2025	10.00 am

The Committees shall discuss the contents of the Bill and its implications during the Public Hearings. Members of the public are invited to attend and share their views on the Bill on the dates indicated.

A copy of the Bill is available at the National Assembly Table Office and on <http://www.parliament.go.ke/the-national-assembly/house-business/bills>.

**S. NJOROGE, CBS**  
**CLERK OF THE NATIONAL ASSEMBLY**  
14<sup>th</sup> August 2025

**"For the Welfare of Society and the Just Government of the People"**



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**7<sup>th</sup> August 2025**

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Principal Secretary  
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Treasury Buildings  
**NAIROBI.**

**Mr. Cyrell Wagunda Odede**  
Principal Secretary  
State Department for Public Investments  
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**Mr. Wyckliffe M. Shamiah**  
Chief Executive Officer  
Capital Markets Authority  
Embankment Plaza, 3rd Floor Longonot  
Road, off Kilimanjaro Avenue, Upperhill  
**NAIROBI.**

Dear

**RE: STAKEHOLDER ENGAGEMENT ON THE PRIVATIZATION BILL, 2025  
(NATIONAL ASSEMBLY BILL NO. 36 OF 2025 BY THE  
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL  
PLANNING AND THE SELECT COMMITTEE ON PRIVATIZATION AND  
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Pursuant to the provisions of Article 118(1) (b) of the Constitution of Kenya and Standing Order 127 (3), the Committee hereby invites you for a meeting to hear your submissions and comments on the said Bill. The meeting will be held on **Wednesday, 13<sup>th</sup> August 2025** at Hilton Garden Hotel, Mombasa Road at 11.00 a.m.

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Yours

**JEREMIAH W. NDOMBI, MBS**  
**For: CLERK OF THE NATIONAL ASSEMBLY**

Copy to

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Cabinet Secretary  
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Treasury Buildings  
**NAIROBI**

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Attorney General of the Republic of Kenya  
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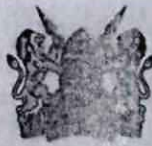
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Yours



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**For: CLERK OF THE NATIONAL ASSEMBLY**

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Dear *Hon Mose*

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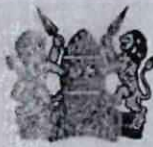
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The Bill seeks to repeal and re-enact the regulatory framework for the Privatisation of public entities with a view to improving the efficiency of public entities. The Bill is being re-enacted in view of the Court decision in **Orange Democratic Movement Party & 4 Others v Speaker of the National Assembly & 5 Others [2024] KEHC 11494 KLR**, which declared the Privatisation Act, 2023 unconstitutional. In accordance with the decision of the court, the Bill now provides for an elaborate role of the National Assembly in the Privatisation process.

Pursuant to the provisions of Article 118(1) (b) of the Constitution of Kenya and Standing Order 127 (3), the Committee hereby invites you for a meeting to hear your submissions and comments on the said Bill. The meeting will be held on **Wednesday, 13<sup>th</sup> August 2025** at Hilton Garden Hotel, Mombasa Road at 11.00 a.m.  
Pursuant to the provisions of Article 118(1) (b) of the Constitution of Kenya and Standing Order 127 (3), the Committee hereby invites you for a meeting to hear your submissions and comments on the said Bill. The meeting will be held on **Wednesday, 13<sup>th</sup> August 2025** at Hilton Garden Hotel, Mombasa Road at 11.00 a.m.

You are requested to prepare a comprehensive submission on any representations you may have on the Bill and email a soft copy to the [ena@parliament.go.ke](mailto:ena@parliament.go.ke) on or before the day of the meeting.

Copies of the Bill are available at the National Assembly Table Office, Main Parliament Building, and on [www.parliament.go.ke/the-national-assembly/house-business/bills](http://www.parliament.go.ke/the-national-assembly/house-business/bills)

The Committee's Liaison Officer for the meeting is **Mr. Benjamin Magut**, who may be contacted on **Tel. No. 0712974966** or email address: [bc@parliament.go.ke](mailto:bc@parliament.go.ke) and **Mr. Leonard Machira** on **Tel. No. 0718379275** or email address [leonard.machira@parliament.go.ke](mailto:leonard.machira@parliament.go.ke).

Yours



**JEREMIAH W. NDOMBI, MBS**  
**For: CLERK OF THE NATIONAL ASSEMBLY**

Copy to

**Hon. FCPA John Mbadi Ng'ongo, EGH**  
Cabinet Secretary  
Ministry of National Treasury and Economic Planning  
Treasury Buildings  
**NAIROBI**

**Hon. Dercas Oduor, OGW, EBS, SC**  
Attorney General of the Republic of Kenya  
Office of the Attorney General and Department of Justice  
State Law Office  
Sheria House, Harambee Avenue  
**NAIROBI**

**H.E. Mwangi Wa Iria**  
The Chairperson  
Public Procurement Regulatory Authority  
6th Floor KISM Towers, Ngong Road  
**NAIROBI.**



**REPUBLIC OF KENYA  
THE NATIONAL ASSEMBLY  
THIRTEENTH PARLIAMENT- FOURTH  
SESSION [2025]**

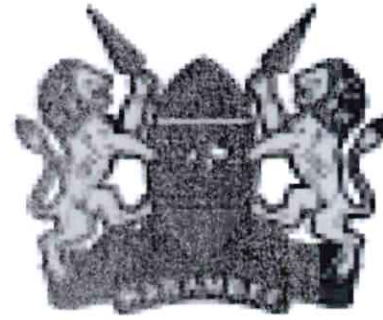
**EXPLAINER**

**THE PRIVATIZATION BILL  
(NATIONAL ASSEMBLY BILLS  
NO. 36 OF 2025)**

**Introduction**

The Privatization Bill, 2025 (National Assembly Bills No. 36 of 2025) is a National Assembly Bill sponsored by the Leader of Majority Party of the National Assembly. It was published on 16th July 2025 and it was read for a first time on 5th August, 2025. It was then committed to both the Departmental Committee on Finance and National Planning and Select Committee on Public Debt and Privatization for their joint consideration.

The Bill seeks to repeal and re-enact the regulatory framework for the privatization of public entities with a view to improving the efficiency of public entities. To this end, it seeks to repeal the Privatization Act (Cap. 485B), an old Act that came into force in 2005, and proposes a new legal regime that is aligned to the Constitution and addresses new realities and opportunities.



**JAMHURI YA KENYA  
BUNGE LA TAIFA  
BUNGE LA KUMI NA TATU- KIPINDI  
CHA NNE [2025]**

**UFAFANUZI**

**MSWADA WA UBINAFSHISHAJI  
(MSWADA WA BUNGE LA TAIFA  
NAMBARI 36 YA MWAKA WA  
2025)**

**Utangulizi**

Mswada wa Ubinafsishaji, 2025 (Mswada wa Bunge la Taifa Nambari 36 ya Mwaka wa 2025) ni Mswada wa Bunge la Taifa ambao umedhaminiwa na Kiongozi wa Chama cha Walio Wengi katika Bunge la Taifa. Mswada ulichapishwa tarehe 16 Julai 2025 na kusomwa kwa mara ya kwanza tarehe 5 Agosti 2025. Kisha ulikabidhiwa Kamati ya Fedha na Mipango ya Taifa na Kamati ya Deni la Umma na Ubinafsishaji ili uzingatiwe kwa pamoja.

Mswada huu unalenga kufuta na kutunga upya mfumo wa udhibiti wa ubinafsishaji wa mashirika ya umma kwa lengo la kuboresha utendakazi wa mashirika hayo. Kwa madhumuni haya, Mswada huu unalenga kufuta Sheria ya Ubinafsishaji (Sura ya 485B), sheria ya zamani iliyoanza kutumika mwaka wa 2005. Mswada huu unapendekeza mfumo mpya wa kisheria unaoambatana na Katiba na kushughulikia hali halisi na fursa mpya.

The Bill proposes to establish a Privatization Authority whose main role would be to implement the privatization programme, sets out a detailed process of carrying out privatization from formulation of the privatization programme to publication of a notice of privatization after finalization of the process.

## **Overview of the Bill**

### **Purpose of privatization**

The Bill sets out purpose of a privatisation. These are to implement government fiscal policies and revenue raising measures; improve the infrastructure and the delivery of public services through the involvement of private capital and expertise; enhance and develop the capital markets in Kenya; improve efficiency, profitability and accountability of public entities. In addition, it seeks to improve the regulation of the economy by reducing conflicts between the public sector's regulatory functions and commercial functions and broaden the base of ownership in the Kenyan economy by encouraging private ownership of entities.

### **Things not covered by the Bill**

The Bill provides that it does not apply to sale of shares in the secondary market; sale of shares by a social security fund, compensation fund, superannuation fund, insurance fund or endowment fund under public control for the benefit of its contributors; sale of government shares in a government-linked corporation; sale of new shares to existing shareholders through a rights issue; any balance sheet reorganisation which may lead to dilution of the percentage of shares held by a public entity; and sale or transfer of shares by a county government.

Mswada huu unapendekeza kuanzishwa kwa Mamlaka ya Ubinafsishaji ambayo jukumu lake kuu litakuwa kutekeleza mpango wa ubinafsishaji, na unatoa mchakato wa kina wa kutekeleza ubinafsishaji, kuanzia kuunda mpango wa ubinafsishaji hadi kuchapisha notisi ya ubinafsishaji baada ya kukamilika kwa mchakato huo.

## **Muhtasari wa Mswada**

### **Madhumuni ya Ubinafsishaji**

Mswada unaeleza madhumuni ya ubinafsishaji yafuatayo: kutekeleza sera za kifedha za serikali na mikakati ya ukusanyaji mapato; kuboresha miundombinu na utoaji wa huduma za umma kupitia ushirikishwaji wa mtaji na utaalamu wa sekta binafsi; kuboresha na kuendeleza masoko ya mitaji nchini Kenya; kuboresha ufanisi, faida na uwajibikaji wa mashirika ya umma. Zaidi ya hayo, Mswada unalenga kuboresha udhibiti wa uchumi kwa kupunguza mikinzano kati ya majukumu ya udhibiti na yale ya kibiashara ya sekta ya umma. Pia, ubinafsishaji unakusudia kupanua wigo wa umiliki katika uchumi wa Kenya kwa kuhimiza umiliki wa mashirika na sekta binafsi.

### **Mambo yasiyoshughulikiwa na Mswada**

Mswada unaeleza kuwa hautumiki kwa uuzaji wa hisa katika soko la pili (secondary market); uuzaji wa hisa na hazina ya hifadhi ya jamii, hazina ya fidia, hazina ya malipo ya uzeeni, hazina ya bima au hazina ya wakfu chini ya udhibiti wa umma kwa manufaa ya wachangiaji wake; uuzaji wa hisa za serikali katika shirika linalohusiana na serikali; uuzaji wa hisa mpya kwa wanahisa waliopo kupitia utoaji wa haki (rights issue); upangaji upya wa mizania (balance sheet) ambao unaweza kusababisha kupungua kwa asilimia ya hisa zinazomilikiwa na shirika la umma; na uuzaji au uhamisho wa hisa na serikali ya kaunti.

### **Functions of the Cabinet Secretary for the National Treasury and National Planning**

The Bill sets out the functions of the Cabinet Secretary for the National Treasury and National Planning on privatization. These are to provide policy direction on matters related to privatisation; co-ordinate the adherence to national, regional and international obligations relating to privatisation; develop and formulate the privatisation programme; and oversee the administration of the Act. These functions have their basis on the responsibilities of the National Treasury provided for in section 12 of the Public Finance Management Act (Cap. 412A).

### **Establishment and composition of the Privatization Authority**

The Bill proposes to establish the Privatization Authority whose functions shall be to advise the government on all aspects of privatisation of public entities; facilitate the implementation of government policies on privatisation; implement the privatisation programme; and implement specific privatisation proposals in accordance with the privatisation programme. Additional functions shall be to collaborate with other organisations, within or outside Kenya, as it may consider appropriate in furtherance of the objects of the Act and to take such measures as are necessary to ensure that the provisions of the Act are complied with.

The membership of the Privatization Authority shall be nine (9), including the chairperson, consisting of a chairperson appointed by the President; the Principal Secretary for the time being responsible for privatisation or a representative designated in writing; the Attorney-General or a representative designated in writing; and six other persons, not being public officers, appointed by the Cabinet Secretary through a competitive process, each possessing a degree in either economics,

### **Majukumu ya Waziri wa Hazina ya Kitaifa na Mipango ya Kiuchumi**

Mswada unaorodhesha majukumu ya Waziri wa Hazina ya Kitaifa na Mipango ya Kiuchumi kuhusu ubinafsishaji. Majukumu haya ni kutoa mwelekeo wa sera kuhusu masuala yanayohusiana na ubinafsishaji; kuratibu uzingatiaji wa majukumu ya kitaifa, kikanda na kimataifa yanayohusiana na ubinafsishaji; kuandaa na kuunda mpango wa ubinafsishaji; na kusimamia utekelezaji wa sheria hii. Msingi wa majukumu haya ni majukumu ya Hazina ya Kitaifa yaliyorejelewa katika kifungu cha 12 cha Sheria ya Usimamizi wa Fedha za Umma (Sura ya 412A).

### **Kuanzisha na kuunda Mamlaka ya Ubinafsishaji**

Mswada unapendekeza kuanzishwa kwa Mamlaka ya Ubinafsishaji ambayo majukumu yake yatakuwa: kuishauri serikali kuhusu masuala yote ya ubinafsishaji wa mashirika ya umma; kuwezesha utekelezaji wa sera za serikali kuhusu ubinafsishaji; kutekeleza mpango wa ubinafsishaji; na kutekeleza mapendekezo maalum ya ubinafsishaji kulingana na mpango wa ubinafsishaji. Majukumu ya ziada yatakuwa kushirikiana na mashirika mengine, ndani au nje ya Kenya, inavyoona inafaa ili kuendeleza malengo ya sheria hii, na kuchukua hatua zinazohitajika ili kuhakikisha kuwa masharti ya sheria hii yanazingatiwa.

Uanachama wa Mamlaka ya Ubinafsishaji utakuwa wa watu tisa (9) ukijumuisha mwenyekiti. Mamlaka itakuwa na mwenyekiti atakayeteuliwa na Rais; Katibu Mkuu anayehusika na ubinafsishaji au mwakilishi aliyeteuliwa kwa maandishi; Mwanasheria Mkuu wa Serikali au mwakilishi aliyeteuliwa kwa maandishi; na watu wengine sita, ambao si maafisa wa umma, walioteuliwa na Waziri wa Hazina ya Kitaifa na Mipango ya Kitaifa kupitia mchakato wa ushindani, ambapo kila

accounting, finance or any other relevant degree from a recognized institution and having ten years of work experience of which five shall be at senior management level in a relevant field.

#### **Formulation of privatization programme by the Cabinet Secretary for the National Treasury and Economic Planning**

The Bill provides that that the Cabinet Secretary for the National Treasury and Economic Planning shall formulate a privatization programme which will specify the public entities identified and approved for privatisation. At this formulation stage, the Bill provides that the Cabinet shall approve the privatization programme. It is important to note that the National Assembly will also receive the privatization programme for its approval or otherwise.

The Bill provides that during the formulation of the privatization programme, the Cabinet Secretary shall make appropriate consultations with persons who are likely to be affected by the privatization of a public entity. These will include persons with expertise in fields relevant to the entities to be included in the privatization programme; organisations representing persons who are likely to be affected by the proposed privatization; and members of the public. This is in line with the public participation requirements provided for in the Constitution.

#### **Important considerations when identifying entities to privatize**

The Bill sets out things that the Cabinet Secretary must consider when identifying entities to be privatized. These are enumerated as the relevant government policies in respect of privatization; the strategic priorities and policy goals to be achieved by the privatization; the strategic nature of the public entity to be

mmoja wao ana shahada ya uchumi, uhasibu, fedha au shahada nyingine yoyote inayohusika kutoka chuo kikuu kinachotambuliwa na ana uzoefu wa kazi wa miaka kumi, ambapo mitano kati ya hiyo itakuwa katika ngazi ya usimamizi mwandamizi katika nyanja husika.

#### **Uundaji wa mpango wa ubinafsishaji na Waziri wa Hazina ya Kitaifa na Mipango ya Kiuchumi**

Mswada unaeleza kwamba Waziri wa Hazina ya Kitaifa na Mipango ya Kiuchumi atatunga mpango wa ubinafsishaji ambao utataja mashirika ya umma yaliyotambuliwa na kuidhinishwa kwa ajili ya ubinafsishaji. Katika hatua hii ya uundaji, Mswada unaeleza kuwa Baraza la Mawaziri litaidhinisha mpango wa ubinafsishaji. Ni muhimu kutambua kwamba Bunge la Taifa nalo litapokea mpango huo wa ubinafsishaji kwa ajili ya kuidhinisha au vinginevyo.

Mswada unaeleza kwamba wakati wa kuunda mpango wa ubinafsishaji, Waziri atafanya mashauriano na watu ambao huenda wataathirika na ubinafsishaji wa shirika la umma. Hawa watajumuisha watu wenye utaalamu katika fani zinazohusika na mashirika yatakayojumuishwa katika mpango wa ubinafsishaji; mashirika yanayowakilisha watu ambao huenda wataathirika na ubinafsishaji uliopendekezwa; na wananchi. Hili linatimiza mahitaji ya ushirikishwaji wa umma yaliyotolewa katika Katiba.

#### **Mambo muhimu ya kuzingatia wakati wa kutambua mashirika ya kubinafsisha**

Mswada unaeleza mambo ambayo Waziri lazima azingatia wakati wa kutambua mashirika ya kubinafsisha. Haya yametajwa kama sera husika za serikali kuhusu ubinafsishaji; vipaumbele vya kimkakati na malengo ya sera yanayotarajiwa kufikiwa kupitia ubinafsishaji; umuhimu wa kimkakati

privatized; and the need to avoid a privatization that may result in an unregulated monopoly..

Other considerations are the need to avoid a privatization that may accord the new owners' special protection or access to credit on concessionary terms as a result of the National Government's sovereign status; the extent of regulatory adjustments required; the need to reduce budget drain on government resources; the expected benefits to be gained from a proposed privatization; and any other relevant consideration

#### **Approval of the privatization programme by the National Assembly**

After formulation of the privatization programme and approval by the Cabinet, the Bill proposes that the programme be submitted to the National Assembly for approval. The privatization programme must be accompanied by an explanatory memorandum indicating a brief description of the public entity to undergo privatization; a brief explanation of the reasons for undertaking the privatization; the benefits to be gained from the proposed privatization including the estimated revenue to be obtained; and any other relevant information. The information in the explanatory memoranda is intended to aid the National Assembly in making its decision.

The National Assembly will be required to consider a privatization programme within sixty days of receipt and make its decision. The Bill provides clarity on the oversight role of the National Assembly in providing a definite period in exercising that right.

wa shirika la umma linalokusudiwa kubinafsishwa; na umuhimu wa kuepuka ubinafsishaji unaoweza kusababisha ukiritimba (monopoly) usiodhibitiwa.

Mambo mengine ya kuzingatia ni umuhimu wa kuepuka ubinafsishaji unaoweza kuwapa wamiliki wapya ulinzi maalum au ufikiaji wa mikopo kwa masharti nafuu kutokana na hadhi ya Serikali ya Kitaifa; kiwango cha marekebisho ya udhibiti yanayohitajika; umuhimu wa kupunguza mzigo wa bajeti kwenye rasilimali za serikali; faida zinazotarajiwa kupatikana kutokana na ubinafsishaji uliopendekezwa; na jambo lingine lolote muhimu la kuzingatia.

#### **Mpango wa Ubinafsishaji kuidhinishwa na Bunge la Kitaifa**

Mswada unapendekeza kwamba mpango wa ubinafsishaji utawasilishwa kwa Bunge la Kitaifa ili uidhinishwe. Mpango wa ubinafsishaji lazima uambatane na barua ya ufafanuzi inayoonyesha maelezo mafupi ya shirika la umma linalokusudiwa kubinafsishwa; maelezo mafupi ya sababu za kufanya ubinafsishaji huo; faida zitakazopatikana kutokana na ubinafsishaji unaopendekezwa ikiwemo makadirio ya mapato yatakayopatikana; na taarifa nyingine yoyote inayohusika. Taarifa katika barua ya ufafanuzi inalenga kusaidia Bunge la Taifa kufanya uamuzi wake.

Bunge la Taifa litahitajika kuzingatia mpango wa ubinafsishaji na kutoa uamuzi wake ndani ya siku sitini baada ya kuupokea. Mswada unatoa ufafanuzi juu ya jukumu la Bunge la Taifa kwa kutoa kipindi maalum cha kutekeleza haki hiyo.

### **Options available to the National Assembly in the approval of privatization programme**

The Bill provides three options to the National Assembly in giving its decision on a privatization programme. The National Assembly can approve the programme for implementation; approve the programme with amendments; or decline the programme. The Clerk will be required to notify the Cabinet Secretary of the decision of the National Assembly within seven days of the decision.

### **Publication of approved privatization programme**

The Bill provides that the privatization programme that has been approved by the National Assembly shall be published in the *Kenya Gazette*. This is intended to disseminate the information to the public for its knowledge and to foster openness and transparency.

### **Validity of the privatization programme**

The Bill proposes that a privatization programme shall be valid for a period not exceeding eight years from the date it is gazetted. The period is projected to be reasonable and cost effective to ensure that the privatization process is successfully concluded.

Where the eight-year period lapses before completion of the implementation of the programme, the Bill provides that the Cabinet Secretary may include the affected entities in another privatization programme formulated and approved in accordance with the Act.

### **Maamuzi ambayo Bunge la Taifa yanaweza kutoa katika kuidhinisha mpango wa ubinafsishaji**

Bunge la Taifa lina aina tatu ya uamuzi inayoweza kutoa kuhusu mpango wa ubinafsishaji. Bunge la Taifa linaweza kuidhinisha mpango huo ili utekelezwe; kuidhinisha mpango huo na marekebisho; au kukataa mpango huo. Katibu wa Bunge atatakiwa kumfahamisha Waziri kuhusu uamuzi wa Bunge la Taifa ndani ya siku saba baada ya uamuzi huo kufanywa.

### **Uchapishaji wa mpango wa ubinafsishaji uliodhinishwa**

Mswada unaeleza kuwa mpango wa ubinafsishaji uliodhinishwa na Bunge la Taifa utachapishwa katika *Gazeti Rasmi la Serikali la Kenya*. Hii inalenga kueneza habari kwa umma ili kujulisha wananchi na kuimarisha uwazi.

### **Kipindi cha uhalali wa mpango wa ubinafsishaji**

Mswada unapendekeza kwamba mpango wa ubinafsishaji utakuwa halali kwa kipindi kisichozidi miaka minane tangu tarehe utakapochapishwa kwenye *Gazeti Rasmi la Serikali*. Kipindi hiki kinatazamiwa kuwa faafu na chenye gharama nafuu ili kuhakikisha kwamba mchakato wa ubinafsishaji unakamilika vyema.

Endapo kipindi cha miaka minane kitaisha kabla ya kukamilika kwa utekelezaji wa mpango wa ubinafsishaji, Mswada unatoa fursa kwa Waziri kuwajumuisha mashirika yaliyoathirika katika mpango mwingine wa ubinafsishaji utakaoundwa na kuidhinishwa kulingana na Sheria.

## **Amendment of the privatization programme      Marekebisho ya mpango wa ubinafsishaji**

The Bill proposes that the Cabinet Secretary may amend the privatization programme. This could be occasioned by various reasonable factors. The Bill contains necessary safeguards when this arises since it requires that the procedures outlined in the formulation and approval of a privatization programme must be adhered to.

Mswada unapendekeza kwamba Waziri anaweza kufanya marekebisho kwenye mpango wa ubinafsishaji. Hii inaweza kusababishwa na sababu mbalimbali zinazokubalika. Mswada unajumuisha kinga muhimu pindi jambo hili linapotokea kwa kuwa unahitaji kwamba taratibu zilizoelzwa katika uundaji na kuidhinisha mpango wa ubinafsishaji lazima zifuatwe.

## **Eligibility to participate in a privatization      Wanaostahili kushiriki katika ubinafsishaji**

The Bill provides that any person, whether Kenyan or non-Kenyan, is eligible to participate in a privatization. However, the Cabinet Secretary may direct the Authority to limit participation in any privatization to Kenyans; or ensure that there is a specified minimum level of participation by Kenyans in any privatization.

Mswada unaeleza kuwa mtu yeyote, awe Mkenya au si Mkenya, anastahili kushiriki katika ubinafsishaji. Hata hivyo, Waziri anaweza kuielekeza Mamlaka ya Ubinafsishaji kudhibiti ushiriki katika ubinafsishaji wowote kwa Wakenya. Pia, Waziria anaweza kuweka kiwango maalum cha chini cha ushiriki wa Wakenya katika ubinafsishaji wowote.

The Bill excludes a national government-owned entity from participating in a privatization. However, a social security fund, compensation fund, superannuation fund, insurance fund or endowment fund under government control will be allowed to purchase shares for the benefit of its contributors.

Mswada unaizuia taasisi inayomilikiwa na serikali kuu kushiriki katika ubinafsishaji. Hata hivyo, hazina ya hifadhi ya jamii, hazina ya fidia, hazina ya malipo ya uzeeni, hazina ya bima au hazina ya wakfu chini ya udhibiti wa serikali utaruhusiwa kununua hisa kwa manufaa ya wanachama wake.

## **Steering Committee**

The Bill provides that for each privatization, there shall be a steering committee to implement the privatization on behalf of the Authority consisting of the following members: the Principal Secretary for the time being responsible for privatization or a representative designated in writing; the Attorney-General or a representative designated in writing; the Principal Secretary of the ministry with responsibility over the asset or service being privatized and two members of the Board.

## **Kamati ya Utendaji**

Mswada unaeleza kwamba kwa kila ubinafsishaji, kutakuwa na kamati ya utendaji itakayosimamia utekelezaji wa ubinafsishaji kwa niaba ya Mamlaka ya Ubinafsishaji. Kamati hii itakuwa na wajumbe wafuatao: Katibu Mkuu anayehusika na ubinafsishaji au mwakilishi aliyeteuliwa kwa maandishi; Mwanasheria Mkuu wa Serikali au mwakilishi aliyeteuliwa kwa maandishi; Katibu Mkuu wa wizara inayohusika na mali au huduma inayobinafsishwa; na wajumbe wawili wa Bodi ya Mamlaka ya Ubinafsishaji.

## Methods of privatization

The Bill provides for methods of privatization which shall include initial public offer of shares, sale of shares by public tender, sale resulting from the exercise of pre-emptive rights and such other method as the Board shall, with the approval of the Cabinet Secretary, determine.

## Privatization proposal

The Bill provides that where an entity has been identified for privatization under the Act, the Authority shall prepare a privatization proposal on the entity. The privatisation proposal shall specify—

- the purpose for the establishment or existence of the entity to be privatised and the extent to which that purpose or operation has been met including any inadequacies in meeting that purpose
- any rights or other entitlements and resources that have been provided to meet the purpose for the establishment or existence of the entity to be privatised
- any recommendations for continuing to meet the purpose for establishment or existence of the entity to be privatised
- the financial position of the entity to be privatised
- the recommended method of privatisation
- the estimated costs of implementing the proposed privatisation
- any recommendations for dealing with the employees directly affected by the

## Mbinu za ubinafsishaji

Mswada unaeleza kwamba kwa kila ubinafsishaji, kutakuwa na kamati ya utendaji itakayosimamia utekelezaji wa ubinafsishaji kwa niaba ya Mamlaka ya Ubinafisishaji. Kamati hii itakuwa na wajumbe wafuatao: Katibu Mkuu anayehusika na ubinafsishaji au mwakilishi aliyeteuliwa kwa maandishi; Mwanasheria Mkuu wa Serikali au mwakilishi aliyeteuliwa kwa maandishi; Katibu Mkuu wa wizara inayohusika na mali au huduma inayobinafsishwa; na wajumbe wawili wa Bodi ya Mamlaka ya Ubinafisishaji.

## Pendekezo la ubinafsishaji

Mswada unaeleza kwamba pale ambapo shirika limetambuliwa kwa ajili ya ubinafsishaji kwa mujibu wa sheria hii, Mamlaka ya Ubinafisishaji itaandaa pendekezo la ubinafsishaji kuhusu shirika hilo. Pendekezo la ubinafsishaji litaeleza—

- Lengo la kuanzishwa au kuwepo kwa shirika litakalobinafsishwa na kiasi ambacho lengo hilo au utendaji umetimizwa ikiwemo mapungufu yoyote katika kutimiza lengo hilo
- Haki au rasilimali na mali nyinginezo zilizotolewa ili kutimiza lengo la kuanzishwa au kuwepo kwa shirika litakalobinafsishwa
- Mapendekezo yoyote ya kuendelea kutimiza lengo la kuanzishwa au kuwepo kwa shirika litakalobinafsishwa
- Hali ya kifedha ya shirika litakalobinafsishwa
- Mbinu iliyopendekezwa ya ubinafsishaji
- Makadirio ya gharama za utekelezaji wa ubinafsishaji uliopendekezwa
- Mapendekezo yoyote ya kushughulikia wafanyakazi walioathirika moja kwa moja na

proposed privatisation including any benefits they are entitled to

- where applicable, a recommendation on how to undertake socio-economic investments to the host community
  - the benefits to be gained from the proposed privatisation
  - a work plan for the proposed privatisation
  - any information relating to the repeal, amendment or enactment of any law for the proposed privatisation to be carried out
  - an evaluation of the entity to be privatised
  - any proposals on how Kenyans can participate in the transaction
  - any other relevant information.
- ubinafsishaji uliopendekezwa, ikiwemo manufaa yoyote wanayostahili
  - Inapohitajika, pendekezo la jinsi ya kufanya uwekezaji wa kijamii na kiuchumi kwa jamii inayohusika
  - Faida zitakazopatikana kutokana na ubinafsishaji uliopendekezwa
  - Mpango wa utekelezaji wa ubinafsishaji uliopendekezwa
  - Taarifa yoyote inayohusiana na kufuta, kurekebisha au kutunga sheria yoyote ili ubinafsishaji uliopendekezwa uweze kufanyika
  - Tathmini ya shirika litakalobinafsishwa
  - Mapendekezo yoyote ya jinsi Wakenya wanaweza kushiriki katika shughuli hiyo
  - Taarifa nyingine yoyote muhimu

For each privatization included in the privatization programme, the Bill provides that the Privatization Authority shall make a specific proposal for privatization to the Cabinet Secretary and the Cabinet Secretary shall present the privatization proposal to the Cabinet for approval.

Kwa kila ubinafsishaji uliowekwa katika mpango wa ubinafsishaji, Mswada unaeleza kwamba Mamlaka ya Ubinafsishaji itaandaa pendekezo maalum la ubinafsishaji kwa Waziri halafu atawasilisha pendekezo la ubinafsishaji kwa Baraza la Mawaziri ili kuidhinishwa.

#### **Valuation for each privatization**

#### **Tathmini ya thamani kwa kila ubinafsishaji**

The Bill obligates the Privatization Authority to undertake a business and assets valuation for each privatization to assist in the implementation of the privatization proposal. The valuation shall be performed by a qualified person appointed by the Authority.

Mswada unaelekeza Mamlaka ya Ubinafsishaji kufanya tathmini ya biashara na mali kwa kila ubinafsishaji ili kusaidia katika utekelezaji wa pendekezo la ubinafsishaji. Tathmini hiyo itafanywa na mtu aliyehitimu atakayeteuliwa na Mamlaka.

#### **Restrictions and obligations on public entities scheduled for privatization**

#### **Vikwazo na majukumu kwa mashirika ya umma yaliyopangwa kubinafsishwa**

The Bill provides that a public entity scheduled for privatization is prohibited from allowing its assets to be dissipated, incurring any liabilities, other than in the ordinary course of business,

Mswada unaeleza kwamba shirika la umma lililopangwa kubinafsishwa limepigwa marufuku kuruhusu mali yake kupotea; kuingia kwenye madeni yoyote, isipokuwa

without the prior written approval of the Cabinet Secretary; and disclosing information, other than publicly, if there is a reasonable risk that the disclosure would give an advantage to a person who might compete in the privatisation.

The Bill also provides that a public entity undergoing privatisation shall not undertake any new capital investment or disposal unless approved by the Cabinet Secretary. Also, the National Government or the public entity undergoing privatisation shall not extend credit or provide financing for the purchase of the shares. All these restrictions are intended to provide safeguards against defeating the purposes of privatization.

The Bill further provides that a public entity undergoing privatisation shall keep up-to-date business records and books of accounts, maintain an up-to-date register of all fixed assets and document all legal and other obligations of the entity.

#### **Privatisation agreement**

The Bill provides for parties entering into a privatization agreement after the preceding stages have been finalised including settlement of any disputes.

After execution of the privatisation agreement, the Bill provides that the Privatization Authority shall promptly publish a notice of the privatization in the Kenya *Gazette* setting out details on the following: a description of the entity being privatized; a summarised description of the transaction used to give effect to the privatization; the names and addresses of the persons to whom the shareholding is being transferred except where a privatization undertaken through initial public offer of

katika shughuli za kawaida za biashara, bila idhini ya maandishi kutoka kwa Waziri; na kufichua habari ikiwa kuna hatari kwamba ufichuzi huo utampa mtu faida ambaye anaweza kushindana katika mchakato wa ubinafsishaji.

Mswada pia unaeleza kwamba shirika la umma linalobinafsishwa halitafanya uwekezaji wa mtaji mpya au uuzaji wa mali isipokuwa kama Waziri ataidhinisha. Pia, Serikali ya Kitaifa au shirika la umma linalobinafsishwa halitatoa mikopo au ufadhili kwa ajili ya ununuzi wa hisa. Vikwazo hivi vyote vinalenga kutoa kinga dhidi ya kutatiza malengo ya ubinafsishaji.

Mswada pia unaeleza kuwa shirika la umma linalobinafsishwa litaweka rekodi za biashara na vitabu vya hesabu vilivyosasisiwa, litadumisha sajili iliyosasisiwa ya mali zote zisizohamishika na kuweka kumbukumbu za majukumu yote ya kisheria na mengineyo ya shirika hilo.

#### **Mkataba wa ubinafsishaji**

Mswada unaeleza kwamba pande husika zitaingia katika mkataba wa ubinafsishaji baada ya hatua zilizotangulia kukamilika, ikiwemo utatuzi wa migogoro yoyote.

Baada ya utiaji saine wa mkataba wa ubinafsishaji, Mswada unaeleza kuwa Mamlaka ya Ubinafsishaji itachapisha mara moja taarifa ya ubinafsishaji katika *Gazeti Rasmi la Serikali la Kenya* ikieleza yafuatayo: maelezo ya shirika linalobinafsishwa; maelezo yaliyofupishwa ya shughuli iliyotumika kutekeleza ubinafsishaji huo; majina na anwani za watu ambao umiliki wa hisa unahamishiwa kwao isipokuwa pale ambapo ubinafsishaji unafanyika kupitia toleo la

shares; and such other information as the Authority considers appropriate.

kwanza la; na taarifa nyingine yoyote ambayo Mamlaka ya Ubinafsishaji inaona inafaa.

#### **Proceeds from sale of direct government shareholding.**

#### **Mapato yatokanayo na uuzaji wa hisa za Serikali ya Kitaifa**

The Bill provides that any proceeds from the sale of a direct National Government shareholding shall be paid into the Consolidated Fund.

Mswada unaeleza kwamba mapato yoyote yanayotokana na uuzaji wa hisa za moja kwa moja za Serikali ya Kitaifa yatalipwa kwenye Hazina Kuu.

#### **Proceeds from the sale of a public entity's shareholding.**

#### **Mapato yatokanayo na uuzaji wa hisa za shirika la umma**

The Bill provides that any proceeds from the sale of a public entity's shareholding shall be deposited in a special interest-bearing account established for that public entity's privatization and the proceeds shall be credited into the Consolidated Fund Account within ninety days.

Mswada unaeleza kwamba mapato yoyote yatokanayo na uuzaji wa hisa za shirika la umma yatawekwa katika akaunti maalum yenye riba iliyoanzishwa kwa ajili ya ubinafsishaji wa shirika hilo la umma. Mapato hayo yatawekwa kwenye Akaunti ya Hazina Kuu ndani ya siku tisini.

#### **Reviews and appeals**

#### **Kupitia upya uamuzi na rufaa**

The Bill provides for reviews and appeals for disputes arising from implementation of privatization programme. It provides the procedure for reviews and appeal and proposes the establishment of the Privatization Appeals Board to determine appeals from decisions of the Privatization Authority.

Mswada unaeleza utaratibu wa kupitia upya uamuzi na rufaa katika utatuzi wa migogoro inayotokana na utekelezaji wa mpango wa ubinafsishaji. Mswada unaeleza utaratibu wa kupitia upya uamuzi na rufaa na unapendekeza kuanzishwa kwa Bodi ya Rufaa ya Ubinafsishaji (Privatization Appeals Board) ili kuamua rufaa zinazotokana na maamuzi ya Mamlaka ya Ubinafsishaji.

#### **Ongoing privatization**

#### **Ubinafsishaji Unaoendelea**

The Bill provides that upon commencement of this Act, the privatization of entities published under Gazette Notice No. 8739 of 14th August 2009 shall be finalised in accordance with this Act. This provision provides clarity on ongoing privatization and the law that will apply in the subsequent stages once the Act comes into force.

Mswada unaeleza kwamba pindi sheria hii itaanza kutumika, ubinafsishaji wa mashirika yaliyochapishwa katika *Tangazo la Gazeti Rasmi la Serikali* Nambari 8739 la tarehe 14 Agosti 2009 utakamilishwa kwa mujibu wa sheria hii. Kifungu hiki kinatoa ufafanuzi kuhusu ubinafsishaji unaoendelea na sheria itakayotumika katika hatua zinazofuata mara tu sheria hii itakapoanza kutumika.

### **Guidance on the next stages**

Once the two Committees conclude public participation on the Bill, they will table their joint report in the National Assembly. The Bill will then proceed for Second Reading where it will be debated and voted on. After that, if the Bill is passed by the House, it will proceed to the Committee of the whole House where amendments will be considered and voted on. Thereafter, in Third Reading the House will vote on the Bill again and if it passes, it will be transmitted to the President for assent then it will become an Act of Parliament.

A copy of the Bill is available at the National Assembly Table Office and on the Parliament Website <http://www.parliament.go.ke/the-national-assembly/house-business/bills>.

### **Mwongozo kuhusu hatua zinazofuata**

Mara tu Kamati hizi mbili za Bunge (Kamati ya Fedha na Mipango ya Taifa na Kamati ya Deni la Umma na Ubinafishaji) zitakapokamilisha ushirikishwaji wa umma kuhusu Mswada huu, watawasilisha ripoti yao ya pamoja katika Bunge la Taifa. Kisha Mswada utasomwa Mara ya Pili ambapo utajadiliwa na kupigiwa kura. Baada ya hapo, ikiwa Mswada utapitishwa na Bunge la Taifa, utashughulikiwa kwenye Kamati ya Bunge zima ambapo yatafanyiwa marekebisho na kupigiwa kura. Baadaye, Mswada utakaposomwa Mara ya Tatu, Bunge la Taifa litaupigia kura Mswada huu tena na ikiwa utapitishwa, utawasilishwa kwa Rais ili autie Saini. Mwishowe Mswada huu utakuwa sheria.

Nakala ya Mswada inapatikana katika Ofisi za Bunge la Taifa na kwenye Tovuti ya Bunge kupitia kiungo hiki: <http://www.parliament.go.ke/the-national-assembly/house-business/bills>.

**S. NJOROGE, CBS  
CLERK OF THE NATIONAL ASSEMBLY  
15th August, 2025**

**S. NJOROGE, CBS  
KATIBU WA BUNGE LA TAIFA  
Tarehe 15 Agosti 2025**

**“For the Welfare of the Society and the  
Just Government of the People”**

**“Kwa Ustawi ya Jamii na Utawala wa  
Haki kwa Watu”**



**JAMHURI YA KENYA**

**BUNGE LA TAIFA**

**BUNGE LA KUMI NA TATU- KIPINDI CHA NNE [2025]**

**UFAFANUZI**

**MSWADA WA UBINAFSISHAJI (MSWADA WA BUNGE LA TAIFA NAMBARI  
36 YA MWAKA WA 2025)**

### **Utangulizi**

Mswada wa Ubinafsishaji, 2025 (Mswada wa Bunge la Taifa Nambari 36 ya Mwaka wa 2025) ni Mswada wa Bunge la Taifa ambao umedhaminiwa na Kiongozi wa Chama cha Walio Wengi katika Bunge la Taifa. Mswada ulichapishwa tarehe 16 Julai 2025 na kusomwa kwa mara ya kwanza tarehe 5 Agosti 2025. Kisha ulikabidhiwa Kamati ya Fedha na Mipango ya Taifa na Kamati ya Deni la Umma na Ubinafsishaji ili uzingatiwe kwa pamoja.

Mswada huu unalenga kufuta na kutunga upya mfumo wa udhibiti wa ubinafsishaji wa mashirika ya umma kwa lengo la kuboresha utendakazi wa mashirika hayo. Kwa madhumuni haya, Mswada huu unalenga kufuta Sheria ya Ubinafsishaji (Sura ya 485B), sheria ya zamani iliyoanza kutumika mwaka wa 2005. Mswada huu unapendekeza mfumo mpya wa kisheria unaoambatana na Katiba na kushughulikia hali halisi na fursa mpya.

Mswada huu unapendekeza kuanzishwa kwa Mamlaka ya Ubinafsishaji ambayo jukumu lake kuu litakuwa kutekeleza mpango wa ubinafsishaji, na unatoa mchakato wa kina wa kutekeleza ubinafsishaji, kuanzia kuunda mpango wa ubinafsishaji hadi kuchapisha notisi ya ubinafsishaji baada ya kukamilika kwa mchakato huo.

**“Kwa Ustawi ya Jamii na Utawala wa Haki kwa Watu”**

## **Muhtasari wa Mswada**

### **Madhumuni ya Ubinafsishaji**

Mswada unaeleza madhumuni ya ubinafsishaji yafuatayo: kutekeleza sera za kifedha za serikali na mikakati ya ukusanyaji mapato; kuboresha miundombinu na utoaji wa huduma za umma kupitia ushirikishwaji wa mtaji na utaalumu wa sekta binafsi; kuboresha na kuendeleza masoko ya mitaji nchini Kenya; kuboresha ufanisi, faida na uwajibikaji wa mashirika ya umma. Zaidi ya hayo, Mswada unalenga kuboresha udhibiti wa uchumi kwa kupunguza mikinzano kati ya majukumu ya udhibiti na yale ya kibiashara ya sekta ya umma. Pia, ubinafsishaji unakusudia kupanua wigo wa umiliki katika uchumi wa Kenya kwa kuhimiza umiliki wa mashirika na sekta binafsi.

### **Mambo yasiyoshughulikiwa na Mswada**

Mswada unaeleza kuwa hautumiki kwa uuzaji wa hisa katika soko la pili (secondary market); uuzaji wa hisa na hazina ya hifadhi ya jamii, hazina ya fidia, hazina ya malipo ya uzeeni, hazina ya bima au hazina ya wakfu chini ya udhibiti wa umma kwa manufaa ya wachangiaji wake; uuzaji wa hisa za serikali katika shirika linalohusiana na serikali; uuzaji wa hisa mpya kwa wanahisa waliopo kupitia utoaji wa haki (rights issue); upangaji upya wa mizania (balance sheet) ambao unaweza kusababisha kupungua kwa asilimia ya hisa zinazomilikiwa na shirika la umma; na uuzaji au uhamisho wa hisa na serikali ya kaunti.

### **Majukumu ya Waziri wa Hazina ya Kitaifa na Mipango ya Kiuchumi**

Mswada unaorodhesha majukumu ya Waziri wa Hazina ya Kitaifa na Mipango ya Kiuchumi kuhusu ubinafsishaji. Majukumu haya ni kutoa mwelekeo wa sera kuhusu masuala yanayohusiana na ubinafsishaji; kuratibu uzingatiaji wa majukumu ya kitaifa, kikanda na kimataifa yanayohusiana na ubinafsishaji; kuandaa na kuunda mpango wa ubinafsishaji; na kusimamia utekelezaji wa sheria hii. Msingi wa majukumu haya ni majukumu ya Hazina ya Kitaifa yaliyorejelewa katika kifungu cha 12 cha Sheria ya Usimamizi wa Fedha za Umma (Sura ya 412A).

### **Kuanzisha na kuunda Mamlaka ya Ubinafsishaji**

Mswada unapendekeza kuanzishwa kwa Mamlaka ya Ubinafsishaji ambayo majukumu yake yatakuwa: kuishauri serikali kuhusu masuala yote ya ubinafsishaji wa mashirika ya umma; kuwezesha utekelezaji wa sera za serikali kuhusu ubinafsishaji; kutekeleza mpango wa ubinafsishaji; na kutekeleza mapendekezo maalum ya ubinafsishaji kulingana na mpango wa ubinafsishaji. Majukumu ya ziada yatakuwa kushirikiana na mashirika mengine, ndani au nje ya Kenya, inavyoona inafaa ili kuendeleza malengo ya sheria hii, na kuchukua hatua zinazohitajika ili kuhakikisha kuwa masharti ya sheria hii yanazingatiwa.

Uanachama wa Mamlaka ya Ubinafsishaji utakuwa wa watu tisa (9) ukijumuisha mwenyekiti. Mamlaka itakuwa na mwenyekiti atakayeteuliwa na Rais; Katibu Mkuu anayehusika na ubinafsishaji au mwakilishi aliyeteuliwa kwa maandishi; Mwanasheria Mkuu wa Serikali au mwakilishi aliyeteuliwa kwa maandishi; na watu wengine sita, ambao si maafisa wa umma, walioteuliwa na Waziri wa Hazina ya Kitaifa na Mipango ya Kitaifa kupitia mchakato wa ushindani, ambapo kila mmoja wao ana shahada ya uchumi, uhasibu, fedha au shahada nyingine yoyote inayohusika kutoka chuo kikuu kinachotambuliwa na ana uzoefu wa kazi wa miaka kumi, ambapo mitano kati ya hiyo itakuwa katika ngazi ya usimamizi mwandamizi katika nyanja husika.

### **Undaji wa mpango wa ubinafsishaji na Waziri wa Hazina ya Kitaifa na Mipango ya Kiuchumi**

Mswada unaeleza kwamba Waziri wa Hazina ya Kitaifa na Mipango ya Kiuchumi atatunga mpango wa ubinafsishaji ambao utataja mashirika ya umma yaliyotambuliwa na kuidhinishwa kwa ajili ya ubinafsishaji. Katika hatua hii ya undaji, Mswada unaeleza kuwa Baraza la Mawaziri litaidhinisha mpango wa ubinafsishaji. Ni muhimu kutambua kwamba Bunge la Taifa nalo litapokea mpango huo wa ubinafsishaji kwa ajili ya kuidhinisha au vinginevyo.

Mswada unaeleza kwamba wakati wa kuunda mpango wa ubinafsishaji, Waziri atafanya mashauriano na watu ambao huenda wataathirika na ubinafsishaji wa shirika la umma. Hawa watajumuisha watu wenye utaalamu katika fani zinazohusika na mashirika yatakayojumuishwa katika mpango wa ubinafsishaji; mashirika yanayowakilisha watu ambao huenda wataathirika na ubinafsishaji uliopendekezwa; na wananchi. Hili linatimiza mahitaji ya ushirikishwaji wa umma yaliyotolewa katika Katiba.

### **Mambo muhimu ya kuzingatia wakati wa kutambua mashirika ya kubinafsisha**

Mswada unaeleza mambo ambayo Waziri lazima azingatia wakati wa kutambua mashirika ya kubinafsisha. Haya yametajwa kama sera husika za serikali kuhusu ubinafsishaji; vipaumbele vya kimkakati na malengo ya sera yanayotarajiwa kufikiwa kupitia ubinafsishaji; umuhimu wa kimkakati wa shirika la umma linalokusudiwa kubinafsishwa; na umuhimu wa kuepuka ubinafsishaji unaoweza kusababisha ukiritimba (monopoly) usiodhibitiwa.

Mambo mengine ya kuzingatia ni umuhimu wa kuepuka ubinafsishaji unaoweza kuwapa wamiliki wapya ulinzi maalum au ufikiaji wa mikopo kwa masharti nafuu kutokana na hadhi ya Serikali ya Kitaifa; kiwango cha marekebisho ya udhhibiti yanayohitajika; umuhimu wa kupunguza mzigo wa bajeti kwenye rasilimali za serikali; faida zinazotarajiwa kupatikana kutokana na ubinafsishaji uliopendekezwa; na jambo lingine lolote muhimu la kuzingatia.

### **Mpango wa Ubinafsishaji kuidhinishwa na Bunge la Kitaifa**

Mswada unapendekeza kwamba mpango wa ubinafsishaji utawasilishwa kwa Bunge la Kitaifa ili uidhinishwe. Mpango wa ubinafsishaji lazima uambatane na barua ya ufafanuzi inayoonyesha maelezo mafupi ya shirika la umma linalokusudiwa kubinafsishwa; maelezo mafupi ya sababu za kufanya

ubinafsishaji huo; faida zitakazopatikana kutokana na ubinafsishaji unaopendekezwa ikiwemo makadirio ya mapato yatakayopatikana; na taarifa nyingine yoyote inayohusika. Taarifa katika barua ya ufafanuzi inalenga kusaidia Bunge la Taifa kufanya uamuzi wake.

Bunge la Taifa litahitajika kuzingatia mpango wa ubinafsishaji na kutoa uamuzi wake ndani ya siku sitini **baada** ya kuupokea. Mswada unatoa ufafanuzi juu ya jukumu la Bunge la Taifa kwa kutoa kipindi maalum cha kutekeleza haki hiyo.

### **Maamuzi ambayo Bunge la Taifa yanaweza kutoa katika kuidhinisha mpango wa ubinafsishaji**

Bunge la Taifa lina aina tatu ya uamuzi inayoweza kutoa kuhusu mpango wa ubinafsishaji. Bunge la Taifa linaweza kuidhinisha **mpango** huo ili utekelezwe; kuidhinisha mpango huo na marekebisho; au kukataa mpango huo. Katibu wa Bunge atatakiwa kumfahamisha Waziri kuhusu uamuzi wa Bunge la Taifa ndani ya siku saba **baada** ya uamuzi huo kufanywa.

### **Uchapishaji wa mpango wa ubinafsishaji uliodhinishwa**

Mswada unaeleza kuwa mpango wa ubinafsishaji uliodhinishwa na Bunge la Taifa utachapishwa katika *Gazeti Rasmi la Serikali la Kenya*. Hii inalenga kueneza habari kwa umma ili kujulisha wananchi na kuimarisha uwazi.

### **Kipindi cha uhalali wa mpango wa ubinafsishaji**

Mswada unapendekeza kwamba mpango wa ubinafsishaji utakuwa halali kwa kipindi kisichozidi miaka minane tangu tarehe utakapochapishwa kwenye *Gazeti Rasmi la Serikali*. Kipindi hiki kinatazamiwa kuwa faafu na chenye gharama nafuu ili kuhakikisha kwamba mchakato wa ubinafsishaji unakamilika vyema.

Endapo kipindi cha miaka minane kitaisha kabla ya kukamilika kwa utekelezaji wa mpango wa ubinafsishaji, Mswada unatoa fursa kwa Waziri kuwajumuisha mashirika yaliyoathirika katika mpango mwingine wa ubinafsishaji utakaoundwa na kuidhinishwa kulingana na Sheria.

### **Marekebisho ya mpango wa ubinafsishaji**

Mswada unapendekeza kwamba Waziri anaweza kufanya marekebisho kwenye mpango wa ubinafsishaji. Hii inaweza kusababishwa na sababu mbalimbali zinazokubalika. Mswada unajumuisha kinga muhimu pindi jambo hili linapotokea kwa kuwa unahitaji kwamba taratibu zilizoelezwa katika uundaji na kuidhinisha mpango wa ubinafsishaji lazima zifuatwe.

### **Wanaostahili kushiriki katika ubinafsishaji**

Mswada unaeleza kuwa mtu yeyote, awe Mkenya au si Mkenya, anastahili kushiriki katika ubinafsishaji. Hata hivyo, Waziri anaweza kuielekeza Mamlaka ya Ubinafsishaji kudhibiti ushiriki katika ubinafsishaji

wowote kwa Wakenya. Pia, Waziria anaweza kuweka kiwango maalum cha chini cha ushiriki wa Wakenya katika ubinafsishaji wowote.

Mswada unaizuia taasisi inayomilikiwa na serikali kuu kushiriki katika ubinafsishaji. Hata hivyo, hazina ya hifadhi ya jamii, hazina ya fidia, hazina ya malipo ya uzeeni, hazina ya bima au hazina ya wakfu chini ya udhibiti wa serikali utaruhusiwa kununua hisa kwa manufaa ya wanachama wake.

### **Kamati ya Utendaji**

Mswada unaeleza kwamba kwa kila ubinafsishaji, kutakuwa na kamati ya utendaji itakayosimamia utekelezaji wa ubinafsishaji kwa niaba ya Mamlaka ya Ubinafsisishaji. Kamati hii itakuwa na wajumbe wafuatao: Katibu Mkuu anayehusika na ubinafsishaji au mwakilishi aliyeteuliwa kwa maandishi; Mwanasheria Mkuu wa Serikali au mwakilishi aliyeteuliwa kwa maandishi; Katibu Mkuu wa wizara inayohusika na mali au huduma inayobinafsishwa; na wajumbe wawili wa Bodi ya Mamlaka ya Ubinafsisishaji.

### **Mbinu za ubinafsishaji**

Mswada unaeleza mbinu za ubinafsishaji ambazo zitajumuisha toleo la awali la hisa (IPO), kuuza hisa kwa zabuni ya umma, mauzo kutokana na utekelezaji wa haki za kununua kwanza na njia nyinginezo kama Bodi itakavyoamua, kwa idhini ya Waziri.

### **Pendekezo la ubinafsishaji**

Mswada unaeleza kwamba pale ambapo shirika limetambuliwa kwa ajili ya ubinafsishaji kwa mujibu wa sheria hii, Mamlaka ya Ubinafsisishaji itaandaa pendekezo la ubinafsishaji kuhusu shirika hilo. Pendekezo la ubinafsishaji litaeleza—

- Lengo la kuanzishwa au kuwepo kwa shirika litakalobinafsishwa na kiasi ambacho lengo hilo au utendaji umetimizwa ikiwemo mapungufu yoyote katika kutimiza lengo hilo.
- Haki au rasilimali na mali nyinginezo zilizotolewa ili kutimiza lengo la kuanzishwa au kuwepo kwa shirika litakalobinafsishwa.
- Mapendekezo yoyote ya kuendelea kutimiza lengo la kuanzishwa au kuwepo kwa shirika litakalobinafsishwa.
- Hali ya kifedha ya shirika litakalobinafsishwa.
- Mbinu iliyopendekezwa ya ubinafsishaji.
- Makadirio ya gharama za utekelezaji wa ubinafsishaji uliopendekezwa.
- Mapendekezo yoyote ya kushughulikia wafanyakazi walioathirika moja kwa moja na ubinafsishaji uliopendekezwa, ikiwemo manufaa yoyote wanayostahili.
- Inapohitajika, pendekezo la jinsi ya kufanya uwekezaji wa kijamii na kiuchumi kwa jamii inayohusika.
- Faida zitakazopatikana kutokana na ubinafsishaji uliopendekezwa.
- Mpango wa utekelezaji wa ubinafsishaji uliopendekezwa.
- Taarifa yoyote inayohusiana na kufuta, kurekebisha au kutunga sheria yoyote ili ubinafsishaji uliopendekezwa uweze kufanyika.

- Tathmini ya shirika litakalobinafsishwa.
- Mapendekezo yoyote ya jinsi Wakenya wanaweza kushiriki katika shughuli hiyo.
- Taarifa nyingine yoyote muhimu.

Kwa kila ubinafsishaji uliowekwa katika mpango wa ubinafsishaji, Mswada unaeleza kwamba Mamlaka ya Ubinafsishaji itaandaa pendekezo maalum la ubinafsishaji kwa Waziri halafu atawasilisha pendekezo la ubinafsishaji kwa Baraza la Mawaziri ili kuidhinishwa.

### **Tathmini ya thamani kwa kila ubinafsishaji**

Mswada unaelekeza Mamlaka ya Ubinafsishaji kufanya tathmini ya biashara na mali kwa kila ubinafsishaji ili kusaidia katika utekelezaji wa pendekezo la ubinafsishaji. Tathmini hiyo itafanywa na mtu aliyehitimu atakayeteuliwa na Mamlaka.

### **Vikwazo na majukumu kwa mashirika ya umma yaliyopangwa kubinafsishwa**

Mswada unaeleza kwamba shirika la umma lililopangwa kubinafsishwa limepigwa marufuku kuruhusu mali yake kupotea; kuingia kwenye madeni yoyote, isipokuwa katika shughuli za kawaida za biashara, bila idhini ya maandishi kutoka kwa Waziri; na kufichua habari ikiwa kuna hatari kwamba ufichuzi huo utampa mtu faida ambaye anaweza kushindana katika mchakato wa ubinafsishaji.

Mswada pia unaeleza kwamba shirika la umma linalobinafsishwa halitafanya uwekezaji wa mtaji mpya au uuzaji wa mali isipokuwa kama Waziri ataidhinisha. Pia, Serikali ya Kitaifa au shirika la umma linalobinafsishwa halitatoa mikopo au ufadhili kwa ajili ya ununuzi wa hisa. Vikwazo hivi vyote vinalenga kutoa kinga dhidi ya kutatiza malengo ya ubinafsishaji.

Mswada pia unaeleza kuwa shirika la umma linalobinafsishwa litaweka rekodi za biashara na vitabu vya hesabu vilivyosasishwa, litadumisha sajili iliyosasishwa ya mali zote zisizohamishika na kuweka kumbukumbu za majukumu yote ya kisheria na mengineyo ya shirika hilo.

### **Mkatoba wa ubinafsishaji**

Mswada unaeleza kwamba pande husika zitaingia katika mkatoba wa ubinafsishaji baada ya hatua zilizotangulia kukamilika, ikiwemo utatuzi wa migogoro yoyote.

Baada ya utiaji saine wa mkatoba wa ubinafsishaji, Mswada unaeleza kuwa Mamlaka ya Ubinafsishaji itachapisha mara moja taarifa ya ubinafsishaji katika *Gazeti Rasmi la Serikali la Kenya* ikieleza yafuatayo: maelezo ya shirika linalobinafsishwa; maelezo yaliyofupishwa ya shughuli iliyotumika kutekeleza ubinafsishaji huo; majina na anwani za watu ambao umiliki wa hisa unahamishiwa kwao isipokuwa pale ambapo ubinafsishaji unafanyika kupitia toleo la kwanza la; na taarifa nyingine yoyote ambayo Mamlaka ya Ubinafsishaji inaona inafaa.

### **Mapato yatokanayo na uuzaji wa hisa za Serikali ya Kitaifa**

Mswada unaeleza kwamba mapato yoyote yanayotokana na uuzaji wa hisa za moja kwa moja za Serikali ya Kitaifa yatalipwa kwenye Hazina Kuu.

### **Mapato yatokanayo na uuzaji wa hisa za shirika la umma**

Mswada unaeleza kwamba mapato yoyote yatokanayo na uuzaji wa hisa za shirika la umma yatawekwa katika akaunti maalum yenye riba iliyoanzishwa kwa ajili ya ubinafsishaji wa shirika hilo la umma. Mapato hayo yatawekwa kwenye Akaunti ya Hazina Kuu ndani ya siku tisini.

### **Kupitia upya uamuzi na rufaa**

Mswada unaeleza utaratibu wa kupitia upya uamuzi na rufaa katika utatuzi wa migogoro inayotokana na utekelezaji wa mpango wa ubinafsishaji. Mswada unaeleza utaratibu wa kupitia upya uamuzi na rufaa na unapendekeza kuanzishwa kwa Bodi ya Rufaa ya Ubinafsishaji (Privatization Appeals Board) ili kuamua rufaa zinazotokana na maamuzi ya Mamlaka ya Ubinafsishaji.

### **Ubinafsishaji Unaoendelea**

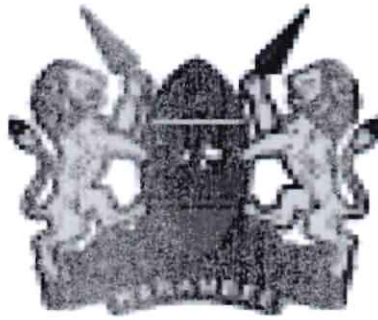
Mswada unaeleza kwamba pindi sheria hii itanza kutumika, ubinafsishaji wa mashirika yaliyochapishwa katika *Tangazo la Gazeti Rasmi la Serikali* Nambari 8739 la tarehe 14 Agosti 2009 utakamilishwa kwa mujibu wa sheria hii. Kifungu hiki kinatoa ufafanuzi kuhusu ubinafsishaji unaoendelea na sheria itakayotumika katika hatua zinazofuata mara tu sheria hii itakapoanza kutumika.

### **Mwongozo kuhusu hatua zinazofuata**

Mara tu Kamati hizi mbili za Bunge (Kamati ya Fedha na Mipango ya Taifa na Kamati ya Deni la Umma na Ubinafsishaji) zitakapokamilisha ushirikishwaji wa umma kuhusu Mswada huu, watawasilisha ripoti yao ya pamoja katika Bunge la Taifa. Kisha Mswada utasomwa Mara ya Pili ambapo utajadiliwa na kupigiwa kura. Baada ya hapo, ikiwa Mswada utapitishwa na Bunge la Taifa, utashughulikiwa kwenye Kamati ya Bunge zima ambapo yatafanyiwa marekebisha na kupigiwa kura. Baadaye, Mswada utakaposomwa Mara ya Tatu, Bunge la Taifa litaupigia kura Mswada huu tena na ikiwa utapitishwa, utawasilishwa kwa Rais ili autie Saini. Mwishowe Mswada huu utakuwa sheria.

Nakala ya Mswada inapatikana katika Ofisi za Bunge la Taifa na kwenye Tovuti ya Bunge kupitia kiungo hiki: <http://www.parliament.go.ke/the-national-assembly/house-business/bills>.

**S. NJOROGE, CBS  
KATIBU WA BUNGE LA TAIFA  
Tarehe 15 Agosti 2025**



REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT- FOURTH SESSION [2025]

EXPLAINER

THE PRIVATIZATION BILL (NATIONAL ASSEMBLY BILLS NO. 36 OF 2025)

### **Introduction**

The Privatization Bill, 2025 (National Assembly Bills No. 36 of 2025) is a National Assembly Bill sponsored by the Leader of Majority Party of the National Assembly. It was published on 16th July 2025 and it was read for a first time on 5th August, 2025. It was then committed to both the Departmental Committee on Finance and National Planning and Select Committee on Public Debt and Privatization for their joint consideration.

The Bill seeks to repeal and re-enact the regulatory framework for the privatization of public entities with a view to improving the efficiency of public entities. To this end, it seeks to repeal the Privatization Act (Cap. 485B), an old Act that came into force in 2005, and proposes a new legal regime that is aligned to the Constitution and addresses new realities and opportunities.

The Bill proposes to establish a Privatization Authority whose main role would be to implement the privatization programme, sets out a detailed process of carrying out privatization from formulation of the privatization programme to publication of a notice of privatization after finalization of the process.

### **Overview of the Bill**

#### **Purpose of privatization**

The Bill sets out purpose of a privatisation. These are to implement government fiscal policies and revenue raising measures; improve the infrastructure and the delivery of public services through the involvement of private capital and expertise; enhance and develop the capital markets in Kenya; improve efficiency, profitability and accountability of public entities. In addition, it seeks to improve the regulation of the economy by reducing conflicts between the public sector's regulatory functions and commercial functions and broaden the base of ownership in the Kenyan economy by encouraging private ownership of entities.

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### **Things not covered by the Bill**

The Bill provides that it does not apply to sale of shares in the secondary market; sale of shares by a social security fund, compensation fund, superannuation fund, insurance fund or endowment fund under public control for the benefit of its contributors; sale of government shares in a government-linked corporation; sale of new shares to existing shareholders through a rights issue; any balance sheet reorganisation which may lead to dilution of the percentage of shares held by a public entity; and sale or transfer of shares by a county government.

### **Functions of the Cabinet Secretary for the National Treasury and National Planning**

The Bill sets out the functions of the Cabinet Secretary for the National Treasury and National Planning on privatization. These are to provide policy direction on matters related to privatisation; co-ordinate the adherence to national, regional and international obligations relating to privatisation; develop and formulate the privatisation programme; and oversee the administration of the Act. These functions have their basis on the responsibilities of the National Treasury provided for in section 12 of the Public Finance Management Act (Cap. 412A).

### **Establishment and composition of the Privatization Authority**

The Bill proposes to establish the Privatization Authority whose functions shall be to advise the government on all aspects of privatisation of public entities; facilitate the implementation of government policies on privatisation; implement the privatisation programme; and implement specific privatisation proposals in accordance with the privatisation programme. Additional functions shall be to collaborate with other organisations, within or outside Kenya, as it may consider appropriate in furtherance of the objects of the Act and to take such measures as are necessary to ensure that the provisions of the Act are complied with.

The membership of the Privatization Authority shall be nine (9), including the chairperson, consisting of a chairperson appointed by the President; the Principal Secretary for the time being responsible for privatisation or a representative designated in writing; the Attorney-General or a representative designated in writing; and six other persons, not being public officers, appointed by the Cabinet Secretary through a competitive process, each possessing a degree in either economics, accounting, finance or any other relevant degree from a recognized institution and having ten years of work experience of which five shall be at senior management level in a relevant field.

### **Formulation of privatization programme by the Cabinet Secretary for the National Treasury and Economic Planning**

The Bill provides that that the Cabinet Secretary for the National Treasury and Economic Planning shall formulate a privatization programme which will specify the public entities identified and approved for privatisation. At this formulation stage, the Bill provides that the Cabinet shall approve the privatization programme. It is important to note that the National Assembly will also receive the privatization programme for its approval or otherwise.

The Bill provides that during the formulation of the privatization programme, the Cabinet Secretary shall make appropriate consultations with persons who are likely to be affected by the privatization of a public entity. These will include persons with expertise in fields relevant to the entities to be included in the privatization programme; organisations representing persons who are likely to be affected by the proposed privatization; and members of the public. This is in line with the public participation requirements provided for in the Constitution.

#### **Important considerations when identifying entities to privatize**

The Bill sets out things that the Cabinet Secretary must consider when identifying entities to be privatized. These are enumerated as the relevant government policies in respect of privatization; the strategic priorities and policy goals to be achieved by the privatization; the strategic nature of the public entity to be privatized; and the need to avoid a privatization that may result in an unregulated monopoly.

Other considerations are the need to avoid a privatization that may accord the new owners' special protection or access to credit on concessionary terms as a result of the National Government's sovereign status; the extent of regulatory adjustments required; the need to reduce budget drain on government resources; the expected benefits to be gained from a proposed privatization; and any other relevant consideration.

#### **Approval of the privatization programme by the National Assembly**

After formulation of the privatization programme and approval by the Cabinet, the Bill proposes that the programme be submitted to the National Assembly for approval. The privatization programme must be accompanied by an explanatory memorandum indicating a brief description of the public entity to undergo privatization; a brief explanation of the reasons for undertaking the privatization; the benefits to be gained from the proposed privatization including the estimated revenue to be obtained; and any other relevant information. The information in the explanatory memoranda is intended to aid the National Assembly in making its decision.

The National Assembly will be required to consider a privatization programme within sixty days of receipt and make its decision. The Bill provides clarity on the oversight role of the National Assembly in providing a definite period in exercising that right.

#### **Options available to the National Assembly in the approval of privatization programme**

The Bill provides three options to the National Assembly in giving its decision on a privatization programme. The National Assembly can approve the programme for implementation; approve the programme with amendments; or decline the programme. The Clerk will be required to notify the Cabinet Secretary of the decision of the National Assembly within seven days of the decision.

#### **Publication of approved privatization programme**

The Bill provides that the privatization programme that has been approved by the National Assembly shall be published in the *Kenya Gazette*. This is intended to disseminate the information to the public for its knowledge and to foster openness and transparency.

### **Validity of the privatization programme**

The Bill proposes that a privatization programme shall be valid for a period not exceeding eight years from the date it is gazetted. The period is projected to be reasonable and cost effective to ensure that the privatization process is successfully concluded.

Where the eight-year period lapses before completion of the implementation of the programme, the Bill provides that the Cabinet Secretary may include the affected entities in another privatization programme formulated and approved in accordance with the Act.

### **Amendment of the privatization programme**

The Bill proposes that the Cabinet Secretary may amend the privatization programme. This could be occasioned by various reasonable factors. The Bill contains necessary safeguards when this arises since it requires that the procedures outlined in the formulation and approval of a privatization programme must be adhered to.

### **Eligibility to participate in a privatization**

The Bill provides that any person, whether Kenyan or non-Kenyan, is eligible to participate in a privatization. However, the Cabinet Secretary may direct the Authority to limit participation in any privatization to Kenyans; or ensure that there is a specified minimum level of participation by Kenyans in any privatization.

The Bill excludes a national government-owned entity from participating in a privatization. However, a social security fund, compensation fund, superannuation fund, insurance fund or endowment fund under government control will be allowed to purchase shares for the benefit of its contributors.

### **Steering Committee**

The Bill provides that for each privatization, there shall be a steering committee to implement the privatization on behalf of the Authority consisting of the following members: the Principal Secretary for the time being responsible for privatization or a representative designated in writing; the Attorney-General or a representative designated in writing; the Principal Secretary of the ministry with responsibility over the asset or service being privatized and two members of the Board.

### **Methods of privatization**

The Bill provides for methods of privatization which shall include initial public offer of shares, sale of shares by public tender, sale resulting from the exercise of pre-emptive rights and such other method as the Board shall, with the approval of the Cabinet Secretary, determine.

## **Privatization proposal**

The Bill provides that where an entity has been identified for privatization under the Act, the Authority shall prepare a privatization proposal on the entity. The privatisation proposal shall specify—

- the purpose for the establishment or existence of the entity to be privatised and the extent to which that purpose or operation has been met including any inadequacies in meeting that purpose
- any rights or other entitlements and resources that have been provided to meet the purpose for the establishment or existence of the entity to be privatised
- any recommendations for continuing to meet the purpose for establishment or existence of the entity to be privatised
- the financial position of the entity to be privatised
- the recommended method of privatisation
- the estimated costs of implementing the proposed privatisation
- any recommendations for dealing with the employees directly affected by the proposed privatisation including any benefits they are entitled to
- where applicable, a recommendation on how to undertake socio-economic investments to the host community
- the benefits to be gained from the proposed privatisation
- a work plan for the proposed privatisation
- any information relating to the repeal, amendment or enactment of any law for the proposed privatisation to be carried out
- an evaluation of the entity to be privatised
- any proposals on how Kenyans can participate in the transaction
- any other relevant information.

For each privatization included in the privatization programme, the Bill provides that the Privatization Authority shall make a specific proposal for privatization to the Cabinet Secretary and the Cabinet Secretary shall present the privatization proposal to the Cabinet for approval.

## **Valuation for each privatization**

The Bill obligates the Privatization Authority to undertake a business and assets valuation for each privatization to assist in the implementation of the privatization proposal. The valuation shall be performed by a qualified person appointed by the Authority.

## **Restrictions and obligations on public entities scheduled for privatization**

The Bill provides that a public entity scheduled for privatization is prohibited from allowing its assets to be dissipated, incurring any liabilities, other than in the ordinary course of business, without the prior written approval of the Cabinet Secretary; and disclosing information, other than publicly, if there is a reasonable risk that the disclosure would give an advantage to a person who might compete in the privatisation.

The Bill also provides that a public entity undergoing privatisation shall not undertake any new capital investment or disposal unless approved by the Cabinet Secretary. Also, the National Government or the public entity undergoing privatisation shall not extend credit or provide financing for the purchase of the shares. All these restrictions are intended to provide safeguards against defeating the purposes of privatization.

The Bill further provides that a public entity undergoing privatisation shall keep up-to-date business records and books of accounts, maintain an up-to-date register of all fixed assets and document all legal and other obligations of the entity.

### **Privatisation agreement**

The Bill provides for parties entering into a privatization agreement after the preceding stages have been finalised including settlement of any disputes.

After execution of the privatisation agreement, the Bill provides that the Privatization Authority shall promptly publish a notice of the privatization in the *Kenya Gazette* setting out details on the following: a description of the entity being privatized; a summarised description of the transaction used to give effect to the privatization; the names and addresses of the persons to whom the shareholding is being transferred except where a privatization undertaken through initial public offer of shares; and such other information as the Authority considers appropriate.

### **Proceeds from sale of direct government shareholding.**

The Bill provides that any proceeds from the sale of a direct National Government shareholding shall be paid into the Consolidated Fund.

### **Proceeds from the sale of a public entity's shareholding.**

The Bill provides that any proceeds from the sale of a public entity's shareholding shall be deposited in a special interest-bearing account established for that public entity's privatization and the proceeds shall be credited into the Consolidated Fund Account within ninety days.

### **Reviews and appeals**

The Bill provides for reviews and appeals for disputes arising from implementation of privatization programme. It provides the procedure for reviews and appeal and proposes the establishment of the Privatization Appeals Board to determine appeals from decisions of the Privatization Authority.

### **Ongoing privatization**

The Bill provides that upon commencement of this Act, the privatization of entities published under Gazette Notice No. 8739 of 14th August 2009 shall be finalised in accordance with this Act. This provision provides clarity on ongoing privatization and the law that will apply in the subsequent stages once the Act comes into force.

### **Guidance on the next stages**

Once the two Committees conclude public participation on the Bill, they will table their joint report in the National Assembly. The Bill will then proceed for Second Reading where it will be debated and voted on. After that, if the Bill is passed by the House, it will proceed to the Committee of the whole House where amendments will be considered and voted on. Thereafter, in **Third Reading** the House will vote on the Bill again and if it passes, it will be transmitted to the President for **assent** then it will become an Act of Parliament.

A copy of the Bill is available at the National Assembly Table Office and on the Parliament Website <http://www.parliament.go.ke/the-national-assembly/house-business/bills>.

**S. NJOROGE, CBS  
CLERK OF THE NATIONAL ASSEMBLY  
15th August, 2025**

**“For the Welfare of the Society and the Just Government of the People”**



**Submission by the National Treasury on the Privatization Bill, 2025, to the Departmental Committee on Finance and National Planning and the select Committee on Privatization and Public Debt, Wednesday 13<sup>th</sup> August 2025**

**Honourable Chairpersons and Members** of the Departmental Committee on Finance and National Planning and the select Committee on Privatization and Public Debt,

1. Thank you for the opportunity you have given to the National Treasury to meet this Committee and make submissions on the Privatization Bill, 2025.
2. We have a brief submission organised in two short, but related, parts – namely:
  - (i) Background – under which we give an overview of the current legal framework, for purposes of context; and,
  - (ii) The Privatization Bill, 2025 – the case for it and the key provisions under the proposed law.

We will then make our request to this Joint Committee and, by extension, to the National Assembly through this Committee.

## I. Background

3. Prior to the coming into effect of the Privatization Act, 2005, privatization transactions of Government were guided by the *Policy Paper on Public Enterprises Reforms and Privatization, 1998*, with the then Permanent Secretary to the Treasury (Incorporation) Act as the legal framework.
4. In an effort to have a more suitable legal framework for privatization transactions, the Privatization Act, 2005, was assented to in 2005. However, it was not until 2008 that this law came into effect. The Act established the Privatization Commission whose primary mandate is to formulate and implement the privatization programme. The Act also sets out the arrangements for establishing the Privatization Programme and for the conduct of privatization processes and activities. In addition, the Privatization Act, 2005, established the Privatization Appeals Tribunal, among other provisions.
5. As it has turned out, the key provisions of the Privatization Act 2005 have weaknesses and limitations that have become more pronounced with the advent of the Constitution of Kenya 2010 and the related laws, such as the Public Finance Management Act, 2012.
6. Honorable members, on this case, Privatization as a key tool to address the following three major economic balances Government debt, Public Expenditure and Revenue Raising. In this regard a robust program must be designed to address fiscal sustainability challenges by limiting government debt, constraining budget deficits, and promoting counter-cyclical fiscal policy. Having pursued fiscal consolidation in the recent years, the policy has now reached optimal levels and hence cannot be pushed further. In this case an economic stimulus mechanism must be pursued. You will

agree honorable members that unlike taxation, privatization never reduces private sector wealth. In most cases, it encourages the propensity to invest, and enhances aggregate demand which in the long run would widen the revenue base.

7. Honorable members from a capital markets development perspective, a robust capital markets protects the macro stability of the economy as it plays a critical role in capital mediation. Capital markets provide institutional investors both local and foreign, such as mutual funds, pension funds, and insurance companies, with instruments to diversify their assets geographically, thus increasing the potential for significant inflows of portfolio investment. The deepening of the capital markets increases institutional investors' desired stock of assets and this will end up with an increase in the flows of foreign capital.
8. Privatization especially through listings in the open capital markets is one of the key financial reforms we shall be deploying in the development and deepening of our capital markets which is a necessary ingredient for enhancing economic efficiency promoting our course towards transition to a market economy.
9. Honorable Members, on the other hand, the National Treasury is also carrying out an economy-wide and state corporations' sector-specific reforms and corporation-specific restructurings not just as an end in itself and also in response to policy and business dynamics.

The dynamics include the following:

- ❖ The coming of age of the private sector that can deliver commercial activities more efficiently, hence (part of) the need for privatization of GOEs; and/therefore,

- ❖ the need to elevate the role of Government to one of policy and regulation to support commercial activities of the private sector (to avoid conflict at the commercial operations level).

It is against this background that the Privatization Bill, 2025, has been developed.

## II. The Privatization Bill, 2025

10. The Privatisation Bill, 2025, has been formulated as the next-generation legal framework that, among others, seeks to overcome the shortcomings and challenges associated with the current law – the Privatization Act, 2005. The Bill aims to enhance transparency, accountability, efficiency and value for public resources in the privatization processes. Specifically, there is need for a new law on Privatization for reasons that include the following:
  - i. Better alignment with the Constitution of Kenya 2010 (CoK 2010) and with the related laws that have since been enacted pursuant to the CoK 2010, key of which is the Public Finance Management Act, 2012 (PFMA). For instance:
    - a) Formulation of the Privatization Programme under Section 19 of the proposed law shall be in accordance with Section 12 of the PFMA. The responsibility for formulating the Privatization Programme is, therefore, placed on CS/National Treasury, while the implementation of the program is vested in the privatization Authority;
    - b) The role of the National Assembly is well defined in sections 22-26, the National Assembly being a

*pslax*

representative house of the people of Kenya has a clear and elaborate role in approval of a privatization program. For instance, it can approve, approve with amendments or decline the program in its entirety.

11. Some of the key areas and provisions covered by the Privatization Bill, 2025, are the following:

- i. The **purpose of privatization – Section 6** – which, in effect, is consistent with the need to correctly place the responsibility of formulation of the Privatization Programme (i.e identification of suitable entities for privatization) on the CS/National Treasury;
- ii. **Part II on *Coordination of Privatization Matters***. This Part sets out the roles of the CS/National Treasury and of the Privatization Authority in ways that remove ambiguities and possible contradictions; Clear separation of policy and implementation roles;
- iii. **Part III** on the governance of the Privatization Programme – covering provisions for formulation of the Privatization Programme by the CS/National Treasury, approval by Cabinet and approval by the National Assembly;
- iv. **Part IV on *Implementation of the Privatization Programme*** – with the necessary approvals sought from the CS/National Treasury and the Cabinet; and,
- v. **Part VII on Reviews and Appeals** – which provides for appeals mechanisms in respect of the implementation of the

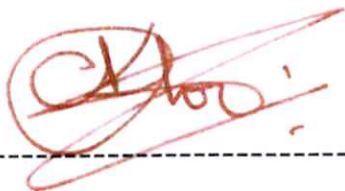
Privatization Programme. In this regard, the Privatization Appeals Board is established under Section 52, with the rest of the Sections under this Part covering the operationalization of the Privatization Appeals Board.

### **III. Request to the National Assembly**

12. **Honourable Chairpersons and Members**, the National Treasury requests the National Assembly, through the **Departmental Committee on Finance and National Planning** and the **Select Committee on Privatization and Public Debt**, to consider and approve:

- i. The Privatisation Bill, 2025; and,
- ii. The repeal of the Privatisation Act, 2005.

We submit.



**DR. CHRIS KIPTOO, CBS**

**PRINCIPAL SECRETARY, NATIONAL TREASURY**



**Confidential**

The National Assembly  
Office of the Clerk  
P.O Box 41842-00100  
Main Parliament Buildings  
Nairobi, Kenya

14 August 2025

**REF: NA/DDC/F&P/2025/071**

Sent via email to: [cna@parliament.go.ke](mailto:cna@parliament.go.ke)

Dear Sirs,

**Subject: Stakeholder engagement on the Privatization Bill, 2025 (National Assembly Bill No. 36 of 2025) by the Departmental Committee on Finance and National Planning and the Select Committee on Privatization and Public Interest**

Pursuant to the notice issued on August 7, 2025, by the Office of the Clerk of the National Assembly and Article 118 (1)(b) of the Constitution of Kenya, PricewaterhouseCoopers Limited (“we”, “PwC”, “us”) are pleased to share with you our comments on the Privatization Bill, 2025 (National Assembly Bill No. 36 of 2025) and recommendations for your consideration. We have included our comments as an appendix to this cover letter.

We would be grateful for an opportunity to engage you further on our proposals and provide any additional information should you require us to.

Yours faithfully,

For: **PricewaterhouseCoopers Limited**

PricewaterhouseCoopers Limited. PwC Tower, Waiyaki Way/Chromo Road, Westlands P O Box 43963 – 00100 Nairobi, Kenya

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Directors: S Abu\* L Akendele\* J Aroi A Awodunmila\* S Cheruyot E Gitachu J Kabochi J Kameu E Kerich P Kiambi B Kimani M Mugasa T Mukora A Muriithi F Muriu S Mutinda P Ngahu R Njoroge S O Norberts A Nyaga O Nyambogo B Okundi I Otolo K Saiti G Shah M Thothi S Vikram G Waru (\*Nigerian)

Isaac Otolu  
Partner

## APPENDIX

### Background

The Privatization Bill, 2025 (National Assembly Bill No. 36 of 2025) (the “**Bill**”), seeks to repeal and re-enact the regulatory framework for Privatization of public entities with a view of improving the efficiency of public entities. The Bill is being re-enacted in view of the Court decision in **Orange Democratic Movement Party & 4 Others v Speaker of the National Assembly & 5 Others [2024] KEHC 11494 KLR**, which declared the Privatization Act, 2023 unconstitutional. In accordance with the decision of the court, the Bill now provides for an elaborate role of the National Assembly in the Privatization process.

The Bill underwent the First Reading pursuant to Standing Order 127(3) of the Tuesday 5th June 2025. The Bill was committed to the Departmental Committee on Finance and National Planning (the “Departmental Committee”) and Select Committee on Privatization and Public Debt (the “Select Committee”) for joint consideration and reporting back to the House.

In compliance with the provisions of Article 118(1)(b) of the Constitution of Kenya and Standing Order 127(3), the Committee invited interested members of the public and stakeholders to submit their inputs and comments for consideration. A public notice to this effect was issued on 7 August 2025, and the submissions should be channelled to the office of the Clerk of the National Assembly.

We are glad to present the recommendations and comments on the Bill, 2025 (National Assembly Bill No. 36 of 2025) to the Departmental Committee and Select Committee.

Comments and recommendations on the Privatization Bill, 2025 (National Assembly Bill No. 36 of 2025) (the “Bill”)				
#	Section	Recommendation	Our proposed amendment	Justification for proposed amendment
1.	Clause 2(1)	Please reconsider clarifying an interpretation that harmonizes it with definitions of “ <i>government-linked corporation</i> ,” “ <i>public entity</i> ,” and “ <i>privatization</i> ,”	Amend Clause 4(c) and provide clarifying interpretation that harmonizes it with the comprehensive definitions of “ <i>government-linked corporation</i> ,” “ <i>public entity</i> ,” and “ <i>privatization</i> ,” thereby eliminating ambiguity regarding the applicability of the Act to share transactions involving government-linked corporations.	Clause 2 defines a “government-linked corporation” as a company partly owned by the government. It also defines “public entity” to include government-linked corporations and other related organizations.  The definition of “Privatization” covers the transfer of shares of public entities, including government-linked corporations.  Clause 4(c), however, excludes the sale of government shares in government-linked corporations from the Act.  This causes confusion, as it might imply all transactions involving these corporations are excluded. The intent is to exclude only sales to government-linked corporations,

Clause 2(1)	Please consider including county government linked entities as part of public entities	<p>Amendment of Clause 2(1) a and b to read as follows:</p> <p>“public entity” includes:</p> <ul style="list-style-type: none"> <li>a) a national government linked corporation;</li> <li>b) a county government linked corporation; and</li> <li>c) a subsidiary of a national or county government corporation.</li> </ul>	<p>while sales of shares by these corporations or sales to private parties remain regulated under the proposed bill.</p> <p>Current definition of a public entity does not include sub-sovereign entities such as county government entities.</p>
Clause 2(1)	<p>Definition of the term “Secondary markets”</p> <p>Please consider specifying the markets (both local and international markets) in the definition of secondary markers</p>	<p>Amendment of definition of secondary market to read as follows:</p> <p><i>“secondary market means a financial market in which previously issued financial instruments such as shares and other marketable securities are traded both within the local and international financial markets”</i></p>	<p>The inclusion of the markets where the tradable securities are traded will cover for any transaction that might be conducted in financial markets outside Kenya.</p>
Clause 6	<p>Please consider amending Clause 6 by adding economic inclusivity and poverty reduction as one of the purposes of privatization</p>	<p>Amendment of Clause 6 to read as follows:</p> <p><i>“(g) ensure that privatization initiatives contribute to economic inclusivity and poverty reduction”</i></p>	<p>Privatization processes have significant socio-economic impacts which ensure contribution to inclusivity. This helps to address disparities and enhance the participation of marginalized groups in the economy.</p> <p>This amendment seeks to encourage privatization initiatives to create more opportunities for employment, ownership, and access to services,</p>

			thereby reducing poverty levels. Therefore, addition of this sub clause within the purpose of the Act enhances accountability and social responsibility.
Clause 9	Please consider adding a clause on the independence of the privatization authority	<p>Addition of a clause on independence of the privatization authority as follows:</p> <p><i>“9A. Independence of the Authority</i></p> <p><i>(1) The Authority shall be independent and free of control by government, political or commercial interests in the exercise of its powers and in the performance of its functions.</i></p> <p><i>(2) In fulfilling its mandate, the Authority shall be guided by the national values and principles of governance in Article 10 and the values and principles of public service in Article 232(1) of the Constitution.”</i></p>	<p>The omission of independence creates a risk that the Authority could be subject to political interference or biased decision-making, which can undermine the integrity and effectiveness of privatization processes.</p> <p>The proposed amendment introduces a requirement for the Authority to operate independently and to implement a conflict-of-interest policy. This ensures that the Authority’s decisions are impartial, transparent, and trustworthy, thereby enhancing investor confidence and the overall success of privatization initiatives.</p>
Clause 14	Please consider amending Clause 14 by adding subclauses regarding the formal requirements for delegation terms, revocation and accountability	<p>Amendment of Clause 14 to read as follows:</p> <p><i>“(1) The Board may, by resolution either generally or in a particular case, delegate to a subcommittee of the Board or to a member, officer, employee, or agent of the Authority, the exercise of any of the powers or performance of any of the functions of the Board.</i></p>	<p>Without formal delegation terms and revocation rights, the delegation risks misuse, lack of accountability and governance gaps.</p> <p>This amendment introduces written appointment terms, including duties, powers and reporting requirements strengthening transparency, control and governance.</p>

*(2) Every such subcommittee, officer, employee or agent shall be appointed by the Authority in writing, setting out the duration of the appointment, the duties, reporting requirements, functions, authority and powers so conferred.*

*(3) The Authority may at any time revoke a delegation under this section.*

*(4) A delegation conferred under this section shall not prevent the Authority from performing the delegated function.”*

Clause 23	Lack of clarity with regards to a situation of inaction after the sixty-day consideration period of the Privatization Programme by the National Assembly.	Consider introducing a provision as a sub-clause stating:  <i>23(b). Where the Privatization Programme is not considered within sixty days, the National Assembly must provide written justification within five days and conclude consideration within a further period not exceeding thirty days.</i>	The absence of a clear consequence for inaction beyond the prescribed timeframe undermines accountability and may delay decision-making. The proposed amendment introduces a structured timeline with a built-in escalation mechanism, ensuring that the process remains transparent, time-bound, and subject to oversight.
Clause 32(1)	Lack of Contextual Criteria for Limiting Foreign Participation	Consider amending the proposed clause to insert a new sub-section 1A as follows:	The amendment ensures that potential risks of foreign participation—such as threats to national security, economic exclusion of citizens, or foreign dominance of strategic assets—are assessed

32(1).

*Any person, whether Kenyan or non-Kenyan, is eligible to participate in a Privatization, subject to the provisions of this Act and any other applicable law.*

transparently and case-by-case. It avoids blanket bans while allowing justified safeguards where national interests are at stake.

32(1A).

*In determining whether to limit or restrict the participation of non-Kenyan persons in a specific Privatization, the Cabinet Secretary, in consultation with the Authority, shall consider the following:*

*(a) the strategic nature of the asset or service to be privatized;*

*(b) national security interests;*

*(c) economic empowerment and inclusion of Kenyan citizens;*

*(d) the potential impact on public welfare, service delivery, or access;*

*(e) the risk of foreign dominance or monopolistic control; and*

*(f) the consistency of the privatization with national development goals and policies*

Clause 32(2)

Ambiguity in the Cabinet Secretary's decisions on either

Consider amending the proposed sub-section by introduction of a proviso

Clause 32(2) of the Privatization Bill appears to grant the Cabinet Secretary overly broad discretion to

limiting participation in any privatization to Kenyans or require a minimum level of Kenyan participation

on criteria and concurrence with the Privatization Authority to inform the Cabinet Secretary's decision. The proviso can read as follows:

limit or prescribe Kenyan participation in privatization without clear criteria, institutional checks, or transparency requirements. This raises concerns about arbitrary decisions. The proposed amendment addresses this by requiring the Cabinet Secretary to act in consultation with the Privatization Authority, base decisions on defined criteria, such as national security, strategic interests, and inclusive economic empowerment, and ensure transparency through stakeholder consultations and timely publication of reasons.

*32(2).*

*The Cabinet Secretary may, in consultation with the Authority and subject to public interest considerations, direct the Authority to:*

*(a) limit participation in any privatization to Kenyan citizens; or*

*(b) ensure that there is a specified minimum level of participation by Kenyan citizens in any privatization:*

*Provided that any such direction shall –*

*(i) be based on clearly defined and published criteria, including but not limited to:*

*(a) protection of national security interests;*

*(b) safeguarding strategic economic sectors;*

*(c) promotion of inclusive economic empowerment, including participation of youth, women, persons with disabilities, and marginalized communities;*

*(d) enhancement of local enterprise*

		<p><i>development and job creation;</i></p> <p><i>(e) prevention of monopolistic or anti-competitive practices;</i></p> <p><i>(ii) be preceded by a public stakeholder consultation process in line with Article 10 of the Constitution;</i></p> <p><i>(iii) be accompanied by a written statement of reasons, and published in the Kenya Gazette within 14 days of issuance.</i></p>	
Clause 38(2)	This clause does not provide for the independence of the valuing agent/valuer	Re-draft of Clause 38(2) to read as follows- <i>“All valuations shall be conducted by an independent third-party firm/agent selected through a competitive process and approved by the Authority”</i>	This is to ensure objectivity and protect public interest in the valuation process.
Clause 47(2)	Consider including disclosures on payment to advisors under Clause 47(2)	Consider including the below statement under clause 47(2)  “Payments to advisors supporting the authority in the execution of it’s mandate”	The proposed inclusion will aid in transparency on the costs incurred in supporting the Authority to execute its mandate.
Clause 49(2)	The clause is unclear on the provision for the transition period.	Consider amending the suggested clause to accommodate the transition period as follows-  “ The proceeds from privatization of any public entity shall be deposited into the Consolidated Fund as required by this Act. However, up to 20% of the total proceeds may be allocated to the entity	This will ensure that the interests of the entity, its employees or any other related aspects that are of importance to the entities operation are taken care of in the course of the transition.  Some privatisations may be affected by lack of funds to pay up the strategy formulators, transaction advisors, valuation firms and so on. Right expertise needed to ensure process in effective, efficient, and timely. Need for the establishment of a

		<p>that is subject to privatization for the purposes of transition support.”</p> <p>“The allocation must be approved by the Cabinet Secretary for the National Treasury and Economic Planning or an authorised person as per the Act with equivalent roles and obligations as those of the Cabinet secretary”</p> <p>Alternatively, this can be done through the introduction of a Clause creating a Privatization Facilitation Fund. This will also require the addition of the definition of the “Privatization Facilitation Fund” in section 2 of the Bill.</p>	<p>Privatisation Facilitation Fund sourced from:</p> <ul style="list-style-type: none"> <li>• Amounts appropriated by Parliament.</li> <li>• Grants and donations.</li> <li>• Success fees.</li> <li>• Levies or tariffs imposed on the enterprise.</li> </ul>
Clause 51 (3)	This clause lacks clarity on the <i>locus standi</i> and does not create restrictive measures to the Authority’s decision	<p>Re-write clause 51(3) to read as follows-</p> <p><i>“Any person or entity may file an appeal or objection with the High Court within 15 days of the Authority’s decision. The Authority must stay execution of privatization until the High Court determines the matter”</i></p>	This provision will not only uphold and strengthen procedural fairness but also provide an essential legal recourse to prevent rushed or unfair decisions.
Clause 59	Please consider the addition of disclosure requirements for all donations, grants and gifts.	<p>Addition of clause 59(2) to read as follows-</p> <p><i>“The authority shall disclose the funds highlighted in sub-clause (c) and (d) stating its source and intended purpose.”</i></p>	Public disclosure of the Authority’s external funding allows for transparency since their financial dealings are open to public scrutiny ensuring funds are used accordingly.
Clause 61(2)	Please consider addition of payments to external technical	Addition of clause 61(2)(e) to read as follows-	One of the expenses of the Authority shall be external technical consultants. This should be factored in when preparing the annual

	consultants to the annual estimated expenditure of the Authority.	<i>“(e) the payment of the salaries, allowances and other charges in respect to external technical consultants.”</i>	estimated expenditure of the Authority.
Clause 63(2)	Please consider addition of an impact assessment to determine the effects privatization would have on the community and its performance after privatization.	<p>Addition of clause 63(2)(c) and (d) to read as follows-</p> <p><i>“(c) socio-economic impact assessments of privatized entities, including effects on employment, local communities, and market competition;</i></p> <p><i>(d) performance of privatized entities, including financial performance, service delivery outcomes, and compliance with post-privatization obligations”</i></p>	The inclusion of impact assessments and performance of the privatized entities in the reports will allow for transparency and accountability by ensuring the Authority reports on the outcomes of privatization.
Clause 69	Please consider adding public participation and stakeholder engagement.	<p>Addition of clause 69(2) that states as follows-</p> <p><i>“(2) The Cabinet Secretary shall, prior to making any regulations under the Act, publish draft regulations to invite public consultations.”</i></p>	This allows for the Cabinet Secretary to consider stakeholder and public input thus making more informed regulations.
<b>Schedule 1</b>			
Paragraph 3	Please consider adding a subparagraph to paragraph 3 addressing the loss of quorum that may be caused by exclusion of members declaring conflict of interest	<p><i>Amending of paragraph 3 to read as follows:</i></p> <p><i>“3. Quorum</i></p> <p><i>(a)The quorum for the conduct of business at a meeting of the Board shall be two-thirds of all</i></p>	The Board may face frequent delays or inability to decide on matters due to quorum loss. This sub paragraph clarifies procedures where quorum issues arise from conflict-of-interest exclusions, ensuring operational flexibility.

*the total members of the Board.*

*(b) When there is no quorum at or for the continuation of a meeting of the Board only because of the exclusion of a member of the Board under paragraph 3(a), the other members present may, if they deem it expedient so to do—*

*(1) postpone the consideration of that matter until there is a quorum; or*

*(2) proceed to consider and decide the matter as if there was quorum”*



MEMORANDUM SUBMITTED BY THE KENYA PRIVATE SECTOR ALLIANCE (KEPSA) ON THE  
 PRIVATIZATION BILL 2025, TO THE NATIONAL ASSEMBLY DEPARTMENTAL COMMITTEE ON  
 FINANCE AND NATIONAL PLANNING, SUBMITTED ON 14<sup>TH</sup> AUGUST 2025

	CLAUSE NUMBER	CONTENT OF THE CLAUSE	PROPOSED AMENDMENT	RATIONALE AND JUSTIFICATION
1	20.(2) (c)	<p><i>20.Consultation in Formulation of the Programme</i></p> <p>2) The persons envisaged under subsection (1) shall include: -</p> <p>a) persons with expertise in fields relevant to the entities to be included in the Privatization Programme;</p> <p>b) organizations representing persons who are likely to be affected by the proposed Privatization; and</p> <p>c) Members of the public</p>	<p>We propose that the following words should be added to Section 20 (2)(c): "<i>through public participation</i>"</p> <p>2) The persons envisaged under subsection (1) shall include: -</p> <p>a) persons with expertise in fields relevant to the entities to be included in the Privatization Programme;</p> <p>b) organizations representing persons who are likely to be affected by the proposed Privatization; and</p> <p>c) Members of the public through public participation.</p>	<ul style="list-style-type: none"> <li>○ Section 20 (2)(c) is not clear on how the CS will carry out consultation with members of the public.</li> <li>○ Public participation is vital in matters regarding privatization of public entities. In the context whereby, the public is not involved, this indicates that there is no transparency in that respective privatization program</li> </ul>





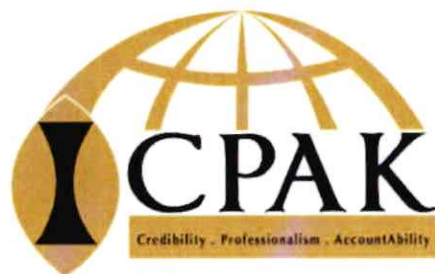
2	32(2)(b)	<p><b>Eligibility in a Privatization</b></p> <p>32.(2) Notwithstanding subsection (1) the cabinet Secretary may direct the Authority to-</p> <p>a) Limit participation in any Privatization to Kenyans; or</p> <p>b) Ensure that there is a specified minimum level of Participation by Kenyans in any Privatization.</p>	<p>Clause 32(2)(b) be amended by inserting the following words  <i>"above 50% level of participations by Kenyans.</i></p> <p>32.(2) Notwithstanding subsection (1) the cabinet Secretary may direct the Authority to-</p> <p>a) Limit participation in any Privatization to Kenyans; or</p> <p>b) Ensure that the level of participation by Kenyans is above 50% in any Privatization program.</p>	<p>The minimum fraction of Kenyans who participate in the privatization should be specified to avoid ambiguity.</p>
3	Second Schedule 1.	<p>Second Schedule- S34</p> <p><b>Methods of Privatization.</b></p> <p>1.Initial Public Offering of shares.</p> <p>Where the selected method of privatization is through initial public offer of shares, the offering of shares shall be undertaken in accordance with Capital Markets Act, Cap 485A</p>	<p>Second Schedule clause 1 is amended by inserting the following words  <i>"privatization of entities deemed as strategic national assets, should be done through initial public offering"</i></p> <p><b>1.Initial Public Offering of shares.</b></p> <p>Where the selected method of privatization is through initial public offer of shares, the offering of shares shall be undertaken in</p>	<p>The strategic national assets are the pride of the nation hence the ownership need to be spread across the population. This will deter rent seekers from acquiring strategic assets via Sale of shares by public tender.</p>



			accordance with Capital Markets Act, Cap 485A, privatization of entities deemed as strategic national assets, should be done through initial public offering.	
4	38(2)	<p><b>38. Valuation required for each Privatization.</b></p> <p>(2) The valuation shall be performed by a qualified person appointed by the Authority.</p>	<p>Section 38(2) to be amended as follows: Delete the words</p> <p><i>“a qualified person”</i> and replace with <i>“an independent Audit Firm”</i> to read</p> <p>2)The Valuation shall be performed by an independent Audit Firm appointed by the Authority.</p>	The privatization process needs to be transparent on asset valuation. In the event there are no guideline in terms of how the audit is conducted or public disclosure of valuation reports, there is a risk that the respective assets might be sold below their respective market value hence benefiting private entities at the expense of the taxpayers
5	17. (3)	<p><b>17. Corporation Secretary</b></p> <p>3) The corporation Secretary shall be responsible to the Managing Director. of Privatization Bill 2025 has not given the specific number of years that an appointed Corporation</p>	<p>Consider the following Inclusion:</p> <p>17 (4). The corporation secretary shall be appointed for a term of four years and may be eligible for reappointment for one further term not exceeding four years.</p>	There is need to have specific number of years the corporate secretary can serve the Authority. This will deter abuse of the loophole that exist in the current Section 17 of Privatization Bill 2025.



		Secretary is eligible to serve		
6	45. (1)	<p><b>45. Limits on when agreement may be signed.</b></p> <p>1. An agreement to give effect to a Privatization shall not be signed until the period for filing an objection has lapsed.</p>	<p>Section 45(1) is amended by inserting the following words:</p> <p><i>“in instances where matters regarding the workers’ rights have not been addressed and where the period for filing an objection has lapsed”</i></p> <p>1. An agreement to give effect to a Privatization shall not be signed in instances where matters regarding the workers rights have not been addressed and where the period for filing an objection has lapsed.</p>	<p>The privatization process leads to loss of jobs or reduced labour protection since most private entities prioritize profits.</p> <p>There is need for provision that safeguards the rights of workers such as guarantees of continued employment post-privatization or severance packages.</p>



**The Institute of Certified Public Accountants of Kenya**

**SUBMISSION**

**ON**

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**PRIVATIZATION BILL 2025**

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**AUGUST 2025**

## **INTRODUCTION**

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The Institute of Certified Public Accountants of Kenya (ICPAK) is a statutory body of accountants established under the Accountants Act CAP 531, with the mandate to develop and regulate the Accountancy Profession in Kenya. The Institute is also a member of the Pan Africa Federation of Accountants (PAFA), and the International Federation of Accountants (IFAC), the global umbrella body for the accountancy profession.

The Privatization Bill 2025 seeks to repeal the Privatization Act of 2005 and re-enact the regulatory framework for the privatization of public entities with a view to improving the efficiency of public entities. The Bill, which was first introduced in 2023 and now reintroduced in 2025 with amendments, coincides with recent announcements by the National Treasury regarding the planned privatization through an Initial Public Offering on the Nairobi Securities Exchange. This transaction aims at mobilizing financial resources to support the implementation of the 2025/26 national budget, while also seeking to deepen domestic capital markets.

Following a review of the Bill, the Institute has identified the following general observations:

- (i) The Bill mandates the Authority to conduct valuations of entities proposed for privatization. However, it does not provide sufficient safeguards to ensure the independence and transparency of the valuation process. This therefore increases the risk of perceived or actual bias that may undermine stakeholder confidence in privatization process.
- (ii) The Bill does not clearly define the minimum threshold for objections to privatization after a public notice for privatization has been Gazetted by Cabinet Secretary. This may hinder the transparency of the process.
- (iii) The Bill does not provide safeguards for employees during the privatization process, yet they are critical for institutional memory and continuity of the entity. This may have further implications on their job security given that their employment terms in public sector are known while for the new entity there is no disclosure of the same.

## **SUMMARY OF ICPAK'S PROPOSALS**

In light of these concerns, the Institute has reviewed the Bill and developed the following set of submissions for consideration.

#	Clause	Issue of Concern	Recommendation	Justification
1.	<b>Clause 2</b>	Introduce the term “divestiture” to the definition	Define divestiture to mean “Disposing of whole or part of the assets and or shares of a public enterprise	For ease of interpretation and flexibility of government interest.
2.	<b>Clause 3: Objects and Purpose of the Act</b>	The objects stipulated are limiting and not comprehensive.	Amend Clause 3 by adding the following objects:  c) prohibit restrictive or unfair trade practices in the privatization process. d) Promote openness and public participation in privatization programmes in Kenya.	For comprehensiveness of the Authority’s regulatory mandate
3.	<b>Clause 5 Guiding principles of Privatization</b>	The principles stipulated are limiting and not comprehensive.	The Institute proposes the amendment of 5(f) to read as follows:  f). effective, efficient, economical and transparent;	Enhance clarity in implementation of the principles and in line with the Constitution and relevant Acts.
4.	<b>Clause 6 Purpose of Privatization</b>	The term profitability as applied in the Bill conflicts with the Governments core mandate of service delivery and sustainability.	The Institute proposes the amendment of clause 6(d) to read as follows  d) Improve efficiency, sustainability and accountability of public entities	This aligns with core mandate of Government
5.	<b>Clause 7 Role of the Cabinet Secretary</b>	The role of the Cabinet Secretary overlaps the role of the Board of the Authority	The Institute proposes deletion of Clause 7 in its entirety.	This will enhance clarity and efficiency of the Boards responsibility. It will also delink the Government from the process.
6.	<b>Clause 9: Functions of the Authority</b>	Important functions such as record management, liaison, publicity or monitoring and	Amend the Clause to include the following additional functions:	For ease of interpretation, include more functions.

#	Clause	Issue of Concern	Recommendation	Justification
		evaluation have been left out. These need to be explicitly stated.	<ul style="list-style-type: none"> <li>a) seek potential investors in public enterprises.</li> <li>b) to prepare the long-term divestiture sequence plan</li> <li>c) maintain records, safeguard information, and establish such administrative procedures as shall ensure confidentiality of information.</li> <li>d) maintain close liaison with all relevant institutions in the process of privatization.</li> <li>e) publicize activities of the privatization programme.</li> <li>f) monitor and evaluate implementation of privatization programmes in Kenya.</li> </ul>	
7.	<b>Clause 10(1) d</b>  <b>Board of the Authority</b>	The qualifications for Board members as for provided in the Bill is limiting	The Institute proposes the inclusion of the following in clause 10(1) (d) Meet the requirements of Chapter six of the Constitution. Meets the requirements of the fit and proper test	This is in line with the Mwongozo guidelines and best practices observed in similar Boards.
8.	<b>Clause 19</b>  <b>Privatization Programme</b>	The role of the Authority on the formulation of the privatization program was taken by the Cabinet Secretary	The Institute proposes amendment of Clause 19(2) (a) to read:  a) be formulated by the Authority and submitted to the Cabinet Secretary for concurrence and to	This will ensure the independence of the process in line with proper governance.

#	Clause	Issue of Concern	Recommendation	Justification
			the National Assembly for approval.	
9.	<b>Clause 20 (1)</b>  <b>Consultation in formulation of the Program</b>	The alignment of the function to the responsible office	The Institute proposes the following. Replace Cabinet Secretary with Authority's Board	This will ensure alignment of the function to the responsible office
	<b>Clause 22</b>	The Bill has not provided for public participation by stakeholders.	Amend Clause 22(1) to incorporate.  a) Stakeholders shall provide input and representations on a draft privatization programme for consideration before implementation within 14 days of formulation of the programme  b) The Cabinet Secretary shall provide feedback on incorporation of stakeholder comments within 7 days at the end of the stakeholder engagement exercise.  c) Where its deemed or established by a relevant National Assembly Committee that there was no stakeholder engagement or input, the programme shall be suspended.	Article 201 of the Constitution emphasizes principles of public finance.  Studies have established that public participation in government programmes is important in achieving the following: a. It helps to build public trust and support in government programmes. b. it helps to design and implement more effective government policies, interventions, and programmes, leading to improved services and outcomes; and c. it is a positive response to greater demands for involvement from the public

#	Clause	Issue of Concern	Recommendation	Justification
				in decisions that affect them.
10.	<b>Clause 29</b>  <b>Validity of the Program</b>	The proposed timeline of 8 years for the execution of the program is too long	The Institute proposes the amendment of Clause 29 (1) to read:  A privatization program shall be valid for a period of five years from the date of gazettment.	The Completion of the program should fall within the tenure of Board.
11.	<b>Clause 32 (2) (a)</b>	The term 'limit' is subject to misinterpretation	The Institute proposes the amendment of Clause 32 (2) (a) to read  (a) Restrict participation in any Privatization to Kenyans	This will enhance clarity.
12.	<b>Clause 32 (4)</b>	The proviso of restricting national government entities form participating in the privatization is lacking clarity as national funds, which are government entities, are allowed to participate in privatization.	The Institute proposes the deletion of Clause 32 (4)	This will avoid conflict of interest and ensure that the main objective of delinking Government is upheld.
13.	<b>Clause 41</b>  <b>Control of Investments</b>	The term critical business continuity as provided in the Bill is subject to misuse in the context of capital investment or disposal during privatization.	The Cabinet Secretary to define and provide the key elements that constitute critical business continuity during privatization.	This will enhance ease of application and control of investments.
14.	<b>Clause 45 (1)</b>	Lack of specified timelines within which an objection may be filed.	Amend 45 (1) to read as follows:	The inclusion of specified timelines will ease the application.

#	Clause	Issue of Concern	Recommendation	Justification
	<b>Limits on when Agreements may be signed</b>		An agreement to give effect to a Privatization shall not be signed until the <b>21 day period</b> for filing a objection has lapsed.	
15.	<b>Clause 58 Conflict of Interest</b>	The use of the term Review Board is a typo	Replace Review Board with Appeals Board in Clause 58.	This will enhance clarity.
16.	<b>Clause 68 (d) Offences</b>	There is inconsistency in the penalties	Align the penalties in terms of amount of the fine and imprisonment	It will enhance ease of application.
17.	<b>Clause 38 (3) Valuation Required for each Privatization</b>	The omnibus provision that valuation be done by a qualified person appointed by the authority negates professionalism and may be subject to abuse.	<p>Add a new sub-clause 38 (3) to read:</p> <p>(1) The Authority shall appoint such number of reputable valuers comprising the relevant experts in the sector in which the entity is domiciled to carry out the valuation of the public-entity identified for privatization.</p> <p>(2) The independent valuers envisaged under subsection (1) may include financial experts, Management consultants, legal experts, Tax experts, Actuarial firms, Property valuers, Plant &amp; machinery valuers' plant &amp; equipment valuers properly value the fixed assets, Technical experts or Environmental auditors</p> <p>(3) The valuers shall prepare a comprehensive report containing-</p> <p>(a) historical financial performance as well as future earnings potential</p>	To enhance professionalism, objective valuation, and protection of public interest

#	Clause	Issue of Concern	Recommendation	Justification
			<p>and strategic value of the public entity;</p> <p>(b) any unique assets and liabilities, contractual obligations, or litigation risks should be identified and factored into the valuation;</p> <p>(c) recommended fair market valuation range as well as the underlying methodology, analyses, assumptions and limitations;</p> <p>(d) the reserve price or minimum price for the sale of the enterprise assets or shares.</p> <p>(4) The Authority may recommend restating the valuation exercise if market conditions change materially post-valuation.</p> <p>(5) Any changes to valuation scope or assumptions must be approved by the Authority before revising the valuation conclusions.</p> <p>(6) The details on the valuation process shall be prescribed in Regulations.</p>	
18.	<b>New Clause 10 (4) Powers to Coopt</b>	Absence of powers to coopt by the Board	Amend by inserting 13C to read,  The Board may, by resolution either generally or in a particular case, co-opt	Provision of powers to coopt

#	Clause	Issue of Concern	Recommendation	Justification
			an additional member with relevant expertise for purposes of performance of any of the functions of the Board	
19.	<b>New Provision post-privatization monitoring</b>	Amend the section to make it more comprehensive.	<p>The Institute proposed a post-privatization monitoring as follows:</p> <p>(1) The Authority shall monitor and oversee the performance of privatized public- entities for a period of <b>five years'</b> post-transaction.</p> <p>(2) The Privatized entities shall be required to submit periodic financial statements, operating statistics, compliance reports to the Authority to facilitate monitoring.</p> <p>(3) The Authority may conduct field visits, inspections and audits of privatized entities to verify compliance and performance levels.</p> <p>(4) Any breach of contractual obligations which may include investment commitments, service standards, and staff retention shall be an offence under the Act.</p> <p>(5) The Authority may recommend cancellation of contracts, change of management or divestment or dilution of ownership in circumstances where there is continued breach of terms of the contract.</p>	For ease of reference and interpretation

#	Clause	Issue of Concern	Recommendation	Justification
			<p>(6) The Authority may receive and consider any complaints during the post-privatization period.</p> <p>(7) The Authority shall annually publish consolidated monitoring reports on privatized entities and table them before Parliament.</p> <p>(8) Suitable amendments should be made in relevant regulations to require privatized entities to provide information required by the commission for monitoring.</p> <p>(9) The commission may hire industry experts/consultants to assist with monitoring privatized entities in infrastructure and public service sectors.</p> <p>(10) The Authority may enforce through imposing penalties, cancellation of privatization or re-nationalization as per the provisions in the contract, for any non-compliance.</p>	

### GENERAL RECOMMENDATIONS

- (i) There is need to provide a transitional clause to safeguard for the entity to provide job security. The Government should ensure that there is a framework for retention of staff as a result of privatization processes. Hence the need for a transitional clause in the Bill.
- (ii) The accounting officers of the state-owned enterprises affected by privatization should have roles clearly defined during the signing of the privatization agreement. This will be important as they will be the ones fully in charge of the implementation of the agreement.

