



REPUBLIC OF KENYA

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DRAFT BILL

**INFORMATION AND COMMUNICATIONS TECHNOLOGY AUTHORITY BILL,
2024**

A Legislative Proposal by

The Cabinet Secretary, Ministry of Information communication and Digital Economy

**THE INFORMATION AND COMMUNICATIONS TECHNOLOGY AUTHORITY
BILL, 2024**

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**THE INFORMATION AND COMMUNICATIONS TECHNOLOGY AUTHORITY
BILL, 2024**

A Bill for

AN ACT of Parliament to provide for the establishment of the Information and Communications Technology Authority; to facilitate the implementation, integration and standardization of ICT in the delivery of public services; realization of the digital economy and for connected purposes.

ENACTED by the Parliament of Kenya, as follows—

PART I—PRELIMINARY

Short title. 1) This Act may be cited as the Information and Communications Technology Authority Act, 2024.

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

“Authority” means the Information and Communications Technology Authority established under section 5;

“Board” means the Board of the Authority constituted in accordance with section 7;

“Cabinet Secretary” means the Cabinet Secretary responsible for matters relating to Information and Communication Technology;

“ICT” means Information and Communication Technology;

“Digital infrastructure” includes—

- (a) digital connectivity;
- (b) systems and applications;
- (c) domain and websites;
- (d) ICT networks;
- (e) data centers;
- (f) electronic records and data;
- (g) software
- (h) ICT hardware and firmware; and
- (i) any other related ICT Infrastructure.

“ICT codes” means minimum ICT sector technical and operational standards for ICT infrastructure provided to and by public entities;

“Integrated infrastructure” means a systematic approach where various infrastructure components, such as transportation, building, energy, water, and communication networks, are interconnected and managed cohesively

“passive infrastructure” means the physical components or facilities that provide support for the transmission and distribution of ICT services and includes ducts, poles, towers, antennas, fiber optic cables, equipment cabinets, shelters and any other related components;

“person” means a person as defined in the Interpretation and General Provisions Act;

“public entities” means government ministries, departments, agencies, state corporations, and any other body established by or under any written law which is fully or substantially funded from public funds

Objects of the Act.

3) The objects of this Act are to promote—

- (a) secure, efficient, and effective use operation of Digital Infrastructure;
- (b) standardization of Digital Infrastructure in public entities;
- (c) public service delivery and government operations through the effective utilization of ICT.

Guiding principles.

4) The guiding principles in the implementation of this Act include to—

- (a) promote inclusive access to Digital services in the country;
- (b) enhance cost-effectiveness and efficiency in the provision of Digital Infrastructure;
- (c) foster innovation, research, and entrepreneurship in the ICT sector to drive sustainable development; and
- (d) encourage the integration and interoperability of Digital infrastructure.

PART II—ESTABLISHMENT OF THE AUTHORITY

Establishment
of the
Authority.

5) (1) There is established the Information and Communications Technology 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, or otherwise acquiring, holding, charging, and disposing of movable and immovable property;
- (c) entering contracts;
- (d) generating, investing, borrowing, and lending money; and
- (e) doing or performing all other acts necessary for the proper performance of its functions under this Act.

(3) The Authority shall ensure access to its services in all parts of the Republic in accordance with Article 6(3) of the Constitution.

Functions of the
Authority.

6) (1) The Authority shall—

- (a) design, implement, maintain, and manage public Digital Infrastructure;
- (b) design, roll out and maintain ICT disaster management plan for government;
- (c) enforce ICT codes, policies and guidelines as may be prescribed by the Cabinet Secretary;
- (d) ensure optimal utilization of public Digital Infrastructure;
- (e) collaborate with other relevant entities in promoting investments and growth of the ICT sector;
- (f) collaborate with other relevant public entities in the protection of critical Digital infrastructure;

- (g) collaborate with relevant stakeholders in the development and implementation of programs to enhance skills in ICT and access to digital opportunities and jobs;
- (h) collaborate with relevant public entities and non-state agencies to monitor potential cybersecurity threats and implement cybersecurity measures for public ICT Infrastructure; and
- (i) collaborate with relevant public entities and non-state agencies to establish and strengthen innovation programs in information and communication technology.
- (j) Collaborate with relevant public entities and non- state agencies to encourage the adoption of eco-friendly technologies to minimize environmental impact.
- (k) perform any other functions that may be assigned by the Cabinet Secretary, or as may be required by any other written law.

Board of the
Authority

7) (1) There shall be a Board which shall consist of—

- (a) the chairperson appointed by the President;
- (b) the Principal Secretary for matters relating to ICT or a designated representative;
- (c) the Principal Secretary for the National Treasury or a designated representative;
- (d) the Attorney General or a designated representative;
- (e) five other persons, not being public officers, appointed by the Cabinet Secretary; and
- (f) the Chief Executive Officer who shall be an *ex officio* member.

(2) A person is qualified for appointment as the Chairperson if the person—

- (a) holds at least an undergraduate degree from a university recognized in Kenya;
- (b) has at least ten years' experience in senior management; and

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

(3) A person shall be qualified for appointment as a member of the Board under subsection (1)(e) if the person—

(a) holds at least an undergraduate degree from a university recognized in Kenya;

(b) possesses at least six years' proven experience or special knowledge in matters relating to engineering, ICT, finance, law, or any other relevant field;

(c) has not served in the same entity as an employee in the preceding five years; and

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

(4) A person shall not be qualified for appointment as the chairperson or as a member if they are ineligible for such appointment under any provision of the Constitution or any other written law governing appointments in the public service.

(5) A member of the Board appointed under paragraph (a) and (e) shall hold office for a term of three years and shall, be eligible for reappointment for one further term.

(6) The appointment of the chairperson and members of the Board appointed under paragraph (1)(e) shall be by a notice in the *Gazette*.

(7) A member of the Board shall be paid such allowances as the Salaries and Remuneration Commission may advise.

Vacation of
office

8) (1) A member of the Board shall cease to hold office—

(a) upon the expiry of their term of appointment;

(b) upon resignation;

(c) upon death;

(d) if absent from three consecutive meetings of the Board without the permission of the Chairperson;

- (e) if convicted of an offence and sentenced to imprisonment for a term exceeding six months;
- (f) if adjudged bankrupt; and
- (g) if incapacitated by physical or mental illness and incapable of discharging their duties.

Functions of the Board.

- 9)** The Board of the Authority shall—
- (a) approve and oversee the implementation of policies, programs, projects, plans, and strategies;
 - (b) review, consider and approve the budget of the Authority;
 - (c) monitor performance and ensure prudence in the utilization of resources;
 - (d) determine and approve the terms for the appointment of the staff of the Authority;
 - (e) Enhance the corporate image of the organization;
 - (f) carry out any other oversight function necessary to facilitate the objects of the Authority.

Powers of the Board

- 10) (1)** The Board shall have powers to—
- (a) acquire, administer, or dispose of assets of the Authority;
 - (b) establish a subsidiary company or any other special purpose vehicle for purposes of discharging the functions of the Authority;
 - (c) allocate resources of the Authority;
 - (d) receive on behalf of the Authority, grants, gifts, donations, or other monies, endowments and make legitimate disbursements therefrom;
 - (e) open such bank accounts for the funds of the Authority as may be necessary;
 - (f) determine levies, rates, charges, dues, penalties or fees of any services offered by the Authority; and

(g) invest any of the funds of the Authority not immediately required for its purposes.

Conduct of
business for the
Board.

11 (1) The business and affairs of the Board shall be conducted in accordance with the State Corporations Act.

Cap 446

(2) The Board may regulate its own procedure.

Delegation of
functions and
powers.

12 (1) The Board may by resolution either generally or in any case delegate to any committee of the Board or to any member, officer, employee or agent of the Authority, the exercise of any of its powers or, the performance of any of the functions.

(2) Any function or power delegated under this section shall be performed and exercised in the name and on behalf of the Authority.

Committees of
the Board

13 (1) The Board may, for effective discharge of its functions establish committees.

(2) The Board may co-opt into the membership of a committee established under subsection (1), any person whose knowledge and skills are considered necessary for the effective discharge of the functions of the Authority.

(3) Any person co-opted into a Committee under subsection (2) may attend the meetings of the Committee and participate in its deliberations, but shall not vote at such meeting.

Chief Executive
Officer

14 (1) The Board shall appoint a Chief Executive Officer of the Authority through an open and competitive process.

(2) A person is qualified to be appointed as the Chief Executive Officer, if that person—

(a) holds a postgraduate degree from a recognized university in Engineering, Information and Communications Technology, Finance, Law, Economics, or any other relevant fields;

(b) has served at least ten years at senior management level; and

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

(3) The Chief Executive Officer shall be responsible for—

- (a) the overall management and administration of the Authority;
- (b) implementation of the decisions of the Board;
- (c) implementation of policies, programs, plans, and strategies of the Authority; and
- (d) performing any other duties incidental to the functions of the Authority as may be assigned by the Board.

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

(5) The Board may terminate the appointment of the Chief Executive Officer in accordance with the Employment Act, specified terms and conditions of service of appointment, or any other applicable terms and conditions of service generally prescribed for the public service.

Corporation
secretary.

15 (1) The Board shall, appoint a suitably qualified person to be the corporation secretary.

(2) A person shall be qualified to be appointed as the Corporation Secretary if that person is a certified public secretary and is a member of the relevant professional body.

(3) The corporation secretary shall be the secretary to the Board and perform such other duty as the Board may direct.

(4) The Corporation Secretary shall be responsible to the Chief Executive Officer in the performance of duties under this Act.

Staff of the
Authority

16 The Board shall appoint such staff of the Authority as may be necessary for the efficient discharge of the functions under this Act.

Seal and
execution of
documents

17 (1) The common seal of the Authority shall be kept in the custody of the Corporation Secretary.

(2) The common seal shall not be affixed to any instrument or document except as may be authorized by the Authority.

(3) The affixing of the common seal of the Authority shall be authenticated by the signature of any two directors of the Board or one director and the Corporation Secretary.

PART III—FINANCIAL PROVISIONS

Funds of the
Authority

18) (1) The funds of the Authority shall include—

- (a) such monies as may accrue or vest in the Authority in the performance of its functions;
- (b) such other funds as may lawfully accrue to the Authority; and
- (c) such sums as may be appropriated by Parliament; and
- (d) gifts, grants, or donations made to the Authority.

Financial year

19) The financial year for the Authority shall be a period of twelve months ending on the thirtieth June of each year.

Annual
estimates

20) (1) The Board shall cause to be prepared estimates of the income and expenditure of the Authority for that year.

(2) The annual estimates shall make provisions for all the estimated expenditures and revenues of the Authority for the financial year.

Accounts and
audit

21) (1) The Board shall cause to be kept all proper audit books and records of accounts of the income, expenditure, assets, and liabilities of the Authority.

Cap 412A

(2) The accounts of the Authority shall be audited and reported upon in accordance with the Public Audit Act, 2015 and the Public Finance Management Act, 2012.

Cap 412B

PART IV—GENERAL PROVISIONS

ICT codes

22) The Cabinet Secretary may issue ICT codes, which shall guide public entities in the acquisition, development, deployment, and management of ICT infrastructure.

- Compliance with ICT codes. **23)** (1) All public entities shall adhere to the applicable ICT codes in their operations.
- (2) The Authority shall develop and implement measures to enhance compliance with the ICT Codes including—
- (a) conducting training to improve understanding of the ICT codes;
 - (b) supporting self-assessment for public entities to evaluate their compliance;
 - (c) implementing systems to assess adherence to the ICT Codes;
 - (d) establishing feedback mechanisms to improve compliance;
- (3) The Authority shall publish annual report detailing the level of compliance with the ICT codes.
- Allowance for ICT Infrastructure **24)** (1) A person who constructs any integrated infrastructure shall ensure the provision for allowance of passive infrastructure in accordance with the codes issued by the Cabinet Secretary.
- (2) Despite any other law, the provision for allowance of passive infrastructure within a public infrastructure reserve shall not be subject to any wayleave charges.
- (3) the Authority shall establish and maintain a database for the public ICT infrastructure installations.
- Digital service delivery system **25)** (1)The Cabinet Secretary shall issue policies and guidelines for digital service delivery systems operated by public entities;
- (2)The Authority shall enforce the policies and guidelines issued by the Cabinet Secretary in section 25(1) above;
- (3) In adopting or developing a new digital service delivery system, a public entity shall prepare comprehensive requirements and initial documentation in accordance with the ICT codes, policies and guidelines established under this Act;
- (4)A public entity shall submit the documents under paragraph 25(3) above to the Authority for review;

(5) The Authority shall upon review make necessary recommendations to the Public Entity for adoption.;

(6) In developing a digital service delivery system, a public entity shall utilize Government centralized systems where applicable and appropriate;

(7) Public entities shall maintain and provide the Authority with a database of all ICT resources owned by public entities, ensuring accurate tracking and optimal utilization.

Regulations.

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

Offences and penalties

27) (1) Any person who—

(a) unlawfully removes, destroys, alters, or damages public ICT infrastructure; or

(b) obstructs the Authority in exercise of its functions,

commits an offence and shall be liable on conviction to imprisonment of a term not exceeding five years or a fine not exceeding five million shillings or both.

(2) Where a person is convicted of an offence under subsection (1) (a), the court may in addition to the penalty, order the person to pay to the Authority a sum equal to the cost of repairing any damage so caused.

Transitional and saving.

LN. 183 of 2013

28) (1) In this section, “former Authority” means the Information and Communications Technology Authority established under the State Corporations (The Information and Communications Technology Authority) Order, 2013.

(2) On the commencement date of this Act—

(a) The Chairperson and members of the Board of the former Authority in office, shall continue to be a member of the Board of the Authority as though appointed under this Act and shall serve for the remainder of their term;

(b) the Chief Executive Officer of the former Authority in office, shall continue to serve as the Chief Executive Officer of the

Authority as though appointed under this Act and shall serve the remainder of their term;

- (c) the staff of the former Authority shall transition to be the staff of the Authority on the same terms and conditions of service;
- (d) any recommendations given by the former Authority in performance of its functions shall be taken to have been issued by the Authority under this Act;
- (e) all contracts, rights, duties, obligations, assets, and liabilities of the former Authority shall vest to the Authority;
- (f) all actions, suits or legal proceedings pending by or against the former Authority shall be carried on or prosecuted by or against the Authority; and
- (g) the pension scheme established by the former Authority shall be the pension scheme of the Authority.

Revocation of
L.N 183 of 2013

29) The State Corporations (The Information and Communications Technology Authority) Order, 2013 is revoked.

MEMORANDUM OF OBJECTS AND REASONS

[To be inserted]

Dated....., 2024.

Legislative Proposal by:

*Hon. Musalia Mudavadi, EGH, Prime Cabinet Secretary and A Cabinet Secretary
Ministry of Information Communications and Digital Economy*

*The Cabinet Secretary, Ministry of Information, Communications and The Digital
Economy*