



REPUBLIC OF KENYA

April, 2024

DRAFT BILL

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

A Legislative Proposal by

The Cabinet Secretary, Ministry of ICT and Digital Economy

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

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

- 1—Short title
- 2— Interpretation
- 3—Objects of the Act
- 4—Guiding principles.

PART II—ESTABLISHMENT AND ADMINISTRATION OF THE AUTHORITY

- 5—Establishment of the Authority.
- 6—Functions of the Authority
- 7—Board of the Authority
- 8— Vacation of office
- 9—Functions of the Board
- 10—Powers of the Board
- 11—Conduct of business for the Board
- 12—Delegation of functions and powers
- 13—Committees of the Board
- 14—Chief Executive Officer
- 15—Corporation secretary.
- 16—Staff of the Authority
- 17—Seal and execution of documents

PART III—CONDITION FOR DEPLOYMENT ICT RESOURCES

18—Provision of allowance for ICT Infrastructure and systems.

19— Digital service delivery system.

20— ICT codes

21— Compliance with ICT codes

22—Accreditation of service providers.

23—Accreditation status

24—Suspension of accreditation

25—Revocation of accreditation

PART IV—FINANCIAL PROVISIONS

26—Funds of the Authority

27—Financial year

28—Annual estimates

29—Accounts and audit

30—Investment of surplus funds.

PART V—MISCELLANEOUS PROVISIONS

31—Regulations.

32—Offences and penalties

33—Transitional and saving provisions

34—Revocation of L.N 183 of 2013

**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 promote the provision of secure, efficient and effective information and communication technology resources and services; to facilitate the integration of ICT in the delivery of public services; 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 under section 7;

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

“Chief Executive Officer” means the Chief Executive Officer appointed under section 14;

“entities” include national government entities and county government entities as defined under the Public Finance Management Act, 2012 and includes private entities;

“ICT” means information and communication technology;

“ICT resources” includes—

(a) infrastructure and systems;

- (b) ICT services;
- (c) digital connectivity;
- (d) software;
- (e) domain;
- (f) websites;
- (g) ICT network;
- (h) data centre;
- (i) documents; and
- (j) any other ICT related resource;

“ICT codes” means minimum requirements or specifications for ICT goods and services;

“ICT service provider” means a person who provides ICT resources;

Cap 511 “incubation” has the meaning assigned to it under section 2 of the Science and Technology Innovation Act, 2013;

Cap 511 “innovation” has the meaning assigned to it under section 2 of the Science and Technology Innovation Act, 2013;

Cap 412A “public entities” include national government entities and county government entities as defined under the Public Finance Management Act, 2012;

“regulatory nudges” includes measures undertaken by the Authority to encourage compliance with information and communications technology codes.

Objects of the Act.

3. The object of this Act is to promote—

- (a) the provision of secure, efficient and effective information and communications resources;
- (b) standardization in the provision of ICT resources; and
- (c) the integration of ICT in the delivery services.

Guiding principles.

4. In the performance of its functions or the exercise of the powers conferred by this Act, the Authority shall be guided by the principles to

- (a) promote inclusive access to information and communications technology services;
- (b) promote cost-effectiveness and efficiency in the provision of information and communications technology resources;
- (c) foster innovation, research, and entrepreneurship in the ICT sector; and
- (d) promote integration in the use of ICT infrastructure, services and systems by provision of flexible, adaptable and interoperable codes and protocols.

PART II—ESTABLISHMENT AND ADMINISTRATION OF THE AUTHORITY

Establishment of the Authority.

5. (1) There is established the Information and Communications Technology Authority.

(2) The Authority is 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 into contracts;
- (d) generating, investing, borrowing and lending money; and
- (e) doing or performing all other things or acts necessary for the proper performance of its functions under this Act, this may lawfully be done or performed by a body corporate.

Functions of
the Authority

6. (1) The Authority shall—

- (a) design, implement and manage national information and communications technology infrastructure;
- (b) formulate and enforce and national ICT codes of practice and standards;
- (c) commercialization of National ICT Infrastructure;
- (d) provide consultancy services in matters relating to ICT services and resources;
- (e) implement security measures for national ICT infrastructure;
- (f) collaborate with relevant public entities and non-state agencies to—
 - (i) enforce cybersecurity measures; and
 - (ii) proactively monitor potential cybersecurity threats.

- (g) promote digital literacy and ICT skill development;
- (h) promote adoption of emerging technologies;
- (i) accredit ICT service providers; and
- (j) perform any other functions that may be assigned by the Cabinet Secretary, or as may be prescribed 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 appointed in writing;
- (c) the Principal Secretary for the National Treasury or a designated representative appointed in writing;
- (d) the Attorney general or a representative appointed in writing;
- (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 fifteen years' experience in leadership and 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 ten years' experience in engineering, information communication and technology, social sciences finance or law or any other relevant field; and

(c) 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 the person—

(a) is an undischarged bankrupt;

(b) has been convicted of a criminal offence and sentenced to at least six months imprisonment; or

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

(5) In appointing the members under paragraph (1) (e), the Cabinet Secretary shall be guided by the national values and principles of governance under Article 10 and 232 of the Constitution.

(6) The appointment under paragraph 1(a) and (e) shall be based on merit, industry experience, special knowledge, profession or skill which shall be of benefit to the Authority.

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

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

(9) A member of the Board shall be paid such allowances as the Cabinet Secretary may in consultation with the Salaries and Remuneration Commission determine.

(10) The members of the Board shall be appointed in a manner to ensure at different dates so that the respective expiry dates of their terms of office shall fall on different dates.

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) if absent without the permission of the Chairperson from three consecutive meetings of the Board;
- (d) upon death;
- (e) if convicted of an offence and sentenced to imprisonment for a term exceeding six months;
- (f) if adjudged bankrupt; and
- (g) if is incapacitated by prolonged physical or mental illness and incapable of discharging their duties.

(2) Where a vacancy occurs in the membership of the Board under subparagraph (1), the appointing authority shall appoint a new member in accordance with the provisions of this Act.

(3) An appointment to fill a vacancy shall be for the remainder of the term of the member being replaced and the new member shall be eligible for reappointment for one further term.

Functions of
the Board

9. The Board shall—

- (a) approve and oversee the implementation of projects, programs, strategies and policies of the Authority;
- (b) ensure that the Authority complies with all the relevant laws, regulations, governance practices, accounting procedures and auditing standards;
- (c) consider and approve the budget of the Authority;
- (d) monitor performance and ensure effective and efficient utilization of the resources of the Authority;
- (e) approve the appointment criteria and the terms and conditions of service for staff
- (f) carry out any other function for purposes of promoting and facilitating the objects of the Authority.

Powers of the
Board

10. (1) The Board shall have all powers necessary for the proper performance of the functions of the Authority under this Act, in particular, the Board shall have powers to—

- (a) acquire, manage, control administer or dispose assets of the Authority in a manner and for the purposes which shall promote the interests of the Authority;
- (b) establish a subsidiary company, a joint venture or any other special purpose vehicle for purposes of discharging the mandate of the Authority;

- (c) allocate resources for capital and recurrent expenditure and for the reserves of the Authority;
- (d) receive, on behalf of the Authority, grants, gifts, donations, or other moneys endowments and make legitimate disbursements therefrom in accordance with the law;
- (e) enter into association with such other bodies or organizations within or outside Kenya as it may consider desirable or appropriate and in furtherance of the purposes for which the Authority is established;
- (f) open such bank accounts for the funds of the Authority as may be necessary;
- (g) charge fees and levies; and
- (h) 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 section 8 of the State Corporation Act.

Cap 446

(2) The Board may regulate its own procedure.

Delegation of
functions and
powers.

12. (1) The Board may, in writing, delegate the exercise of any of the powers or the performance of any of the functions of the Board under this Act.

(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, by resolution either generally or in any particular case, delegate to a committee of the Board exercise of any of the powers or the performance of any of the functions or duties of the Board under this Act.

(3) 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.

(4) Any person co-opted into a Committee under subsection (3) 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, through an open and competitive process, appoint a suitably qualified person to be the Chief Executive Officer of the Authority.

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

(a) holds a postgraduate degree from a university recognized in Kenya in engineering and information communications technology;

(b) has at least fifteen years working experience, five of which must be at a senior managerial level; and

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

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

(a) the day-to-day management of the Authority;

(b) implementation of the decisions of the Board;

(c) managing the funds, property and affairs of the Authority;

(d) the supervision of the staff of the Authority;

- (e) preparation of strategies, policies and programs, for the consideration of the Board;
- (f) implementation of the strategies, programs and policies, of the Authority; and
- (g) performing any other function 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 four 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 terms and conditions of service for—

- (a) inability to perform the functions of the office arising out of physical or mental incapacity;
- (b) gross misconduct;
- (c) negligence of duty; or
- (d) any other ground that may justify the removal from office under the terms and conditions of service.

Corporation secretary. **15.** (1) The Board shall, through an open and transparent process appoint a suitably qualified person to be the corporation secretary.

(2) A person shall be qualified to be appointed as the Corporation Secretary of that person;

(a) holds at least a masters degree in law from a recognized university;

(b) is a certified secretary and is a member of the relevant professional body.

(3) The corporation secretary shall—

- (a) be the secretary to the Board;
- (b) record and keep minutes and other records of the Board; and
- (c) perform such other duty as the Board may direct.

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

Staff of the Authority

16. The Board shall appoint such staff of the Authority as may be necessary for 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 or a director and the corporation secretary

PART III—CONDITION FOR DEPLOYMENT OF ICT RESOURCES

Provision of allowance for ICT Infrastructure and systems.

18. (1) A person who constructs infrastructure requiring ICT installation shall—

- (a) ensure an allowance for ICT infrastructure is incorporated in the project design in accordance with the ICT codes and or conditions issued by the Authority; and
- (b) share with the Authority all the plans and designs for the allowance of the ICT infrastructure for review and approval.

(2) an entity that constructs or installs any ICT Infrastructure shall share with the Authority all the plans and designs for review and approval;

(3) Notwithstanding the provision of any other law, the installation of public ICT infrastructure alongside public infrastructure reserve shall not be levied any charges by any authority.

(3) The Authority shall establish and maintain a national ICT infrastructure register.

ICT codes

19. (1) The Authority shall develop ICT codes, which shall—

- (a) serve as a benchmark for ICT practices;
- (b) outline the minimum technical and operational standards to be adhered to;
- (c) foster consistency and efficiency across ICT systems; and
- (d) provide standards for securing and protecting data and ICT systems.

Compliance with ICT codes.

20. (1) All entities shall adhere to the applicable ICT codes in their operations.

(2) The Authority shall develop and implement regulatory nudges aimed at encouraging compliance with the ICT Codes, which may include—

- (a) providing sensitization and training to enhance understanding of the ICT codes;
- (b) supporting self-assessment processes to allow entities to evaluate their level of compliance;
- (c) implementing a relevant system to assess adherence to the ICT Codes; and

- (d) employing positive reinforcement and establishing feedback mechanisms to continuously improve compliance.

(3) The Authority shall publish an annual report detailing the level of compliance with the ICT codes.

Accreditation
of service
providers

21. (1) A person who intends to provide ICT services shall apply to the Authority for accreditation in a prescribed manner and upon payment of the required fee.

(2) The Authority may assign categories of accreditation as the Authority may determine.

(3) An applicant shall—

(a) be a holder of the minimum technical qualifications and skills prescribed by the Authority for the class of contract works in respect of which registration is sought;

(b) have the necessary experience prescribed by the Authority in works involving the category of service applied;

(c) have the necessary ICT resources for the category of works for which the accreditation is sought.

(4) The Authority shall process the application submitted within thirty days from the date of receipt of the application.

(5) Where the Authority approves the application, the Authority shall accredit the applicant.

(6) Where the Authority rejects the application, the Authority shall inform the applicant of such rejection and provide reasons.

(7) An accreditation granted under this section shall be renewed annually.

(8) The Authority shall establish, maintain and publish a register of accredited service providers.

Accreditation status **22.** (1) An accredited ICT service provider shall comply with the conditions of the accreditation or other requirements as may be prescribed by the Authority.

(2) The service provider shall inform the Authority of any changes that may affect its accreditation status.

Suspension of Accreditation **23.** (1) The Authority may suspend a certificate, for such a period as the Authority may specify, if an ICT service provider—

- (a) has contravened any of the conditions of accreditation;
- (b) has conducted business in a manner that is detrimental to the interest of a public entity;
- (c) fails to comply with a written direction of the Authority; or
- (d) fails to comply with the provisions of this Act.

Revocation of accreditation. **24.** (1) The Authority may revoke a certificate of an ICT service provider, where the service provider —

- (a) ceases to carry on the business with respect to which the certificate was issued;
- (b) is wound up, liquidated or otherwise dissolved;
- (c) at the end of suspension period, the service provided has not complied with any directive offered; and
- (d) requests the Authority in writing to revoke the certificate.

(2) A person aggrieved by the decision of the Authority to suspend or revoke the application may seek a review of the decision to the Board of the Authority.

(3) A person not satisfied with the decision of the Board of Authority may within thirty days of that decision appeal to the High Court.

PART IV—FINANCIAL PROVISIONS

Funds of the Authority

25. (1) The funds of the Authority shall include—

- (a) such monies as may accrue or vest in the Authority in the course of the exercise of its powers or the performance of its functions under this Act or any other written law;
- (b) such sums as may be payable to the Authority pursuant to this Act or any other written law;
- (c) such other funds as may lawfully accrue to the Authority.
- (d) such sums as may be appropriated by Parliament for the purposes of the Authority; and
- (e) gifts, grants or donations made to the Authority.

Financial year

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

Annual estimates

27. (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 expenditure of the Authority for the financial year concerned, and in particular shall provide for estimated revenue and expenditure of the Authority for the relevant financial year.

Accounts and audit

28. (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

Investment of surplus funds. **29.** The Board may invest any of the monies of the Authority which are not immediately required for its purposes in such manner as the National Treasury may, from time to time, direct.

PART V—GENERAL PROVISIONS

Regulations. **30.** (1) The Cabinet Secretary may make such regulations as may be necessary to give effect to this Act, and prescribe anything required to be prescribed.

(2) Without prejudice to the generality of subsection (1), regulations may provide for—

- (a) accreditation of the public sector ICT providers; and
- (b) levying of fees, costs, levies and any other charges.

Offences and penalties **31.** (1) Any person who—

- (a) knowingly provides false information to the Authority in making an application for accreditation;
- (b) obstruct the Authority in exercise of its functions; or
- (c) unlawfully removes, destroys, alters or damages any data or electronic record or ICT infrastructure, systems or equipment;
- (d) provides ICT services without prerequisite accreditation,

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

(2) Where a person is convicted of an offence under subsection (1) (c), 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

32. (1) In this section “former Authority” means the Information Communication and Technology Authority established under section 5 of L.N 183 of 2013.

(2) The Authority shall be the successor to the former Authority.

(3) On the Commencement date of this Act—

- (a) all contracts, rights, duties, obligations, assets and liabilities of the former Authority shall vest to the Authority;
- (b) any certificate, permit or any approval given by the former authority in exercise of its functions shall be taken to have been issued by the Authority under this Act;
- (c) all actions, suits or legal proceedings pending by or against the former Authority shall be carried on or prosecuted by or against the Authority;
- (d) a member of the Board of the former Authority in office on the Commencement date shall continue to be a member of the Board of the Authority as though appointed under this Act and shall serve the remainder of their term;
- (e) the Chief Executive Officer of the former Authority in office on the Commencement date shall continue to serve as the Chief Executive Officer of the Authority as though appointed in accordance with this Act and shall serve the remainder of their term;

- (f) the staff of the former Authority shall transition to be the staff of the Authority on the same terms and conditions of service; 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 **33.** The State corporations (The Information and Communications Technology Authority) Order, 2013 is revoked.

MEMORANDUM OF OBJECTS AND REASONS

Introduction and Context

The swift progression of information and communication technology (ICT) has reshaped the delivery mechanism of public services. To tap into the potential of ICT and confirm its effective application in the public sector, it becomes essential to form a dedicated authority to supervise the initiation, administration, and integration of ICT infrastructure and systems. The Information and Communication Technology Authority Bill, 2024 proposes to establish such an authority, by upgrading the ICT Authority already established under an order into a statutory entity, to ensure it is designated to cultivate secure, efficient, and high-performing ICT services.

Purpose of the Bill

The principal aim of this Bill is to facilitate the provision of secure, proficient, and high-performing ICT services. The Bill intends to simplify the incorporation of ICT in the process of public service delivery, thereby improving accessibility, efficiency, and inclusivity. It also intends to bolster innovation, research, and entrepreneurship within the ICT sector, propelling technological progress and economic expansion. Additionally,

the Bill promotes the application of flexible, adaptable, universal, interoperable standards and protocols for integration across varied technologies. One of the ways to actualize these ideals, is to appropriately set up already existing ICT Authority into a dedicated statutory authority with an overarching role of facilitating deepening of the provision of public sector ICT infrastructure and services.

Establishment and Operation of the ICT Authority

The Bill establishes the ICT Authority as a perpetual corporate entity with a common seal. The Authority is mandated to ensure the availability of its services in all regions of the Republic. The responsibilities of the Authority will include designing, implementing, and managing ICT infrastructure, developing and enforcing best practices and standards, formulating and executing strategies to guarantee nationwide digital connectivity, facilitating the application of emerging technologies, accrediting ICT service providers, and performing any other responsibilities assigned by the Cabinet Secretary or prescribed by law.

Public Sector ICT Services

The Bill underscores the importance of setting ICT infrastructure standards. The Cabinet Secretary, in collaboration with the Authority, will establish these standards through notification in the gazette. All public entities will be obliged to conform to these standards in their operations, procurement, and utilization of ICT resources.

The Authority will also develop ICT codes that will serve as references for ICT practices in the Country. These codes will set out minimum standards, encourage consistency and interoperability, and offer guidelines for securing data and ICT systems. Public and private entities will be mandated to comply with these codes, and the Authority will

develop regulatory measures to encourage adherence. The Bill further addresses the allocation of ICT infrastructure allowance in public infrastructure projects, the creation of digital public service delivery systems, and the accreditation of ICT service providers. It also mandates the establishment of a register of accredited service providers.

Other Provisions

The funds of the Authority will comprise monies accruing or vesting in the Authority, other lawful funds, sums allocated by Parliament, and gifts, grants, or donations. The financial year of the Authority will run from July to June, and annual estimates of income and expenditure will be prepared. The accounts of the Authority will be audited in accordance with pertinent laws.

The Cabinet Secretary will have the authority to enact regulations for the improved execution of the Bill. These regulations may include matters such as the establishment of special purpose entities, determination and payment of fees and charges, and any other necessary provisions. The Bill also encompasses provisions for offenses and penalties, transitional and saving provisions, and the annulment of a previous order.

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

The Bill delegates legislative powers to the to the Cabinet Secretary responsible for matters relating to information and communications technology to make regulations to operationalize the provisions of the Bill upon enactment. The Bill does not contain any provisions limiting any fundamental rights or freedoms.

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

The Bill is a Money Bill in terms of Article 114 of the Constitution. The enactment of this Bill will occasion additional expenditure of public funds as it seeks the appropriation of monies by the Parliament towards the funds of the Authority.

Statement as to whether the Bill concerns a County Government

This is not a Bill concerning the County Governments within the meaning of Article 110 and of the Fourth Schedule of the Constitution.

Dated....., 2024.

*Legislative Proposal by
Eliud Owalo*

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