

DRAFT KENYA SOVEREIGN WEALTH FUND BILL, 2019

ARRANGEMENT OF CLAUSES

Clause

PART I—PRELIMINARY

- 1—Short title and commencement.
- 2—Interpretation.
- 3—Guiding Principles and Values of the Act.

PART II—ESTABLISHMENT OF THE SOVEREIGN WEALTH FUND

- 4—Establishment of the Fund.
- 5—Object and purpose of the Fund.
- 6—Sources of funds to the Fund.
- 7—The Holding Account.
- 8—Transfers from the Holding Account.

The Stabilisation Component

- 9—Objects and purpose of the Stabilisation Component.
- 10—Sources of funds to the Stabilisation Component.
- 11— Withdrawal from the Stabilisation Component.

The Infrastructure Development Component

- 12— Object and Purpose of the Infrastructure Development Component.
- 13— Sources of funds to the Infrastructure Development Component.
- 14—Withdrawal from the Infrastructure Development Component.

The Urithi Component

- 15—Object and purpose of the *Urithi* Component.
- 16—Sources of funds to *Urithi* Component.
- 17—Transfers from *Urithi* Component.

Depletion of Mineral and Petroleum Resources

- 18—Depletion of resources.

PART III- FISCAL RESPONSIBILITY PRINCIPLES OF THE FUND

- 19—Application of the Public Finance Management Act.
- 20—Enforcement of fiscal responsibility principles.
- 21—The Administrator of the Fund and financial reporting.
- 22—Preparation of estimates and Budget.
- 23—Management of cash.
- 24—National Government Budget Process and the Fund.

PART IV- THE MANAGEMENT OF THE FUND

- 25—Establishment of the Kenya Sovereign Wealth Fund Board.
- 26—Headquarters of the Board.
- 27—Powers and Functions of the Board.
- 28—Composition of the Board.
- 29—Qualifications of Board Members.
- 30—Terms of office.
- 31—Remuneration of the Board.
- 32—Meetings of the Board.
- 33—Committees of the Board.
- 34—Resignation, removal and vacancy in office.
- 35—Appointment and responsibilities of the Chief Executive Officer.
- 36—Vacation of office of the Chief Executive Officer.
- 37—Staff of the Board.
- 38—Code of conduct.
- 39—Protection from personal liability.
- 40—Confidentiality.
- 41—Common seal.

PART V—INVESTMENT OF THE FUND

Qualifying instruments

- 42—*Urithi* Component.
- 43—Stabilisation Component.
- 44—Infrastructure Development Component.
- 45—Prohibition of advances, credits and collateralization of the components of the Fund.

Investment Principles and Rules

- 46— Risk Management Principles.
- 47—Investment Rules.

PART VI- INVESTMENT FUND MANAGERS

- 48—Appointment of Investment Fund Managers.
- 49—Functions of Investment Fund Managers.

PART VII- APPOINTMENT OF THE CENTRAL BANK OF KENYA TO MANAGE THE FUND

- 50—Appointment of the Central Bank of Kenya to manage the Fund.

PART VIII-ACCOUNTABILITY FOR THE FUND MANAGEMENT

- 51—Annual Financial statements.
- 52—Audit of the Fund.
- 53—Annual performance report of the Fund.

PART IX—MISCELLANEOUS PROVISIONS

- 54— Offences for misappropriation of funds.
- 55— General penalty.
- 56—Preservation of the reserves of the Fund.
- 57—Act to prevail.
- 58—Regulations.
- 59—Consequential Amendments.

SCHEDULES

- First Schedule Conduct of the Business and Affairs of the Board.
- Second Schedule Qualifying Instruments.
- Third Schedule Guidelines to Service Level Agreements for an Investment Fund Manager.
- Fourth Schedule Consequential Amendments

DRAFT KENYA SOVEREIGN WEALTH FUND BILL, 2019

A BILL for an Act of Parliament to establish the Kenya Sovereign Wealth Fund, to provide institutional arrangements for effective administration and efficient management of minerals and petroleum revenues, and for connected purposes and incidentals thereto.

ENACTED by the Parliament of Kenya as follows—

PART I – PRELIMINARY

Short title and commencement **1.** This Act may be cited as the Kenya Sovereign Wealth Fund Act, 2019 and shall come into force on such date as the Cabinet Secretary may, by notice in the Gazette, appoint and the Cabinet Secretary may appoint different dates for coming into force of different provisions of this Act.

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

No. 18 of 2012 “Accounting Standards Board” means the Public Sector Accounting Standards Board established under section 192 of the Public Finance Management Act, 2012;

No. of 2012. “Appropriation Act” has the same meaning assigned to it by the Public Finance Management Act;

“Chief Executive Officer” means the Chief Executive Officer of the Fund appointed under section 35;

“Board” means the Kenya Sovereign Wealth Fund Board appointed under section 25;

“Cabinet Secretary” means the Cabinet Secretary for the time being responsible for matters relating to finance;

Cap. 491. “Central Bank of Kenya” means the Central Bank of Kenya established by the Central Bank of Kenya Act;

“Consolidated Fund” has the same meaning assigned to it under Article 206 of the Constitution of Kenya;

Cap. “cost petroleum” means the cost of exploration, development and production which are recoverable by the contractor under the Petroleum Act;

“eminent person” means a person who is well- known, distinguished and respected especially due to that person’s contribution towards a profession or impact on the society;

“exogenous shocks” means events beyond the control of the national government, which have significant negative impact on the economy including terms-of-trade shocks, natural disasters, shocks to demand for exports, or conflict or crisis in neighbouring countries that has adverse effects on balance of payments;

“financial instruments” means contracts that give rise to financial assets of one entity and a financial liability or equity instrument of another entity;

“Financial year” means the period of twelve months starting on first July and ending on thirtieth June;

“Fund” means Kenya Sovereign Wealth Fund established under section 4 of this Act;

“Holding Account” means a bank account for receiving and holding revenues from minerals and petroleum before they are transferred to the components of the Fund;

Cap. 2 “Government” has the meaning assigned to it in the Interpretations and General Provisions Act;

“indirect participation interest” means the percentage interest share of the whole of the undivided interest in the participation area, provided that such share shall only over burden contractor's participation interest in and contractor's share from participation interest, whatever that may be from time to time, and the contractor shall not transfer or assign government's interest to any other party;

“Investment Policy” means a public statement on the principles that will apply to the desired risk profile, the allocation and list of assets, portfolios and benchmarks and other issues related with the general investment policy;

No. 12 of 2016 “medium and large scale mining operations" has the same meaning assigned to it under the Mining Act;

No. 12 of 2016 “mineral” has the meaning assigned to it under the Mining Act;

No. of 2016 “participation area” means the area within the licence area in which the government is entitled to indirect participation interest, including the full extent required to exploit fully all commercially recoverable petroleum in any and all blocks drilled pursuant to relevant exploration agreements, as defined in the Petroleum Act;

Cap. 308 “Petroleum” has the meaning assigned to it under the Petroleum (Exploration and Production) Act;

“Profit petroleum” means the predetermined allocation of petroleum production after ‘cost petroleum’, split between the contractor and the government;

Cap. 308 “Production sharing contract” has the meaning assigned to it under the Petroleum (Exploration and Production) Act;

No 18 of 2012 “publicise” has the meaning assigned to it in the Public Finance Management Act;

No. 18 of 2012 “publish” has the meaning assigned to it in the Public Finance

Management Act;

“qualifying instruments” means instruments as specified in the Third Schedule to this Act;

“resource revenue” means the government’s revenue as specified in section 6;

“significant depletion” means a ninety percent reduction in—

- (a) annual resource revenue below the highest recorded annual receipt of monies into the Holding Account; or
- (b) mineral and petroleum deposits:

provided that:—

- (i) the reduction in the resource revenue shall have been persistent for two years; and
- (ii) the reduction in mineral and petroleum deposits shall be based on a geological report prepared by a geologist registered in accordance with the Geologists Registration Act;

No. 10 of 1993

No. 18 of 2012

Guiding Values
and Principles
of the Act.

“the National Treasury” has the same meaning as assigned to it under section 2 of the Public Finance Management Act.

3. (1) A public officer and any person to whom this Act applies shall be guided by principles and values as provided for in the Constitution and any other Act of Parliament in discharging the functions under this Act.

(2) Despite the generality of subsection (1), a public officer or any person to whom this Act applies, shall, in particular, be guided by the following values and principles as provided for in the Constitution—

- (a) the national values and principles provided for under Article 10;
- (b) the equality and freedom from discrimination provided for under Article 27;
- (c) the responsibilities of leadership provided for under Article 73;
- (d) the principles governing the conduct of State officers and public officers under Article 75;
- (e) the principles of public finance under Article 201; and
- (f) the values and principles of Public Service as provided for under Article 232.

PART II—ESTABLISHMENT OF KENYA SOVEREIGN WEALTH FUND

Establishment of the Fund.

4. (1) There is hereby established a public fund known as the Kenya Sovereign Wealth Fund.

(2) The legal ownership of the Fund is vested in the National Treasury in trust for the citizens of Kenya.

(3) The Fund shall be managed and invested for the benefit of the current and future generations of citizens of Kenya.

(4) Subject to this Act, the Board shall have the legal custody of, and the management responsibility of the Fund.

(5) The Fund shall comprise of three distinct components namely—

- (a) the Stabilization Component;
- (b) the Infrastructure Development Component; and
- (c) the *Urithi* Component.

Objectives and purpose of the Fund.

5. The purpose of the Fund shall be to —

- (a) insulate expenditure under the budget estimates of the national government from fluctuations in resource revenues;
- (b) provide finance for infrastructure development priorities to foster strong and inclusive growth and development; and
- (c) build a savings base for future generations when minerals and petroleum resources are exhausted.

Sources of funds to the Fund.

6. The Fund shall consist of funds from all resource revenues including—

- (a) government's share of profit derived from upstream petroleum operations excluding share of profit payable under section 58(2) and (3) of the Petroleum Bill;
- (b) all petroleum royalties payable to the government;
- (c) all mining royalties payable to the national government under section 183(5)(a) of the Mining Act;
- (d) bonus payments on grants or assignment of

No. 12 of 2016.

petroleum license or when production or prices of petroleum operations reaches a specific level;

- (e) annual license fee from upstream petroleum and mining operations;
- (f) payment on grants or assignment of a mining license or rights;
- (g) earnings from direct or indirect participation interest of the government in minerals and petroleum operations; and
- (h) any other minerals and petroleum revenue or monies from other sources as may be determined by the Cabinet Secretary through a notice in the Gazette.

The Holding Account.

7. (1) There shall be a bank account for the Fund to be known as “The Holding Account.”

(2) The Holding Account shall—

- (a) be used for receiving, holding and disbursing all the proceeds to the Fund;
- (b) be maintained at the Central Bank of Kenya; and
- (c) maintain the monies in Kenya Shillings or any other foreign currency as the Cabinet Secretary may determine.

Transfers from the Holding Account.

8. (1) Any deposits into the Holding Account shall be transferred into the components of the Fund in the following proportions

- (a) at least fifteen percent to the Stabilisation Component;
- (b) at least sixty percent to the Infrastructure Development Component; and
- (c) at least ten percent to the *Urithi* Component.

(2) The transfer of deposits under subsection (1) shall be within ten days from the date of receipt.

(3) Notwithstanding subsection (1)—

- (a) transfers to the Stabilisation component shall cease when the component grows to twenty percent of the GDP and the share —
 - (i) shall be utilized to service national debt; or
 - (ii) with the approval of Parliament, may be distributed by the Cabinet Secretary

to the Infrastructure development component or the *Urithi* Component;

(b) Where there is a windfall in resource revenues, the windfall shall be utilized in order of priority as follows—

- (i) accelerated debt servicing to reduce national debt;
- (ii) subject to subsection (3)(a), be transferred to the Stabilization Component;
- (iii) transferred to the Infrastructure Development component to provide basic services including, but not limited to education and health care; or
- (iv) transferred directly to the citizens through tax cuts.

(4) Parliament may, in consultation with the Cabinet Secretary, review, annually, the proportions under subsection (1).

(5) In making a review under subsection (4), Parliament shall take into account—

- (a) the need to maintain macro-economic stability and the competitiveness of the non-resource sector;
- (b) investment in priority projects; and
- (c) the need to provide savings for future generations.

(6) The Cabinet Secretary shall, in preparing the national budget that incorporates monies from the Fund, ensure that the national government's non-resource primary balance over the medium-term does not exceed the threshold, as may be set in the Public Finance Management (National Government) Regulations.

The Stabilisation Component

Object and Purpose of the Stabilisation Component.

9. The object and purpose of the Stabilisation Component shall be—

- (a) to insulate expenditures under the budget estimates of the national government from fluctuations in resource revenues; and

- (b) for management of shocks which may affect macro-economic stability not covered under subparagraph (a) as may be approved by Parliament.

Sources of funds for the Stabilisation Component.

- 10.** The sources of funds for the Stabilisation Component shall be—
- (a) transfers received from the Holding Account; and
 - (b) investment income earned on the Stabilisation Component.

Withdrawal from the Stabilisation Component.

11. (1) Where there is a situation that requires money to be withdrawn from the Stabilisation Component, the Cabinet Secretary shall write to the Board outlining the amount required and the justification for the withdrawal.

(2) The Board shall, upon the receipt of a request under subsection (1), write to the Central Bank of Kenya authorizing it to transfer the funds from the Stabilisation Component to the Consolidated Fund.

(3) Any withdrawal under subsection (1) shall not exceed—

- (a) the limit approved by Parliament in the budget estimates; and
- (b) the limit approved by Parliament under section 9(b):

Provided that the Contingencies Fund budgetary provision has been exhausted.

(4) Any balances standing to the credit after withdrawal from the Stabilisation Component may be invested in qualifying instruments in accordance with this Act.

(5) Any investments under subsection (4) shall be done in a manner that is not prejudicial to the objectives of the Fund.

(6) Any withdrawal under subsection (2) shall require written instructions by the Board to the Central Bank of Kenya to transfer the funds from the Stabilisation Component for the purposes of investment and macroeconomic stabilisation.

The Infrastructure Development Component

Object and purpose of Infrastructure Development Component.

12. (1) The object and purpose of the Infrastructure Development Component is to provide funding for public sector infrastructure development priorities that are aligned to the national or county development plan to foster a stronger and more inclusive growth and development.

(2) Infrastructure Development priorities referred to under subsection

(1) may include, but are not limited to, investments in agriculture, transport, housing, energy, water, education and health.

Sources of funds to the Infrastructure Development Component.

13. The sources of funds for the Infrastructure Development Component shall be —

- (a) transfers received from the Holding Account; and
- (b) investment income earned on the Infrastructure Development Component.

Withdrawal from the infrastructure Component.

14. (1) All withdrawals from the Infrastructure Development Component shall—

- (a) only be made on the balance outstanding to the credit as at the beginning of the financial year or most recent outstanding credit balance in the case of a Supplementary Budget;
- (b) be used to finance infrastructure development priorities as provided in the Appropriation Act.

(2) After approval of the budget by the National Assembly, the Cabinet Secretary shall write to the Board stating the amount required to be withdrawn and the timing of the withdrawal.

(3) The Board shall, upon the receipt of request under subsection (2), write to the Central Bank of Kenya authorizing it to transfer the funds from the Infrastructure Development Component to the Consolidated Fund.

(4) Any outstanding balances after withdrawal for financing the infrastructure development priorities under section 12 may be invested in qualifying instruments in accordance with this Act.

(5) Any withdrawal under subsection (3) shall require written instructions from the Board to the Central Bank of Kenya to transfer the funds from the Infrastructure Development Component for the purposes of funding public sector infrastructure development priorities.

The Urithi Component

Object and purpose of the Urithi Component.

15. The object and purpose of the *Urithi* Component is to build a savings base for future generations by—

- (a) providing an endowment to support development for future generations, when the revenues from minerals and petroleum are depleted;
- (b) generating an alternative stream of income to support expenditure on capital projects as a result of revenue downturn caused by depletion of minerals and petroleum; and
- (c) distributing wealth across generations.

Sources of funds for the *Urithi* Component

16. The sources of funds for the *Urithi* Component shall be from—

- (a) transfers received from the Holding Account; and
- (b) investment income earned on the *Urithi* Component.

Transfers from *Urithi* Component.

17. (1) Transfers from the *Urithi* Component shall be invested in accordance with the provisions of Part V of this Act.

(2) Any transfer from the *Urithi* Component shall require a minuted Board resolution and written instructions from the Board to the Central Bank of Kenya authorizing it to transfer funds from the *Urithi* Component for investment purposes.

(3) Any transfer from the *Urithi* Component shall not exceed the limit approved by the Board in its resolution.

Depletion of Mineral and Petroleum Resources

Depletion of resources.

18. (1) In the event of a significant depletion of large and medium-size mineral operations and petroleum resources—

- (a) the cash balances held in the Stabilisation Component, the Infrastructure Development Component and the *Urithi* Component shall be consolidated into one single account of the Kenya Sovereign Wealth Fund to be held at the Central Bank of Kenya after which the different components of the Fund shall cease to exist; and
- (b) all the net assets of the three components shall become assets of the Fund.

(2) After the minerals and petroleum reserves are depleted, the withdrawals from the Fund shall not exceed the sum of earnings from assets and dividends.

(3) The withdrawals under subsection (2) shall be used to finance infrastructure development priorities as approved by Parliament in the budget estimates.

PART III- FISCAL RESPONSIBILITY PRINCIPLES OF THE FUND

Application of the Public Finance Management Act.

19. The Public Finance Management Act shall apply to the administration and management of the Fund in accordance with this Part.

Enforcement of Fiscal responsibility Principles.
No 18 of 2012

20. The withdrawal from the Stabilisation and Infrastructure Development components of the Fund shall be made in accordance with the fiscal responsibility principles provided in this Act and taking into account section 15(2) of the Public Finance Management Act.

Administrator of the Fund and

21. (1) For the purposes of section 24(5) of the Public Finance

financial reporting.

Management Act, the Chief Executive Officer shall be the administrator of the Fund.

(2) The administrator shall –

No. 18 of 2012

(a) prepare quarterly financial statements of the Fund in accordance with section 85 of the Public Finance Management Act; and

No. 18 of 2012

(b) prepare and submit to the Auditor-General for audit, annual financial statements of the Fund in accordance with the Public Finance Management Act.

(3) Despite subsection (1), the Cabinet Secretary may, in the absence of the Chief Executive Officer or on any other reasons, designate any other person to be the administrator of the Fund.

Preparation of estimates and Budget.

No. 18 of 2012

22. (1) The Budget Policy Statement referred to under section 25(1) of the Public Finance Management Act shall include, in addition to the contents mentioned in section 25(4) of that Act, –

(a) forecasts of resource revenue over the medium-term and assumptions thereof;

(b) ceilings on annual withdrawal from the Stabilisation and Infrastructure Development components of the Fund over the medium term;

(c) a description of how the ceilings under paragraph (b) adheres to the fiscal responsibility principles and financial objectives specified with this Act and the Public Finance Management Act; and

No. 18 of 2012

No. 18 of 2012

(2) The Budget Review and Outlook Paper mentioned under section 26(1) of the Public Finance Management Act shall include, in addition to the contents mentioned in the said section of that Act, –

(a) the actual amount of resource revenues during the present financial year, in comparison with the amount entered into the budget estimates;

(b) the actual amount of withdrawal from the Stabilisation and Infrastructure Development components of the Fund during the present financial year, in comparison with the budget estimates; and

(c) updated forecasts of resource revenues and explanation of changes from the forecasts in

the most recent Budget Policy Statement.

Management of cash.

23. (1) The Holding Account and the accounts of the components of the Fund shall be –

No.18 of 2012

(a) included in the Treasury Single Account established under section 28(2) of the Public Finance Management Act; and

No. 18 of 2012

(b) subject to the requirements for bank accounts of national government entities under section 28 of the Public Finance Management Act.

(2) The Board shall, for the purposes of investment and management of the Fund, have the authority to open bank accounts for the Fund with domestic and foreign financial institutions upon approval by the Cabinet Secretary.

No.18 of 2012

(3) The Board shall prepare an annual cash plan and forecast of the Holding Account, Stabilisation Component and the Infrastructure Development Component and the *Urithi* Component in accordance with section 29(2) of the Public Finance Management Act.

(4) The Board shall submit the annual cash plan and forecast prepared under subsection (3) to the Cabinet Secretary and to the Central Bank of Kenya.

No.18 of 2012

(5) In applying to the Holding Account, the framework for cash management established under section 29(1) of the Public Finance Management Act, the Board shall update on a rolling basis, a cash plan and forecast of the Holding Account, the Stabilisation Component, the Infrastructure Development Component and the *Urithi* Component.

(6) The Board shall, whenever it updates a cash plan and forecast under subsection (3), and at least every month, submit the updated cash plan and forecast to the Cabinet Secretary and the Central Bank of Kenya.

National Government Budget process and the Fund.

24. (1) The circular on the budget process provided for under the Public Finance Management Act shall include, in addition to the contents mentioned in that section, an instruction in respect of proposals for projects to be financed by withdrawal from the Infrastructure Development component of the Fund.

No. 18 of 2012

(2) The budget estimates mentioned in section 38(1)(b) of the Public Finance Management Act shall include, in addition to the contents mentioned in that section,—

(a) estimated resource revenues; and

(b) estimated expenditure to be funded from transfers—

(i) from Stabilisation Component of the Fund to the Consolidated Fund; and

- (ii) from the Infrastructure Development Component to the Consolidated Fund and to the County Revenue Fund.

No. 18 of 2012 (3) The budget documents mentioned in section 38(1) of the Public Finance Management Act shall include, in addition to the contents mentioned in that section—

- (a) the recent annual report and quarterly financial statements of the Fund;
- (b) a statement of projects financed by withdrawal from the Fund which include—
 - (i) a description of policy objectives relating to prioritization of projects to be financed by the withdrawal from the Infrastructure Development component of the Fund;
 - (ii) a list of all projects which are ongoing or newly included in the budget estimates and have been or will be financed by the withdrawal from the Infrastructure Development component of the Fund; and
 - (iii) an assessment of economic and social impact of the projects listed under subparagraph (ii).

PART IV- MANAGEMENT OF THE FUND

Establishment of the Kenya Sovereign Wealth Fund Board.

25. (1) There is hereby established a Board to be known as Kenya Sovereign Wealth Fund Board.

(2) The Board shall be a body corporate with perpetual succession and shall be capable in its corporate name of—

- (a) suing and being sued;
- (b) taking, purchasing or otherwise acquiring, holding, charging and or disposing of movable and immovable property in and outside Kenya;
- (c) entering into contracts;
- (d) being the custodian of assets, properties and equipment of the Fund;
- (e) managing, controlling and administering the assets of

the Fund; and

- (f) performing or doing such other acts necessary for the proper performance of the functions of the Board under this Act which may lawfully be done by a body corporate.

Headquarters of the Board.

26. The Headquarters of the Board shall be in Nairobi.

Powers and functions of the Board.

27. (1) The Board shall have all the powers necessary for the proper performance of the functions of the Fund under this Act.

(2) Notwithstanding the generality of subsection (1), the Board shall—

- (a) provide overall guidance and oversight of the administration and management of the Fund;
- (b) determine the management structure and operational guidelines of the Fund;
- (c) invest the Fund in accordance with this Act;
- (d) develop investment policies for approval by the Cabinet Secretary;
- (e) set performance benchmarks for returns and risks;
- (f) approve budget for the management, administration and agency fees related to the Fund, which shall be included in the budget estimates of the National Government;
- (g) perform financial management and reporting functions including—
 - (i) causing to be prepared bank reconciliation statements every month and submitting to the Cabinet Secretary not later than tenth of the subsequent month;
 - (ii) causing to be kept proper books of accounts and other books and records in relation to the Fund, of all activities and undertakings financed from the Fund;
 - (iii) preparing and submitting reports required under the Public Finance Management Act and its Regulations;
 - (iv) monitor and evaluate performance of the Components of the Fund as specified in this Act; and
 - (v) prepare a quarterly report on the receipts into

No. 18 of 2012.

and withdrawals from the Fund and submit to the Cabinet Secretary by fifteenth day of the month following the end of the quarter as required under this Act and the Public Finance Management Act;

No. 18 of 2012.

- (h) open and close bank accounts for the Fund with the approval of the Cabinet Secretary;
- (i) submit reports to the Cabinet Secretary as required under this Act and the Public Finance Management Act;
- (j) recruit, in consultation with the Public Service Commission, such staff as may be necessary for the effective performance of its functions;
- (k) perform any other functions as may be assigned to it by the Cabinet Secretary; and
- (l) perform any other function necessary to achieve the objectives of the Fund under this Act.

No. 18 of 2012.

(2) The Board shall, in exercise of its powers and performance of its duties under this Act, —

- (a) be responsible and accountable in the performance of its functions and exercise of its powers and for the proper management of the Fund;
- (b) keep under constant review, the performance of the Chief Executive Officer in discharging the responsibilities of that office; and
- (c) keep under constant review, the use of the resources of the Fund.

(3) The Board may delegate to any person, the exercise of any powers or the performance of any of its functions or its duties under this Act.

Composition of the Board.

28. (1) The management of the Fund shall vest in the Board which shall consist of—

- (a) a Chairperson appointed by the President on nomination by the Cabinet Secretary;
- (b) the Principal Secretary to the National Treasury or an alternate appointed by the Principal Secretary in writing;
- (c) the Principal Secretary responsible for matters relating Petroleum or an alternate appointed by the Principal Secretary in writing;

- (d) Governor of the Central Bank or an alternate appointed by the Governor in writing;
- (e) three other persons appointed by the Cabinet Secretary from outside of government; and
- (f) the Chief Executive Officer who shall be an *ex-officio* member with no rights to vote and who shall be secretary to the Board.

(2) The Cabinet Secretary shall nominate and forward to the President, three names of candidates to be appointed as the Chairperson.

(3) The President shall appoint one person from the nominees submitted under subsection (2) as Chairperson of the Board.

(4) The appointment of the Chairperson and the Board members under subsection 1 (a) and (e) shall be through a notice in the Gazette.

(5) The Board may co-opt a maximum of two members who have necessary expertise to assist the Board in dispensing with any matter.

(6) A member of the Board appointed under this section in relation to the Fund, shall have the duties and obligations of a trustee, and be accountable in accordance with the provisions of the Trustee Act.

Cap. 167.

Qualifications
of Board
members.

29. (1) A person qualifies to be appointed as a Chairperson or a member of the Board under section 28 (a) and (e), if that person —

- (a) is a citizen of Kenya;
- (b) has over five years' experience at senior management level in the field of management of investments portfolios;
- (c) holds a degree in economics, finance, accounting, law or other relevant fields from a recognized university;
- (d) meets the requirements of Chapter Six of the Constitution; and
- (e) has not been convicted in a court of competent jurisdiction for any criminal offense with a fine exceeding half a million Kenya Shillings or to a jail term exceeding six months.

(2) A person shall not qualify to be appointed as Chairperson or a member of the Board under section 29(1) (a) and (e) if that a person—

- (a) is a member of Parliament or a County Assembly;
- (b) is a member of the governing body of a political party; or

(c) is an un-discharged bankrupt.

Term of office.

30. The Chairperson and members of the Board appointed under section 29 (1) (a) and (e) shall hold office for a term of three years and shall be eligible for reappointment for one further final term of three years.

Remuneration of the Board.

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

Meetings of the Board.

32. (1) The procedures for the conduct of business and affairs of the Board shall be as set out in the First Schedule.

(2) Despite subsection (1), the Board may regulate its own procedure.

Committees of the Board.

33. (1) The Board may constitute no more than four committees from its members for the performance of its functions under this Act.

(2) The Board may prescribe the duties and responsibilities of each committee constituted under subsection (1) to facilitate better performance of its functions.

Resignation, removal and vacancy in office.

34. (1) The Chairperson and any other member of the Board, other than *ex-officio* member, may—

(a) at any time resign from office by notice in writing to the President in the case of the Chairperson or to the Cabinet Secretary in the case of a Board Member;

(b) be removed from office by the President in the case of the Chairperson or by the Cabinet Secretary in the case of a member, if the Chairperson or member—

(i) has been absent from three consecutive meetings of the Board without permission of the Cabinet Secretary in the case of the Chairperson or permission of the Chairperson in the case of a member;

(ii) is adjudged bankrupt or enters into a composition scheme of arrangement with his or her creditors;

(iii) is convicted of an offence involving dishonesty or fraud;

(iv) is convicted of a criminal offence and sentenced to imprisonment for a term exceeding six months; or

(v) is incapacitated by prolonged physical or mental illness.

(2) A member of the Board shall cease to be a member upon death.

(3) The President may, on the recommendation of the Cabinet Secretary, dismiss the Chairperson on reasonable grounds.

Chief Executive
Officer.

35. (1) There shall be a Chief Executive Officer of the Fund who shall be competitively recruited by the Board and appointed by the Cabinet Secretary.

(2) A person shall qualify to be appointed under subsection (1) if that person—

- (a) holds at least a masters degree in business administration or management, economics, finance, or any other relevant field from a university recognized in Kenya;
- (b) holds a bachelors' degree from a university recognized in Kenya;
- (c) has at least ten years' experience in management of investment portfolios; and
- (d) meets the requirements of Chapter Six of the Constitution of Kenya.

(3) The Chief Executive Officer shall—

- (a) hold office for a period of three years and shall be eligible for re-appointment for one further final term of three years;
- (b) serve on such terms and conditions of service as the Board may, in consultation with the Cabinet Secretary and the Salaries and Remuneration Commission, determine.

(4) The Chief Executive Officer shall, subject to the directions of the Board, be responsible for the day-to-day management of the affairs of the Board.

Vacation of
office of the
Chief Executive
Officer.

36. The Chief Executive Officer may—

- (a) at any time resign from office by notice in writing to the Cabinet Secretary in accordance with the instrument of appointment;
- (b) be removed from office by the Cabinet Secretary on the recommendation of the Board if the Chief Executive Officer—

(i) contravenes the provisions of the Constitution or any other law relating to public finance; or

(ii) is adjudged bankrupt or enters into a

composition scheme of arrangement with his or her creditors;

(iii) is convicted of an offence involving dishonesty or fraud;

(iv) is convicted of a criminal offence and sentenced to imprisonment to a term exceeding six months;

(v) incapacitated by prolonged physical or mental illness for a period exceeding six months; or

(vi) on any other grounds including non-performance.

Staff of the Board.

37. (1) The Board may, in consultation with the Public Service Commission, appoint such staff as are necessary for the performance of its functions under this Act.

(2) The staff appointed under subsection (1) shall serve on such terms and conditions as the Board may, in consultation with the Salaries and Remuneration Commission, determine.

Code of conduct.

38. Members of the Board, the Chief Executive Officer and staff of the Board shall adhere to the code of conduct governing public officers.

Protection from personal liability.

39. (1) No matter or thing done by any member of the Board or by any member of staff or agent of the Board shall, if the omission was done in good faith for the purposes of performing the functions of the Board under this Act, render the person liable for any action, claim or demand.

(2) Any expenses incurred or to be incurred by any person mentioned in subsection (1) in defending an action, claim or demand in any suit brought against that person in respect of any act or omission done or purported to be done by that person under this Act, or on the direction of the Board, shall be reimbursed or borne by the Board unless the act or omission was done in bad faith.

Confidentiality.

40. (1) A person shall protect the confidentiality of information and documents that comes into his or her possession as a result of the performance of his or her duties under this Act.

(2) Despite subsection (1), a person may disclose a document or information to—

(a) to an authorized officer for the purposes of carrying out any duty under this Act;

(b) a court of competent jurisdiction to the extent necessary for the purposes of proceedings relating to this Act;

- (c) Auditor-General for the performance of the Auditor-General's official duties;
- (d) Authority responsible for investigating corruption and matters related to integrity of public officers; and
- (e) any other institution of government in the performance of the duties of that institution.

(3) A person who contravenes subsection (1) commits an offence and is liable on conviction, to a fine not exceeding five million shillings or to imprisonment for a period not exceeding two years.

Common seal.

41. (1) The Board shall have a common seal which shall be kept in such custody as the Board may direct and shall not be used except on the order of the Board.

(2) The affixing of the common seal of the Fund shall be authenticated by the signature of any two Board members or one Board member and the Chief Executive Officer.

(3) Any document not required by law to be made under seal and all decisions of the Board may be authenticated by the signature of the Chairperson or the Chief Executive Officer.

(4) The common seal of the Board when affixed on a document and duly authenticated shall be judicially and officially noticed unless the contrary is proved, and any necessary order or authorization by the Board shall be presumed to have been duly given.

PART V- INVESTMENT OF THE FUND

Qualifying Instruments

Urithi
Component.

42. (1) The resources of the *Urithi* Component shall be invested in qualifying instruments as specified in part 1 of the Second Schedule.

(2) The assets of the *Urithi* Component shall not be invested in –

- (a) securities issued by a Kenyan issuer, real estate located in Kenya, or funds or companies or similar arrangements, the primary purpose of which are to invest in Kenya; or
- (b) covered bonds secured with assets mentioned in paragraph (a).

Stabilisation
Component.

43. (1) The resources of the Stabilisation Component shall be invested in qualifying instruments as specified in part 2 of the Second Schedule.

(2) The assets of the Stabilisation Component shall not be invested in –

- (a) securities listed at the Nairobi Securities Exchange; or
- (b) covered bonds secured with assets mentioned

under paragraph (a).

Infrastructure Development Component.

44. (1) The resources of the Infrastructure Development Component shall be invested in qualifying instruments as specified in part 3 of the Second Schedule.

Prohibition of advances, credits and collateralization of the Components of the Fund.

45. The Urithi Component, the Stabilisation Component and the Infrastructure Development Component shall not be used—

- (a) to make advances or loans or provide any other form of credit to a national government entity, state corporation, county government entity, county corporation or any other legal or natural person; or
- (b) as collateral for any borrowing of a national government entity, state corporation, county government entity, county corporation or any other legal or natural person.

Investments Principles and Rules

Risk Management Principles.

46. (1) Investment policies of the Fund shall be guided by the following risk management principles—

- (a) clear and consistent investment policies including objectives, risk tolerance, and strategy approved by the Cabinet Secretary which shall, at the minimum specify—
 - (i) the balance between risk and return in the overall investment portfolio of the Fund;
 - (ii) the criteria for selecting investment assets within the class of qualifying instruments;
 - (iii) the determination of benchmarks and standards against which the performance of the Fund will be assessed;
 - (iv) the constraints in investment of the Fund;
 - (v) The policies for the appointment, oversight and evaluation of the external investment managers and custodians;
 - (vi) the policies for use of leverage on investment;
 - (vii) the policies for risk management;
 - (viii) the policies for internal control and audit; and
 - (ix) such other matters as may be prescribed in the policies of the Board and approved by the

Cabinet Secretary; and

- (b) reliable information and regular reporting to assure effective monitoring and management of relevant risks within acceptable levels.

(2) The investment policies shall not instruct the Investment Manager to invest in a particular asset or derivative.

(3) The Board shall, with the approval of the Cabinet Secretary, review at least every three years, and revise as appropriate, the investment policies which shall be consistent with this Act.

(4) The Board shall publish the risk management framework and the investment policies on the Board's website immediately after the Board determines or revises them.

Investment
Rules.

47. (1) Any investments made under this Act shall be in qualifying instruments as specified in the Second Schedule.

(2) All investments of the Fund shall—

- (a) be made in accordance with the approved investment policy, risk management framework, guidelines and strategies;
- (b) be geared towards assuring maximum return while minimizing the level of risk exposure;
- (c) be made in a prudent manner consistent with institutional portfolio management;
- (d) be made without undue risk to the Fund as a whole; and
- (e) have regard to the public interest and the overall macroeconomic and financial stability of the economy.

(3) All investments in foreign jurisdictions shall be undertaken in a manner that meets the requirements of those jurisdictions and safeguarding the national interests, including international reputation.

(4) Any returns earned from investments shall be credited to the respective components of the Fund and may be re-invested in accordance with the provisions of this Act.

(5) All investments from the Stabilisation Component shall, to the extent possible, be in liquid instruments and have maturities that are consistent with the risks covered.

(6) All investments in the Infrastructure Development Component shall, to the extent possible, be in liquid instruments with maturities that are consistent with the expected pay-out schedule for resources identified for utilisation in that year.

(7) The proportion of investment in each qualifying instrument may be specified by the Cabinet Secretary, on the recommendation of the Board.

(8) A specification under subsection (7) shall be through the Gazette.

PART VI – INVESTMENT FUND MANAGERS

Appointment of
Investment
Fund
Managers.

48. (1) The Board shall, through an open, competitive and transparent process, recruit and appoint such number of Investment Fund Managers as may be necessary for the proper discharge of its functions.

(2) Despite subsection (1), the Cabinet Secretary may appoint the Central Bank of Kenya as an Investment Fund Manager for such a period as the Cabinet Secretary may deem necessary.

(3) The appointment of investment managers under subsection (1) shall be done on such terms and conditions as the Board shall determine.

(4) The Board may appoint an Investment Manager under subsection (1) if the Board is satisfied that the Fund Manager—

- (a) meets the minimum technical qualifications;
- (b) is a legal person with sufficient equity capital, adequate risk management and internal control systems as well as sufficient guarantees and insurance against operational risks;
- (c) has sound record of operational and financial performance;
- (d) has the highest standards of experience, knowledge and reputation in fund management;
- (e) has a good track record of managing large investment portfolios of equivalent or higher magnitudes;
- (f) is able to provide such information and reports at such times and in such a manner as the Board or the Central Bank of Kenya may determine; and
- (g) meets any other conditions as may be prescribed by the Cabinet Secretary.

(5) The Board shall undertake due diligence, selection, and ongoing monitoring of investment Fund Managers appointed under subsection (1).

(6) The Board shall prepare and publish the policies for the—

- (a) due diligence, selection and ongoing monitoring of external investment managers of the Fund; and

- (b) appointment of custodians, banking correspondents and other financial intermediaries necessary for the management of the Fund.

Functions of
Investment
Fund Managers

49. (1) An Investment Fund Manager appointed under section 48 shall—

- (a) implement the investment policies, strategies and guidelines of the Board in respect to the investment of funds; and
- (b) ensure full compliance with the provisions of the Third Schedule while making investments.

(2) An Investment Fund Manager shall prepare and submit to the Board, an annual report within two months after the end of each financial year.

(3) A report prepared and submitted under subsection (2) shall include—

- (a) the audited financial statements of the investments and the audit opinion thereof;
- (b) the investment policies applied;
- (c) an explanation of the performance of each investment, including comparison with the expectations of the Board about the performance of the portfolio;
- (d) an explanation of how the investment policies were complied with during the financial year;
- (e) a list of agents, if any, appointed by the Investment Fund Manager; and
- (f) any other information as the Board may consider necessary.

(4) An Investment Manager shall provide a performance bond to be determined by the Board unless exempted by the Board with justifiable reasons.

PART VII- APPOINTMENT OF THE CENTRAL BANK OF KENYA TO MANAGE THE FUND

Appointment of
the Central
Bank to
manage the
Fund.

50. (1) Despite section 48, the Board may appoint the Central Bank of Kenya as the custodian of the Fund and an Investment Fund Manager.

(2) Subject to section 21(4), the Cabinet Secretary may appoint the Central Bank of Kenya as the administrator of the Fund.

(3) The Cabinet Secretary may appoint the Central Bank of Kenya to administer the Fund pending full operationalization of the Fund.

(4) Upon appointment under subsections (2) or (3), The Central Bank of Kenya shall—

- (a) manage and administer the Fund according to this Act and the instrument of appointment; and
- (b) execute the powers, roles and responsibilities of the

Fund Administrator, the Board and the Chief Executive Officer as specified in the instrument of appointment.

PART VIII—ACCOUNTABILITY FOR THE FUND MANAGEMENT

Reporting and Audit of the Fund

Annual
Financial
statements.

51. Within three months after the end of each financial year, the Board shall prepare and submit consolidated financial statements of the Fund in accordance with standards set by the Accounting Standards Board for each component of the Fund for onward transmission to the Auditor General with a copy to the Cabinet Secretary.

Audit of the
Fund.

52. The Fund shall be audited by the Auditor General in accordance with Article 229 of the Constitution.

Annual
Performance
Report of the
Fund.

53. (1) The Board shall prepare an annual report relating to each component of the Fund and shall, within six months after the end of each financial year, submit the report to the Cabinet Secretary.

(2) The Board shall, within fourteen days after the submission of the report under subsection (1), publish and publicize the report in such format as may be prescribed by the in the Public Finance Management (National Government) Regulations.

(3) The report prepared under subsection (1) shall include details of—

- (a) the audited financial statements of the Fund and the audit report;
- (b) investment strategies and policies determined by the Board and the level of compliance;
- (c) performance of each component of the Fund including—

- (i) all payments to the Fund during the year it relates;
- (ii) all investments made during the year;
- (iii) total income received from investments during the year;
- (iv) an analysis and explanation of performance for each component during the year it relates; and
- (v) cash balance at the end of the financial year including a list of qualifying instruments used in that financial year;

(d) any other information that the Board considers necessary or as may be directed by the Cabinet Secretary to be included.

(4) The Cabinet Secretary shall submit to Parliament the report received under subsection (1), within fourteen days after receipt.

PART IX—MISCELLANEOUS PROVISIONS

Offences for
misappropriatio

54.(1) A person who misappropriates any funds or assets from the

n of funds. Fund, or assists or causes any person to misappropriate or apply the funds otherwise than in the manner provided in this Act, commits an offence and is liable on conviction to—

- (a) pay twice the amount misappropriated; and
- (b) a fine not less than ten million shillings or imprisonment for a term of not less than five years or both.

(2) Without prejudice to subsection (1), a person who misappropriates, assists or causes any person to misappropriate from the Fund, shall be held liable for any loss arising from that loss and shall make good the loss whether that person remains the holder of the office or not.

General penalty.

55. A person who contravenes the provisions of this Act where no specific penalty is provided, commits an offence and is liable on conviction to imprisonment for a term not less than two years or to a fine not less than five million shillings or to both.

Preservation of the reserves of the Fund.

56. (1) The monies standing to the credit of the Fund, at least three months prior to every General Election, shall be certified by the Board and submitted to the Auditor-General and the outgoing President.

(2) The outgoing President shall submit the report received under subsection (1) to the incoming President and a copy to Parliament.

(3) The incoming President shall preserve the report received under subsection (2) for the life of the new government.

Act to prevail.

57. This Act shall prevail in all matters relating to the allocation, withdrawal, transfer, investment and management of all revenues from medium and large scale mining and petroleum operations, specified in this Act.

Regulations.

58. The Cabinet Secretary may make regulations for the better carrying out the purposes and objectives of this Act.

Consequential amendments.

59. The Acts specified in the Fourth Schedule are amended in the manner as specified in the Schedule.

FIRST SCHEDULE (s. 34)

CONDUCT OF THE BUSINESS AND AFFAIRS OF THE BOARD

Meetings of the Board

1.

- (a) The Board shall meet not less than four times in every financial year and not more than three months shall elapse between the date of the next meeting.
- (b) Unless three quarters of the total members of the Board otherwise agree, at least fourteen days written notice of every meeting of the Board shall be given to every member of the

Board.

- (c) The quorum for the conduct of the business of the Board shall be five members excluding the Chairperson.
- (d) The Chairperson shall preside at every meeting of the Board at which he or she is present but in his or her absence, the members present shall elect one of their members who shall preside over the meeting, with respect to that meeting and the business transacted thereat, have all the powers of the chairperson.
- (e) Decisions of the Board shall be adopted by a majority of the votes of those present at that meeting and in case of an equality of votes the chairperson or the member presiding at the meeting shall have a second or casting vote.
- (f) no proceedings of the Board shall be invalid by reason only of a vacancy among the members thereof.
- (g) Subject to the provisions of this Schedule, the Board shall determine its own operating procedures.
- (h) The Board may invite any person to attend any of its meetings to participate in its deliberations, but such person shall not have a vote in any decision of the Board.

Disclosure of Interest

2.

- (a) A member of the Board who has a material personal interest in a matter subject to discussions by the Board shall, as soon as reasonably practicable after the commencement thereof, disclose his or her interest in the matter and shall not take part in the deliberations over, or vote on, the matter;
- (b) A disclosure of interest made under this paragraph shall be recorded in the minutes of the meeting at which it is made;
- (c) Where a member of the Board discloses conflict of interest, that member shall not exact undue influence to any other member of the Board on that matter; and
- (d) A member of the Board who contravenes sub-paragraph (a) commits an offence and is liable, on conviction, to imprisonment for a term not exceeding three years or to a fine not exceeding one million shillings or both.

Minutes

3. The Board shall cause minutes of all proceedings of its meetings to be entered in books for that purpose.

Qualifying Instruments

SECOND SCHEDULE (s. 42 and 43)

QUALIFYING INSTRUMENTS

For purposes of this Act, qualifying instruments for the three components

of the Fund means:

Part 1: Urithi Component

1. A financial instrument denominated in internationally convertible currency –
 - (a) that has investment grade rating from internationally recognized rating agencies; or
 - (b) that is issued by or guaranteed by the International Monetary Fund, World Bank or by a sovereign State other than the Republic of Kenya, if the issuer or guarantor, has investment grade rating from internationally recognized rating agencies; or
2. An internationally convertible currency deposit that bears interest in a fixed amount equivalent to at least interest issued by—
 - (a) the Central Bank of Kenya or the Bank for International Settlements foreign State investment grading; or
 - (b) the European Central Bank or any other Central Bank established within Regional Economic Bloc of a sovereign State investment credit rating from internationally recognized rating agencies; or
3. An internationally convertible currency deposit with a foreign central bank, a public international financial institution, or a foreign commercial bank that meets a minimum capital adequacy ratio set by internationally recognized standards body and has investments credit rating; or
4. Any other instrument as may be prescribed by the Cabinet Secretary in the Gazette on the recommendation of the Board.

Part 2: Stabilization Component

1. A debt instrument denominated in internationally convertible currency-
 - (a) that has investment credit rating from internationally recognized rating agencies; or
 - (b) that is issued by or guaranteed by the International Monetary Fund, World Bank or by a sovereign State other than the Republic of Kenya, if the issuer or guarantor, has investment grade rating from internationally recognized rating agencies; or
2. An internationally convertible currency deposit that bears interest of a fixed amount equivalent to at least interest issued by—
 - (a) the Central Bank of Kenya or the Bank for International Settlements sovereign State investment

grade rating; or

(b) the European Central Bank or any other Central Bank established within a Regional Economic Bloc of a Sovereign State investment grade rating from internationally recognized rating agencies; or

3. An internationally convertible currency deposit with a foreign central bank, a public international financial institution, or a foreign commercial bank that meets a minimum capital adequacy ratio set by internationally recognized standards body and has investments credit rating from internationally recognised rating agencies; or
4. Any other instrument as may be prescribed by the Cabinet Secretary in the Gazette on the recommendation of the Board.

Part 3: Infrastructure Development Component

1. A debt instrument denominated in local or internationally convertible currency.
2. A local or an internationally convertible currency deposit that bears interest of a fixed amount equivalent to at least interest issued by—
 - (a) the Central Bank of Kenya or the Bank for International Settlements sovereign State investment credit rating; or
 - (b) the European Central Bank established within a Regional Economic Bloc of a Sovereign State investment grading from an internationally recognized rating agencies; or
3. A derivative instrument—
 - (a) that is solely based on an instrument that satisfies the requirements of paragraphs (1) and (2); and
 - (b) where its acquisition reduces the financial exposure to the risks associated with underlying instruments prescribed by the Cabinet Secretary; or
4. The assets of Infrastructure Development Component may be invested in—
 - (a) securities listed at the Nairobi Securities Exchange;
 - (b) secured bonds; or
 - (c) Treasury Bills and Bonds issued by any of the Central Banks of the East Africa Community member States.
5. Any other instrument as may be prescribed by the Cabinet

Secretary in the Gazette on the recommendation of the Board.

THIRD SCHEDULE (s. 48)

GUIDELINE TO SERVICE LEVEL AGREEMENT FOR AN INVESTMENT FUND MANAGER

Responsibilities of a Fund Manager

1. The responsibilities of the Investment Fund Manager, acting on behalf of the Board under service level agreement, shall include but not limited to:—
 - (a) managing assets and other resources of the Fund in accordance with this Act, and the prudent investor standard of an investment manager, engaged in the asset management profession;
 - (b) investing assets and other resources of the Fund shall be in accordance with this Act, and the operational and investment guidelines developed under this Act;
 - (c) selection and retention on behalf of the Fund appropriate third-party service providers, such as Advisors in order to carry out competently, the mandate specified in the instrument of delegation in accordance with relevant legislations;
 - (d) maintaining records and documentary support for all investments, receipts, disbursements and other transactions relating to the management of the Fund in accordance with internationally accepted accounting standards;
 - (e) submitting reports to the Board, on the holdings, performance and risk of the Fund;
 - (f) submitting an annual report of the investment management to the Board, no later than two months after the end of the financial year; and
 - (g) the Report referred to in paragraphs (e) and (f), shall be accompanied by a certificate signed by internal auditors of the fund manager as well as a certified investment report on the performance of the Fund.

Fees

2.
 - (a) The annual management fee payable to Fund Manager shall be specified in the instrument of appointment;
 - (b) Management fee referred to in sub-paragraph (a) above shall be agreed between the Board and the Fund Manager.

FOURTH SCHEDULE (s. 59)

CONSEQUENTIAL AMENDMENTS (s.59)

Amendment to Section 186 of

1. Section 186 of the Mining Act, 2016, is amended by -

Act No. 12 of
2016

(i) in subsection (1) by deleting the words ‘and royalties’.

(ii) inserting a new subsection (1A) immediately after subsection (1) as follows:

“(1A) All royalties payable under this Act shall be paid to the Commissioner General appointed under the Kenya Revenue Act”.

Amendment to
section 5 of
Cap. 308

2. Section 27 under Part VI of the Petroleum (Exploration and Production) Act is amended by inserting a new sub-section (7) immediately after subsection (6) as follows:

“(7) The Petroleum agreement (or contract) referred to in the subsection (1) shall specify the government’s share of profit petroleum which shall be collected by the Commissioner General appointed under the Kenya Revenue Act”.

Amendment to
First Schedule
of Cap. 469

3. First Schedule of the Kenya Revenue Authority Act is amended in Part II by inserting items “13 and 14” immediately after item “12” as follows:

“13. The Mining Act, 2016, (No. 12 of 2016)”.

“14. Petroleum (Exploration and Production) Act (Cap. 308)”.

Dated..... 2019