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THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – FOURTH SESSION – 2025
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL
PLANNING

REPORT ON:

THE CONSIDERATION OF THE RATIFICATION OF THE AGREEMENT
ESTABLISHING THE EUROPEAN BANK FOR RECONSTRUCTION AND
DEVELOPMENT (EBRD)

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI

THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 24 JUN 2025	DAY: TUE
TABLED BY:	HON. KURIA KIMANI, MP, CBS CHAIRPERSON.
CLERK-AT THE-TABLE:	Ms. ANN SHIBUKO

JUNE, 2025

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LIST OF ABBREVIATIONS

- EBRD - European Bank for Reconstruction and Development
MFA - Ministry of Foreign and Diaspora Affairs

ANNEXURES

Annexure 1: Signed list of Members who attended the sitting which considered and adopted the Report

Annexure 2: Adoption Minutes

Annexure 3: Copy of newspaper advertisement on public participation and submission of memoranda

CHAIRPERSON'S FOREWORD

This report details the consideration by the Departmental Committee on Finance and National Planning on its consideration of the Agreement Establishing the European Bank for Reconstruction and Development. EBRD is owned by seventy one (71) countries on five continents, the European Union (EU) and the European Investment Bank (EIB).

The 2023 Annual General Meeting in Uzbekistan, the Board of Governors of EBRD voted for the limited and incremental expansion of its operations into sub-Saharan Africa. The decision reflected the growing economic links between countries where the Bank has invested in Sub-Saharan Africa and the potential for developing private sector there. Following the decision of the Annual General Meeting, the EBRD will invest, for the first time, in up to six sub-Saharan African Countries from 2025. Based on EBRD's mandate and business model, Kenya is among the six countries identified for investment. The other countries are Benin, Cote d'Ivoire, Ghana, Nigeria and Senegal.

Pursuant to section 8(1) of the Treaty Making and Ratification Act Cap 4D, the Cabinet Secretary for Foreign and Diaspora Affairs submitted the Parliamentary Memorandum on Kenya's Accession of the Agreement Establishing European Bank for Reconstruction and Development to the Speaker of National Assembly, laid on the Table of the House and committed to the Committee in line with Standing Order 170A(1).

The Agreement aims to foster the transition towards open market-oriented economies and promote private and entrepreneurial initiatives in countries committed to applying the principles of multiparty democracy, pluralism and market economies.

In considering the Treaty, the Committee pursuant to Article 118(1)(b) of the Constitution, section 8(3) of the Treaty Making and Ratification Act Cap 4D and Standing Order 170A(2) held popularization meetings with The National Treasury, Office of the Attorney General and Ministry of Foreign Affairs on 24th June, 2025 in Trademark, Nairobi. The Committee also placed advertisements in two local dailies on **13th May 2025**, calling for submissions of memoranda on the subject matter.

Having considered the Agreement and analyzed the submissions made, the Committee observed that the Agreement aligns with Kenya's constitutional values, and its ratification does not necessitate amendments to the Constitution or existing laws.

Having examined the Kenya's Accession of the Agreement Establishing the European Bank for Reconstruction and Development against the Constitution, the Treaty Making and Ratification Act (Cap 4D) and Standing Order 170A of the National Assembly Standing Orders, the Committee recommends that the House adopts this report and **APPROVES** the ratification of the Agreement for Establishing the European Bank for Reconstruction and Development.

Pursuant to Standing Orders 199(6) and 170A (4) it is my pleasant duty to present to the House the Report of the Departmental Committee on Finance and National Planning on

its consideration of the Agreement for the Establishment of the Africa Finance Corporation.

Hon. CPA Kuria Kimani, CBS, M.P.

Chairperson, Departmental Committee on Finance and National Planning.

CHAPTER ONE

I.0 PREFACE

I.1 ESTABLISHMENT OF THE COMMITTEE

1. The Departmental Committee on Finance and National Planning is established under **Standing Order 216 (5)** and whose mandate is as follows:

- i. *To investigate, inquire into, and report on all matters relating to the mandate, management, activities, administration, operations and estimates of the assigned ministries and departments;*
- ii. *To study the program and policy objectives of Ministries and departments and the effectiveness of their implementation;*
- iii. *To study and review all the legislation referred to it;*
- iv. *To study, assess, and analyze the relative success of the Ministries and departments as measured by the results obtained as compared with their stated objectives;*
- v. *To investigate and inquire into all matters relating to the assigned Ministries and departments as they may deem necessary, and as may be referred to them by the House;*
- vi. *To vet and report on all appointments where the Constitution or any law requires the National Assembly to approve, except those under Standing Order No. 204 (Committee on Appointments);*
- vii. *To examine treaties, agreements and conventions;*
- viii. *To make reports and recommendations to the House as often as possible, including recommendation of proposed legislation;*
- ix. *To consider reports of Commissions and Independent Offices submitted to the House pursuant to the provisions of Article 254 of the Constitution and*
- x. *To examine any questions raised by Members on a matter within its mandate.*

I.2 MANDATE OF THE COMMITTEE

2. In accordance with the Second Schedule of the Standing Orders, the Committee is mandated to consider public finance, monetary policies, public debt, financial institutions (excluding those in securities exchange), investment and divestiture policies, pricing policies, banking, insurance, population revenue policies including taxation and national planning and development.

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

- i. The National Treasury;
- ii. State Department for Economic Planning;
- iii. State Department for Public Investments and Asset Management
- iv. Commission on Revenue Allocation; and
- v. Office of the Controller of Budget.

I.3 COMMITTEE MEMBERSHIP

4. The Departmental Committee on Finance and National Planning comprises the following Members:

Chairperson

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

Vice-Chairperson

Hon. (Amb). Benjamin Langat, CBS, MP
Ainamoi Constituency
UDA Party

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

Hon. Andrew Okuome, MP
Karachuonyo Constituency
ODM Party

Hon. David Mwalika Mboni, MP
Kitui Rural Constituency
Wiper Party

Hon. CPA. Joseph Oyula, MP
Butula Constituency
ODM Party

Hon. Dr. John Ariko Namoit, MP
Turkana South Constituency
ODM Party

Hon. Umul Ker Kassim, MP
Mandera County
UDA Party

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

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

Hon. Paul K. Biego, MP
Chesumei Constituency
UDA Party

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

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

Hon. Mohamed S. Machele, MP
Mvita Constituency
ODM Party

Hon. George Sunkuyia, MP
Kajiado West Constituency
UDA Party

I.4 COMMITTEE SECRETARIAT

5. The following staff facilitate the Committee:

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

Ms. Jennifer Ndeto
Deputy/D, Legal Service

Mr. Salem Lorot
Legal Counsel I

Mr. James M. Macharia
**Media Relations Officer
I**

Ms. Peninnah Simiren
Legal Counsel II

Ms. Winfred Kambua
Clerk Assistant III

Mr. George Ndenjeshe
Fiscal Analyst II

Mr. Benson Kamande,
Clerk Assistant III

Ms. Nelly W.N. Ondieki
Research Officer III

Mr. Benson Muthuri
Serjeant-At-Arms

Ms. Joyce Wachera
Hansard Officer II

Mr. Mwangi Muchiri
Audio Officer III

PART II

2.0 BACKGROUND TO THE TREATY ESTABLISHING THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT

6. The Committee has received the Agreement Establishing European Bank for Reconstruction and Development (**EBRD Agreement**). The Agreement Establishing the European Bank for Reconstruction and Development (EBRD), also referred to as the AEB, is the EBRD's Treaty.
7. The AEB was signed in Paris by founding members on 29 May, 1990 and entered into force on 28 March 1991. Following an Inaugural Meeting held in London from 15 to 17 April 1991, the Board of Governors adopted Resolution No. 8, authorizing the Bank to commence operations.
8. The AEB is the main document of the EBRD and sets out the governance principles of the Bank. The EBRD is a multilateral development bank with its Headquarters in London that promotes sustainable private sector-led economies in Central and Eastern Europe, Central Asia, and the Southern and Eastern Mediterranean.
9. The mandate of EBRD is "to foster the transition towards open market-oriented economies and to promote private and entrepreneurial initiatives in countries committed to applying the principles of multiparty democracy, pluralism and market economies".
10. In its 2023 Annual General Meeting in Uzbekistan, the Board of Governors of EBRD voted for the limited and incremental expansion of its operations into sub-Saharan Africa. The decision reflected the growing economic links between countries where the Bank has invested in Sub-Saharan Africa and the potential for developing private sector there.
11. Following the decision of the Annual General Meeting, the EBRD will invest, for the first time, in up to six sub-Saharan African Countries from 2025. Based on EBRD's mandate and business model, Kenya is among the six countries identified for investment. The other countries are Benin, Cote d'Ivoire, Ghana, Nigeria and Senegal.
12. EBRD is owned by 71 countries on five continents, the European Union (EU) and the European Investment Bank (EIB).
13. EBRD imposes the following obligations to Member States:
 - (i) Each member shall subscribe to shares of the capital stock of the Bank;

- (ii) The voting power of each member shall be equal to the number of its subscribed shares in the capital stock of the Bank;
- (iii) Each member shall be represented on the Board of Governors and shall appoint one governor and one alternate;
- (iv) Member states are obliged to create an enabling environment that supports structural reforms that promote liberalization, privatization, and economic diversification.

14. Kenya's membership was approved by Cabinet during its meeting held on **14th February, 2024**. Kenya will be required to pay subscription of 203 shares, of which

- 37 are paid-up shares with a total cost of EUR 370,000 (Approx. Kshs.61,162,406.00 @165.30-CBK rate on 17/11/2023)
- 166 shares are callable

15. The Treaty Making and Ratification Act, 2012 (the Act) is the legal framework giving effect to **Article 2(6)** of the Constitution and to provide the procedure for the making and ratification of treaties. Article 2(6) provides that—

“Any treaty or convention ratified by Kenya shall form part of the law of Kenya under this Constitution.”

16. Section 7 of the Act provides that where the Government intends to ratify a treaty, the Cabinet Secretary of the relevant State department shall, in consultation with the Attorney-General, submit to the Cabinet the treaty, together with a memorandum outlining several things including the objects and subject matter of the treaty.

PROVISIONS OF THE AGREEMENT

17. The Agreement contains 20 chapters and 63 articles.

Chapter I: Purpose, functions and membership

Article 1: Purpose

18. The **Bank** aims to help Central and Eastern European countries transition to market economies and promote private and entrepreneurial initiatives. The Bank only operates in countries committed to multiparty democracy and market reform.

Article 2: Functions

19. The article lists how the Bank will fulfill its mission—by financing private sector **development**, mobilizing capital, and supporting reforms. It provides for the following measures:

- (i) to promote, through private and other interested investors, the establishment, improvement and expansion of productive, competitive and private sector activity, in particular small and medium-sized enterprises;
- (ii) to mobilize domestic and foreign capital and experienced management;

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REPORT ON THE CONSIDERATION OF THE RATIFICATION OF THE AGREEMENT ESTABLISHING THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT (EBRD)

- (iii) to foster productive investment, including in the service and financial sectors, and in related infrastructure where that is necessary to support private and entrepreneurial initiatives, thereby assisting in making a competitive environment and raising productivity, the standard of living and conditions of labour;
- (iv) to provide technical assistance for the preparation, financing and implementation of relevant projects, whether individual or in the context of specific investment programmes;
- (v) to stimulate and encourage the development of capital markets;
- (vi) to give support to sound and economically viable projects involving more than one recipient member country;
- (vii) to promote in the full range of its activities environmentally sound and sustainable development; and
- (viii) to undertake such other activities and provide such other services as may further these functions.

20. The Article **further** provides that the Bank shall work in close cooperation with all its members and, in such manner as it may deem appropriate within the terms of this Agreement, with the International Monetary Fund, the International Bank for Reconstruction and Development, the International Finance Corporation, the Multilateral Investment Guarantee Agency, and the Organisation for Economic Co-operation and Development, and shall cooperate with the United Nations and its Specialized Agencies and other related bodies, and any entity, whether public or private, concerned with the economic development of, and investment in, Central and Eastern European countries.

Article 3: Membership

21. The Article **provides** that membership is open to IMF member countries (European and non-European), the EU, and the EIB (European Investment Bank). Countries apply and require 2/3 majority vote of the Governors for approval.

Chapter II: Capital

Article 4: Authorized Capital Stock

22. The Article sets the initial capital at €10 billion, divided into shares. Members subscribe to shares, some paid-in and some callable.

Article 5: Subscription of Shares

23. The **Article** defines how shares are distributed among members. Subscription proportions are maintained to protect EU majority control.

Article 6: Payment of Subscriptions

24. The Article details payment terms (5 yearly installments, half can be promissory notes). **Members** pay in cash or obligations in Euros, USD, or Japanese yen

Article 7: Ordinary Capital Resources

25. The Article defines the Bank's financial resources (paid-in capital, borrowings, income). It **ensures** separation from donor (special) funds.

Chapter III: Operations

Article 8: Recipient Countries and Use of Resources

26. The Article provides that the Bank's resources are used only in countries transitioning toward market economies and democracy. Support may be suspended if a country regresses.

How It Operates:

- i. Countries must take *concrete steps* towards democracy and market reform.
- ii. The Bank may **limit or suspend** access if a country violates these principles.
- iii. New members may request limited access for three years, tied to their contribution.

Article 9: Ordinary and Special Operations

9. The Article provides that the Bank has two types of operations:
- i. **Ordinary operations** (from capital contributions and income).
 - ii. **Special operations** (from donor-provided Special Funds).

How It Operates:

- i. Ordinary operations are core activities funded by capital stock and income.
- ii. Special operations allow flexibility and experimentation, funded by donor countries.

Article 10: Separation of Operations

27. The Article provides that Ordinary and Special operations must be **financially and operationally separate**.

How It Operates:

- i. Separate accounting and reporting systems.
- ii. No cross-subsidization between ordinary and special funds.
- iii. Expenses must be attributed properly.

Article 11: Methods of Operation

28. The Article provides for how the Bank conducts its financing, including loans, equity, **guarantees**, and technical assistance. Private sector support is prioritized.

How It Operates:

- i. Invests in or lends to both private firms and state-owned firms transitioning to private control.

- ii. Can underwrite securities, provide guarantees, and give technical help.
- iii. Not more than 40% of operations may support the state sector.

Article 12: Limitations on Ordinary Operations

29. The Article sets prudential limits to ensure the Bank remains financially sound and avoids **overexposure**.

How It Operates:

- i. Cannot exceed its capital base in outstanding operations.
- ii. Limits on how much equity it can hold and prohibits controlling stakes.
- iii. No export credit guarantees or insurance business.

Article 13: Operating Principles

30. The Article sets out the guiding principles for EBRD operations to ensure responsible and effective investment.

How It Operates:

- i. Projects must follow sound banking principles and avoid political bias.
- ii. The Bank avoids over-concentrating resources in one country or sector.
- iii. Investment proposals must undergo staff review and be documented.
- iv. The Bank avoids financing projects that could be done on reasonable terms by others.

Article 14: Terms and Conditions for Loans and Guarantees

31. The Article provides that all loans and guarantees must have clearly defined terms and protect **the Bank's** income.

How It Operates:

- i. Sets loan interest, fees, currencies, and maturity terms.
- ii. Loans to state enterprises may require a government guarantee.

Article 15: Commission and Fees

32. The Article provides that the Bank charges commissions and fees for loans, guarantees, and underwriting.

How It Operates:

- i. Fees compensate for risks.
- ii. The Board of Directors sets the rates.

Article 16: Special Reserve

33. The Article provides that commissions and fees are set aside in a special reserve to absorb future losses.

How It Operates:

- i. Reserve is kept in liquid form and can be reclassified as income if surplus is large enough.

Article 17: Methods of Meeting the Losses of the Bank

34. The Article describes the step-by-step process for covering losses.

How It Operates:

- i. Provisions
- ii. Net income
- iii. Special reserve
- iv. General reserve
- v. Paid-in capital
- vi. Finally, call on callable capital

Article 18: Special Funds

35. The Article provides that the Bank can accept and manage donor-funded Special Funds that align **with** its mandate.

How It Operates:

- i. Costs must be charged to the fund and Non-recipient countries can temporarily access funds if qualified.

Article 19: Special Funds Resources

36. The Article defines what constitutes Special Funds resources.

How It Operates:

- i. Includes donor contributions, income, and repayments and these resources must be tracked and reported separately.

Chapter IV: Borrowing and Miscellaneous Powers

Article 20: General Powers

37. The Article grants the Bank authority to borrow funds, invest reserves, issue and guarantee securities, and provide technical advice.

How It Operates:

- i. The Bank must get approval to issue obligations in a member's territory or in that member's currency.
- ii. The Bank may engage in underwriting and sell or buy back its securities.
- iii. It can advise governments and enterprises.

Chapter V: Currencies

Article 21: Determination and Use of Currencies

38. The Article seeks to ensure the Bank can freely use, receive, and transfer currencies related to its operations.

How It Operates:

- i. Convertible currencies are determined by the Bank, consulting IMF as needed.
- ii. Members may not restrict the Bank's access or movement of currencies.

Chapter VI: Organization and Management

Article 22–36: These articles define the internal governance structure of the EBRD.

Article 22: Structure

39. The Article provides that the Bank consists of a Board of Governors, Board of Directors, President, Vice Presidents, and staff.

Article 23–25: Board of Governors

40. Articles 23-25 provide for the Board of Governors.

How It Operates:

- i. Each member appoints one Governor and one Alternate.
- ii. Holds final authority on critical issues like capital increases and membership decisions.
- iii. Meets at least annually.

Article 26–28: Board of Directors

41. Articles 26-28 provides for 23 Directors who represent different constituencies and manage daily operations.

How It Operates:

- i. Oversees loans, technical assistance, guarantees, and strategy.
- ii. Directors are elected for three years and represent individual or groups of countries.

Article 29: Voting

42. Article 29 provides for voting.

How It Operates:

- i. Voting power is proportional to shares held.
- ii. Unpaid capital obligations reduce voting rights.

Article 30–36: Presidential powers, transparency, and income use

43. The salient points in Articles 30-36 are the following:

- i. The President is elected for 4 years, cannot vote (except as tiebreaker).
- ii. The Bank must publish quarterly financials and environmental impact reports.
- iii. Surpluses are allocated or distributed based on Board decisions.

Chapter VII: Membership and Termination

Article 37: Right to Withdraw

44. The Article provides that a member may leave the Bank by notifying 6 months in advance.

Article 38: Suspension of Membership

45. The Article provides that a member violating obligations may be suspended and expelled if not reinstated within one year.

Article 39–40: Settlements & Emergency Suspension

46. Articles 39 and 40 provide for settlement of accounts with former members and temporary suspension of operations in an emergency.

How It Operates:

- i. Exiting members remain liable for pre-exit obligations.
- ii. Emergency powers allow temporary halt to operations.

Article 41–43: Termination of Operations

47. The Articles provide that dissolution needs 2/3 vote. Assets are to be distributed only after all debts are cleared.

Chapter VIII: Status, Immunities, Privileges, and Exemptions

Article 44–55: Institutional Protections

48. The Articles provide that EBRD is immune from lawsuits (except under explicit terms), asset seizures, and taxation. Further, all Governors, Directors, Alternates, officers and employees of the Bank and experts of the Bank performing missions for the Bank enjoy legal immunities for official acts.

Chapter IX: Amendments, Interpretation, Arbitration

Article 56: Amendments

49. The Article provides that amendment to the Agreement needs approval of $\frac{3}{4}$ of members with $\frac{4}{5}$ of voting power; some require unanimity (e.g., on rights to withdraw).

Article 57: Interpretation and Application

50. The Article provides that disputes on interpretation of the Agreement are to be submitted to the Board of Directors. Members can appeal to the Board of Governors.

Article 58: Arbitration

51. The Article provides that disputes with former members are to be submitted to a 3-person tribunal (one picked by each party, one by the ICJ President).

Article 59: Implied Approval

52. The Article provides that if a member doesn't object in time before any act may be done by the Bank, approval of certain actions is assumed.

Chapter X: Final Provisions

Articles 60–63: Entry into Force and Ratification

53. The Articles provides for how states join the Bank, ratify the agreement, and deposit instruments.

PART III

3.0 PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION

3.1.1 CALL FOR MEMORANDA FROM THE PUBLIC

54. Pursuant to Article 118(1)(b) of the Constitution on Public Participation and Section 8(3) of the Treaty Making and Ratification Act, 2012, the Committee placed advertisements in the local dailies, on 13th May 2025 calling for submissions of memoranda on the subject matter. By the close of the deadline, the Committee received two memoranda from National Treasury and Ministry of Foreign and Diaspora Affairs.

3.1.2 THE NATIONAL TREASURY

55. The National Treasury submitted that, the EBRD Board of Governors adopted Resolution 271 on 16th May 2024, approving Kenya's membership in the EBRD.

56. EBRD is a multilateral development bank with its Headquarters in London, promoting sustainable, private sector-led economies in Central and Eastern Europe, Central Asia, and the Southern and Eastern Mediterranean.

57. The mandate of EBRD is "to foster the transition towards open market-oriented economies and to promote private and entrepreneurial initiatives in countries committed to applying the principles of multiparty democracy, pluralism and market economies".

58. In its 2023 Annual General Meeting in Uzbekistan, the Board of Governors of EBRD voted for the limited and incremental expansion of its operations into sub-Saharan Africa. The decision reflected the growing economic links between Countries where the Bank has invested in Sub-Saharan Africa and the potential for developing the private sector in the region.

59. Following the decision of the Annual General Meeting, EBRD will invest, for the first time, in up to six sub-Saharan African Countries from 2025. Based on EBRD's mandate and business model, Kenya is among the six countries identified for investment. The other countries are Benin, Côte d'Ivoire, Ghana, Nigeria and Senegal

GOVERNANCE AND SHAREHOLDING STRUCTURE

60. The National Treasury submitted that, the governance and shareholding structure of EBRD is as follows:

- i. Inclusive governance
- ii. Growing membership

61. EBRD is owned by seventy one (71) countries on five continents, the European Union (EU) and the European Investment Bank (EIB). The United Arab Emirates and Algeria are recent members. Additionally, the shareholders have approved the membership of

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Iraq. The founding treaty stipulates that the EU member states, the EU and the EIB must hold most of the Bank's shares. Notably, the United States of America is the Bank's largest shareholder.

62. Each shareholder is represented individually on the EBRD's Board of Governors

RATIONALE FOR THE AGREEMENT

63. The National Treasury highlighted that the mandate and goals of EBRD are closely aligned with the Bottom-up Economic Transformation Agenda (BETA) and four of its five core pillars, namely:

- i. Agriculture;
- ii. Micro, Small and Medium Enterprise (MSME) economy;
- iii. Healthcare, and
- iv. Digital Superhighway and Creative Economy.

IMPACT OF THE AGREEMENT

64. The National Treasury and Economic Planning noted that the EBRD strategy for supporting the economy is in three cross-cutting themes,

- i. Accelerating the digital transition;
- ii. Transitioning to a green, low-carbon economy, and
- iii. Promoting equality of opportunity and gender equality for disadvantaged groups, such as women, youth and people living in remote areas, with a key focus on Access to employment, Skills training, Finance and Entrepreneurship

65. Further, EBRD will bring on board the following expertise:

- i. Strengthening entrepreneurship and the role of SMEs;
- ii. Promoting private sector-led infrastructure and sub-sovereign lending, for example, by commercialising and privatising state-owned enterprises (SOES);
- iii. Developing capital markets and local-currency financing through support for regulators, investments in new financial instruments and targeted technical cooperation;
- iv. Furthering the transition to universal and sustainable energy by combining public and private sector work focusing on the green economy; and
- v. Adding value to agribusiness as a leading investor.

66. The membership to EBRD will have linkages with the following ten (10) Ministries
- i. Ministry of Energy and Petroleum
 - ii. Ministry of Environment, Climate Change and Forestry
 - iii. Ministry of Co-operatives and Micro, Small and Medium Enterprises (MSME) Development
 - iv. Ministry of Investments, Trade and Industry
 - v. Ministry of Agriculture and Livestock Development
 - vi. Ministry of Roads and Transport
 - vii. Ministry of Information, Communications and The Digital Economy
 - viii. Ministry of Youth Affairs and Sports
 - ix. The Ministry of Gender, Culture, the Arts and Heritage
 - x. Ministry of East African Community, The ASALS & Regional Development

IMPLEMENTATION PLAN

67. The National Treasury and Economic Planning will submit the signed Instrument of Accession and Instrument of Subscription.
68. The EBRD Management will complete the Country Technical Assessment Report. EBRD carried out the Country Assessment in the week of 9 to 13 June 2025.
69. The Attorney General will submit a Legal Opinion in the format prescribed by EBRD
70. The EBRD Board of Directors will grant the membership before their summer recess, which makes it essential that all the Conditions Precedent are completed before the end of June 2025.
71. Subject to the EBRD Board of Directors, the Republic of Kenya and EBRD conclude a Resident Office Agreement allowing the Bank to establish Resident Offices in Kenya.

LEGISLATION AND REGULATORY PLAN

72. A Legal Opinion in a form that is satisfactory to the Bank and that confirms the membership Instruments have been adopted in compliance with the laws of the Republic of Kenya is a Condition Precedent,

FINANCIAL IMPACT OF THE AGREEMENT

73. The minimum subscription, which will be the initial subscription, is 203 shares, of which: 37 are paid-up shares with a total cost of EUR 370,000 (Approx. Kshs. 55,053,558 @ 148.7934-CBK rate on 23/06/25). 166 shares are callable.

3.1.3 MINISTRY OF FOREIGN AND DIASPORA AFFAIRS

The Ministry of Foreign and Diaspora Affairs MFA submitted as follows;

- 74.** The EBRD is a multilateral development bank with its Headquarters in London that promotes sustainable private sector-led economies in Central and Eastern Europe, Central Asia, and the Southern and Eastern Mediterranean.
- 75.** The mandate of EBRD is “to foster the transition towards open market-oriented economies and to promote private and entrepreneurial initiatives in countries committed to applying the principles of multiparty democracy, pluralism and market economies”.
- 76.** The Agreement Establishing the European Bank for Reconstruction and Development (EBRD), also referred to as the AEB, is the EBRD’s Treaty.
- 77.** The AEB was signed by founding members in May 1990 and entered into force on 28 March 1991.
- 78.** The AEB is the main document of the EBRD and sets out the governance principles of the Bank.
- 79.** In its 2023 Annual General Meeting in Uzbekistan, the Board of Governors of EBRD voted for the limited and incremental expansion of its operations into sub-Saharan Africa.
- 80.** Following the decision of the Annual General Meeting, the EBRD will invest, for the first time, in up to six sub-Saharan African Countries from 2025. Based on EBRD's mandate and business model, Kenya is among the six countries identified for investment. The other countries are Benin, Cote d’Ivoire, Ghana, Nigeria and Senegal.

THE PATH TO EBRD MEMBERSHIP

- 81.** The Cabinet approved Kenya’s application of membership and recipient country status to the European Bank for Reconstruction and Development (EBRD) on 14TH February 2024.
- 82.** Following this approval, the Cabinet Secretary for the National Treasury and Economic Planning formally submitted Kenya’s membership application.
- 83.** On 16th May, 2024 the EBRD Board of Governors adopted Resolution 271 granting Kenya’s membership to the EBRD.
- 84.** However, in order to finalize membership to the EBRD, the EBRD Board of Governors stipulated that Kenya must meet the following Conditions Precedent to membership by 31st May 2025:

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- i. Submit an Instrument of Accession to confirm that the country accedes to the Agreement Establishing (AEB) and accepts the conditions of membership
- ii. Submit an Instrument of Subscription to confirm that the country subscribes to both the paid in shares and callable shares,
- iii. Submit a Legal Opinion that confirms that the above instruments are legal according to Kenya law, and that all necessary measures required under the law have been taken for the accession to the AEB and
- iv. Transfer the sum for the paid in portion of the shares amounting to EUR 370,000 for the 37 paid-in shares.

LEGAL PROVISIONS

- 85.** Pursuant to the Treaty Making and Ratification Act CAP 4D, the Cabinet Secretary submitted the treaty and a memorandum to the Speaker of the National Assembly on **7th April 2025**.
- 86.** Upon receipt of the Parliamentary Memorandum by the National Assembly, the relevant parliamentary committee during its consideration of the treaty is required to ensure there is public participation.
- 87.** The National Assembly may approve or refuse to approve or approve with reservation the ratification of a treaty.
- 88.** Where the ratification of a treaty is approved by the National Assembly, the Registry of Treaties prepares the instrument of ratification of the treaty.
- 89.** The instrument is then signed, sealed, deposited at the relevant depositary, and a copy is filed with the Registrar of Treaties.

PART IV

4.0 COMMITTEE OBSERVATIONS

90. Having considered the Agreement and analyzed the submissions made, the Committee observed as follows:

- (a) The Agreement Establishing the European Bank for Reconstruction and Development (EBRD), also referred to as the AEB, is the EBRD's Treaty and was signed in Paris by founding members on 29 May, 1990 and entered into force on 28 March 1991.
- (b) EBRD's mandate is to foster the transition towards open market-oriented economies and to promote private and entrepreneurial initiatives in countries committed to applying the principles of multiparty democracy, pluralism and market economies.
- (c) The Board of Governors of EBRD voted for the limited and incremental expansion of its operations into sub-Saharan Africa. The decision reflected the growing economic links between countries where the Bank has invested in Sub-Saharan Africa and the potential for developing private sector there.
- (d) Following the decision of the Annual General Meeting, the EBRD will invest, for the first time, in up to six sub-Saharan African Countries from 2025. Based on EBRD's mandate and business model, Kenya is among the six countries identified for investment.
- (e) EBRD imposes the following obligations to Member States:
 - (i) Each member shall subscribe to shares of the capital stock of the Bank;
 - (ii) The voting power of each member shall be equal to the number of its subscribed shares in the capital stock of the Bank;
 - (iii) Each member shall be represented on the Board of Governors and shall appoint one governor and one alternate;
 - (iv) Member states are obliged to create an enabling environment that supports structural reforms that promote liberalization, privatization, and economic diversification.
- (f) Kenya will be required to pay subscription of 203 shares, of which:
 - i. 37 are paid-up shares with a total cost of EUR 370,000 (Approx. Kshs.61,162,406.00 @165.30-CBK rate on 17/11/2023)
 - ii. 166 shares are callable


PART V

5.0 COMMITTEE RECOMMENDATION

91. The Committee, having reviewed the Agreement recommends that, pursuant to Section 8 of the Treaty-Making and Ratification Act, Cap. 4D, the House **APPROVES** the Accession to the Agreement Establishing the European Bank for Reconstruction and Development (EBRD).

SIGNED:  DATE: 24th June, 2025

**THE HON CPA KURIA KIMANI, CBS, M.P.
CHAIRPERSON, DEPARTMENTAL COMMITTEE ON FINANCE AND
NATIONAL PLANNING**

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 24 JUN 2025	DAY: TUE.
TABLED BY:	HON. KURIA KIMANI MP, CBS. CHAIRPERSON.
CLERK-AT THE-TABLE:	MS. ANN SHIBUKO



**THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - FOURTH SESSION- 2025
DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING.**

ADOPTION LIST

**REPORT ON THE AGREEMENT ESTABLISHING EUROPEAN BANK FOR
RECONSTRUCTION AND DEVELOPMENT (EBRD)**

We, the Members of the Departmental Committee on Finance and National Planning have pursuant to Standing Order 199, adopted this Report and affix our signatures to affirm our approval and confirm its accuracy, validity and authenticity today, Monday, 23rd June, 2025.


S/NO.	NAME	SIGNATURE
1.	HON. (CPA). KURIA KIMANI, CBS, MP - CHAIRPERSON	
2.	HON. (AMB). BENJAMIN KIPKIRUI LANGAT, MP - VICE CHAIRPERSON	
3.	HON. KALUMA PETER OPONDO, CBS,MP	
4.	HON. GEORGE SUNKUYIA RISA, MP	
5.	HON. (CPA) JOSEPH MAERO OYULA, MP	
6.	HON. ANDREW ADIPO OKUOME, MP	
7.	HON. DAVID MWALIKA MBONI, MP	
8.	HON. CHIFOROMODO MANGALE, MP	
9.	HON. MAINA BETTY NJERI, MP	
10.	HON. (CPA) JULIUS KIPLETING RUTTO, MP	
11.	HON. PAUL KIBICHIY BIEGO, MP	
12.	HON. UMUL KER SHEIKH KASSIM, MP	
13.	HON. DR. SHADRACK MWITI ITHINJI, MP	
14.	HON. DR. JOHN ARIKO NAMOIT, MP	
15.	HON. MOHAMED SOUD MACHELE, MP	

Mrs. Magat Benjamin, No 2
Pls WA, Dtd 02/05/25



MINISTRY OF FOREIGN AND DIASPORA AFFAIRS

PARLIAMENTARY MEMORANDUM

 THE NATIONAL ASSEMBLY PAPERS LAID		ON
DATE: 29 APR 2025	DAY <i>Tuesday</i>	
TABLED BY:	<i>Hon. Julius Ngetich Mwangi</i> <i>on Behalf of LOM</i>	THE ACCESSION TO THE
CLERK-AT-TABLE:	<i>Benson Inzani</i>	

**AGREEMENT ESTABLISHING EUROPEAN BANK FOR
RECONSTRUCTION AND DEVELOPMENT (EBRD)**

APRIL 2025

PARLIAMENTARY MEMORANDUM ON THE ACCESSION OF THE
AGREEMENT ESTABLISHING THE EUROPEAN BANK FOR
RECONSTRUCTION AND DEVELOPMENT

1.0 OBJECTIVE OF THE MEMORANDUM

1.1 The purpose of this Memorandum is to appraise the National Assembly and seek approval for Kenya's accession of the *Agreement Establishing European Bank for Reconstruction and Development* (hereinafter referred to as the EBRD Agreement).

1.2 Kenya's membership was approved by Cabinet during its meeting held on **14th February, 2024**

2.0 BACKGROUND

2.1 The Agreement Establishing the European Bank for Reconstruction and Development (EBRD), also referred to as the AEB, is the EBRD's Treaty.

2.2 The AEB was signed by founding members in May 1990 and entered into force on **28 March 1991**. Following an Inaugural Meeting held in London from 15 to 17 April 1991, the Board of Governors adopted Resolution No. 8, authorising the Bank to commence operations.

- 2.3 The AEB is the main document of the EBRD and sets out the governance principles of the Bank.
- 2.4 The EBRD is a multilateral development bank with its Headquarters in London that promotes sustainable private sector-led economies in Central and Eastern Europe, Central Asia, and the Southern and Eastern Mediterranean.
- 2.5 The mandate of EBRD is "to foster the transition towards open market-oriented economies and to promote private and entrepreneurial initiatives in countries committed to applying the principles of multiparty democracy, pluralism and market economies".
- 2.6 In its 2023 Annual General Meeting in Uzbekistan, the Board of Governors of EBRD voted for the limited and incremental expansion of its operations into sub-Saharan Africa. The decision reflected the growing economic links between Countries where the Bank has invested in Sub-Saharan Africa and the potential for developing the private sector there.
- 2.7 Following the decision of the Annual General Meeting, the EBRD will invest, for the first time, in up to six sub-Saharan African Countries

from 2025. Based on EBRD's mandate and business model, Kenya is among the six countries identified for investment.

2.8 The other countries are Benin, Cote d'Ivoire, Ghana, Nigeria and Senegal.

2.9 EBRD is owned by 71 countries on five continents, the European Union (EU) and the European Investment Bank (EIB).

3.0 OBJECTS AND SUBJECT MATTER OF THE EBRD AGREEMENT

3.1 The Primary Objective of the EBRD Agreement was to foster the transition towards open market-oriented economies and to promote private and entrepreneurial initiative in countries committed to and applying the principles of multiparty democracy, pluralism and market economics.

3.2 The EBRD strategy for supporting the economy is entailed in three cross-cutting themes;

a) Accelerating the digital transition;

b) Transitioning to a green, low-carbon economy; and

c) Promoting equality of opportunity and gender equality for disadvantaged groups, such as women, youth and people living in remote areas, with key focus on; access to employment, skills training, finance and entrepreneurship.

4.0 OBLIGATIONS IMPOSED BY EBRD AGREEMENT

4.1 EBRD imposes the following obligations to Member States: -

- i. Each member shall subscribe to shares of the capital stock of the Bank.
- ii. The voting power of each member shall be equal to the number of its subscribed shares in the capital stock of the Bank.
- iii. Each member shall be represented on the Board of Governors and shall appoint one governor and one alternate.
- iv. Member states are obliged to create an enabling environment that support structural reforms that promote liberalization, privatization, and economic diversification.

5.0 JUSTIFICATION

4.1 The mandate and goals of EBRD are closely aligned with the Bottom-up Economic Transformation Agenda (BETA) and four of its five core pillars, namely:

- a) Agriculture;
- b) Micro, Small and Medium Enterprise (MSME) economy;
- c) Healthcare; and
- d) Digital Superhighway and Creative Economy

4.2 Kenya's membership to the EBRD will bring on board the following expertise:

- a) Strengthening entrepreneurship and the role of SMEs;
- b) Promoting private sector-led infrastructure and sub-sovereign lending, for example, by commercialising and privatising state-owned enterprises (SOEs);
- c) Developing capital markets and local-currency financing through support for regulators, investments in new financial instruments and targeted technical cooperation;
- d) Furthering the transition to universal and sustainable energy by combining public and private sector work focusing on the green economy; and
- e) Adding value to agribusiness as a leading investor.

6.0 THE PATH TO EBRD MEMBERSHIP: WHAT KENYA NEEDS TO DO

5.1 The National Treasury and Economic Planning submits a membership and recipient country application to EBRD;

- a) The EBRD Management carries out country assessments
- b) Consideration of the application by the Board of Directors and Board of Governors of EBRD

c) The Condition Precedent to Membership within the timeframe specified in the Resolution are:

- i. Submit an Instrument of Accession
- ii. Submit an Instrument of Subscription
- iii. Submit a Legal Opinion
- iv. Transfer the sum of the paid-in portion of the shares to the Bank.

d) Subject to the Board of Directors, the Republic of Kenya and EBRD conclude a Resident Office Agreement allowing the Bank to establish Resident Offices in Kenya.

7.0 COMMON CONSTITUTIONAL AND LEGISLATIVE IMPLICATION

6.1 The EBRD Agreement does not propose any amendments to the Constitution and is consistent with constitutional provisions.

6.2 Kenya will be required to have a Legal opinion in a form that is satisfactory to the Bank and that confirms the membership Instruments have been adopted in compliance with the Republic of Kenya laws is a Condition Precedent.

8.0 IMPLICATION RELATING TO COUNTIES

8.1 The obligations under the EBRD Agreement are functions of the National Government.

8.0 MINISTERIAL RESPONSIBILITY

- 7.1 Implementation of the EBRD Agreement will be under the responsibility the National Treasury and Economic Planning.
- 7.2 The Office of the Attorney General and Department of Justice and the Ministry of Foreign and Diaspora Affairs will coordinate the reporting process on State obligations pursuant to the Treaty Making and Ratification Act CAP 4D of the Laws of Kenya.

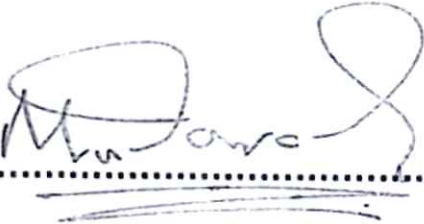
9.0 FINANCIAL IMPLICATION

- 1.1 Kenya will be required to pay subscription of 203 shares, of which:
- 37 are paid-up shares with a total cost of EUR 370,000 (Approx. Kshs.61,162,406.00 @ 165.30 - CBK rate on 17/11/2023).
 - 166 shares are callable

10.0 RECOMENDATION

- 9.1 In consideration of the aforementioned facts, the National Assembly is invited to:
- a) Note the contents of the Amendment;
 - b) Consider and approve Kenya's accession to Agreement Establishing the European Bank for Reconstruction and Development (EBRD);

c) Direct the Prime Cabinet Secretary and Cabinet Secretary for Foreign Affairs & Diaspora Affairs to prepare and deposit the relevant instruments to the Depositary.

SIGNED.......... DATED.....19/4/2025.....

**H.E. DR. MUSALIA MUDAVADI, EGH
PRIME CABINET SECRETARY AND CABINET SECRETARY FOR FOREIGN
AND DIASPORA AFFAIRS**

PRINCIPAL SECRETARY
THE NATIONAL TREASURY
26 FEB 2024
RECEIVED
P. O. Box 30007 - 00100, NAIROBI



DIRECTOR GENERAL
RECEIVED
902
THE NATIONAL TREASURY
PUBLIC DEBT MANAGEMENT OFFICE

EXECUTIVE OFFICE OF THE PRESIDENT
CABINET OFFICE

Telegraphic Address
Telephone: +254-20-22275621/2/3
When replying please quote
CAB/GEN.3/1/1 VOL.XXI/(57)
Ref. No.
and date

SECRET

STATE HOUSE
P.O. Box 40530-00100
Nairobi, Kenya
14th February, 2024

Dr. Chris Kiptoo, PhD., CBS
Principal Secretary
The National Treasury
The National Treasury & Economic Planning
NAIROBI

Mr. James B. Muhati, CBS
Principal Secretary
State Department for Economic Planning
The National Treasury & Economic Planning
NAIROBI

Hon. Shadrack J. Mose
Solicitor- General
State Law Office
NAIROBI

① DG/PMO
Deal
PAS

26/2/2024

② DK-PIPM

This is yours
HJ
26/2/24

cc: D/RMG

THE MEMBERSHIP TO THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT (EBRD)

I refer to the 1st Cabinet Meeting - 2024 held on 14th February, 2024, during which the Cabinet Secretary for the National Treasury & Economic Planning presented a Cabinet Memorandum CAB(23)253, jointly with the Attorney General.

The Memorandum sought to apprise Cabinet on the intent of the Government of Kenya to be a Member Country of the European Bank for Reconstruction and Development (EBRD); and sought Cabinet approval for the application of Membership and Recipient Country status in the EBRD.

I wish to inform you that Cabinet considered the Memorandum and:

- I. Noted the contents of the Memorandum;
- II. Approved the application for membership and Recipient Country status in the European Bank for Reconstruction and Development; and

SECRET

Mr. Kandoo
discuss
with JSC
27/2/2024
K-2

III. Directed the Cabinet Secretary for the National Treasury & Economic Planning; and the Attorney-General to take appropriate action.

Please proceed and take action as directed by Cabinet.



Mercy Wanjau, (Mrs.), MBS
SECRETARY TO THE CABINET

Copy to: Prof. Njuguna S. Ndungú, PhD, CBS
Cabinet Secretary
The National Treasury & Economic Planning
Treasury Building
NAIROBI

Hon. Justin B. N. Muturi, EGH
Hon. Attorney-General
The State Law Office
NAIROBI

Mr. Felix K. Koskei, EGH
Chief of Staff &
Head of Public Service
Executive Office of the President
NAIROBI

Ms. Wanjiku Wakogi, CBS
Chief of Staff
Office of the Deputy President
Executive Office of the President
NAIROBI

Dr. Idris Salim Dokota, PhD
Principal Secretary
State Department for Cabinet Affairs
Office of the Deputy President
NAIROBI



REPUBLIC OF KENYA
THE NATIONAL TREASURY AND ECONOMIC PLANNING

Telegraphic Address: 22921
FINANCE – NAIROBI
Fax No. 315779
Telephone: 2252299
When replying please quote

THE NATIONAL TREASURY
P.O. Box 30007 - 00100
NAIROBI
KENYA

Ref. No.: TNT/DPR-F/VOL.I/1/14

Date: 25th March, 2024

Mr. Odile Renaud-Basso
President
European Bank for Reconstruction and Development
LONDON, UNITED KINGDOM

Dear

Mr. Renaud-Basso,


**MEMBERSHIP TO EUROPEAN BANK FOR RECONSTRUCTION AND
DEVELOPMENT**

The Republic of Kenya would like to request to be admitted as a member country of the European Bank for Reconstruction and Development (EBRD) in accordance with the Agreement Establishing EBRD (the agreement), an international agreement signed on 29th May, 1990 as amended on 15th October 2006, 22nd August, 2012 and 12th September, 2013 (the Agreement). Subject to the entry into force of the amendments to the Agreement adopted by the Board of Governors of the EBRD in Resolution 259, the Republic of Kenya is hereby asking to be granted recipient country status.

On becoming a Member of the EBRD, the Republic of Kenya will be bound by the provisions of the Agreement and the obligations thereunder. The Republic of Kenya confirms its commitment to the purpose and functions of the EBRD as set out in the Agreement and to the fundamental principles of multiparty democracy, the rule of law, respect for human rights, and market economics.

We understand that to become a Member of the EBRD, the Republic of Kenya must satisfy several conditions that the Board of Governors will set out in their Resolution on the membership of the Republic of Kenya. The Republic of Kenya wishes to subscribe to 203 shares of the EBRD's capital stock, of which 37 would be paid-in, and 166 would be callable.

We firmly believe that the Republic of Kenya and the EBRD can benefit from the membership. We look forward to working with you and the EBRD shareholders on the next steps.

Yours *Sincerely,*


NJUGUNA NDUNG'U, EGH
CABINET SECRETARY



European Bank
for Reconstruction and Development

18

Kazuhiko Koguchi
Secretary General
EBRD

Professor Njuguna Ndung'u
Cabinet Secretary
National Treasury and Economic Planning
Kenya

28 May 2024

Dear Cabinet Secretary,

Following Kenya's application for EBRD membership on 25 March 2024, I am very pleased to inform you that on 16 May 2024 the EBRD Board of Governors adopted Resolution 271 (Annex 1), approving the membership of Kenya to the EBRD. Please allow me to congratulate Kenya on this important step towards EBRD membership. I was also delighted to welcome Ms Grace Linturi as an observer from the National Treasury to the EBRD Annual Meeting last week in Yerevan, Armenia.

To finalise membership to the EBRD, Kenya needs to meet the following Conditions Precedent to Membership by 31 May 2025, as stipulated by the Board of Governors:

- Submit an "Instrument of Accession" to confirm that Kenya accedes to the Agreement Establishing the Bank (AEB) and accepts the conditions of membership;
- Submit an "Instrument of Subscription" to confirm that Kenya subscribes to both the 37 paid-in shares and 166 callable shares;
- Submit a "Legal Opinion" that confirms the above Instruments are legal according to Kenyan law, and that all necessary measures required under the law have been taken for the accession to the AEB; and
- Transfer the sum for the paid-in portion of the shares to the Bank. For Kenya this would be EUR 370,000 for the 37 paid-in shares.

I attach here templates for the Instrument of Accession (Annex 2), the Instrument of Subscription (Annex 3), and the Legal Opinion (Annex 4) for your reference and use.

Once the four points above are completed, I will issue a Certificate of Membership, and Kenya's membership to the EBRD will be effective as of this date.

Additionally, as you know, we are in the process of amending the AEB to enable the Bank to expand its operations to sub-Saharan Africa (including Kenya) and Iraq. Once Kenya completes the membership process, Kenya will also need to accept these amendments as an EBRD shareholder. Attached here is an explanatory note on the steps to accept these amendments (Annex 5), which will differ depending on where we are in the process when Kenya finalises its membership. My team in the Office of the Secretary General and colleagues from the Office of the General Counsel stand ready to support you on any questions you may have on this as well as the Conditions Precedent to Membership.



European Bank
for Reconstruction and Development

Following the completion of your membership process, we will move forward with steps to ensure Kenya can fully take part in the governance and decision-making of the EBRD, including the appointment of a Governor and Alternate Governor and joining a Board of Directors Constituency. Although Board Constituency arrangements are bilateral arrangements between shareholders, I will be more than happy to provide any introductions and include here the current composition of the Board Constituencies for your reference (Annex 6).

Please allow me, Your Excellency, to congratulate you once again on this key step and I look forward to working with you closely on the remaining steps to complete Kenya's membership.

Sincerely,

17. n - 17

Kazuhiko Koguchi

- Annex 1: Resolution 271
- Annex 2: Template Instrument of Accession
- Annex 3: Template Instrument of Subscription
- Annex 4: Template Legal Opinion
- Annex 5: Explanatory Note on Amendment of the AEB
- Annex 6: Table of Board Constituencies

RESOLUTION NO.271
MEMBERSHIP OF KENYA

WHEREAS:

The Republic of Kenya has applied for membership of the EBRD;

As a non-European country which is a member of the International Monetary Fund, the Republic of Kenya is eligible for membership of the Bank in accordance with Article 3, paragraph 1, of the Agreement Establishing the Bank;

The proposed capital subscription by the Republic of Kenya is permissible under the provisions of Article 5, paragraph 2, of the Agreement;

Shares for the proposed capital subscription can be made available from the existing capital stock of the Bank; and

The Board of Directors, in a Report submitted to the Board of Governors, has recommended that the Republic of Kenya be admitted to membership of the Bank.

NOW THEREFORE THE BOARD OF GOVERNORS RESOLVES:

That the Republic of Kenya be admitted to membership of the Bank as a non-European country member on the following terms and conditions:

Subscription to Capital Stock

1. The Republic of Kenya shall subscribe to 203 shares of the capital stock of the Bank as follows: (i) 37 shares are paid-in; and (ii) 166 shares are callable.

Payment for Paid-in Shares

2. The Republic of Kenya shall make payment for its paid-in shares in the amount of EUR 370,000, which shall be due or payable on or before 31 May 2025, or such later date as the Board of Directors may determine.

Conditions Precedent to Membership

3. The Republic of Kenya shall become a member of the Bank only if on or before 31 May 2025, or such later date as the Board of Directors may determine, the following conditions precedent to membership shall have been satisfied:
 - (i) The Republic of Kenya shall have deposited with the Bank an **Instrument of Accession** stating that it accepts, in accordance with its law, the Agreement Establishing the Bank and all the terms and conditions of membership set forth in this Resolution, and that all necessary steps have been taken to enable it to carry out its obligations under the Agreement Establishing the Bank and this Resolution;
 - (ii) The Republic of Kenya shall have deposited with the Bank an **Instrument of Subscription** stating that Kenya subscribes to the paid in and callable shares of the capital stock of the Bank allocated to it pursuant to section 1 above;
 - (iii) The Republic of Kenya shall have furnished to the Bank evidence in the form of a **legal opinion**, satisfactory to the Bank, that the Instruments referred to in (i) and (ii) above have been duly executed and deposited in accordance with its law; and
 - (iv) The Republic of Kenya shall have **paid all amounts due** in respect of the paid-in shares to which it has subscribed.

Effective Date of Membership

4. The Republic of Kenya shall become a member of the Bank on the date on which the Secretary General of the Bank certifies in writing that the conditions precedent to membership specified in paragraph 3 of this Resolution have been satisfied.

(Adopted 16 May 2024)



THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - FOURTH SESSION-2025
DIRECTORATE OF DEPARTMENTAL COMMITTEES

**MINUTES OF THE 52ND SITTING OF THE DEPARTMENTAL COMMITTEE ON
FINANCE AND NATIONAL PLANNING HELD ON MONDAY 23RD JUNE 2025
AT TRADE MARK HOTEL, KIAMBU COUNTY AT 5:00 P.M**

PRESENT

- | | | |
|--|---|-------------------------|
| 1. Hon. CPA. Kuria Kimani, CBS, MP | - | Chairperson |
| 2. Hon. (Amb.) Benjamin Kipkirui Langat, CBS, MP | - | Vice-Chairperson |
| 3. Hon. Umul Ker Sheikh Kassim, MP | | |
| 4. Hon. (Dr.) John Ariko Namoit, MP | | |
| 5. Hon. Andrew Adipo Okuome, MP | | |
| 6. Hon. Julius Kipletting Rutto, MP | | |
| 7. Hon. George Sunkuyia Risa, MP | | |
| 8. Hon. Paul Kibichiy Biego, MP | | |
| 9. Hon. CPA. Joseph Maero Oyula, MP | | |
| 10. Hon. David Mwalika Mboni, MP | | |
| 11. Hon. (Dr.) Shadrack Mwiti Ithinji, MP | | |

ABSENT WITH APOLOGY

1. Hon. Mohamed Soud Machele, MP
2. Hon. Peter Kaluma, CBS, MP
3. Hon. Betty N. Maina, MP
4. Hon. Chiforomodo Munga Mangale, MP

COMMITTEE SECRETARIAT

- | | | |
|-------------------------|---|---------------------------------|
| 1. Mr. Benjamin Magut | - | Principal Clerk Assistant II |
| 2. Ms. Jenniffer Ndeto | - | Deputy Director, Legal Services |
| 3. Mr. Salem Lorot | - | Legal Counsel I |
| 4. Mr. Mabuti Mutua | - | Legal Counsel II |
| 5. Mr. Benson Kamande | - | Clerk Assistant III |
| 6. Ms. Winfred Kambua | - | Clerk Assistant III |
| 7. Mr. George Ndenjeshe | - | Fiscal Analyst II |
| 8. Ms. Joyce Wachera | - | Hansard Officer II |
| 9. Ms. Nelly Ondieki | - | Research Officer III |
| 10. Mr. Benson Muthuri | - | Serjeant At Arms |
| 11. Mr. Allan Kimani | - | Intern, Audio Services |
| 12. Mr. Ian Kinuthia | - | Intern |

AGENDA

1. Prayers
2. Preliminaries/Introductions
3. Communication from the Chairperson
4. Confirmation of Minutes/Matters Arising
5. **Consideration and Adoption of the Report on the Accession of the Agreement for Establishment of the European Bank for Reconstruction and development. (EBRD)**
6. Any other Business
7. Adjournment/Date of the Next Sitting.

MIN No. NA/F & NP/2025/231: **PRELIMINARIES**

The meeting was called to order at 5.17 p.m. with a word of prayer by the Chairperson. This was followed by self-introductions of the members present.

The Chairperson welcomed all members to the meeting emphasizing the significance of Kenya as a country acceding to the Agreement for Establishment of the European Bank for Reconstruction and development in supporting Kenya's fiscal policy for the 2025/26 financial year. He noted that the agreement aligns with the Bottom-Up Economic Transformation Agenda (BETA) priorities.

The Chairperson underscored the importance of public participation, as mandated by Article 118 of the Constitution, and thanked Kenyans for their submissions during the stakeholder engagement period.

MIN No. NA/F & NP/2025/232: **CONFIRMATION OF MINUTES**

Confirmation of minutes of the previous sittings were deferred to the next sitting.

MIN No. NA/F & NP/2025/233: **CONSIDERATION AND ADOPTION OF THE REPORT ON THE ACCESSION OF THE AGREEMENT FOR ESTABLISHMENT OF THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT (EBRD)**

The meeting deliberated at length and agreed on the observations and recommendations contained in Chapter four and five of the Report. The Report was thereafter adopted with amendments having been proposed by Hon. Paul Kibichiy Biego, MP and seconded by Hon. CPA. Joseph Maero Oyula, MP.

(Comprehensive details of the proposed amendments are contained in Chapter Five of the Report on the Accession of the Agreement for Establishment of the European Bank for Reconstruction and development. (EBRD)

MIN No. NA/F & NP/2025/:234 **ADJOURNMENT/DATE OF THE NEXT MEETING.**

The meeting was adjourned at 8.10 p.m. The next meeting will be held on notice.

SIGNED:  DATE: 24th June, 2025

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

Haji: Security at risk without full Sh65bn budget

► Intelligence chief warns that national security is in peril if agency budget is not approved.
 ► He cites mounting threats from neighbouring countries and global instability.

EDWIN NYARANGI, NAIROBI

National Intelligence Service (NIS) Director General Noordin Haji has painted a grim picture of Kenya's current security landscape, urging Parliament to approve the Sh65 billion requested in the agency's budget for the 2025 financial year.

Speaking before the National Assembly Committee on Defence, Intelligence and Foreign Relations, chaired by Belgut MP Nelson Koech, Haji underscored the crucial role of security agencies in protecting the

country's sovereignty, stability, and territorial integrity.

He warned that ongoing budget shortfalls could severely hamper national defence efforts, especially at a time when Kenya faces increasing hostilities from elements in some neighbouring states. "I am saddened that we do not take our national security seriously. Over the past decade, the security sector has not received sufficient funding to procure adequate equipment to defend the country. This should not be taken lightly," said Haji.

In a rare show of transparency, Haji disclosed financial details of the agency's allocations, revealing that the NIS had been granted Sh51 billion—Sh14 billion short of the Sh65 billion originally requested.

He explained that while the NIS continues to supply intelligence to keep Kenyans safe, other front-line security agencies that rely on this intelligence must also be prop-



NIS Director General Noordin Haji. (Kelly Ayodi, Standard)

erly equipped to combat emerging threats such as terrorism, transnational crime, and cyber warfare.

Bridging the funding gap, Haji argued, is not only critical to the operations of the NIS but also to the broader national preparedness in a volatile global security climate. "The country has faced threats from Somalia, Ethiopia, South Sudan, and Uganda, which we have managed to thwart. It is only Tanzania that has posed no threat. That is why I get emotional when it appears that we do not value our safety," he said.

Haji noted that Sh33 billion had been allocated for personnel emolu-

ments, Sh5.5 billion for modernising intelligence infrastructure, Sh4.5 billion for surveillance expansion, and Sh2.5 billion for multi-agency security operations.

A request for Sh1 billion to recruit new, highly trained personnel across various sectors was not approved. Haji stressed that such investment is crucial for enhancing national safety. "The age of disinformation and misinformation is a real threat to national stability. Investment in staff training and modern infrastructure is no longer optional," he added.

enyarangi@standardmedia.co.ke

TRANS NZOIA

Femicide a national emergency, lobby chair Barasa says

Kenya's Technical Working Group on Gender-Based Violence (GBV) and Femicide chairperson, Dr Nancy Barasa, has raised the alarm over the rising cases of femicide, calling it a national emergency requiring urgent and radical action.

Speaking at a stakeholders' meeting at Kitale National Polytechnic in Trans Nzoia County, Barasa revealed that nearly 700 women have been killed since 2016—an average of 40 per month, though underreporting suggests the figure could be higher. "Sixty per cent of femicide cases occur in homes. What should be a space of love has become a place of death," she said.

Barasa condemned the normalisation of domestic violence and highlighted the Sh41 billion annual economic cost of GBV. She announced that the Working Group will present actionable policy reforms to President William Ruto and urged the public to seize the current political goodwill.

Other speakers, including Governor George Natebeya and County Commissioner Gideon Oyagi, called for dismantling harmful traditions and strengthening gender support systems across all levels of society.

[Martin Ndlema]

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THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT - FOURTH SESSION (2025)

IN THE MATTER OF ARTICLES 2(5) AND (6) AND 118(1)(b) OF THE CONSTITUTION AND
 AND
 IN THE MATTER OF SECTION 8 OF THE TREATY MAKING AND RATIFICATION ACT, CAP. 40
 AND
 IN THE MATTER OF CONSIDERATION BY THE NATIONAL ASSEMBLY OF—

(1) ACCESSION TO THE AGREEMENT ON ESTABLISHMENT OF THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT; AND
 (2) RATIFICATION OF THE AGREEMENT FOR THE ESTABLISHMENT OF THE SHELTER AFRIQUE DEVELOPMENT BANK.

INVITATION TO SUBMIT MEMORANDA

WHEREAS, Article 118(1)(b) of the Constitution requires Parliament to facilitate public participation and involvement in the legislative and other business of Parliament and its Committees;

AND WHEREAS, the Agreement on the establishment of the European Bank for Reconstruction and Development (EBRD) and the Agreement for the establishment of the Shelter Afrique Development Bank were tabled in the House on 29th April 2025 and committed to the Departmental Committee on Finance and National Planning for consideration and reporting to the House;

FURTHER, WHEREAS the Agreement on establishment of the European Bank for Reconstruction and Development (EBRD) seeks to foster the transition towards open market-oriented economies and promote private and entrepreneurial initiatives in countries committed to applying principles of multiparty democracy, pluralism and market economics;

AND WHEREAS the purpose of ratifying the Agreement for establishment of the Shelter Afrique Development Bank is to allow Kenya to benefit from the repositioning of Shelter Afrique as a Housing Development and Financial Institution by accessing financing for affordable housing and urban infrastructure development;

NOW THEREFORE, in compliance with Articles 2(5) and (6) and 118(1)(b) of the Constitution and section 8 of the Treaty Making and Ratification Act, Cap. 40, the Departmental Committee on Finance and National Planning, hereby invites members of the public and stakeholders to submit memoranda on the Agreement on establishment of the European Bank for Reconstruction and Development (EBRD) and the Agreement for establishment of the Shelter Afrique Development Bank.

The full text of the Agreements and the accompanying Memoranda to Parliament may be accessed at www.parliament.go.ke/the-national-assembly/house-business/paper-laid.

The memoranda should be addressed to the Clerk of the National Assembly, P.O. Box 43842-00100, Nairobi; hand-delivered to the Office of the Clerk, Main Parliament Buildings, Nairobi; or emailed to cas@parliament.go.ke; to be received on or before Wednesday 29th May 2025 at 5.00 p.m.

S. HORODGE, CBS
CLERK OF THE NATIONAL ASSEMBLY
13th May, 2025

"For the Welfare of Society and the just Government of the People"



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OFFICE OF THE CLERK

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When replying, please quote:

REF: NA/DDC/F&NP/2025/061

19th June 2025

Dr. A. Korir Sing'Oei, P.hD, EBS
Principal Secretary
State Department for Foreign Affairs
Ministry of Foreign and Diaspora Affairs
Old Treasury Buildings
NAIROBI

Dr. Chris K. Kiptoo, CBS
Principal Secretary
The National Treasury
Ministry of National Treasury and Economic Planning
Treasury Buildings
NAIROBI

Hon. Shadrack John Mose, CBS
Solicitor General
Office of the Attorney-General and Department of Justice
Sheria House, Harambee Avenue
NAIROBI

Dear *D. Kiptoo*

RE: STAKEHOLDER HEARINGS ON THE ACCESSION OF THE AGREEMENT FOR ESTABLISHMENT OF THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT (EBRD) BY THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

The Departmental Committee on Finance and National Planning is established pursuant to National Assembly Standing Order 216 which mandates it **to examine treaties, agreements and conventions referred to it.**

The Accession of the Agreement for the establishment of the European Bank for Reconstruction and Development (a copy attached) is before the Committee for consideration and reporting back to the House.

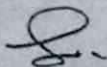
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In compliance to the provisions of Article 118(1) (b) of the Constitution of Kenya and Standing Order 127 (3), the Committee hereby invites you for a meeting to discuss the said Protocol. The meeting will be held on **Tuesday 24th June, 2025** in a venue to be communicated.

You are required to avail fifteen (15) hard copies of your submissions to the meeting, soft copies of which may be sent to cna@parliament.go.ke and copied to the email addresses of the liaison officers indicated below prior to the meeting.

The Committee's Liaison Officers for these meetings are **Mr. Benjamin Magut** who may be contacted on **Tel. No. 0712-974-966** or email address: benjamin.magut.go.ke
Mr. Benson Kamande of **Tel No. 0789-459-387** or email address: benson.kamande@parliament.go.ke.

Yours



JEREMIAH NDOMBI, MBS
For: CLERK OF THE NATIONAL ASSEMBLY

Copy: H.E. (Dr.) Musalia Mudavadi, EGH
Prime Cabinet Secretary
Ministry of Foreign and Diaspora Affairs
Old Treasury Buildings
NAIROBI

Hon. CPA John Mbadi Ng'ongo, EGH
Cabinet Secretary
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Hon, Dorcas Oduor, OGW, EBS, SC
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Solicitor General
Office of the Attorney-General and Department of Justice
Sheria House, Harambee Avenue
NAIROBI

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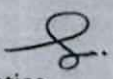
Yours

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NAIROBI

Dear *Hon Mose*

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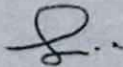
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MINISTRY OF FOREIGN AND DIASPORA AFFAIRS

REGISTRY OF TREATIES

**BRIEF ON THE MEMBERSHIP TO THE EUROPEAN BANK FOR
RECONSTRUCTION AND DEVELOPMENT (EBRD)**

JUNE 2025

ISSUES TO NOTE

- The EBRD is a multilateral development bank with its Headquarters in London that promotes sustainable private sector-led economies in Central and Eastern Europe, Central Asia, and the Southern and Eastern Mediterranean.
- The mandate of EBRD is "to foster the transition towards open market-oriented economies and to promote private and entrepreneurial initiatives in countries committed to applying the principles of multiparty democracy, pluralism and market economies".
- The Agreement Establishing the European Bank for Reconstruction and Development (EBRD), also referred to as the AEB, is the EBRD's Treaty.
- The AEB was signed by founding members in May 1990 and entered into force on 28 March 1991.
- The AEB is the main document of the EBRD and sets out the governance principles of the Bank.
- In its 2023 Annual General Meeting in Uzbekistan, the Board of Governors of EBRD voted for the limited and incremental expansion of its operations into sub-Saharan Africa.
- Following the decision of the Annual General Meeting, the EBRD will invest, for the first time, in up to six sub-Saharan African Countries from 2025. Based on EBRD's mandate and business model, Kenya is among the six countries identified for investment. The other countries are Benin, Cote d'Ivoire, Ghana, Nigeria and Senegal.

THE PATH TO EBRD MEMBERSHIP

- The Cabinet approved Kenya's application of membership and recipient country status to the European Bank for Reconstruction and Development (EBRD) on 14TH February 2024.
- Following this approval, the Cabinet Secretary for the National Treasury and Economic Planning formally submitted Kenya's membership application.
- On 16th May, 2024 the EBRD Board of Governors adopted Resolution 271 granting Kenya's membership to the EBRD.
- However, in order to finalize membership to the EBRD, the EBRD Board of Governors stipulated that Kenya must meet the following Conditions Precedent to membership by 31st May 2025:
 - Submit an Instrument of Accession to confirm that the country accedes to the Agreement Establishing (AEB) and accepts the conditions of membership
 - Submit an Instrument of Subscription to confirm that the country subscribes to both the paid in shares and callable shares,
 - Submit a Legal Opinion that confirms that the above instruments are legal according to Kenya law, and that all necessary measures required under the law have been taken for the accession to the AEB and
 - Transfer the sum for the paid in portion of the shares amounting to EUR 370,000 for the 37 paid-in shares.

LEGAL PROVISIONS

- Pursuant to the Treaty Making and Ratification Act CAP 4D, the Cabinet Secretary submitted the treaty and a memorandum to the Speaker of the National Assembly on **7th April 2025**.
- Upon receipt of the Parliamentary Memorandum by the National Assembly, the relevant parliamentary committee during its consideration of the treaty is required to ensure there is public participation.
- The National Assembly may approve or refuse to approve or approve with reservation the ratification of a treaty.
- Where the ratification of a treaty is approved by the National Assembly, the Registry of Treaties prepares the instrument of ratification of the treaty.
- The instrument is then signed, sealed, deposited at the relevant depositary, and a copy is filed with the Registrar of Treaties.

CURRENT POSITION/ WAY FORWARD

The Departmental Committee on Finance and National Planning has scheduled a meeting on **Tuesday 24th June 2025** to discuss Kenya's accession to the Agreement Establishing European Bank for Reconstruction and Development (EBRD).

REGISTRY OF TREATIES JUNE 2025



STAKEHOLDERS HEARINGS ON THE ACCESSION OF THE AGREEMENT FOR
ESTABLISHMENT OF THE EUROPEAN BANK FOR RECONSTRUCTION AND
DEVELOPMENT (EBRD) BY THE DEPARTMENTAL COMMITTEE ON FINANCE
AND NATIONAL PLANNING

**AMB. STELLA MUNYI, MBS
REGISTRAR OF TREATIES**

MINISTRY OF FOREIGN AND DIASPORA AFFAIRS

THURSDAY 24TH JUNE 2025

PART 1

TREATIES AND THE MANDATE OF THE REGISTRAR OF TREATIES

OUTLINE OF PART 1

1. Introduction
2. Definition of key terms and concepts in treaty law
3. The Constitution of Kenya 2010
4. The Treaty Making and Ratification Act, CAP 4D of the laws of Kenya
5. The mandate of the Registrar of Treaties

1. INTRODUCTION

- ✓ Articles 2 (5) and 2(6) of the Constitution of Kenya 2010 collectively provide that the **general rules of international law** and **any treaty or convention ratified by Kenya** shall form part of the laws of Kenya
- ✓ The Treaty Making and Ratification Act, CAP 4D of the laws of Kenya gives effect to the aforementioned provisions of the Constitution by providing the procedure for the making and ratification of treaties in Kenya
- ✓ Additionally, the Act establishes the Registry of Treaties which is headed by the Registrar of Treaties
- ✓ Registry of Treaties functions include maintaining a record of treaties ratified or proposed for ratification by Kenya and monitoring the implementation of those treaties

2. DEFINITION OF KEY TERMS AND CONCEPTS

1. Treaty

✓ Article 2 of the Vienna Convention on the Law of Treaties defines a treaty as:

“an international agreement concluded between States in written form and governed by international law, whether embodied in a single instrument or in two or more related instruments and whatever its particular designation”

✓ The term “*treaty*” is a generic name and it encompasses, among others, the terms *convention, agreement, statute, covenant*. Terms assigned to documents normally vary because they are often employed to indicate differing degrees of political or practical significance e.g. a bilateral agreement on technical cooperation will rarely be designated as a charter or covenant

2. DEFINITION [CONT'D]

2. Multilateral treaty

- ✓ An international agreement concluded between **three or more subjects of international law**.

3. Bilateral treaty

- ✓ A bilateral treaty is an international agreement concluded between **two subjects of international law** each possessing treaty-making capacity. Example: *An Agreement Between the Government of The Republic of Kenya and The Government of The Republic of The United Kingdom of Great Britain and Northern Ireland on (specific subject)*

2. DEFINITION [CONT'D]

4. Depositary

- ✓ After a treaty has been concluded, the **written instruments**, which provide formal evidence of consent to be bound, and also **reservations and declarations**, are **placed in the custody of a depositary**
- ✓ For treaties with a small number of parties, the depositary will usually be the government of the state on whose territory the treaty was signed
- ✓ Multilateral treaties usually designate an international organization or the Secretary-General of the United Nations as depositaries.

2. DEFINITION [CONT'D]

5. Signature and full powers

- ✓ Normally, the **Head of State, Head of Government or Minister for Foreign Affairs** are the authorized persons who can sign a treaty on behalf of the state
- ✓ Any other person can sign a treaty only if that person possesses a **valid instrument of full powers**. The instrument can authorize the person to sign one or more treaties
- ✓ **Purpose of the instrument of full powers:** protects the interests of all States that can participate in a treaty and the integrity of the depositary
- ✓ It is a legal requirement under Article 7 of the 1969 Vienna Convention on the Law of Treaties

2. DEFINITION [CONT'D]

6. Ratification

- ✓ An act signifying a state's commitment to undertake its obligations under a treaty
- ✓ Most multilateral treaties allow states to express their consent through signature **subject to** ratification, acceptance or approval. This allows states time to seek approval for the treaty at the domestic level as per the constitutional and legislative provisions, and to enact any national legislation (if necessary)
- ✓ Ratification at the international level is complete once an **Instrument of Ratification is deposited** by a state

NB: A state can only ratify a treaty **before** the treaty **enters into force**. After a treaty enters into force, a state can only accede to it

2. DEFINITION [CONT'D]

7. Accession

- ✓ Expression of a state's consent to be bound by a treaty after a treaty has entered into force
- ✓ It occurs through depositing an **Instrument of Accession** with the depositary
- ✓ Accession is not preceded by a signature although it has the same legal effect as ratification, acceptance or approval
- ✓ Where a state deposits an **Instrument of Ratification where the Treaty had not been previously signed**, the UN Secretary-General treats the Instrument as an **Instrument of Accession** and the state is advised accordingly

2. DEFINITION [CONT'D]

8. Acceptance or approval

- ✓ Acceptance or approval of a treaty following the signing of a treaty has the same legal effect as ratification and the same rules apply unless the treaty provides otherwise
- ✓ Acceptance or approval is signified by depositing **Instruments of Acceptance or Approval** with the depositary
- ✓ Example: **Article 88 (2) of the 2008 United Nations Convention on Contracts for the International Carriage of Goods Wholly or Partly by Sea** allows for acceptance or approval of the Convention

2. DEFINITION [CONT'D]

9. Reservation

- ✓ A reservation is a **unilateral statement** made upon signature, ratification, acceptance, approval of or accession to a treaty
- ✓ The purposes of a reservation are:
 - i) To **exclude or modify the legal effect** of a treaty provision concerning the declarant
 - ii) To enable **a state to participate in a multilateral treaty** in which the State would otherwise be unwilling or unable to participate
- ✓ An instrument of reservation must be included in the instrument of ratification, acceptance, approval or accession or be annexed to it. If annexed, it must be signed by the authorized person

2. DEFINITION [CONT'D]

9. Reservation

- ✓ A treaty can expressly **authorize, prohibit or be silent on reservations**

- ✓ Many environmental treaties prohibit reservations. For example:
 - i) Article 37 of the 1992 Convention on Biological Diversity (CBD)-
"No reservations may be made to this Convention"

 - i) Article 24 of the 1992 UN Framework Convention on Climate Change (UNFCCC)- *"No reservations may be made to the Convention"*

2. DEFINITION [CONT'D]

10. Amendment of treaties- treaties that have not entered into force

- ✓ Where a treaty has not entered into force, **it is not possible to amend the treaty pursuant to its own provisions**
- ✓ Where States agree that the text of a treaty needs to be revised, subsequent to the treaty's adoption, but prior to its entry into force, signatories and contracting states may meet to adopt additional agreements or protocols to address the problem

3. CONSTITUTION OF KENYA 2010

- ✓ The Constitution of Kenya 2010 is the **supreme law of the state** and binds all persons and all State organs at both levels of government
- ✓ Regarding the application of international law in Kenya, **Article 2 (5) of the Constitution** provides that “**the general rules of international law shall form part of the law of Kenya**”
- ✓ Further, **Article 2 (6) of the Constitution** introduces a new paradigm to the application of treaties. It states that “**any treaty or convention ratified by Kenya shall form part of the law of Kenya**”

4. THE TREATY MAKING AND RATIFICATION ACT, CAP 4D OF THE LAWS OF KENYA

- ✓ The Treaty Making and Ratification Act (TMRA) was enacted to **give effect to the provisions of Article 2 (6) and to provide for the procedure for the making and ratification of treaties**
- ✓ **Section 4** of the Act assigns the responsibility of initiating the treaty making process, negotiating and ratifying of treaties to the **executive** or it can be delegated to a **relevant State department**
- ✓ **Section 5- certain conditions must be met** before the treaty-making process is initiated

4. THE TREATY MAKING AND RATIFICATION ACT, CAP 4D OF THE LAWS OF KENYA

- ✓ **Section 7-** ratification of treaties in Kenya is **initiated** by the Cabinet Secretary of the relevant State Department (in consultation with the Attorney General) **through a Cabinet Memorandum attaching the Treaty**. These documents are submitted to **Cabinet for approval**

- ✓ **Section 8-** after the Cabinet approves the ratification, a **Parliamentary Memorandum** is prepared **attaching the Treaty** and is submitted to **Parliament** for approval
 - The relevant parliamentary committee must ensure that there is **public participation**
 - **National Assembly can approve or refuse to approve** the ratification of a treaty

4. THE TREATY MAKING AND RATIFICATION ACT, CAP 4D OF THE LAWS OF KENYA

- ✓ **Section 9-** where Parliament approves the ratification, the relevant Cabinet Secretary requests the **Cabinet Secretary of MFDA to prepare the instrument of ratification of the treaty** within 30 days from the date of approval

- ✓ **Section 10-** the **instrument of ratification is deposited** by the Cabinet Secretary of MFDA at the relevant depositary
 - The instrument should be signed and sealed and a copy filed with the Registrar

- ✓ **Section 11-** the **Cabinet Secretary of MFDA can grant full powers** to appropriate persons for purposes of ratification of any treaty

4. THE TREATY MAKING AND RATIFICATION ACT, CAP 4D OF THE LAWS OF KENYA

- ✓ **Section 12-** it is an **offence to ratify a treaty on behalf of the government** without seeking Cabinet and Parliament approval
 - Person committing offence will be liable to **imprisonment** for a term **not exceeding 15 years** or to a **fine not exceeding 20 million shillings** or **to both**

- ✓ **Section 13** creates the **Registry of Treaties** which is domiciled within the Ministry of Foreign and Diaspora Affairs. It is **headed by the Registrar of Treaties (Section 14)**
 - **Functions of the Registry-** a depository of all treaties to which Kenya is a party; contains a record of all treaties; and contains a status of all treaties pending ratification or domestication and the timelines for such ratification

4. THE TREATY MAKING AND RATIFICATION ACT, CAP 4D OF THE LAWS OF KENYA

- ✓ **Section 16-** Where a treaty provides for **periodic submission of reports** as part of its monitoring mechanisms, **the CS of the MFDA (in conjunction with the Attorney General and the relevant State Department)** is required to facilitate the **preparation and submission of such report**

5. THE MANDATE OF THE REGISTRAR OF TREATIES

- ✓ The mandate of the Registrar of Treaties is **contained in the Constitution of Kenya 2010** and the **Treaty Making and Ratification Act CAP 4D of the laws of Kenya**
- ✓ The Registrar is assisted by officers in the Registry of Treaties to execute his mandate
- ✓ These are the responsibilities of the Registrar:

5. THE MANDATE OF THE REGISTRAR [CONT'D]

1. Preparation of the President's Report on Progress Made in Fulfilling the International Obligations of Kenya

- The President is required to present this Report to the National Assembly annually
- It is prepared by the Registry of Treaties (on behalf of the Cabinet Secretary)
- Since 2010, the Registry of Treaties has prepared and consolidated 11 Annual H.E.'s Reports and is in the process of preparing the 12th Report
- See Articles 132 (1) (c) (iii) and (5) of the Constitution

5. THE MANDATE OF THE REGISTRAR [CONT'D]

2. Preparation of the Cabinet Secretary's Report on Treaties ratified by Kenya

- The CS of MFDA is required to submit a report containing all treaties which Kenya has ratified and which may in any way bind Kenya into specific action annually to the National Assembly (Section 15 of the TMRA)
- Since 2010, Registry of Treaties has prepared and consolidated 8 Cabinet Secretary's Reports and is in the process of preparing the 9th Report

5. THE MANDATE OF THE REGISTRAR [CONT'D]

3. Maintaining records of:

- Treaties signed by Kenya
- Treaties proposed for ratification
- Treaties that Kenya has ratified
- Kenya's reports to any treaty body
- Recommendations and concluding observations from any treaty body on Kenya's reports
- Section 14 (4) (a) of the TMRA

4. Monitoring the implementation of treaties ratified by Kenya

- Section 14 (4) (c) of the TMRA

5. THE MANDATE OF THE REGISTRAR [CONT'D]

5. Ensuring lead state departments observe and uphold their obligations under respective treaties

- Section 14 (4) (d) of the TMRA

6. Advising Kenyan citizens on Kenya's rights and obligations under the treaty

- Section 14 (4) (e) of the TMRA

7. Maintaining a website of the treaties to which Kenya is a signatory

- Section 14 (4) (f) of the TMRA

5. THE MANDATE OF THE REGISTRAR [CONT'D]

8. Keeping copies of published reports of proceedings of negotiations that led to the adoption of the treaties ratified by Kenya

- Section 14 (4) (g) of the TMRA

9. Facilitating public access to treaties which Kenya has ratified

- Section 14 (4) (h) of the TMRA

10. Responding to public inquiries on any treaty ratified by Kenya

- Section 14 (4) (i) of the TMRA



MFDA officials, including the Registrar of Treaties, and stakeholders during the launch of the treaties website

Date: 27th November 2023

**Venue:
Radisson Blu
Upperhill**

Thank You



REPUBLIC OF KENYA
THE NATIONAL TREASURY AND ECONOMIC PLANNING

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FINANCE – NAIROBI
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THE NATIONAL TREASURY
P.O. Box 30007 - 00100
NAIROBI

KENYA

When replying, please quote

Ref. TNT/DPR-F/VOL.I/1/ (34)

23rd June, 2025

Mr. Samuel Njoroge, CBS
Clerk of the National Assembly
The National Assembly
Main Parliament Buildings
NAIROBI

Dear *Sir,*

RE: STAKEHOLDER HEARINGS ON THE ACCESSION OF THE AGREEMENT FOR ESTABLISHMENT OF THE EUROPEAN BANK FOR RECONSTRUCTION AND DEVELOPMENT (EBRD) BY THE DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

We refer to your letter Ref. NA/DDC/DDC/F&NP/2025/061 dated 19th June, 2025, inviting the National Treasury for the stakeholder hearing on the accession of the Agreement for the establishment of EBRD by the Departmental Committee on Finance and National Planning.

Pursuant to your requirements, we hereby attach our submissions for your consideration.

Yours

Sincerely

Samson Wangusi

SAMSON WANGUSI, OGW
PRINCIPAL ADMINISTRATIVE SECRETARY
FOR: PRINCIPAL SECRETARY/NATIONAL TREASURY



REPUBLIC OF KENYA
THE NATIONAL TREASURY AND ECONOMIC PLANNING

PARLIAMENTARY BRIEF

BY

THE PRINCIPAL ADMINISTRATIVE SECRETARY

NATIONAL TREASURY

ON

MEMBERSHIP TO

**THE EUROPEAN BANK FOR RECONSTRUCTION AND
DEVELOPMENT (EBRD)**

JUNE 2025

1. OBJECTIVE OF THE MEMORANDUM

The objective of this Parliamentary Brief is to:

- a) Apprise Parliament that the Cabinet, in its meeting on 14th February 2024, approved the Republic of Kenya to obtain a Member and Recipient Country Status in the European Bank for Reconstruction and Development (EBRD);
- b) Seek Ratification by Parliament of the Basic Documents of EBRD as per Sections 8 and 9 of the Treaty-Making and Ratification Act under the guidance of the Ministry of Foreign and Diaspora Affairs.

2. BACKGROUND

This Parliamentary brief is in reference to the Cabinet approval for the application for Membership and Recipient Country Status to EBRD on 14th February, 2024, as per the letter from the Office of the President dated 14th February 2024. The Cabinet Secretary for the National Treasury and Economic Planning subsequently applied for membership.

The EBRD Board of Governors adopted Resolution 271 on 16th May 2024, approving Kenya's membership in the EBRD.

EBRD is a multilateral development bank with its Headquarters in London, promoting sustainable, private sector-led economies in Central and Eastern Europe, Central Asia, and the Southern and Eastern Mediterranean.

The mandate of EBRD is *“to foster the transition towards open market-oriented economies and to promote private and entrepreneurial initiatives in countries committed to applying the principles of multiparty democracy, pluralism and market economies”*.

In its 2023 Annual General Meeting in Uzbekistan, the Board of Governors of EBRD voted for the limited and incremental expansion of its operations into sub-Saharan Africa. The decision reflected the growing economic links between Countries where the Bank has invested in Sub-Saharan Africa and the potential for developing the private sector there.

Following the decision of the Annual General Meeting, EBRD will invest, for the first time, in up to six sub-Saharan African Countries from 2025. Based on EBRD's mandate and business model, Kenya is among the six countries identified for investment.

The other countries are Benin, Côte d'Ivoire, Ghana, Nigeria and Senegal.

3. GOVERNANCE AND SHAREHOLDING STRUCTURE

The governance and shareholding structure of EBRD is as follows:

a) Inclusive governance

b) Growing membership

- EBRD is owned by 71 countries on five continents, the European Union (EU) and the European Investment Bank (EIB).
- The United Arab Emirates and Algeria are recent members.
- Shareholders have approved the membership of Iraq.
- The founding treaty stipulates that the EU member states, the EU and the EIB must hold most of the Bank's shares.
- The United States of America is the Bank's largest shareholder.

c) Representation

Each shareholder is represented individually on the EBRD's Board of Governors.

4. JUSTIFICATION

The mandate and goals of EBRD are closely aligned with the Bottom-up Economic Transformation Agenda (BETA) and four of its five core pillars, namely:

a) Agriculture;

b) Micro, Small and Medium Enterprise (MSME) economy;

- c) Healthcare; and
- d) Digital Superhighway and Creative Economy.

5. IMPACTS CONSIDERED

The National Treasury and Economic Planning has considered the following impact that EBRD will have on the Economy and align with BETA.

5.1.Strategy

The EBRD strategy for supporting the economy is in three cross-cutting themes;

- a) Accelerating the digital transition;
- b) Transitioning to a green, low-carbon economy; and
- c) Promoting equality of opportunity and gender equality for disadvantaged groups, such as women, youth and people living in remote areas, with a key focus on:
 - Access to employment
 - Skills training
 - Finance
 - Entrepreneurship

5.2.Expertise

EBRD will bring on board the following expertise:

- a) Strengthening entrepreneurship and the role of SMEs;
- b) Promoting private sector-led infrastructure and sub-sovereign lending, for example, by commercialising and privatising state-owned enterprises (SOEs);
- c) Developing capital markets and local-currency financing through support for regulators, investments in new financial instruments and targeted technical cooperation;
- d) Furthering the transition to universal and sustainable energy by combining public and private sector work focusing on the green economy; and
- e) Adding value to agribusiness as a leading investor.

5.3. Operations

The operations of EBRD span four (4) economic sectors;

a) Financial Institutions

- Green Economy Financing Facilities
- Women in Business
- Trade Facilitation

b) Corporate Sector

- Company level, sector level and national level
- Commercialisation and privatisation of state-owned enterprises
- Agribusiness

c) Small and Medium-Sized Enterprises (SMEs)

- Making it easier for SMEs to access finance
- Improving the productivity of SMEs
- Providing supply-chain finance
- Enabling the environment to remove regulatory barriers to entry and operation.

d) Sustainable Infrastructure.

6. INTERMINISTRY CONSULTATION RECORD

The membership to EBRD will have linkages with the following ten (10) Ministries:

- a) Ministry of Energy and Petroleum
- b) Ministry of Environment, Climate Change and Forestry
- c) Ministry of Co-operatives and Micro, Small and Medium Enterprises (MSME) Development
- d) Ministry of Investments, Trade and Industry
- e) Ministry of Agriculture and Livestock Development
- f) Ministry of Roads and Transport
- g) Ministry of Information, Communications and The Digital Economy

- h) Ministry of Youth Affairs and Sports.
- i) The Ministry of Gender, Culture, the Arts and Heritage
- j) Ministry of East African Community, The ASALS & Regional Development

7. IMPLEMENTATION PLAN

- a) The National Treasury and Economic Planning will submit the signed Instrument of Accession and Instrument of Subscription.
- b) The EBRD Management will complete the Country Technical Assessment Report. EBRD carried out the Country Assessment in the week of 9 to 13 June 2025.
- c) The Attorney General will submit a Legal Opinion in the format prescribed by EBRD.
- d) The EBRD Board of Directors will grant the membership before their summer recess, which makes it essential that all the Conditions Precedent are completed before the end of June 2025.
- e) Subject to the EBRD Board of Directors, the Republic of Kenya and EBRD conclude a Resident Office Agreement allowing the Bank to establish Resident Offices in Kenya.

8. LEGISLATION AND REGULATORY PLAN

A Legal Opinion in a form that is satisfactory to the Bank and that confirms the membership Instruments have been adopted in compliance with the laws of the Republic of Kenya is a Condition Precedent.

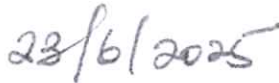
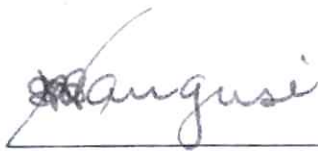
9. FINANCIAL IMPACT

- a) The minimum subscription, which will be the initial subscription, is 203 shares, of which:
 - 37 are paid-up shares with a total cost of EUR 370,000 (Approx. Kshs. 55,053,558 @ 148.7934 - CBK rate on 23/06/25).
 - 166 shares are callable.

10. REQUEST TO PARLIAMENT

Parliament is invited to:

- i) Take note that the Cabinet, in its meeting on 14th February 2024, approved the Republic of Kenya to obtain a Member and Recipient Country Status in the European Bank for Reconstruction and Development (EBRD);
- ii) Consider and Ratify the Basic Documents of EBRD as per Sections 8 and 9 of the Treaty-Making and Ratification Act.
- iii) Direct the Attorney General to issue the required Legal Opinion.
- iv) Direct the Prime Cabinet Secretary and Cabinet Secretary for Foreign Affairs & Diaspora Affairs to prepare and deposit the relevant Instruments to the Depository.



SIGNED:

DATED

SAMSON WANGUSI, OGW

**PRINCIPAL ADMINISTRATIVE SECRETARY
FOR: PRINCIPAL SECRETARY/THE NATIONAL TREASURY**

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