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PARLIAMENTARY MEMORANDUM

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 29 APR 2025	DAY: Tuesday
TABLED BY: Hon. Julius Melly, MP on Behalf of LOM	THE ACCESSION TO THE
CLERK-AT-THE-TABLE: Benson Inzofu	

ON

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 Depository.

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
PUBLIC DEBT MANAGEMENT OFFICE
THE NATIONAL TREASURY

**EXECUTIVE OFFICE OF THE PRESIDENT
CABINET OFFICE**

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Telephone: +254-20-22275621/2/3
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Ref. No.
and date

SECRET

STATE HOUSE
P.O. Box 40530-00100
Nairobi, Kenya

14th February, 2024

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27 FEB 2024
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Dr. Chris Kiptoo, PhD., CBS
Principal Secretary
The National Treasury
The National Treasury & Economic Planning
NAIROBI

① DG/PMO
Deal
PAS

26/2/2024

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

② DK-PIPM

This is yours
HJ
26/2/24

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

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:

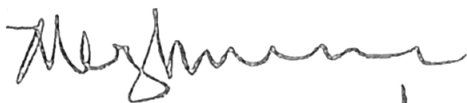
- I. Noted the contents of the Memorandum;
- II. Approved the application for membership and Recipient Country status in the European Bank for Reconstruction and Development; and

*Mr. Kiptoo
release
26/2/2024
27/2/2024
K-2*

SECRET

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**

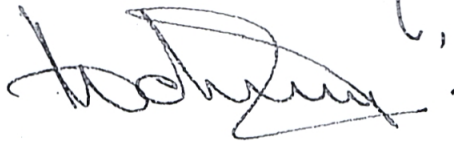
The Republic of Kenya would like to request to be admitted as a member country of the European Bank for Reconstruction and Development (EBRD) in accordance with the Agreement Establishing EBRD (the agreement), an international agreement signed on 29th May, 1990 as amended on 15th October 2006, 22nd August, 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

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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,

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)