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REPUBLIC OF KENYA

THE NATIONAL ASSEMBLY

THIRTEENTH PARLIAMENT – FOURTH SESSION – 2025

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING

....

REPORT ON:

THE CONSIDERATION OF THE RATIFICATION OF THE KENYA'S ACCESSION OF THE AGREEMENT FOR ESTABLISHMENT OF THE AFRICA FINANCE CORPORATION

CLERK'S CHAMBERS
DIRECTORATE OF DEPARTMENTAL COMMITTEES
PARLIAMENT BUILDINGS
NAIROBI.

MARCH, 2025

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LIST OF ABBREVIATIONS AND ACRONYMS

AFC	-	Africa Finance Corporation
AFCFTA	-	African Continental Free Trade Area
ADB	-	Africa Development Bank
CBN	-	Central Bank of Nigeria
CBS	-	Chief of Burning Spear
CPA	-	Certified Public Accountant
DRC	-	Democratic Republic of Congo
EAC	-	East African Community
EACOP	-	East African Crude Oil Pipeline
FY	-	Financial Year
HON	-	Honorable
KEPFIC	-	Kenya Pension Funds Investment Consortium
KEPSA	-	Kenya Private Sector Alliance
LSK	-	Law Society of Kenya
MFA	-	Ministry of Foreign Affairs
MOU	-	Memorandum of Understanding
MP	-	Member of Parliament
ODM	-	Orange Democratic Movement
PCS	-	Preferred Creditor Status
UDA	-	United Democratic Alliance
UDM	-	United Democratic Movement
UN	-	United Nations
USD	-	United States Dollar

LIST OF ANNEXURES

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

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CHAIRPERSON'S FOREWORD

This report details the consideration by the Departmental Committee on Finance and National Planning on its consideration of the Kenya's Accession of the Agreement for Establishment of the Africa Finance Corporation. The Africa Finance Corporation (AFC) is a multilateral development finance institution established in 2007 to provide financing solutions for infrastructure development in Africa. It has its headquarters in Lagos, Nigeria. Its main objective is to provide Financing and developing infrastructure projects in sectors such as energy, transport, telecommunications, and natural resources.

To become a member of AFC, African countries sign the Instrument of Adherence and ratify the AFC Establishment Agreement. Upon accession, member countries are required to ratify AFC's constitutive instruments in line with their national laws, effectively domesticating the AFC Treaty into local law. Kenya became a sovereign member of the Africa Finance Corporation (AFC) in 2017. Since then, AFC has been a significant development partner in Kenya, with cumulative investments of approximately USD 400 million in the country. Kenya's decision to accede to the Africa Finance Corporation (AFC) was driven by multiple economic, infrastructural, financial, and strategic considerations.

Pursuant to section 8(1) of the Treaty Making and Ratification Act Cap 4D, the Prime Cabinet Secretary and Cabinet Secretary for Foreign and Diaspora Affairs submitted the Parliamentary Memorandum on Kenya's Ratification of Kenya's Accession of the Agreement for the Establishment of the Africa Finance Corporation 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 purpose of the Treaty is to Support and promote infrastructure development in Africa through the provision of investment funds; Facilitate African trade generally and export-oriented trade by African countries; Contribute to the development of the energy and extractive industries in Africa; Provide on-lending and refinancing facilities to African financial institution and Engage in any kind of banking and financial business intended to promote investments in Africa.

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 Law Society of Kenya **on Thursday, 13th February 2025** in Parliament Buildings, Nairobi. The Committee also placed advertisements in two local dailies on **30th November 2024** calling for submissions of memoranda on the subject matter. Further, the Committee, through letter dated **6th February 2025,** sought the views of the Office of the Attorney General, the Ministry of Foreign and Diaspora Affairs, The National Treasury and the Ministry of Trade, Industry and Cooperatives.

Having considered the Treaty and analyzed the submissions made, the Committee observed that the Treaty 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 for the Establishment of the Africa Finance Corporation 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 the Establishment of the Africa Finance Corporation.

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

1. PREFACE

1.1 INTRODUCTION

1. This report outlines the consideration by the Departmental Committee on Finance and National Planning of the Treaty Establishing the Kenya's Accession of the Agreement for the Establishment of the Africa Finance Corporation. The Agreement is focused on bridging Africa's large infrastructure deficit by financing projects that have high developmental impact on the economies of African countries.
2. As part of its mandate, the Corporation focusses on lending to and investing in the core infrastructure sectors of power, natural resources, transport, heavy industry and telecommunication, which it believes are critical pillars for economic growth across Africa.
3. Since its inception, the Corporation has committed more than USD 2 Billion in major infrastructure projects in the power and energy, oil and gas sectors, telecommunication, transport and logistics, and heavy industries in Nigeria, Cote d'Ivoire, Ghana, Cape Verde, Kenya, DRC, Malawi, Zambia, Ethiopia, Chad, Cameroon, Congo, Morocco and South Africa.
4. The Agreement for the Establishment of the Africa Finance Corporation ("AFC Agreement") is dated and was executed on 28th May, 2007 and it contains 20 Articles.

1.2 MANDATE OF THE COMMITTEE

5. The Committee is established under the National Assembly Standing Order No. 216. The mandate of the Committee includes, among others, ***"to examine treaties, agreements and conventions".***
6. The Committee's subject matters are stated in the Second Schedule of the National Assembly Standing Orders to consider matters pertaining public finance, public audit policies, monetary policies, financial institutions, economy, investment policies, competition, banking, insurance, national statistics, population, revenue policies including taxation, national planning, and development, digital finance, including digital currency.
7. In executing its mandate, the Committee oversees the following MDAs: The National Treasury; The State Department for Economic Planning; The Office of the Controller of Budget and The Commission on Revenue Allocation.

1.4 COMMITTEE MEMBERSHIP

8. The Departmental Committee on Finance and National Planning was constituted by the House on **27th October, 2022** and 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 O. Kaluma, CBS, MP
Homabay Town Constituency
ODM Party

Hon. David Mboni, MP
Kitui Rural Constituency
Wiper Party

Hon. Chiforomodo M. Munga, MP
Lungalunga Constituency
UDM Party

Hon. CPA Julius Rutto, MP
Kesses Constituency
UDA Party

Hon. Paul Biego, MP
Chesumei Constituency
UDA Party

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

Hon. George Sunkuya, MP
Kajiado West Constituency
UDA Party

Hon Andrew Okuome, MP
Karachuonyo Constituency
ODM Party

Hon. CPA Joseph Oyula, MP
Butula Constituency
ODM Party

Hon. Umul Ker Kassim, MP
Mandera County
UDM Party

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

Hon. Betty N. Maina, MP
Muranga County
UDA Party

Hon. Mohamed Machele, MP
Mvita Constituency
ODM Party

1.5 COMMITTEE SECRETARIAT

9. The Committee is facilitated by the following staff:

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**	Mr. Mwangi Muchiri **Audio Officer III**
Ms. Winfred Kambua **Clerk Assistant III**	Mr. George Ndenjeshe **Fiscal Analyst III**
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 III**

CHAPTER TWO

2. BACKGROUND TO THE TREATY ESTABLISHING THE AFRICA FINANCE CORPORATION

2.1 INTRODUCTION

10. The Committee has received the Agreement for the Establishment of the Africa Finance Corporation. The Africa Finance Corporation ("Corporation") is a multilateral development financial institution dedicated to infrastructure financing in Africa, primarily through debt and equity investments, project development and financial advisory services. It was established and commenced operations on 1st November, 2007 and has its headquarters in Lagos, Nigeria. The Corporation is focused on bridging Africa's large infrastructure deficit by financing projects that have high developmental impact on the economies of African countries.

11. Its primary goal is to be the leading African institution for infrastructure financing and facilitation of international trade in Africa.

12. The mission of the Corporation is to foster the economic growth and industrial development of African countries, while delivering a competitive return on investment to its shareholders.

13. As part of its mandate, the Corporation focusses on lending to and investing in the core infrastructure sectors of power, natural resources, transport, heavy industry and telecommunication, which it believes are critical pillars for economic growth across Africa. Since its inception, the Corporation has committed more than USD 2 Billion in major infrastructure projects in the power and energy, oil and gas sectors, telecommunication, transport and logistics, and heavy industries in Nigeria, Cote d'Ivoire, Ghana, Cape Verde, Kenya, DRC, Malawi, Zambia, Ethiopia, Chad, Cameroon, Congo, Morocco and South Africa.

14. The Corporation was created by two constitutive legal instruments:
    i. The Establishment Agreement; and
    ii. The Charter.

15. The Establishment Agreement is made among sovereign states, which sign an instrument of accession and acceptance of membership, giving the Corporation its "supranational" status. The Corporation currently has fourteen (14) member countries: Nigeria, Ghana, Guinea-Bissau, Sierra Leone, Gambia, Liberia, Guinea, Chad, Cabo Verde, Gabon, Cote d'Ivoire, Djibouti, Rwanda and Uganda. Member countries are African countries that have acceded to the Establishment Agreement and the Charter.

16. The Charter grants the Corporation certain immunities and privileges in member countries that are similar to other multilateral development banks, such as the African Development Bank.

17. Membership to the Corporation confers a supranational status and certain benefits such as "preferred creditor status", which includes tax exemptions, preferential access to foreign currency

and immunity from confiscation of its assets in its member countries. The Corporation has an authorized share capital of USD 1.1 Billion.

18. The Corporation is set up with a hybrid structure where the concepts of membership and shareholding are separate. Membership is only open to sovereign African countries while shareholding is open to both public and private sector investors. The Corporation's capital has been principally provided by Nigeria, through the Central Bank of Nigeria (CBN), major commercial banks and financial institutions, other private sector commercial entities and individuals.

19. The Corporation acts as both a leading financier and advisor to its clients in Africa, offering project and structured debt finance, trade finance, greenfield and expansion equity, as well as acquisition capital. These products are complemented with advisory capabilities in areas such as project development, capital raisings and restructurings. The Corporation has several strategic partnerships aimed at establishing market presence and recognition, which also create deal flow for the Corporation. The Corporation's principal assets are loans predominantly in US dollars to borrowers in Africa and investment securities.

20. The Corporation's primary objective is to bridge Africa's infrastructure financing gap by mobilizing and providing funding for large-scale infrastructure projects that are critical for economic growth and development.

21. The subject matter of the agreement revolves around:

    i. Facilitating the development of key infrastructure by investing and funding development projects across sectors such as energy, transportation, telecommunications, natural resources, and heavy industries thereby fostering economic growth and industrial development in African countries.
    ii. Promoting sustainable economic development by creating jobs, enhancing trade, and improving the overall business environment on the continent.
    iii. Encouraging private sector participation. The Corporation aims to enhance the role of the private sector in growth of African economies through public-private partnerships (PPPs), thereby leveraging private investments alongside sovereign or public sector funding.
    iv. Ensuring regional integration. The Corporation fosters cooperation among member states by developing infrastructure that connects African economies and facilitates cross-border trade.

22. The Committee is expected to consider the Agreement and recommend its approval by the National Assembly with or without reservations pursuant to section 8(4) of the Treaty Making and Ratification Act (No. 45 of 2012).

23. 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."

24. 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.

2.2 OUTLINE OF THE TREATY ESTABLISHING THE AFRICA FINANCE CORPORATION.

25. Article I provides for the establishment of the Africa Finance Corporation.

Purpose of the Corporation

26. Article 2 provides for the purposes of the Corporation which is to foster economic growth and industrial development of African countries, collectively and individually, and more specifically, to;

a) support and promote infrastructure development in Africa through the provision of investment funds;
b) facilitate African trade generally and export-oriented trade by African countries;
c) contribute to the development of the energy and extractive industries in Africa;
d) provide on-lending and refinancing facilities to African financial institutions; and
e) generally, engage in any kind of banking and financial business intended to promote investments in Africa.

Functions of the Corporation

27. Article 3 enumerates the functions of the Corporation which are to—

a) grant direct loans and extend credit guaranteed by commercial documents, sovereign instruments, credit instruments or by any other form of security;
b) guarantee transactions made by other reputable financial institutions;
c) give open-ended or transaction-specific lines of credit to other reputable financial institutions;
d) own, hold, purchase, sell, withdraw, make, draw, accept, endorse, discount and carry out any operation with promissory notes, bills of exchange, option certificates for the acquisition of shares and any other securities or credit instruments in any member country or country approved by the Board of Directors;
e) act as an international financial agent;
f) provide equity financing on such terms as may be approved by the Board of Directors;
g) provide technical assistance for the preparation, financing and execution of development projects and programmes, including the formulation of specific project proposals;
h) meet requests from African countries to assist them in the coordination of their development policies and plans with a view to achieving better civilization of their resources, making their economies more complementary, and promoting the orderly expansion of their foreign trade, and in particular, intra-regional trade;

i) co-operate, in such manner as the Corporation may deem appropriate, within the terms of the Agreement, with the United Nations, its organs and subsidiary bodies, and with other public and private international organisations and other international institutions, as well as national entities whether public or private, which are concerned with investment of development funds in Africa, and to interest such institutions and entities in new opportunities for investment and assistance; and
j) generally, carry out any kind of banking, securities and financial operations.

Legal status of the Corporation

28. Article 4 provides for the legal status of the Corporation. It provides that the Corporation shall be deemed a legally constituted body corporate under the laws of each Member State. It further provides that in each Member State, the Corporation shall enjoy the most extensive legal capacity accorded to legal persons under the law, particularly the capacity to—

a) institute and be a party to any judicial, legal or administrative proceedings;
b) enter into contracts;
c) acquire and dispose of property whether movable or immovable;
d) take such steps and do all such things as may appear necessary or desirable to protect its interests; and
e) take such steps and do all such things as are incidental or conducive to attaining its objects and purpose, exercising its powers and conducting its business.

Corporation Membership

29. Article 5 provides for the membership of the Corporation which shall be open to—

a) independent African states, represented by their respective central banks;
b) African regional and sub-regional financial institutions;
c) African public and private banks, financial institutions and private investors; and
d) international private investors.

Headquarters and Branch Offices

30. Article 6 provides that the permanent headquarters of the Corporation shall be in Lagos, Nigeria. It further provides that the Corporation may, in the discharge of its objectives, establish branches or representative offices in other Member States selected by the Board of Directors.

Immunities, Exemptions, Privileges, Facilities and Concessions

31. Article 7 provides that each Member State shall take all legislative action under its national law and all administrative measures, as is necessary, to enable the Corporation to effectively fulfil its purpose and carry out the functions entrusted to it. To this end, each Member State shall accord to the Corporation, in its territory, the status, immunities, exemptions, privileges, facilities and concessions set for the in the Agreement and shall promptly inform the Corporation of the specific action it has taken for this purpose.

Legal Process

32. Article 8 provides that the Corporation shall enjoy immunity from every form of legal action or process except in respect of its operation where legal action may be brought against the Corporation in any court of competent jurisdiction in the territory of the state where the headquarters of the Corporation is situated or in which the Corporation has a representative or branch office or a subsidiary, or has appointed an agent for the purpose of accepting service or notice of process.

10. These entities are prohibited from bringing actions against the Corporation:

a) a Member State;
b) a Shareholder or a former Shareholder of the Corporation or persons acting for or deriving claims from a Shareholder or a former Shareholder; or
c) any natural or legal persons in respect of:
   i. Transactions governed by arbitration agreements;
   ii. Matters pending before an arbitral tribunal; and
   iii. Personnel matters.

Immunity of Property and Assets

33. Article 9 provides that the property and assets of the Corporation shall be immune from search, acquisition, requisition, expropriation, confiscation, nationalization and other forms of seizure, taking or foreclosure by executive or legislative action; and seizure, attachment or execution before the delivery of final judgement or award against the Corporation.

Freedom of Property, Assets and Operations from Restriction

34. Article 10 provides that each Member State shall waive, and refrain from imposing, any administrative, financial or other regulatory restrictions that are likely to hinder in any manner the smooth functioning of the Corporation or impair its operations. It further provides that to this end, the Corporation, its property, assets, operations and activities shall be free from restrictions, regulations, supervision or controls, moratoria and other legislative executive, administrative, fiscal and monetary restrictions of any nature.

Immunity of Archives

35. Article 11 provides that the archives of the Corporation and, in general, all documents belonging to, or held by the Corporation shall be inviolable wherever located. However, the immunity shall not extend to documents required to be produced in the course of judicial or arbitral proceedings to which the Corporation is a party or proceedings arising out of transactions concluded by the Corporation.

Privilege for Communication

36. Article 12 provides that official communication of the Corporation shall be accorded by each Member State the same treatment and preferential rates that it accords to the official communications of international organizations.

Personal Immunities, Privileges and Exemptions

37. Article 13 provides that all representatives, the Chief Executive Officer, Directors, officers and employees of the Corporation and consultants and experts performing missions for the Corporation shall be immune from legal process with respect to acts performed by them in their official capacity. Also, they shall be accorded the same immunities from immigration restrictions and alien registration requirements, and, not being local nationals, shall be accorded the same immunities from national service obligations and the same facilities as regards exchange regulations, as are accorded by each Member State to representatives, officials and employees of comparable rank of other states or international organizations. Further, where they are not resident nationals, they shall be granted the same treatment in respect of travelling facilities as is accorded by Member Stats to representatives, officials and employees of comparable rank of other states or international organizations.

38. The article further provides that the Chief Executive Officer, Directors, officers and employees of the Corporation shall be immune from personal arrest or detention; and shall be exempt from any form of direct or indirect taxation on salaries, emoluments, indemnities and compensation paid by the Corporation.

Waiver of Immunities and Privileges

39. Article 14 provides that the immunities and privileges provided in the Agreement are granted in the interest of the Corporation and may only be waived, to such extent and upon such conditions as the Board of Directors of the Corporation shall determine, in cases where such a waiver would not, in its opinion, prejudice the interests of the Corporation.

40. It further provides that the Chief Executive Officer of the Corporation shall have the right and the duty to waive the immunity of any officer, employee, consultant or expert of the Corporation in cases where, in his opinion, the immunity would impede the course of justice and can be waived without prejudice to the interests of the Corporation. In similar circumstances and under the same conditions, the Board of Directors shall have the right and duty to waive the immunity of the Chief Executive Officer or any Director of the Corporation.

Exemption from Taxation

41. Article 15 provides that the Corporation, its property, assets, income, operations and transactions shall be exempt from all taxation and custom duties. The Corporation, and its receiving, fiscal and paying agents shall be exempt from any obligation relating to the payment, withholding or collection of any tax or duty out of funds owned by, or otherwise appertaining to, the Corporation.

42. It also provides that each Member State shall take all necessary action to ensure that the property and assets of the Corporation, its capital, reserves and dividends, loans, credits, guarantees, securities, and other investments and transactions, interest, commissions, fees, profits, gains, proceeds of realization and other income, return and moneys of any kind, accruing, appertaining or payable to the Corporation from any source shall be exempt from all forms of taxes, duties, charges, levies, and imposts of any kind whatsoever, including stamp duty and other documentary taxes.

43. These provisions shall be applied without prejudice to the right of the Member States to tax their residents in the manner each Member State deems appropriate.

Fiscal Exemptions, Financial Facilities, Privileges and Concessions

44. Article 16 provides that the Corporation shall be accorded by each Member State a status not less favorable than that of a non-resident corporation, and shall enjoy all fiscal exemptions, financial facilities, privileges and concessions granted to international organizations, banking establishments and financial institution by the Member States.

Supplementary Agreements

45. Article 17 provides that each Member State may enter into a supplementary agreement with the Corporation to the extent necessary to attain the purpose of the Agreement.

Interpretation and Settlement of Disputes

46. Article 18 provides that the Agreement shall be interpreted in the light of its primary purpose of enabling the Corporation to fully and efficiently discharge its functions and fulfil its purpose.

47. It further provides that any dispute among the parties to the Agreement or between the Corporation and a party to the Agreement regarding the interpretation or application of any of the provisions of the Agreement or any supplementary agreement shall be submitted to the General Meeting of the Shareholders of the Corporation whose decision shall be final.

Entry into Force

48. Article 19 provides that the Agreement shall be open for signature on behalf of the contracting parties and shall be subject to ratification, acceptance or approval.

49. It further provides that the Agreement shall enter into force provisionally on the day when at least two Member States shall have signed the Agreement; and two instruments of acceptance or approval shall have been deposited with the Provisional Depository.

50. In addition, the Agreement shall take effect definitively for each contracting party on the date of deposit of its instrument of ratification, acceptance, approval or accession in accordance with its constitutional or other applicable statutory procedures.

Depository

51. Article 20 provides that instruments of ratification, acceptance, approval or accession shall be deposited with the Provisional Depository.

52. The Provisional Depository shall register the Agreement with the Secretariat of the United Nations in accordance with Article 102 of the Charter of the United Nations and the regulations thereunder

adopted by the General Assembly of the United Nations and the regulations thereunder adopted by the General Assembly of the United Nations and shall transmit certified copies of the Agreement to all contracting parties.

53. Upon commencement of operations of the Corporation, the Provisional Depository shall transmit the text of the Agreement and all relevant instruments and documents in his possession to the Secretary of the Corporation who shall then act as the Depository.

Establishment of the Corporation

54. Article 21 provides that as soon as the Agreement comes into force pursuant to Article 19, the Corporation shall be established in accordance with the provisions of Article 41 of the Charter.

CHAPTER THREE

3. PUBLIC PARTICIPATION/STAKEHOLDER CONSULTATION

3.1 CALL FOR MEMORANDA FROM THE PUBLIC.

55. 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 two local dailies, on 30th November 2024 calling for submissions of memoranda on the subject matter. By the close of the deadline, the Committee received four structured memoranda from the following stakeholders; The National Treasury, the Law Society of Kenya (LSK), Kenya Private Sector Alliance (KEPSA), and the Ministry of Foreign and Diaspora Affairs.

3.2 THE LAW SOCIETY OF KENYA

56. The Law Society of Kenya appeared before the Committee on 25th February 2025 and submitted as follows with regards to the consideration of the Agreement: -

57. Africa Finance Corporation is a multilateral development financial institution dedicated to infrastructure financing in Africa, primarily through debt and equity investments, project development and financial advisory services. It was established on 1st November, 2007 to foster economic development of African countries collectively and individually inter alia, through provision of funds to catalyse infrastructural development. Furthermore, the corporation provides on-lending and refinancing activities, in addition to conducting any kind of banking and financial business. It has its headquarters in Lagos, Nigeria.

58. To achieve its aim, the corporation funds development projects across sectors such as energy, transportation, telecommunications, natural resources, and heavy industries. Its structure allows for membership and shareholding as separate concepts, where membership is only open to Sovereign African countries while shareholding is open to both public and private sector investors in accordance with Article 5 of the Agreement for the Establishment of the Africa Corporation dated 28th May 2007.

59. The Law Society of Kenya is hesitant to support Kenya's Accession to the Agreement noting that Kenya is currently a member state of Africa Development Bank, which as at 13th November 2019 had entered into a partnership with Africa Finance Corporation. This move it was hoped would enable both institutions to accelerate infrastructure development and delivery on the continent by deepening co-financing opportunities, joint implementation, knowledge transfer and capacity development for the benefit of Africa. The addition of AfDB as a shareholder and DFI member of AFC complements AFC's strategy of addressing Africa's infrastructure deficit with AfDB's stated mission to help reduce poverty, improve living conditions for Africans and mobilize resources for the continent's economic and social development.

60. Further, they stated that on 5th December 2023, AFC and AfDB signed a USD 350 million long-term line of credit for infrastructure to support urgently needed financing for infrastructure projects to underpin sustainable development and economic growth across Africa. The financing agreement will enable AFC to mobilise additional resources towards continued development of infrastructure projects in its focus sectors, including power, transportation, telecommunications, and natural resources. These projects play a pivotal role in closing Africa's infrastructure deficit and creating new opportunities for economic growth and prosperity on the continent.

61. They noted that it would seem that, by interpretation, Kenya already being a member state to AfDB, which is currently financing the activities of AFC, is already by extension a shareholder in AFC. By signing the accession agreement, Kenya would be required buy shares into the corporation as per Article 7 of the Charter of the African Finance Corporation, the amount having not been specified and Annexture "A", having not been shared for interrogation by the Society. Hence by signing the Agreement, they fail to see the additional benefits that would accrue to the country that are currently not enjoyed by the country. Further, the failure to disclose the actual financial implications of signing the agreement leave the society at odds in evaluating the cost- benefit effects.

Committee Observation

The Committee observed that there will be additional benefits to the county through accession to the Agreement for Establishment of the Africa Finance Corporation. Although Kenya is a member of the Africa Development Bank, the specific benefits are enumerated in Article 3 of the Treaty and in summary, they are:

i. **Facilitating the development of key infrastructure by investing and funding development projects across sectors such as energy, transportation, telecommunications, natural resources, and heavy industries thereby fostering economic growth and industrial development in African countries.**
ii. **Promoting sustainable economic development by creating jobs, enhancing trade, and improving the overall business environment on the continent.**
iii. **Encouraging private sector participation. The Corporation aims to enhance the role of the private sector in growth of African economies through public-private partnerships (PPPs), thereby leveraging private investments alongside sovereign or public sector funding.**
iv. **Ensuring regional integration. The Corporation fosters cooperation among member states by developing infrastructure that connects African economies and facilitates cross-border trade.**

62. Additionally, on Article 3 (1)(j) and 3(2)(a) of the Agreement, LSK stated that they reject the accession since it grants the corporation an automatic right to conduct all forms of banking business within the territory of a member state in its own terms, since it is only governed by the establishing agreement and the Charter. They stated that this will result to unfair competition within the banking

sector. Further, they submitted that section 3(1) of the Banking Act provides that no person shall in Kenya, transact any banking business unless it is an institution/ duly approved agency conducting banking business on behalf of an institution, which holds a valid license. Additionally, section 5 (1) of the Act continues to state that subject to section 4, the Central Bank may, upon payment of the prescribed fee, grant a licence to an institution to carry on business. These two Articles therefore suggest that the Corporation will have the power to carry all forms of banking without reference to the license granted by Central Bank.

Committee Observations

i. **Article 2(6) of the Constitution provides that, "Any treaty or convention ratified by Kenya shall form part of the law of Kenya under [the] Constitution";**
ii. **The Kenyan Constitution recognizes international law as part of the laws of Kenya and in terms of primacy, international law ranks higher than domestic laws;**
iii. **Therefore, if Kenya ratifies the Agreement, the provisions of the Banking Act in relation to licensing will not apply to the Africa Finance Corporation;**
iv. **Article 2(e) of the Agreement provides for one of the purposes of the Corporation as to "generally engage in any kind of banking and financial business intended to promote investments in Africa" and Article 3(2) of the Agreement provides that the Corporation shall have power to "carry on all forms of banking business and financial services authorized under this Agreement";**
v. **Therefore, the banking and financial business contemplated is to be within the purposes of the Corporation and for the promotion of investments in Africa and it is not envisaged that this will result in unfair competition domestically.**

63. On Article 5(3) of the Agreement LSK opposes the provision noting that The Article attracts new financial implications, contrary to the assertion by the Prime Cabinet Secretary in the memorandum submitted to Parliament dated 28th October 2024. Under provision 9 titled Financial Implication in page 11, the Cabinet Secretary states that "Accession will not attract any new financial requirements as the implementation of the Agreement only necessitates membership to the Corporation". This interpretation conflicts with the requirements of the Charter of the Africa Finance Corporation on shareholding requirements.

Committee Observations

i. **The National Treasury submitted that AFC membership and shareholding in AFC are separate decisions that are taken concurrently or independently. For membership, one must be a Sovereign State whereas to be a shareholder one may either be a private or public entity. Kenya's AFC membership was ratified by the Cabinet on 7th April 2017, and the**

Instrument of Adherence was submitted to AFC, making the Country a full-fledged member;

ii. **Article 5(3) of the Agreement is couched in mandatory terms by stating that "Membership of the Corporation shall be acquired upon subscribing to the Shares of the Corporation in accordance with the provisions of this Agreement". Therefore, the Committee agrees with the LSK that there will be financial implications to the Agreement;**

iii. **Indeed, the National Treasury in its submission to the Committee stated that the Government of Kenya expressed interest and committed to investing USD100 Million in AFC Callable Capital Shares, from which 25% will be paid and 75% will remain callable;**

iv. **Further, the National Treasury has stated that due to the time lapse between the ratification of the agreement and payment towards shareholding, the value per share offered to the National Treasury was revised upwards from USD 2.20 to the prevailing offer price per share of USD 2.31, based on market valuation. Consequently, this increased the remaining balance. From the proposed investment towards payment of shares, the National Treasury has paid USD 3,833,409 under FY 2023/24 Supplementary Estimates II, leaving a balance of USD 21,166,591; and A budgetary allocation towards payment of shares of USD 10,000,000 has been proposed under FY 2024/2025 Supplementary Estimates No. 2 and the balance of USD 11,166,159 submitted for consideration under the FY 2025/2026 FY Annual Budget.**

64. On Article 10(2) of the Agreement LSK submitted that this provision gives the Corporation unilateral rights to property ownership if not checked vis-a-vis the provisions of other laws of the country on land ownership by non-citizen including Article 65 of the Constitution.

Committee Observations

i. **Article 10 of the Agreement provides as follows:**

"Article 10: Freedom of Property, Assets and Operations from Restriction

(a) To the extent necessary to implement the purpose of the Corporation and carry out its functions, each Member State shall waive, and refrain from imposing, any administrative, financial or other regulatory restrictions that are likely to hinder in any manner the smooth functioning of the Corporation or impair its operations.

(b) To this end, the Corporation, its property, assets, operations and activities shall be from restrictions, regulations, supervision or controls, moratoria and other legislative executive, administrative, fiscal and monetary restrictions of any nature."

ii. **The overarching import of the Article is to enable the Corporation carry out its functions without undue and unwarranted hindrances and it was important to look at this in the context of international law and that in any case, the provision does not violate the Constitution.**

3.3 KENYA PRIVATE SECTOR ALLIANCE (KEPSA)

65. Through a letter Ref. 371/2-PPD/2024, dated 13th February 2025, the Kenya Private Sector Alliance (KEPSA) submitted that their assessment indicates that the agreement does not present any adverse effects on the private sector or the overall competitiveness of Kenya's business environment. They commend the agreement for recognizing the critical role of Public-Private Partnerships in bridging infrastructure gaps, thereby facilitating trade and contributing to the growth of both the private sector and the national economy.

Committee Observation
The Committee noted, with appreciation, the submissions by the stakeholder.

3.4 THE NATIONAL TREASURY.

66. Through a letter Ref. TNT/CONF/36/031 'A' (33) dated 3rd March 2025, The National Treasury submitted as follows;

67. That the Africa Finance Corporation (AFC) was established in 2007 to be the catalyst for pragmatic infrastructure investment across Africa; AFC currently has 43 member states, namely: Nigeria (Host Country), Angola, Benin, Botswana, Burkina Faso, Burundi, Congo Brazaville, Cameroun, Cape Verde, Chad, Cote d'Ivoire, Djibouti, DRC, Egypt, Eritrea, Eswatini, Ethiopia, Gabon, Ghana, Guinea Bissau, Guinea-Conarky, Gambia, Kenya, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Namibia, Niger, Rwanda, Sao Tome and Principe, Senegal, Sierra-Leone, Somalia, South-Sudan, Togo, Tunisia, Uganda, Zambia and Zimbabwe.

68. There is no annual subscription payment to AFC, Kenya will only pay for the share subscription which is a one-off payment.

On the difference between a member and shareholder under the AFC

69. National Treasury submitted that AFC membership and shareholding in AFC are separate decisions that are taken concurrently or independently. For membership one must be a Sovereign State whereas to be a shareholder one may either be a private or public entity. Kenya's AFC membership was ratified by the Cabinet on 7th April 2017, and the Instrument of Adherence was submitted to AFC, making the Country a full-fledged member.

On whether Kenya paid any sum to the Africa Finance Corporation prior to this accession request

70. The National Treasury submitted that in September 2023, the National Treasury, after a series of meetings with AFC, expressed interest in investing in AFC. This move revived the ratification process and the payment of subscriptions ultimately making Kenya both a member and a shareholder; The Government of Kenya expressed interest and committed to investing USD100 Million in AFC Callable Capital Shares, from which 25% will be paid and 75% will remain callable.

71. However, due to the time lapse between the ratification of the agreement and payment towards shareholding, the value per share offered to the National Treasury was revised upwards from USD 2.20 to the prevailing offer price per share of USD 2.31, based on market valuation. Consequently, this increased the remaining balance. From the proposed investment towards payment of shares, the National Treasury has paid USD 3,833,409 under FY 2023/24 Supplementary Estimates II, leaving a balance of USD 21,166,591; and A budgetary allocation towards payment of shares of USD 10,000,000 has been proposed under FY 2024/2025 Supplementary Estimates No. 2 and the balance of USD 11,166,159 submitted for consideration under the FY 2025/2026 FY Annual Budget.

On the benefactors of the Africa Finance Corporation given that its main proponent is the Central Bank of Nigeria

72. The National Treasury highlighted that the benefactors of AFC are all member countries that have signed the Instrument or Letter of Adherence to the AFC Establishment Agreement and submitted the same to the Corporation.

On the clarification of the Projects AFC is running in Kenya

73. The National Treasury stated that the agreement to be ratified by the Parliament of Kenya is the AFC Establishment Agreement, in accordance with Kenya's Treaty Making and Ratification Act. The Agreement has already been ratified by the Cabinet of Kenya on 7th April 2017. However, Parliamentary ratification and payment for share subscriptions have not yet been concluded.

74. Since Kenya joined the AFC membership in 2017, the Corporation has strategically invested in country, focusing on critical sectors such as energy, transport, and natural resources, with a total portfolio of approximately USD370 million.

75. Additionally, Kenya has planned various projects and programs at a cost of USD765 million, including, Sovereign loan of USD200 million, Trade Finance for commercial banks for USD550 million, Wind Power IPP, Dongo Kundu Special Economic Zone and the Kenyan Pension Funds Investment Consortium (KEPFIC), among others.

On the need or justification for accession if projects are already ongoing without accession to the agreement

76. National Treasury submitted that the Africa Finance Corporation (AFC) is a multilateral development financial institution, established by an agreement among sovereign states. It is not incorporated in any jurisdiction nor registered with any local agency, deriving its legal existence from the AFC Establishment Agreement dated 28th May 2007.

77. Additionally, this agreement obliges each member state to enact necessary legislative and executive actions to grant AFC immunities, exemptions, privileges, facilities, and concessions, and it confers Preferred Creditor Status (PCS) on the Corporation in its member states.

78. Ratification by Parliament is crucial. The agreement to be ratified, which should be submitted by Ministry of Foreign and Diaspora Affairs through a Parliamentary Memorandum, is the AFC Establishment Agreement, in accordance with Kenya's Treaty Making and Ratification Act. This agreement was ratified by the Cabinet of Kenya on 7th April 2017.

On whether there are any joint infrastructure projects and initiatives with East Africa Community (EAC) Partner States

79. The National Treasury submitted that, at present, there are no joint projects between EAC Partner States. AFC has however, made independent investments in other East African States including Rwanda, Uganda, Tanzania, Djibouti, Ethiopia and Eritrea. In terms of EAC projects with a regional impact include the Mahathi Infra Uganda Limited, one of East Africa's largest oil and gas downstream players and the East African Crude Oil Pipeline (EACOP) which aims to transport Lake Albert oil from Uganda to the Tanzanian coast, enhancing regional energy security and economic integration.

On whether there a joint framework between Africa Finance Corporation (AFC) and the African Continental Free Trade Area (AFCFTA)

80. The National Treasury submitted that, there is no joint framework. However, through AFC's headline MOU with the Africa Union and UN Economic Commission for Africa, the Corporation uphold the key tenets of the AFCFTA.

On Kenya's Private Partnerships

81. The National Treasury submitted that, in addition to the National Treasury and Economic Planning, Kenya-based shareholders of the Africa Finance Corporation (AFC) include the National Social Security Fund, Public Service Superannuation Fund, CPF Financial Services, and Dyer & Blair Investment Bank.

Committee Observation
The Committee noted the submissions by the National Treasury.

3.5 THE MINISTRY OF FOREIGN AND DIASPORA AFFAIRS.

The Ministry of Foreign and Diaspora Affairs appeared before the Committee and submitted as follows;

82. The Africa Finance Corporation (hereinafter the Corporation) is a multilateral development financial institution dedicated to infrastructure financing in Africa, primarily through debt and equity investments, project development and financial advisory services. It was established and commenced operations on 1st November 2007 and has its headquarters in Lagos, Nigeria.

83. The Corporation is focused on bridging Africa's large infrastructure deficit by financing projects that have high developmental impact on the economies of African countries. Its primary goal is to be the leading African institution for infrastructure financing and facilitation of international trade in Africa.

84. The Corporation was created by two constitutive legal instruments: the Establishment Agreement and the Charter. The Establishment Agreement is made among sovereign states, which sign an instrument of accession and acceptance of membership, giving the Corporation its "supranational" status.

85. The Corporation acts as both a leading financier and advisor to its clients in Africa, offering project and structured debt finance, trade finance, Greenfield and expansion equity, as well as acquisition capital. These products are complemented with advisory capabilities in areas such as project development, capital raisings and restructurings. The Corporation has a number of strategic partnerships aimed at establishing market presence and recognition, which also create deal flow for the Corporation.

Justification for Accession

86. Kenya would gain access to a steady and significant source of capital for large-scale infrastructure projects. This could alleviate some of the financial pressure on the national budget and help accelerate Kenya's development agenda, particularly under Vision 2030.

87. Kenya could attract more foreign direct investment, improve trade, and create jobs, ultimately enhancing living standards.

88. Kenya would strengthen its role in regional integration, promoting intra-African trade under frameworks like the African Continental Free Trade Area (AFCFTA).

89. The Corporation emphasizes the need for public-private partnerships, meaning that Kenya's private sector would have new opportunities to participate in and benefit from large infrastructure projects.

90. The Corporation has a high credit rating and a solid governance framework, which helps mitigate investment risks for infrastructure projects. This means Kenya could see more foreign investors willing to participate in projects that would otherwise be considered risky, particularly in sectors like energy or transportation.

91. The Corporation's team of specialists provides technical advice and support to member states in the planning and execution of infrastructure projects. Kenya would benefit from this expertise, helping to avoid common pitfalls in large-scale project management.

92. By leveraging the Corporation's ability to blend private and public financing, Kenya could potentially avoid taking on large amounts of sovereign debt for infrastructure development, helping to manage the country's debt sustainability.

93. Joining the Corporation would position Kenya as a key player in the continent's infrastructure agenda, enhancing its political and economic influence within Africa.

Obligations Imposed by the Agreement

94. As a member state, Kenya would need to support the Corporation's initiatives, particularly those that involve regional infrastructure projects. This includes providing legal, policy, and regulatory support to ensure smooth implementation of projects in Kenya and across Africa.

95. Kenya would be obligated to adhere to the governance principles set forth by the Corporation. This includes nominating representatives to participate in AFC's decision-making bodies and ensuring transparency and accountability in projects related to or financed by the Corporation.

96. The Establishing Agreement provides for certain legal privileges and immunities for the corporation and its employees, akin to those enjoyed by other international financial institutions. Kenya would be obliged to recognize and implement these privileges, ensuring that the Corporation can operate freely and independently within its borders.

97. Kenya would be obligated to cooperate with other member states in joint infrastructure projects and initiatives that promote regional integration and economic development.

98. The AFC represents a unique opportunity for Kenya to accelerate its infrastructure development, create jobs, and foster economic growth. By acceding to this agreement, we are not only investing in our future but also positioning Kenya as a leader in Africa's transformation.

Committee Observation

The Committee noted the submissions by the Ministry of Foreign and Diaspora Affairs.

CHAPTER FOUR

4. COMMITTEE OBSERVATIONS

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

(a) The Africa Finance Corporation is a multilateral development financial institution dedicated to infrastructure financing in Africa, primarily through debt and equity investments, project development and financial advisory services. It was established and commenced operations on 1st November 2007 and has its headquarters in Lagos, Nigeria;

(b) The Corporation is focused on bridging Africa's large infrastructure deficit by financing projects that have high developmental impact on the economies of African countries. Its primary goal is to be the leading African institution for infrastructure financing and facilitation of international trade in Africa;

(c) The Corporation currently has 43 member states, namely: Nigeria (Host Country), Angola, Benin, Botswana, Burkina Faso, Burundi, Congo Brazaville, Cameroun, Cape Verde, Chad, Cote d'Ivoire, Djibouti, DRC, Egypt, Eritrea, Eswatini, Ethiopia, Gabon, Ghana, Guinea Bissau, Guinea-Conarky, Gambia, Kenya, Liberia, Madagascar, Malawi, Mali, Mauritania, Mauritius, Morocco, Namibia, Niger, Rwanda, Sao Tome and Principe, Senegal, Sierra-Leone, Somalia, South-Sudan, Togo, Tunisia, Uganda, Zambia and Zimbabwe;

(d) Kenya's AFC membership was ratified by the Cabinet on 7th April 2017, and the Instrument of Adherence was submitted to AFC, making the Country a full-fledged member;

(e) Article 2 of the Agreement provides for the purposes of the Corporation which is to foster economic growth and industrial development of African countries, collectively and individually, and more specifically, to;

i) support and promote infrastructure development in Africa through the provision of investment funds;
ii) facilitate African trade generally and export-oriented trade by African countries;
iii) contribute to the development of the energy and extractive industries in Africa;
iv) provide on-lending and refinancing facilities to African financial institutions; and
v) generally engage in any kind of banking and financial business intended to promote investments in Africa.

(f) The Convention is aligned to the Constitution.

CHAPTER FIVE

5. COMMITTEE RECOMMENDATION

100. **The Committee, having reviewed the Agreement and considered the submissions made, recommends that, pursuant to Section 8 of the Treaty-Making and Ratification Act, Cap. 4D, the House adopts and APPROVES the ratification of the Agreement for Establishment of the Africa Finance Corporation.**

SIGNED: ……………………………………… DATE: …13th March 2025**……………………**

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

THE NATIONAL ASSEMBLY
PAPERS LAID
DATE: 14 MAR 2025 DAY: Friday
TABLED BY: Hon Julius Kipletting (Member, Finance and National Planning)
CLERK-AT THE-TABLE: Irene Nduko

THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT - FOURTH SESSION- 2025

DEPARTMENTAL COMMITTEE ON FINANCE AND NATIONAL PLANNING.

ADOPTION LIST

REPORT ON THE KENYAS ACCESSION OF THE AGREEMENT FOR THE ESTABLISHMENT OF THE AFRICA FINANCE CORPORATION

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, **Thursday, 13th March, 2025.**

S/NO.	NAME	SIGNATURE
1.	HON. (CPA). KURIA KIMANI, MP - **CHAIRPERSON**	
2.	HON. (AMB). BENJAMIN KIPKIRUI LANGAT, MP – **VICE CHAIRPERSON**	
3.	HON. KALUMA PETER OPONDO, 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 MUNGA, MP	
9.	HON. MAINA BETTY NJERI, MP	
10.	HON. (CPA) JULIUS KIPLETTING 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	