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REPUBLIC OF KENYA
THE NATIONAL ASSEMBLY
THIRTEENTH PARLIAMENT – FIFTH SESSION – 2026

COMMITTEE ON DELEGATED LEGISLATION

REPORT
ON

THE DRAFT PRIVILEGES AND IMMUNITIES (AFRICA
FINANCE CORPORATION) ORDER, 2026

 THE NATIONAL ASSEMBLY PAPERS LAID	
OCTOBER 2026	
DATE: 13 OCT 2026	DAY. TUESDAY
TABLED BY:	HON. GICHIMU GITHINJI, MP (VICE CHAIRPERSON)
CLERK-AT-THE-TABLE:	INZBU MWALE, HSC



The Directorate of Audit, Appropriations
& General-Purpose Committees
The National Assembly
Parliament Buildings

TABLE OF CONTENTS

LIST OF ANNEXURES.....	II
LIST OF ABBREVIATIONS AND ACRONYMS	III
CHAIRPERSON'S FOREWORD	IV
I.0 PREFACE.....	I
1.1 Establishment and Mandate of the Committee	1
1.2 Committee Membership.....	2
1.3 Committee Secretariat	3
2.0 CONSIDERATION OF THE DRAFT PRIVILEGES AND IMMUNITIES (AFRICA FINANCE CORPORATION) ORDER, 2026	4
2.1 Introduction.....	4
2.2 Object and Purpose of the Agreement and the Draft Order	4
2.3 Legislative Context	5
2.4 Policy Context	6
2.5 Key Provisions of the Host Country Agreement	6
2.6 Summary of the Draft Order	6
2.7 Meeting with the Prime Cabinet Secretary and Cabinet Secretary for Foreign and Diaspora Affairs.....	7
3.0 COMMITTEE OBSERVATIONS	9
3.1 Procedure and Statutory Timelines	9
3.2 Enabling Power.....	9
3.3 Scope of the Privileges Conferred.....	9
3.4 Kenyan Citizens and Residents	10
3.5 Fundamental Rights, Access to Justice and the Rule of Law.....	10
3.6 Fiscal Implications and Regulatory Impact	10
3.7 Consultation and the Explanatory Memorandum	11
3.8 Duration of the Agreement	11
3.9 Summary of Compliance with Section 13 of the Statutory Instruments Act	11
4.0 COMMITTEE RECOMMENDATION	13

LIST OF ANNEXURES

- Annexure 1: Minutes of the Committee
- Annexure 2: Adoption List
- Annexure 3: Explanatory Memorandum
- Annexure 4: A copy of the draft Privileges and Immunities (Africa Finance Corporation) Order, 2026
- Annexure 5: A copy of the Host Country Agreement between the Government of the Republic of Kenya and Africa Finance Corporation for the Establishment of a Regional Office in Nairobi, Kenya
- Annexure 6: Letter of transmittal from the Prime Cabinet Secretary and Cabinet Secretary for Foreign and Diaspora Affairs

LIST OF ABBREVIATIONS AND ACRONYMS

AFC	Africa Finance Corporation
AfCFTA	African Continental Free Trade Area
CBS	Chief of the Order of the Burning Spear
DLS	Directorate of Legislative and Procedural Services
EBS	Elder of the Order of the Burning Spear
EGH	Elder of the Order of the Golden Heart
KANU	Kenya African National Union
KRA	Kenya Revenue Authority
MP	Member of Parliament
ODM	Orange Democratic Movement
UDA	United Democratic Alliance
UDM	United Democratic Movement
UPA	United Progressive Alliance
UPIA	United Party of Independent Alliance
USD	United States Dollar
VAT	Value Added Tax
WDM-Kenya	Wiper Democratic Movement-Kenya

CHAIRPERSON'S FOREWORD

The draft Privileges and Immunities (Africa Finance Corporation) Order, 2026 is proposed to be made by the Prime Cabinet Secretary and Cabinet Secretary for Foreign and Diaspora Affairs under section 9 of the Privileges and Immunities Act, Cap. 179. In accordance with section 17 of the Act, the Cabinet Secretary submitted the draft Order to the National Assembly for approval before it is made and published in the Gazette.

The draft Order was received by the Clerk of the National Assembly on 13th August 2026 and laid before the House on Tuesday, 18th August 2026 by the Deputy Leader of the Majority Party, after which it stood committed to the Committee on Delegated Legislation for scrutiny.

The purpose of the draft Order is to give the force of law in Kenya to the legal capacity, privileges and immunities of Africa Finance Corporation, a multilateral financial institution of which Kenya is a member State, and of its officials, in accordance with the AFC Establishment Agreement and the Host Country Agreement signed on 23rd April 2026 for the establishment of a Regional Office of the Corporation in Nairobi.

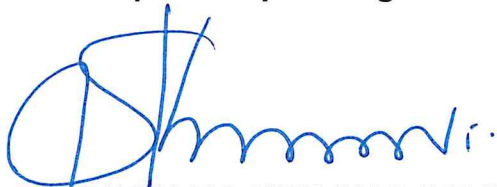
Pursuant to section 16 of the Statutory Instruments Act, Cap. 2A, the Committee met the Prime Cabinet Secretary and Cabinet Secretary for Foreign and Diaspora Affairs, H.E. (Dr.) Musalia Mudavadi, EGH, at its 47th Sitting held on Thursday, 8th October 2026. The Prime Cabinet Secretary briefed the Committee on the draft Order, and Members examined its legal and fiscal effect.

The Committee found that the draft Order is within the powers conferred by section 9 of the Act, that it confers no privilege or immunity greater than the international agreements require, and that its exclusions protect persons who transact with or are employed by the Corporation. The tax exemptions conferred constitute revenue forgone to be accounted for under Article 210 of the Constitution.

Having examined the draft Order against the Constitution, the Privileges and Immunities Act, Cap. 179, the Statutory Instruments Act, Cap. 2A and the Interpretation and General Provisions Act, Cap. 2, the Committee recommends that the House **APPROVES** the draft Order.

I thank the Speaker and the Office of the Clerk for the support accorded to the Committee, and the Members and Secretariat for their diligence in considering the draft Order.

On behalf of the Members of the Committee on Delegated Legislation and pursuant to Standing Order 210, it is my pleasure and duty to present to the House the Committee's **Report on the Consideration of the Draft Privileges and Immunities (Africa Finance Corporation) Order, 2026.**



HON. CHEPKONG'A KIPRONO SAMUEL, CBS, M.P.
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION

CHAPTER ONE

1.0 PREFACE

1.1 Establishment and Mandate of the Committee

1. The Committee on Delegated Legislation is established under **Standing Order No. 210** of the National Assembly Standing Orders and is mandated to scrutinise statutory instruments submitted to the House.
2. Pursuant to Standing Order 210 and section 13 of the Statutory Instruments Act, Cap. 2A, the Committee is mandated to consider, in respect of any statutory instrument, whether it:
 - a) is in accordance with the provisions of the Constitution, the Act pursuant to which it is made or other relevant written laws;
 - b) infringes on fundamental rights and freedoms of the public;
 - c) contains a matter which, in the opinion of the Committee should more properly be dealt with in an Act of Parliament;
 - d) contains imposition of taxation;
 - e) directly or indirectly bars the jurisdiction of the Courts;
 - f) gives retrospective effect to any of the provisions in respect to which the Constitution or the Act does not expressly give any such power;
 - g) involves expenditure from the Consolidated Fund or other public revenues;
 - h) is defective in its drafting or for any reason the form or purport of the statutory instrument calls for any elucidation;
 - i) appears to make some unusual or unexpected use of the powers conferred by the Constitution or the Act pursuant to which it is made;
 - j) appears to have had an unjustifiable delay in its publication or laying before Parliament;
 - k) makes rights, liberties or obligations unduly dependent upon non-reviewable decisions;
 - l) makes rights, liberties or obligations unduly dependent on insufficiently defined administrative powers;
 - m) inappropriately delegates legislative powers;
 - n) imposes a fine, imprisonment or other penalty without express authority having been provided for in the enabling legislation;
 - o) appears for any reason to infringe on the rule of law;
 - p) inadequately subjects the exercise of legislative power to Parliamentary scrutiny; and
 - q) accords to any other reason that the Committee considers fit to examine.

1.2 Committee Membership

3. The Committee membership comprises:

Chairperson

Hon. Chepkong'a Samuel Kiprono, CBS, M.P.

Ainabkoi Constituency

UDA

Vice-Chairperson

Hon. Githinji Robert Gichimu, M.P.

Gichugu Constituency

UDA

Committee Members

Hon. Mbui Robert, CBS, M.P.

Kathiani Constituency

WDM-Kenya

Hon. Ole Sunkuli, Julius Lekakeny, EGH, EBS, M.P.

Kilgoris Constituency

KANU

Hon. Dr. Onchoke, Mamwacha Charles, M.P.

Bonchari Constituency

UPA

Hon. Waithaka, John Machua, M.P.

Kiambu Constituency

UDA

Hon. Yakub Adow Kuno, M.P.

Bura Constituency

UPIA

Hon. Mwirigi John Paul, M.P.

Igembe South Constituency

UDA

Hon. Chepkorir Linet, M.P.

Bomet County

UDA

Hon. Oluoch, Anthony Tom, M.P.

Mathare Constituency

ODM

Hon. Okoth, Moses Omondi, M.P.

Butere Constituency

ODM

Hon. Mugabe Innocent Maino, M.P.

Likuyani Constituency

ODM

Hon. (Maj) (Rtd) Dekow Barrow Mohamed, M.P.

Garissa Township Constituency

UDA

Hon. Kamene Joyce, M.P.

Machakos County

WDM-Kenya

Hon. Dr. Kimaiyo, Gideon Kipkoech, M.P.

Keiyo South Constituency

UDA

Hon. Chebor, Paul Kibet, M.P.

Rongai Constituency

UDA

Hon. (Maj) (Rtd) Abdullahi, Bashir Sheikh, M.P.

Mandera North Constituency

UDM

Hon. Odoyo, Jared Okello, M.P.

Nyando Constituency

ODM

Hon. Munyoro Joseph Kamau, M.P.

Kigumo Constituency

UDA

Hon. Lenguris Pauline, M.P.

Samburu County

UDA

Hon. Mnyazi Amina Laura, M.P.

Malindi Constituency

ODM

1.3 Committee Secretariat

4. The Secretariat facilitating the Committee comprises:

Ms. Wanjiru Mwaura

Principal Clerk Assistant I, Head of Department and Team Leader

Mr. Brian Langwech
Clerk Assistant III

Mr. Wilson Dima
Deputy Director, DLS

Mr. Peter Barasa
Legal Counsel II

Ms. Grace Odedere
Clerk Assistant III

Ms. Elsy Jerop
Legal Counsel II

Ms. Angela Musau
Legal Counsel II

Mr. Yakub Ahmed
Media Relations Officer

Ms. Brenda Michira
Research Officer III

Mr. Cosmas Akhonya
Serjeant at Arms

Mr. Rodgers Kilungya
Hansard Reporter

CHAPTER TWO

2.0 CONSIDERATION OF THE DRAFT PRIVILEGES AND IMMUNITIES (AFRICA FINANCE CORPORATION) ORDER, 2026

2.1 Introduction

5. Africa Finance Corporation (the “Corporation”) is a multilateral financial institution established in 2007 by African sovereign States under the Agreement for the Establishment of the Africa Finance Corporation (the “Establishment Agreement”), to provide pragmatic solutions to Africa’s infrastructure deficit and challenging operating environment and to accelerate Africa’s industrialisation.
6. According to the Explanatory Memorandum, the Corporation:
 - (a) has a mandate to catalyse private sector-led investments in infrastructure and industrial sectors critical to Africa’s sustainable growth;
 - (b) operates across at least thirty-six (36) African countries, having deployed over USD 16.5 billion in cumulative investments, including in the Republic of Kenya, in energy, transport, telecommunications, heavy industry and natural resources; and
 - (c) is a market leader in developing innovative resource mobilisation solutions and capital market transactions.
7. The Republic of Kenya was invited in July 2010 to become a member of the Corporation and became a member on 7th June 2017. The National Assembly approved the ratification of the Establishment Agreement on 8th April 2025, and the instrument of ratification dated 20th May 2025 was deposited, affirming Kenya’s full accession as a sovereign shareholder.
8. The Corporation seeks to formalise and strengthen its Regional Office in Nairobi in order to enhance and expand its activities in the Republic of Kenya and to better serve the broader East African region and the African continent. To enhance this cooperation and ensure the effective operation of the Corporation in Kenya, there is need to provide an enabling, requisite and appropriate legal and institutional framework.
9. The Host Country Agreement between the Government of the Republic of Kenya and Africa Finance Corporation (the “Agreement”) was negotiated and signed on 23rd April 2026. It takes effect provisionally upon signature and definitively upon gazettment, and remains in force for ten (10) years, renewable by mutual agreement of the Parties.

2.2 Object and Purpose of the Agreement and the Draft Order

10. The Agreement grants the Corporation permission to establish a Regional Office in Nairobi and defines the legal status, privileges, immunities and obligations of the Corporation and its officials in Kenya. Its objectives are:
 - (a) strengthening Kenya’s position as a financial hub for Eastern Africa and across Africa;
 - (b) generating direct and indirect employment opportunities for Kenyans; and
 - (c) enhancing long-term cooperation between the Government of Kenya and the Corporation.
11. The draft Order is the instrument through which the legal capacity, privileges and immunities provided for under the Establishment Agreement and the Agreement acquire the force of

law in Kenya. An international agreement does not, of itself, confer immunity from the jurisdiction of Kenyan courts or exemption from taxes imposed by an Act of Parliament. Such privileges take effect in domestic law only upon the making of an order under the Privileges and Immunities Act.

2.3 Legislative Context

12. Article 94(5) of the Constitution provides that no person or body, other than Parliament, has the power to make provision having the force of law in Kenya except under authority conferred by the Constitution or by legislation. Article 94(6) permits an Act of Parliament to confer such authority, and the Privileges and Immunities Act, Cap. 179 confers on the Cabinet Secretary responsible for foreign affairs the power to make orders conferring privileges and immunities.
13. Section 9(1) of the Act applies to any organisation declared by order to be an organisation of which Kenya, or the Government, and one or more foreign sovereign powers, or the governments of such powers, are members. Under section 9(2), such an order may:
 - (a) confer on the organisation the privileges and immunities set out in Part I of the Fourth Schedule to the Act, and the legal capacities of a body corporate;
 - (b) confer on representatives of member States, high officers of the organisation and persons on missions on its behalf the privileges and immunities set out in Part II of the Fourth Schedule; and
 - (c) confer on such other classes of officers and servants of the organisation as may be specified in the order the privileges and immunities set out in Part III of the Fourth Schedule.
14. Section 9(3) of the Act provides that no order shall confer on any person any immunity or privilege greater than that which is required to give effect to any international agreement in that behalf, and that no privilege or immunity shall be conferred on any person as the representative of the Government of Kenya or as a member of the staff of such a representative. Section 9(4) empowers the Minister to publish in the Gazette a notice specifying the persons entitled to privileges and immunities under the order.
15. Section 17 of the Act provides that any order made under the Act shall, unless a draft of it has been laid before Parliament and approved by resolution before the making thereof, be laid before Parliament without unreasonable delay, and shall be void if Parliament resolves to annul it within twenty sitting days after it is laid.
16. Article 210(1) of the Constitution provides that no tax or licensing fee may be imposed, waived or varied except as provided by legislation. Article 210(2) requires that where legislation permits the waiver of any tax or licence fee, a public record of each waiver shall be maintained together with the reason for it, and each waiver and its reason shall be reported to the Auditor-General.
17. Upon being made and published, the Order will constitute a statutory instrument within the meaning of section 2 of the Statutory Instruments Act, Cap. 2A. The Committee therefore considered the draft Order against the grounds of scrutiny in section 13 of that Act.

2.4 Policy Context

18. The policy objective of the Privileges and Immunities Act, Cap. 179, is to provide immunities, privileges and capacities to international organisations and other bodies with which Kenya partners. Under the Establishment Agreement, member States undertake to accord the Corporation, in their territories, the status, immunities, exemptions and privileges necessary for the fulfilment of its functions.
19. The Agreement seeks, subject to the laws of Kenya, to grant privileges, immunities and exemptions to the Corporation and to its officials. According to the Explanatory Memorandum, the Agreement is expected to contribute to Kenya's economic development by:
 - (a) enhancing infrastructure financing and attracting foreign direct investment;
 - (b) strengthening public-private partnerships through knowledge transfer, technical expertise and innovative financing mechanisms;
 - (c) positioning Kenya as a regional hub for infrastructure financing and promoting regional integration under the African Continental Free Trade Area (AfCFTA);
 - (d) promoting sustainable infrastructure development, including investment in renewable energy; and
 - (e) creating direct and indirect employment opportunities for Kenyans.

2.5 Key Provisions of the Host Country Agreement

20. According to the Explanatory Memorandum, the Agreement grants the Government's permission for the Corporation to establish a Regional Office in Nairobi, and recognises the Corporation as a multilateral financial institution with legal personality, with capacity to enter into contracts, acquire property and institute legal proceedings.
21. The Agreement provides that the property and assets of the Corporation shall be immune from legal process except where the immunity is expressly waived, and that the officials of the Corporation shall be granted tax exemptions, work permits and other privileges similar to those accorded to officials of other international organisations.
22. On fiscal arrangements, the Agreement provides tax exemptions on the official activities of the Corporation and exempts goods and services imported for its official use from customs duties and value added tax.
23. On employment, the Corporation will recruit both international and local personnel, and Kenyan citizens will be given priority and recruited across all levels where applicable. Any dispute arising from the implementation of the Agreement will be resolved through consultations between the Parties.

2.6 Summary of the Draft Order

24. The draft Order comprises seven paragraphs. Paragraph 1 provides for the citation of the Order as the Privileges and Immunities (Africa Finance Corporation) Order, 2026.
25. Paragraph 2 declares Africa Finance Corporation, being a multilateral financial institution established to provide pragmatic solutions to Africa's infrastructure deficit and challenging operating environment, catalyse private sector-led investments in infrastructure and

industrial sectors critical to Africa's sustainable growth and accelerate Africa's industrialisation, to be an organisation to which section 9 of the Act applies.

26. Paragraph 3 confers on the Corporation the legal capacity of a body corporate to enter contracts, to institute and defend legal proceedings, and to acquire, hold or dispose of movable property in accordance with the laws of the Republic of Kenya.
27. Paragraph 4 accords the Corporation the privileges and immunities specified in paragraphs 1, 2 and 3 of Part I of the Fourth Schedule to the Act. These are immunity from suit and legal process; inviolability of its official archives and of the premises occupied as its offices; and exemption from rates and taxes, other than taxes on the importation of goods, in the same manner as is accorded to a diplomatic mission.
28. Paragraph 5 provides that no privilege or immunity extends to the Corporation or its Officials with respect to claims arising out of road traffic offences and accidents, commercial transactions, civil actions arising out of the exercise of its powers to borrow money and to guarantee obligations, enforcement of an arbitration award made against the Corporation, criminal actions or omissions, and employment disputes involving a Kenyan or other national.
29. Paragraph 6 accords the Officials of the Corporation, while residing in Kenya and performing duties in the service of the Corporation, the privileges and immunities specified in paragraphs 1 to 7 of Part III of the Fourth Schedule to the Act. These are immunity from suit and legal process in respect of things done or omitted in the course of their official duties; exemption from income tax on emoluments received from the Corporation; immunity from national service obligations; immunity from immigration restrictions and alien registration; exchange facilities; repatriation facilities in time of international crisis; and exemption from duty on furniture and personal effects imported on first arrival to take up post.
30. Paragraph 7 provides that paragraphs 2 to 7 of Part III of the Fourth Schedule to the Act do not apply to a citizen of Kenya or to any person who is ordinarily resident in Kenya. A citizen employed by the Corporation therefore enjoys only immunity in respect of acts done in the course of official duties, and receives no tax, immigration, exchange or customs privilege.

2.7 Meeting with the Prime Cabinet Secretary and Cabinet Secretary for Foreign and Diaspora Affairs

31. Pursuant to section 16 of the Statutory Instruments Act, the Committee met the Prime Cabinet Secretary and Cabinet Secretary for Foreign and Diaspora Affairs, H.E. (Dr.) Musalia Mudavadi, EGH, at its 47th Sitting held on Thursday, 8th October 2026. The Prime Cabinet Secretary was accompanied by officers of the Office of the Prime Cabinet Secretary and the State Department for Foreign Affairs, including Ms. Anne Olubendi, Advisor; Dr. Martin Owuor, Legal Services; and Amb. Daniel Tanui. Mr. Folahanmi Fagbule, Director, Africa Finance Corporation, was also in attendance.
32. The Committee was briefed on the seven paragraphs of the draft Order, covering its citation, the declaration of the Corporation, its legal capacity, the privileges and immunities conferred under Parts I and III of the Fourth Schedule to the Act, the exclusions from immunity, and the exclusion of citizens and ordinarily resident persons. In respect of

paragraph 3, the Committee was informed that the Corporation is to have capacity to acquire, hold or dispose of movable and immovable property in accordance with the laws of Kenya.

33. Upon deliberation, the Committee observed that:

- (a) the draft Order had been submitted in draft form, before being made and published in the Gazette, as required by section 17 of the Privileges and Immunities Act;
- (b) the draft Order, read with the Agreement, confers privileges and immunities including immunity from legal process, inviolability of premises and archives, and exemption from rates and taxes and from income tax on emoluments, and that the cumulative legal and fiscal effect of the exemptions required close scrutiny; and
- (c) the draft Order is accompanied by an Explanatory Memorandum setting out its purpose, legislative context, policy background and the outcome of consultations.

CHAPTER THREE

3.0 COMMITTEE OBSERVATIONS

34. Having examined the draft Order, the Explanatory Memorandum and the submissions of the Ministry, the Committee made the following observations—

3.1 Procedure and Statutory Timelines

35. The draft Order was transmitted by the Prime Cabinet Secretary and Cabinet Secretary for Foreign and Diaspora Affairs vide letter Ref. MFA/INT/147/VOL.19 (31) dated 4th August 2026, together with an Explanatory Memorandum. It was received by the Clerk of the National Assembly on 13th August 2026 and laid before the House on Tuesday, 18th August 2026.
36. The Committee observed that the Cabinet Secretary elected the first procedure under section 17 of the Act. The draft Order therefore requires the approval of the House by resolution before it is made, and the annulment procedure under the second limb of section 17 does not apply at this stage. As the Order has not been made or published, no question of delay in publication or laying arises under section 13(j) of the Statutory Instruments Act.

3.2 Enabling Power

37. The Committee observed that the conditions in section 9(1) of the Act are satisfied, in that the Corporation was established by the Establishment Agreement, a treaty among African sovereign States, and that Kenya has been a member of the Corporation since 7th June 2017 and ratified the Establishment Agreement on 20th May 2025 following the approval of the National Assembly.
38. The Committee further observed that:
- (a) paragraph 2 of the draft Order makes the declaration contemplated by section 9(1) of the Act;
 - (b) paragraph 3 is within section 9(2)(a) of the Act, which expressly permits an order to confer on the organisation the legal capacities of a body corporate;
 - (c) paragraph 4 confers privileges drawn only from Part I of the Fourth Schedule, as permitted by section 9(2)(a) of the Act;
 - (d) paragraph 6 confers privileges drawn only from Part III of the Fourth Schedule on the Officials of the Corporation, being a class of officers specified in the Order, as permitted by section 9(2)(c) of the Act; and
 - (e) the draft Order does not confer the diplomatic-level privileges in Part II of the Fourth Schedule on any person.

3.3 Scope of the Privileges Conferred

39. Section 9(3) of the Act limits the privileges and immunities that may be conferred to those required to give effect to the relevant international agreement. The relevant agreements are the Establishment Agreement, under which member States undertake to accord the Corporation immunity from legal action, save in respect of its operations, and exemption from taxation, and the Agreement, which provides for immunity of the property and assets

of the Corporation from legal process, tax exemptions on its official activities, and tax exemptions and other privileges for its officials.

40. The Committee observed that each privilege conferred by paragraphs 4 and 6 of the draft Order corresponds to a privilege provided for under the Establishment Agreement and the Agreement, and that the draft Order confers no privilege or immunity greater than the agreements require. The draft Order is, in two respects, narrower than the agreements. It does not confer the exemption from customs duties on goods imported for official use under paragraph 4 of Part I of the Fourth Schedule, and it confers no privilege on the Corporation's high officers under Part II. Any further privilege would require a fresh order laid before the House under section 17 of the Act.

3.4 Kenyan Citizens and Residents

41. Paragraph 7 of the draft Order excludes citizens of Kenya and persons ordinarily resident in Kenya from paragraphs 2 to 7 of Part III of the Fourth Schedule. Kenyan staff of the Corporation therefore receive no tax, immigration, exchange or customs privilege, and enjoy only immunity in respect of acts done in the course of their official duties.
42. Section 9(3) of the Act bars the conferment of privileges and immunities only on persons acting as representatives of the Government of Kenya and their staff. Unlike section 11(2) of the Act, which governs foundations and other external agencies, section 9 does not bar the conferment of privileges on citizens of Kenya. The Committee observed that the retention of functional immunity for Kenyan staff is therefore lawful, is consistent with the practice of multilateral financial institutions, and is subject to the exclusions in paragraph 5 of the draft Order.
43. The Committee further observed that, in applying paragraph 7, an internationally recruited official who resides in Kenya solely for the purpose of employment with the Corporation should not be regarded as ordinarily resident in Kenya, in order to give effect to paragraph 6 of the draft Order.

3.5 Fundamental Rights, Access to Justice and the Rule of Law

44. The immunity of the Corporation from suit and legal process, and the immunity of its officials in respect of official acts, limit the right of access to justice under Article 48 of the Constitution and engage sections 13(b) and 13(e) of the Statutory Instruments Act.
45. The Committee observed that paragraph 5 of the draft Order preserves the jurisdiction of Kenyan courts in respect of road traffic offences and accidents, commercial transactions, the borrowing and guarantee operations of the Corporation, the enforcement of arbitral awards, criminal acts or omissions, and employment disputes. These exclusions track the exceptions for lending, borrowing and arbitration found in the constitutive instruments of multilateral financial institutions, and protect Kenyan creditors, counterparties and employees. The Committee therefore found that the limitation is reasonable and justifiable within the meaning of Article 24 of the Constitution.

3.6 Fiscal Implications and Regulatory Impact

46. The draft Order exempts the Corporation from rates and taxes other than taxes on the importation of goods, and exempts its non-citizen officials from income tax on emoluments and from duty on furniture and personal effects imported on first arrival. The Committee

observed that the draft Order imposes no tax within the meaning of section 13(d) of the Statutory Instruments Act, but that the exemptions constitute revenue forgone by the Government.

47. The Committee observed that the exemptions satisfy Article 210(1) of the Constitution, being provided for by section 9 of, and the Fourth Schedule to, the Privileges and Immunities Act, and that Article 210(2) requires a public record of each waiver and its reason to be maintained and reported to the Auditor-General. The Explanatory Memorandum states that the Agreement imposes no direct financial obligation on the Government beyond facilitating the operations of the Regional Office, but does not quantify the revenue forgone.
48. The Ministry did not submit a separate regulatory impact statement. The Committee observed that the draft Order regulates the relationship between the Government and a single intergovernmental institution and is not likely to impose significant costs on the community, so that a regulatory impact statement under section 6 of the Statutory Instruments Act was not required. The Ministry further stated that the Agreement is expected to benefit the private sector through partnerships, innovation and collaboration, and the public sector through knowledge-sharing and the mobilisation of resources for investment in infrastructure and industrial sectors in Kenya.

3.7 Consultation and the Explanatory Memorandum

49. Articles 10 and 118 of the Constitution and section 5 of the Statutory Instruments Act require the regulation-making authority to undertake appropriate consultation with persons likely to be affected by a proposed statutory instrument. The Ministry stated that the views of the National Treasury and Economic Planning, the Office of the Attorney-General, the Directorate of Immigration Services and the Kenya Revenue Authority were considered in developing the Agreement.
50. The Committee observed that, as the draft Order regulates the status of a single intergovernmental institution of which Kenya is a member, consultation with the public bodies responsible for its implementation was appropriate and sufficient.
51. The Explanatory Memorandum states that the Agreement does not require ratification by Parliament under Article 2(6) of the Constitution. The Committee observed that the Establishment Agreement, the treaty under which the Corporation and its privileges are founded, was ratified with the approval of the National Assembly in 2025, that the Agreement implements it, and that Parliamentary oversight of the privileges is exercised through the approval of the draft Order under section 17 of the Act.

3.8 Duration of the Agreement

52. The Agreement takes effect provisionally upon signature and definitively upon gazettment, and remains in force for ten years, renewable by mutual agreement. The Committee observed that no privilege, immunity or exemption under the Agreement has force in Kenyan law until the Order is made and published, and that the Order should be revoked upon the expiry or termination of the Agreement.

3.9 Summary of Compliance with Section 13 of the Statutory Instruments Act

53. The Committee examined the draft Order against each of the grounds of scrutiny set out in section 13 of the Statutory Instruments Act and made the findings set out below.

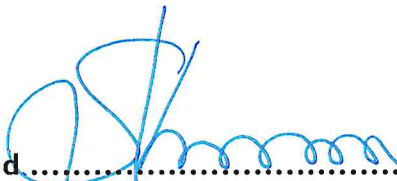
54. The draft Order is in accordance with the Constitution, the Privileges and Immunities Act and other written law, as it falls within the powers conferred by section 9 of the Act and confers no privilege or immunity greater than the international agreements require, as set out in paragraphs 3.2 to 3.4. Although the immunities conferred limit the right of access to justice and the jurisdiction of the courts, the limitation is reasonable and justifiable under Article 24 of the Constitution by reason of the exclusions in paragraph 5 of the draft Order, as set out in paragraph 3.5.
55. The draft Order does not contain any matter which should more properly be dealt with in an Act of Parliament, as section 9 of the Act expressly provides for the conferment of privileges and immunities by order. It imposes no tax, and the exemptions it confers constitute revenue forgone, which is to be recorded and reported in accordance with Article 210(2) of the Constitution, as set out in paragraph 3.6.
56. The Committee did not identify any drafting defect affecting the substance or effect of the draft Order, or any unusual or unexpected use of the powers conferred by the Act. The draft Order has no retrospective effect, does not make rights dependent on non-reviewable decisions, does not confer undefined powers, does not inappropriately delegate legislative power, imposes no penalty and does not appear to infringe on the rule of law.
57. As the Order has not been made or published, no question of unjustifiable delay in its publication or laying arises, as set out in paragraph 3.1. The draft Order has not escaped Parliamentary scrutiny, having been laid before the House for approval under section 17 of the Act, and the Committee found no other reason to object to it.

CHAPTER FOUR

4.0 COMMITTEE RECOMMENDATION

58. Having examined the draft Order against the Constitution, the Interpretation and General Provisions Act, Cap. 2, the Statutory Instruments Act, Cap. 2A and the Privileges and Immunities Act, Cap. 179, the Committee recommends that the House resolves as follows:

THAT, pursuant to section 17 of the Privileges and Immunities Act, Cap. 179, this House **APPROVES** the draft Privileges and Immunities (Africa Finance Corporation) Order, 2026, laid on the Table of the House on Tuesday, 18th August 2026.

Signed  Date 12/10/2026
HON. CHEPKONG'A KIPRONO SAMUEL, CBS, M.P.
CHAIRPERSON, COMMITTEE ON DELEGATED LEGISLATION

 THE NATIONAL ASSEMBLY PAPERS LAID	
DATE: 13 OCT 2026	DAY: TUESDAY
TABLED BY:	HON. GICHIMU GITINDI, MP (VICE CHAIRPERSON)
CLERK-AT THE-TABLE:	INZOFI MWANGI, H&C