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EAST AFRICAN DEVELOPMENT BANK ACT

CHAPTER 493A

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CHAPTER 493A

EAST AFRICAN DEVELOPMENT BANK ACT

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CHAPTER 493A
EAST AFRICAN DEVELOPMENT BANK ACT

[Date of assent: 11th May, 1984.]

[Date of commencement: 18th May, 1984.]

An Act of Parliament to provide for the carrying out of the obligations of Kenya arising under the Treaty Amending and Re-enacting the Charter of the East African Development Bank, and to provide for matters related thereto

[Act No. 3 of 1984, Act No. 7 of 2007, Act No. 38 of 2013.]

WHEREAS the Government of the United Republic of Tanzania, the Republic of Uganda, and the Republic of Kenya (hereinafter referred to as the Parties) did in Article 21 of the Treaty for East African Co-operation of 6th June, 1967 (hereinafter referred to as the Treaty of 1967), agree to establish a development bank, known as the East African Development Bank (hereinafter referred to as the Bank), the Charter therefor (hereinafter referred to as the Charter) being set out in Annex VI of the Treaty of 1967:

AND WHEREAS the Treaty of 1967 is no longer operative;

AND WHEREAS the Parties by a Treaty signed on 23rd July, 1980 (hereinafter referred to as the Treaty of 1980) agreed to amend and re-enact the Charter of the Bank:

AND WHEREAS it is expedient that Kenya should make provision for giving legal effect to certain Articles of the Charter and fulfil the obligations thereunder.

NOW THEREFORE BE IT ENACTED by the Parliament of Kenya as follows:—

1. Short title

This Act may be cited as the East African Development Bank Act, 1984.

2. Financial provision

(1) There shall be charge on and paid out of the Consolidated Fund without further appropriation than this Act all payments required to be made from time to time by the Government to the Bank under the terms of the Treaty.

(2) For the purpose of providing any sums required for making payments under this section, the Minister may, on behalf of the Government, make such arrangements as are necessary, or raise loans by the creation and issue of securities bearing such rates of interest and subject to such conditions as to repayment, redemption or otherwise as he thinks fit, and the principal and interest of those securities and the charges and expense incurred in connection with their issue shall be charged on and issued out of the Consolidated Fund.

(3) Moneys received by the Government from the Bank, or raised under subsection (2), shall be paid into and form part of the Consolidated Fund and shall be available in any manner in which the Consolidated Fund is available.

3. Certain provisions of Charter to have force of law

The provisions of the Charter annexed to the Treaty of 1980 and set out in the Schedule to this Act shall have the force of law in Kenya.

SCHEDULE

[Section 3, Act No. 7 of 2007, Sch., Act No. 38 of 2013, s. 30.]

The provisions of the Charter annexed to the Treaty of 1980 which are to have the force of law in Kenya.

CHAPTER VI – CURRENCIES

Article 24 – Use of Currencies

1. The Member States may not maintain or impose any restriction on the holding or use by the Bank or by any recipient from the Bank for payments in any country of the following—

- (a) currencies received by the Bank in payment of subscriptions to its capital stock;
- (b) currencies purchased with the currencies referred to in subparagraph (a) of this paragraph;
- (c) currencies obtained by the Bank by borrowing for inclusion in its ordinary capital resource;
- (d) currencies received by the Bank in payment of principal, interest, dividends or other charges in respect of loans or investments made out of any of the funds referred to in subparagraphs (a), (b) and (c) of this paragraph or in payment of fees in respect of guarantees made by the Bank; and
- (e) currencies received from the Bank in distribution of the net income of the Bank in accordance with Article 20 of this Charter.

2. The Member States may not maintain or impose any restriction on the holding or use by the Bank or by any recipient from the Bank, for payments in any country, of currency received by the Bank which does not come within the provisions of paragraph 1 of this Article unless such currency forms part of the Special Funds of the Bank and its use is subject to special regulations.

3. The Member States may not maintain or impose any restriction on the holding or use by the Bank, for making amortization payments or for repurchasing in whole or in part the Bank's own obligations, of currencies received by the Bank in repayment of direct loans made out of its ordinary capital resources.

4. Each Member State shall ensure, in respect of projects within its territories, that the currencies necessary to enable payments to be made to the Bank in accordance with the provisions of the contracts referred to in Article 15 of this Charter shall be made available in exchange for currency of the Member State concerned.

5. The Bank shall be accorded, in the territories of the Member States, a creditor status no less than that accorded to the International Monetary Fund, the International Bank of Reconstruction and Development, the International Development Association, the African Development Bank and the African Development Fund.

[Act No. 38 of 2013, s. 30.]

Article 25 – Deleted by Act No. 38 of 2013, s. 30

CHAPTER X – STATUS, IMMUNITIES AND PRIVILEGES

Article 42 – Purpose of Chapter

To enable the Bank effectively to fulfil its objectives and carry out the functions with which it is entrusted, the status, immunities, exemptions and privileges set forth in this Chapter shall be accorded to the Bank in territories of each of the Member States.

[Act No. 38 of 2013, s. 30.]

Article 43 – Legal Status

The Bank shall possess full juridical personality and, in particular, full capacity—

- (a) to contract;
- (b) to acquire, and dispose of, immovable and movable property; and
- (c) to institute legal proceedings.

[Act No. 38 of 2013, s. 30.]

Article 44 – Judicial Proceedings

1. The Bank shall enjoy immunity from every form of legal process except in any case where it has expressly waived its immunity in writing, when it may be sued in a court of competent jurisdiction in a Member State in which the Bank has an office, and has appointed an agent for the purpose of accepting service or notice of process. It is however understood that no waiver of immunity shall be implied or extend to any measure of execution.

2. No action shall be brought against the Bank by members or persons acting for or deriving claims from members. However, members shall have recourse to such special procedures for the settlement of disputes between the Bank and its members as may be prescribed in this Charter, in the regulations of the Bank or in contracts entered into with the Bank.

[Act No. 7 of 2007, Sch., Act No. 38 of 2013, s. 30.]

Article 45 – Immunity of Assets

1. Property and other assets of the Bank, wheresoever located and by whomsoever held, shall be immune from interference, search, requisition, confiscation, expropriation, nationalization or execution or any other form of taking or foreclosure by executive, legislative or judicial or administrative action, and premises used for the business of the Bank shall be immune from search, provided that in legal proceedings brought within the terms of the Charter such immunity shall apply before the delivery of a final judgment against the Bank by the highest court of competent jurisdiction.

2. The Bank shall prevent its premises from becoming refuges for fugitives from justice, or for persons subject to extradition, or persons avoiding service of legal process or a judicial proceeding.

3. For the purpose of this Charter, the terms “property and assets of the Bank” shall include property and assets owned or held by the Bank, the Bank’s premises, and deposits and funds entrusted to the Bank in the ordinary course of fulfilling its mandate.

[Act No. 7 of 2007, Sch., Act No. 38 of 2013, s. 30.]

Article 46 – Immunity of Archives

The archives of the Bank and all documents belonging to it, or held by it, shall be inviolable wherever located.

[Act No. 38 of 2013, s. 30.]

Article 47 – Freedom of Assets from Restriction

To the extent necessary to carry out the objectives and functions of the Bank and subject to the provisions of this Charter, all property and other assets of the Bank shall be free from restriction, regulations, controls and moratoria of any nature.

[Act No. 38 of 2013, s. 30.]

Article 48 – Personal Immunities and Privileges

1. All directors, alternates, officers and employees of the Bank—

- (a) shall be immune from civil process with respect to acts performed by them in their official capacity; and
- (b) shall be accorded such immunities from immigration restrictions or alien registration, and, where they are not citizens of a Member State, such facilities in relation to exchange regulations as are accorded by a Member State to the representatives, officials and employees of comparable rank of other Member States.

2. Experts or consultants rendering services to the Bank shall be accorded the same immunities and privileges as in paragraph 1 above, unless the Member State concerned determines otherwise.

[Act No. 38 of 2013, s. 30.]

Article 49 – Exemption from Taxation

1. The Bank shall be enabled to import free of customs duty any goods required for the purpose of its operations except such goods as are intended for sale, or are sold, to the public.

2. The Bank shall be exempted from income tax and stamp duty.

[Act No. 38 of 2013, s. 30.]

Article 51 – Waiver of Immunities

1. The Bank at its discretion may waive any of the privileges, immunities and exemptions conferred under this Charter in any case or instance, in such manner and upon such conditions as it may determine to be appropriate in the best interests of the Bank.

2. The Bank shall take every measure to ensure that the privileges, immunities, exemptions and facilities conferred by this Charter are not abused and for this purpose shall establish such regulations as it may consider necessary and expedient.

[Act No. 38 of 2013, s. 30.]
