ALN

Investment Guide - Kenya

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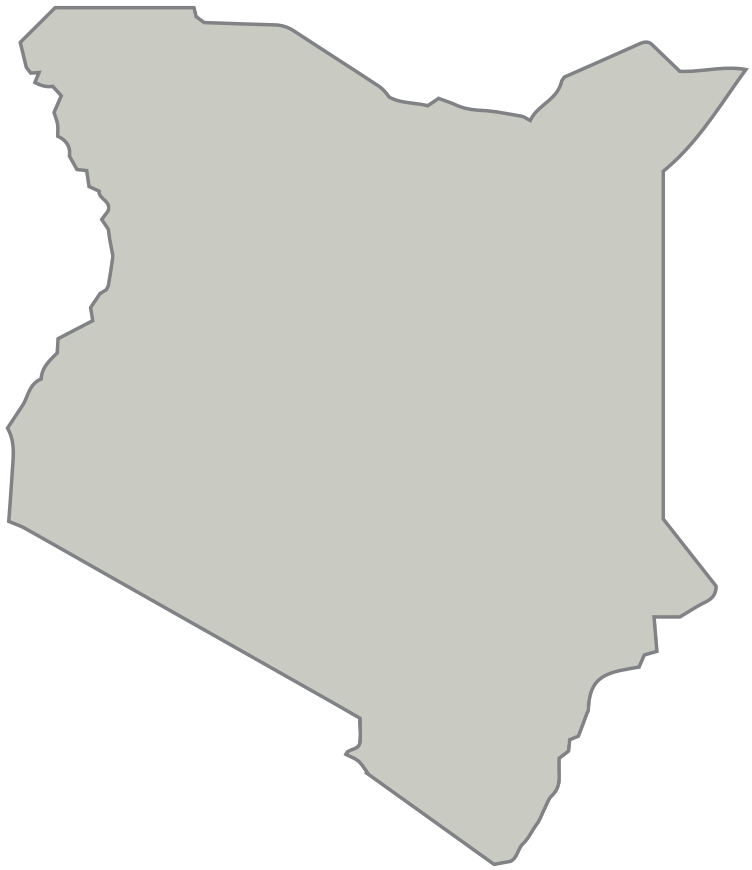
General Overview



Capital City: Nairobi

Currency: Kenya Shilling (**KES**)

Languages: English and Swahili

Government: Unitary republic with a federal system

President: Uhuru Muigai Kenyatta

Population: 45.55 million (2014 estimate)

GDP: US$ 55.24 billion (2013 estimate)

Timezone: GMT + 3

Political Overview

The country has a multi-party political system whose hallmark is constitutional democracy. Kenya adopted a new Constitution on 27th August, 2010 (the **Constitution**). The first general elections under the new Constitution were held in March 2013, following which Kenya ushered in a new devolved government structure. Under the new structure, The Republic of Kenya is a unitary state but with a devolved governance system comprised of the National Government and 47 County Governments. There are three arms of government:

1. The Executive arm which is headed by the President. The President is both the head of state and the head of government.
2. The President is elected by simple majority and must obtain at least 25% of the vote in each of at least 24 counties. The law requires the president to appoint between 14 to 22 cabinet secretaries reflecting ethnic and regional diversity; the current cabinet is made up of 18 cabinet secretaries;
3. The Legislature is comprised of two houses: the National Assembly and the Senate which are vested with law making powers; and
4. The Judiciary is headed by the Chief Justice; the Supreme Court is the highest court in the land.

Since the implementation of the devolved Government, various laws have been passed by some of the 47 County Governments. It is therefore important for businesses and investors to adjust to these new institutional arrangements to ensure that they are in compliance with both national legislation and county government legislation in the counties in which they seek to operate.

The current national government's policies create various investment opportunities and encourage the participation of private sector players through Public Private Partnerships **(PPP)**. These policies include the provision of free maternity services in public hospitals, free laptops for primary school children, reserving 30% of government contracts for the youth, developing a standard gauge railway network between Kenya and Uganda and the Lamu Port Southern Sudan-Ethiopia Transport Corridor.

Economic Overview

The Kenyan economy, East Africa's largest, has experienced considerable growth in the past few years. This growth has been driven by several key factors. The country enjoys some particular advantages including a reasonably well-educated labour force, a vital port that serves as an entry point for goods destined for countries in the East African and Central African interior, abundant wildlife, miles of attractive coastline, increasing discoveries of natural resources and a government that is committed to implementing business reforms. The World Bank Group's Doing Business Report, 2015 ranked Kenya 136 out of 189 economies in ease of doing business, 122nd in protecting minority investors and 116th in getting credit.

Kenya is part of the East African Community **(EAC)**. Other members include Tanzania, Uganda, Rwanda and Burundi. Following its independence, South Sudan submitted an application to join the EAC. Its membership of the EAC is currently being negotiated and is awaiting confirmation.

The members of the EAC entered into a Common Market Protocol **(the Protocol)**, with effect from July 2010 and steps are being undertaken to realise the full implementation of the Protocol in 2015. In particular, the four freedoms enshrined in the Protocol demand free movement of people, goods, services and capital within the common market. In this regard, member states are required to review domestic legislation to ensure their compliance with the Protocol's objectives. The free movement of people allows citizens of member states to work freely within the EAC with the intention of providing each of the member state with a larger pool of skilled labour. However, there has been non-uniform (and in some cases non-existent) progress in the implementation of the Protocol's objectives, particularly in relation to the free movement of people and labour. Rwanda and Kenya have entered into a bilateral agreement which permits the citizens of both countries to work freely in either country without paying work permit fees. A similar agreement is currently being negotiated between Kenya and Uganda. In addition, Kenya, Uganda and Rwanda entered into a tripartite agreement in January 2014 whereby citizens can move freely within the three East African countries using only their identity cards as travel documents.

The EAC is working towards further integration which is likely to have far-reaching, positive consequences for Kenya's economy. Notable developments include the implementation of a single tourist visa for Kenya, Uganda and Rwanda which was launched on 20 February 2014 and the execution of an EAC Monetary Union Protocol, geared to establishing a single currency area in the EAC, by the EAC Heads of State in November, 2013.

Kenya is also a member of COMESA - the 19 member Common Market for East and Southern Africa, opening up the way for trade across Eastern and Southern Africa for nearly 400 million people which is about half of Africa's total population. Kenya has a vibrant investment environment. As at December, 2014, the Nairobi Stock Exchange **(NSE)** had 65 listed companies. In January 2013, the NSE launched its Growth Enterprise Market Segment **(GEMS)** on the NSE; a market which enables Small and Medium Sized Enterprises (SMEs) to raise initial and ongoing capital. After a slow start, interest in the GEMS market has picked up and there are currently four (4) companies listed on it.

The Central Depository and Settlement Corporation provides central depository services for securities in Kenya. November 2013, was scheduled as the date for the completion of the dematerialisation of securities. Hitherto, the dematerialisation process had been implemented in phases targeting particular forms of securities. Moving forward, physical certificates will no longer be recognised as *prima facie* evidence of ownership and listed companies will no longer issue paper share certificates. Investors have been called upon to replace their share certificates, with an electronic record held by the Central Depository System for the purposes of trading or transferring their shares. The move to dematerialise shares is in keeping with current global trends and is expected to raise the profile of Kenya's capital market's adherence to international best practice.

The Government is currently pursuing Kenya's Vision 2030, which is the country's development blueprint covering the years 2008 to 2030. Six key sectors have been given priority as key growth drivers in this plan, namely tourism, agriculture, manufacturing, ICT and business process out-sourcing, wholesale and retail trade and finance.

Kenya's Gross Domestic Product **(GDP)** contracted 3.32% in the third quarter of 2014 over the previous quarter. Kenya's GDP Growth Rate averaged 1.21% from 2005 until 2014, reaching an all-time high of 4.17% in the second quarter of 2014 and a record low of -3.32% in the third quarter of 2014. Kenya's GDP growth is reported by the Kenya National Bureau of Statistics.

On 16 June, 2014, Kenya successfully issued two tranches of a maiden Eurobond (US$ 500 million, 5.875% due 2019 and US$ 1.5 billion, 6.875% due 2024). Investor participation was strong, reflecting robust confidence in the country's economic prospects despite heightened security risks. The bond listed on the Irish Stock Exchange. The proceeds of the fund will be used for infrastructure projects and to pay off a US$ 600 million loan that matured in August 2014. Some major infrastructure projects include railway expansion (a new standard gauge railway will be built in 3 phases for a total of US$ 13 billion), LAPSSET (with a new port at Lamu, railway, road, oil terminal & pipeline and resort cities at Lamu, Isiolo and Lake Turkana), 4 dams at a cost of US$ 16.8 billion and the replacement of the Mombasa-Nairobi oil pipeline.

Regulatory Environment

Much of Kenyan investment law is modeled on English law. One of the most significant changes to take place in Kenya in the last few years is the enactment of the Constitution. The period following the promulgation of the new Constitution has seen the enactment of an unprecedented number of new laws in Kenya. In 2011, 35 new statutes were enacted and in 2012 at least 25 new statutes were enacted. 2013 was a similarly busy year as 39 new statutes were enacted. However, in 2014, only 12 new statutes were enacted with many more awaiting confirmations from the Senate. Kenya's sources of law are the Constitution; written laws; English statutes of general application in force as at 18th August, 1897; the common law and doctrines of equity and customary law. In addition, the Constitution provides that the general rules of international law and treaties or conventions ratified by Kenya form part of the laws of Kenya. The key corporate and investment laws are the Companies Act (Cap 486) and the Investment Promotion Act, 2004. The Constitution envisions numerous pieces of legislation to be enacted by Parliament covering a wide range of subjects, including land ownership, consumer protection and the exploitation of natural resources.

Kenya has taken steps to overhaul several key commercial laws, which are largely based on legislation adopted during the colonial period, to make them more compatible with current global trends and the investment environment. Consequently, there is proposed legislation covering company law, insolvency, and banking and payment systems. A new Competition law which seeks to ensure a more competitive market was brought into effect in 2012. In June 2013, the Capital Markets (Real Estate Investment Trusts) (Collective Investment Schemes) Regulations **(REITS Regulations)** and the Capital Markets (Futures Exchanges) (Licensing Requirements) Regulations came into force.

Over the past few years there have been major efforts to privatise commercial sectors that were previously government owned or managed in order to encourage foreign investment in these sectors. The stated aim of the Government is to have minimal interference in business, and the Government is increasingly adopting the role of a regulator rather than an active market participant.

To promote investment in Kenya, the Government overhauled Kenya's licensing regime in 2006, reducing the number of licences required to do business, while making licensing regimes simpler and more transparent. In 2008, the Government reduced the number of licences required to set up a business from 300 to 11. The Business Regulatory Reform Unit in the Ministry of Finance continues this streamlining process. In general, foreign and local investors receive equal treatment. Foreign and local investors can operate in all sectors except where state corporations still enjoy a statutory monopoly such as in infrastructure, or where there are quotas on minimum local ownership, such as the insurance, banking and telecommunications sectors. Ownership restrictions also apply to listed companies. Kenya has taken steps towards partial liberalisation of state monopolies in certain sectors. A number of state corporations have been privatised and essential sectors such as energy have been opened to private investors. Residents and non-residents are permitted to hold foreign currency accounts.

The new Public Private Partnerships (PPP) Act, 2013 aims to expand the participation of the private sector in infrastructure and development projects through concessions or contractual profit sharing arrangements. The Public Private Partnership Regulations, 2014 were gazetted on the 17th October, 2014 and set out the mechanisms for giving effect to various provisions of the PPP Act.

Pursuant to these Regulations, the PPP Unit is working on a number of projects. With the evolution of a devolved system of government, county governments are targeting private investors to collaborate with them through PPPs in order to enable the county governments to carry out their functions pursuant to Schedule 4 of the Constitution. Potential projects include administration of county transport and infrastructure (including construction, street lighting, traffic and parking), providing county health services, fire fighting services, pre-primary education, disaster management and the implementation of other specific national government policies.

Bilateral and Multilateral Treaties

Kenya is a member of the EAC, COMESA, African, Caribbean and Pacific States and the World Trade Organisation (**WTO**). Currently, Kenya has signed double taxation agreements with Canada, Denmark, France, Germany, India, Norway, Sweden, the United Kingdom and Zambia.

A double taxation agreement between Mauritius and Kenya was scheduled to come into force in January 2015; however, the Kenyan Government did not issue the requisite notifications to the Mauritius Government to bring the Kenya-Mauritius treaty into force. It therefore remains ineffective and will not come into force before 1 Jan 2016. Kenya signed a double taxation agreement with Qatar in 2014 and treaties with the UAE and Iran remain under negotiation. The East African Community Double Taxation Agreement has been ratified by the Kenyan Government but is yet to enter into force. The Kenyan Government has also entered into a double taxation agreement with the South Africa, but the agreement is also ineffective. The treaties will come into force once the requisite notifications are made to the respective foreign governments, but in any case not earlier than 1 January 2016.

It is noteworthy, that with effect from 1 January 2015, the Income Tax Act limits the relief from double taxation to a person resident in a country that has a double taxation agreement with Kenya, or a company that is resident in a country that has a double taxation agreement with Kenya, and where 50% or more of its underlying ownership is held by an individual(s) resident in that country.

Investment Promotion

Institutions Governing Investment Promotion

Kenya Investment Authority

In a bid to encourage investment in Kenya, the National Assembly enacted the Investment Promotion Act, 2004 **(the IPA)**. The IPA aims to reduce bureaucratic delays in relation to licensing, immigration and negotiating tax incentives and exemptions from the relevant authorities. The IPA established a corporate body known as the Kenya Investments Authority

(KenInvest) to implement the goals of the legislation. For a foreign investor to qualify for an investment certificate, the minimum value of his proposed investment should be US$ 100,000 or the equivalent in another currency. In deciding whether to issue an investment certificate, KenInvest considers the extent to which the investment will contribute to the Kenyan economy by increasing the number and quality of jobs in Kenya, training Kenyans in new skills or technology, encouraging economic development, allowing the transfer of technology, adding to tax revenue or affecting foreign exchange.

Investment Incentives

An investment certificate granted under the IPA offers investors some important benefits, the principal one being that KenInvest facilitates the issuance of all necessary licences and permits required for the investor's operations. Investment certificate holders are entitled to apply for entry work permits for 3 members of the holder's management or technical staff and three co-owners, shareholders or partners.

According to KenInvest, Kenya has entered into Investment Promotion and Protection Agreements with France, Finland, Germany, Italy, Netherlands, Switzerland, China, Libya, Iran, Burundi and the United Kingdom and is currently negotiating agreements with other countries.

Both local currency and foreign currency debt is available in Kenya. In addition, there are no restrictions on repatriation of dividends or on foreign currency. Kenya does not restrict remittances to a foreign recipient. However, the Central Bank of Kenya has promulgated regulations, under the Central Bank of Kenya Act (Chapter 491), which require that where a transaction undertaken in Kenya involves the payment of "hard" currency to a foreign recipient, such remittance must be effected through a bank licensed by the Central Bank of Kenya to conduct banking business in Kenya. Therefore, all payments in and out of Kenya have to be remitted through an authorised bank in Kenya.

Payments out of Kenya below US$ 10,000 can be made freely. Payments between US$ 10,000 and US$ 499,999 require evidence of the purpose of the payment being made to be provided to the authorised bank (payments of interest and principal under a loan agreement would be permitted). Notification of any payment above US$ 500,000 has to be given by the authorised bank to the Central Bank of Kenya.

Export Processing Zones ***(EPZs)***

Kenya has established 'special economic zones' under the Export Processing Zones Act (Chapter 517) to promote and facilitate export oriented investment. The activities eligible to be carried out within EPZs include manufacturing, commercial and service activities geared towards exportation. Persons may set up an EPZ by obtaining a licence to develop or operate a zone on land gazetted as an EPZ.

EPZ licensed businesses are granted certain tax exemptions including:

- Exemption from VAT and customs duties on raw materials, machinery and equipment, spare-parts, tools, raw materials, intermediate goods, construction materials and equipment, office equipment and supplies as well as transportation equipment;
- Exemption from income tax for the first 10 years from the date of the first sale as an EPZ enterprise, and income tax shall be limited to 25% for the next 10 years following the expiry of the exemption;
- Exemption from withholding tax on dividends and other payments made to non-residents, during the period that the EPZ enterprise is exempted from payment of income tax; and
- Exemption from stamp duty on the execution of any instruments relating to the business activities of an EPZ enterprise.

Tax

Income Tax

Resident and non-resident corporate entities with a permanent establishment in Kenya are subject to tax on all income accrued in or derived from Kenya. A company is tax resident if it is incorporated under Kenyan law, if the management and control of its affairs are exercised in Kenya, or if the Cabinet Secretary in charge of the National Treasury declares the entity to be tax resident for a particular year of income in a notice published in the Kenya Gazette. An individual is resident if he or she has a permanent home in Kenya and is present for any time during the year; if he or she is present in Kenya for at least 183 days in the tax year; or if he or she has been in Kenya for an average of 122 days in the tax year and the previous two years.

The corporate income tax for a locally incorporated company is 30%. The corporate income tax rate for a non-resident company having a permanent establishment in Kenya (a foreign branch) is 37.5%. Newly listed companies on the NSE receive a reduced tax rate for the first 3 to 5 years following the year of listing. The reduced tax rate varies between 20% and 27% and applies for a period of 3 to 5 years, depending on the percentage of capital listed by the entity on the NSE.

Individual income tax rates are based on a graduated scale based on income brackets with the lowest tax rate being 10% and the highest tax rate being 30%. It is worth noting that senior officers of corporate bodies may be held personally liable for tax offences committed by their corporate employer. The Finance Act, 2013 provides that the High Court of Kenya may order a person to pay the Commissioner of Income Tax the entire amount or such part as remains unpaid, of the tax assessed by the Commissioner either in addition to, or in substitution of any other penalty.

*Withholding Tax **(WHT)***

For dividends paid to Kenyan residents or on listed shares for citizens of the EAC, the rate of WHT is 5%. A 10% rate applies for the dividend payments to other non-residents. No WHT is imposed if the recipient is a resident company which controls 12.5% or more of the capital in the paying company. Loan interest paid to residents and non-residents is subject to a 15% WHT. No WHT is imposed if the recipient is a qualifying Kenyan financial institution. Royalties paid by a resident person to another resident person are subject to a 5% WHT. Royalties paid by a resident person to a non-resident person are subject to a 20% WHT.

WHT is chargeable on management and professional fees. Payments of management and professional fees made by a resident person to another resident person are subject to a 5% WHT. Payments of management and professional fees made by a resident person to a non-resident person are subject to 20% WHT. Although exempted from taxation in 2012, as of 1 January, 2014, winnings from betting and gaming, whether payable in cash or in kind, are subject to WHT at the rate of 20% of cash proceeds or the fair market value of the winnings if paid in kind. This rate is applicable to both residents and non-residents and the tax deducted shall be final.

In June 2014, the Government of Kenya introduced various changes relating to taxation of entities engaged in the extractive sector. These changes abolished the WHT regime that was applicable on farm-out and share sale transactions and have attempted to align the provisions of the Income Tax Act to the tax provisions in the Production Sharing Contracts. With effect from 1 January 2015, farm-out transactions are taxed by including the net gain as part of the taxable income of the transferor. Farm-out transactions may be taxed at the corporation tax rate in certain circumstances.

Other key changes introduced by this regime include the ring fencing of petroleum blocks, indefinite carry forward of tax losses, tax treatment of the assignment of future work obligations, reporting requirements for changes of more than 10% in underlying ownership and specific thin capitalisation thresholds. The rate of WHT may be reduced where the recipient of the income subject to withholding tax is resident in a country which has a double tax treaty with Kenya. For example, the WHT rate for management and professional fees under the Kenya-United Kingdom double tax treaty is 12.5%.

Capital Gains Tax

Capital Gains Tax **(CGT)** had been suspended in Kenya since 1985. The Finance Act, 2014 re-introduced CGT at the rate of 5% on gains arising from transfer of property situated in Kenya. The term 'property' is very wide and includes shares in listed and private companies, land and buildings and other assets. Various exemptions from CGT are available, including on the transfer of a private residence where certain thresholds have been met and on the transfer of agricultural property of less than 100 acres.

A transfer of property is deemed to occur when property is sold, exchanged or disposed of in any manner. Gifts, destruction or loss of property are also deemed to be transfers and CGT will be applicable. There are, however, various instances where a transfer would not be deemed to have occurred and hence CGT would not be applicable. These instances include the transfer of property to secure a loan, a debt or the issuance of shares by a company and the transfer of property upon the beneficiary of a trust becoming entitled to the property.

The Kenya Revenue Authority **(KRA)** has recently issued guidelines **(the Guidelines)** on the application of CGT, as well as the declaration form for payment of CGT (Form CGT-1). As per the Guidelines, taxpayers will be required to undertake a self-assessment and pay CGT to the KRA by the 20th day of the month following the month in which the transfer was made. The Guidelines have also confirmed that CGT will be payable by a non-resident transferor provided that the property is situated in Kenya. Unfortunately, the proposed CGT system makes no allowance for inflation and therefore taxpayers will be assessed on paper gains. Furthermore, some exemption thresholds are based on the law as it stood in 1985 and are not comparable to present day valuations.

Value Added Tax

Value Added Tax **(VAT)** is chargeable on the supply of goods and services in Kenya and on the importation of goods and services into Kenya. The VAT Act, 2013 **(VATA)** came into force in September 2013 and brought with it sweeping changes to the VAT regime in Kenya including making various previously exempt households goods subject to VAT . The VATA provides for 2 rates of VAT, 0% in the case of zero-rated supply specified in the First Schedule to the Act and 16% in all other cases. The VATA repeals the lower rate of 12% previously applicable to electricity and fuel.

The supply or importations of goods or services that are designated as exempt are not subject to VAT. Previously exempt goods, designated in Section B of the First Schedule of the VATA, including fuels and fuel oil, will be exempt for a period of 3 years and thereafter VAT will be chargeable at the standard rate. Zero-rated VAT is applicable to goods and services exported from Kenya, goods and services supplied to EPZs and the supply of coffee and tea for export to coffee and tea auction centres. Exemption also applies to the supply or importation of goods specified in Part A of the First Schedule of the VATA. These include goods used in agriculture, health and education.

The supply of services which were previously exempt will now attract VAT at the standard rate. The VATA has also clarified the rules with respect to the place and time of the supply of goods and services. Under the VATA, a supply of services is made if the supplier's place of business from which the services are provided, is in Kenya. Where the supplier's place of business is not in Kenya, the place of supply shall be deemed to be Kenya if the recipient of the supply is not a registered person and:

a. the services are physically performed in Kenya by a person who is in Kenya at the time of supply;
b. the services are directly related to immovable property in Kenya;
c. the services are radio or television broadcasting services received at an address in Kenya; and
d. the services are electronic services delivered to a person in Kenya at the time of supply or the supply is a transfer or assignment of, or grant of a right to use, copyright, patent, trademark or similar right in Kenya.

With respect to goods, a supply of goods occurs in Kenya if:

a. the goods are delivered or made available in Kenya by the supplier;
b. the supply of the goods involves their installation or assembly at a place in Kenya; and
c. the goods are delivered outside Kenya and were in Kenya when their transportation commenced.

Applicants will be required to apply for tax refunds of tax paid in error within 3 months from the date the tax was due and payable. Previously, the applicable time frame was 12 months. The VATA has made commendable effort to promote the use of information technology with respect to registering applications, filing returns or statements, making payments and refunds and issuing notices and other documents provided by the Commissioner.

One of the key changes introduced by the VATA and which has hitherto received negative reception from the public is making VAT applicable to the sale of commercial buildings. Pursuant to the Third Schedule of the repealed VAT Act (Chapter 476), the sale of buildings was specifically exempt from the tax. Part II of the First Schedule to the VATA specifically exempts "supply by way of sale, renting, leasing, hiring, letting of land or residential premises" provided that the exemption shall not apply where such services are with respect to a car park, conference or exhibition except where such services are provided to educational institutions as part of learning.

The implication of this amendment is that the VAT exemption for the sale of real property now only applies to the sale of land and residential premises. Consequently, the sale, renting, leasing, hiring or letting of commercial buildings will be deemed to be a taxable supply and subject to VAT at the current rate of 16%. Furthermore, the renting of car park spaces which form part of residential premises or the renting of residential premises used as commercial premises will also be subject to VAT.

The withholding VAT system which had been abolished in 2011 was re-introduced in 2014. Government ministries, departments and agencies will be required to withhold 6% of the tax payable at the time of paying for the supplies and remit the same directly to the KRA.

Import Duty

Kenya is a member of the EAC's Customs Union. Accordingly, import duty is charged under the East African Community Customs Management Act, 2004 **(the EACCMA)**. Import duty under the EACCMA is charged on the importation of goods depending on their nature and value. The value for purposes of the import duty assessment is based on the cost, insurance and freight value of the goods imported. The import duty rate is dependent on the nature and description of the goods in the East African Custom External Tariff Code.

The EAC's Customs Union member states have agreed on a three band Common External Tariff at the following rates: 0% for raw materials, capital goods, agricultural inputs, certain medicines and medical equipment, 10% for half finished goods which are to be used for further production and 25% for finished products. A list of the relevant rates for specific goods is set out in Annex I to the Protocol on the Establishment of the EAC's Customs Union (referred to as the Common External Tariff code).

Import duty is payable by the importer. Although the EACCMA sets out exempted goods under the Fifth Schedule to the Act, exemptions only apply to specific goods in relation to certain donor or aid funded organisations.

In order to fund the construction of a standard gauge railway network between Kenya and Uganda, all goods imported into the country and intended for home use are subject to a levy of 1.5% of the customs value of the goods. The levy, known as the Railway Development Levy is payable by the importer at the port of entry. In March 2014, the Kenya Revenue Authority suspended RDL on imports to Kenya from the East African Community.

Pursuant to Articles 209(3) and (4) of the Constitution, which grants county governments the power to impose property rates, entertainment taxes and any other tax as authorized by an Act of Parliament, a number of county governments have implemented County Finance Acts which increase the rates and charges for public services.

Transfer Pricing and Thin Capitalisation

Transfer pricing regulations require pricing arrangements in cross border transactions concerning the sale of goods, provision of services, and transfer of intangible assets and lending or borrowing of money between related entities to be considered at arm's length. It is noteworthy to point out that transactions between a branch and its head office are also subject to the transfer pricing regulations.

Thin capitalisation rules also apply in Kenya, these rules limit the deductibility of loan interest payments to the extent that the highest amount of all loans held by the company at any time during the year of income exceeds the greater of three times the sum of the revenue reserves and the issued and paid up capital of all classes of shares of the company. The thin capitalisation rules only apply where the company is in control of a non-resident entity alone or together with four or fewer other persons and where the company is not a bank or a financial institution licensed under the Banking Act.

Kenya has recently enacted "deemed interest" provisions which apply with respect to interest-free loans from non-resident shareholders. Where a non-resident shareholder has extended a loan to a resident company on an interest-free basis, the resident company is required to compute a deemed-interest charge based on the prevailing Treasury Bill rates and remit it to the KRA along with a withholding tax on the notional (deemed) interest.

Stamp and Transfer Duty

Stamp duty is charged at nominal or *ad valorem* (according to value) rates on certain financial instruments and transactions. Stamp duty of 1% is payable upon the transfer of shares. A stamp duty of 4% of the value of land is payable on the transfer of land in municipal areas. In rural areas, the stamp duty is 2% of the value of land. There is no stamp duty on the transfer of shares in a listed company. Other agreements and documents attract stamp duty at varying rates specified in the Stamp Duty Act

Accounting Principles

Kenya has adopted and applies International Financial Reporting Standards.

Industrial Relations

Below is a summary of the laws governing employment and labour matters in Kenya. Kenya is party to various International Labour Organisation **(ILO)** conventions which form part of its labour legislation through operation of Articles 2(5) and (6) of the Constitution. Article 2(5) of the Constitution provides that the general rules of International Law shall form part of the law of Kenya. Article 2 (6) provides that any treaty or convention ratified by Kenya shall form part of the law of Kenya under the Constitution. The primary statutes that govern employment and labour matters in Kenya are:

1. **The Constitution** – provides for a number of employment rights, including the right to fair labour practices, the right to fair remuneration, the right to reasonable working conditions and the right to join a union, amongst others;
2. **The Employment Act** (Act No. 11 of 2007) the Employment Act - declares and defines the fundamental rights of employees, provides for basic conditions of employment of children and matters connected thereto;
3. **The Labour Institutions Act** (Act No. 12 of 2007) (the Labour Institutions Act) - establishes labour institutions, provides for their functions, powers and duties and for other matters connected thereto;
4. **The Industrial Court Act** (Act No. 20 of 2011) now amended to the Employment and Labour Relations Act (the Employment and Labour Relations Act) - establishes the Industrial Court, now the Employment and Labour Relations Court (the **ELRC**) as a superior court of record and confers jurisdiction with respect to employment and labour relations;
5. **The Labour Relations Act** (Act No. 14 of 2007) (the Labour Relations Act) - consolidates the law relating to trade unions and trade disputes, promotes sound labour relations through the protection of freedom of association, the encouragement of effective collective bargaining and the fostering of orderly and expeditious dispute settlement, conducive to social justice and economic development;
6. **The Occupational Safety and Health Act, 2007** (Act No. 15 of 2007) (the OSHA) - provides for the safety, health and welfare of workers and all persons lawfully present at workplaces and for the establishment of the National Council for Occupational Safety and Health; and
7. **The Work Injury Benefits Act** (Act No. 12 of 2007) (the WIBA) - provides for compensation to employees for work related injuries and diseases contracted in the course of their employment or due to connected purposes.

The legislative framework covers wages, leave, housing, health and welfare, local and foreign contracts of service, employment of women and youth, industrial relations and occupational safety and health.

Wage councils are responsible for formulating wage orders. The wage orders constitute the minimum rates of remuneration and terms of conditions of employment and may not be varied by agreement. The quantum of the minimum wage depends on the industry in which the employee is engaged.

Normal working hours consist of not more than 52 hours of work per week. No person under the age of 16 may be required to work for more than six hours a day. Employees are also entitled to annual leave with full pay of not less than 21 working days after every year of continuous service and not less than 1.75 days per month when employment is terminated after two or more months of continuous service. The annual leave is in addition to all public holidays, weekly rest days and sick leave as fixed by law or by written agreement.

Pursuant to the Industrial Training Act (Chapter 237), an employer is required to pay a training levy to the Industrial Training Levy Fund with respect to each of its employees (currently KES 50 (approximately US$ 0.6) per employee per month).

In January 2014, the National Social Security Fund Act, 2013 **(NSSFA)** came into force repealing the previous National Social Security Fund Act (Chapter 258, Laws of Kenya) (Cap 258). Every employer is required to register with the Pension Fund and to register its employees as members of the Pension Fund. Under the NSSFA the social security contributions payable by both employer and employee were set to increase to up to KES 2160 per employee (approximately US$ 24), 50% payable by the employer and 50% by the employee. Contributions payable by both employee and employer were set to progressively increase over the course of the next 5 years.

Pursuant to a public notice dated 21st January, 2014, the Cabinet Secretary for Labour, Social Security and Services deferred the commencement of section 20, amongst others, which provides for the contribution obligations of the employer and employee. The move is to ensure a smooth and orderly transition from the operations of the previous fund created under Cap 258 to the NSSFA. No further action has been taken to date with regard to employee and employer contributions, which continue to be KES 400 per month (approximately US$ 4.50).

The Employment (General Rules), 2014 **(the General Rules)** as per section 91 (1) of the Employment Act provide for the following:

1. Rights of employees – provisions under the General Rules provide for the complete prohibition against forced labour; policy statements in relation to sexual harassment and employee rights to be displayed openly at the work place; and entitlement to an itemised pay statement.
2. Employment of children – the employment of children under the age of 16 years is strictly prohibited without the prior written permission of an authorised officer unless the child is an apprentice or indentured learner; any contravention of the provisions would result in an offence.
3. Sanitation – this portion of the rules relates to the adequate provision of latrines, dustbins, drainage and general sanitation at the place of work.
4. Medical treatment – any medical expenses or treatment are to be provided by the employer during the course of employment; medicine including malaria treatment, Epsom Salts and antiseptic solution as well as a First Aid kit must be made available at the place of work. Any non-compliance with these provisions shall result in an offence.
5. Foreign Contracts – all contracts of service shall be set out in prescribed form and shall be subject to the provision of a medical certificate to the Labour Officer.

Disputes and Enforcement:

In situations where:

- an employer or employee neglects or refuses to fulfill a contract of service; or
- any question, difference or dispute arises as to the rights or liabilities of either party; or
- any misconduct, neglect, ill treatment or an injury to the person or property of either party under a contract of service occurs;

The aggrieved party can complain to the labour officer or lodge a complaint or suit in the ELRC, which has the status of the High Court and exclusive original jurisdiction over labour disputes.

The primary mechanisms for enforcement of the various provisions of the employment laws in Kenya are fines and penalties imposed by the ELRC. Where an employee has been dismissed, a Labour Officer can recommend that the employer reinstate the employee, however, the ELRC may order reinstatement or compensation to an employee who has been dismissed unfairly or whose labour rights have otherwise been breached.

Real Property

Land in Kenya remains a very emotive and sensitive issue. Due to complex historical, political, economic and social reasons that have led to an inequitable distribution of land, conflicts over land issues continue and debates about the redistribution of land draw strong opinions. Fuelling this problem is the fact that land laws in Kenya have remained very fragmented, with over twenty different statutes governing land ownership and interests relating to land.

In 2010, the then newly promulgated constitution paved the way for an overhaul of the land law systems in Kenya. In 2012, the Kenyan legislature enacted new land laws, being the Land Act, 2012, the Land Registration Act, 2012 and the National Land Commission Act, 2012. The new statutes repealed and made amendments to some of the old land laws such as The Indian Transfer of Property Act of 1882, the Registered Land Act, 1963 and The Registration of Titles Act, 1920.

Under the current laws, land in Kenya may be held under freehold title or leasehold title. Article 65 of the Constitution regulates land holding by non-citizens. Non-citizens cannot own land under a freehold title but can have leasehold interests of up to 99 years. The Constitution protects the sanctity of private property and the state cannot compulsorily acquire one's property without paying sufficient compensation.

In 2013, the Capital Markets Authority **(CMA)** introduced the much awaited Capital Markets **REIT Regulations**. The REIT Regulations provide for the legal framework for REITS and establishes 2 classes of REITS, being the development and construction real estate investment trust schemes (which provides for investment in development and construction projects) and income real estate investment trust schemes (which provide for investment in existing income generating real estate projects).

The REIT Regulations regulate the offers and listing of REITS, management of REITs, specific requirements of each type of REITS and also provide for the establishment of Islamic REITS. The REIT Regulations entrench the growing interest in REITS as a flexible and tax-beneficial method of financing urban and commercial real estate projects in Kenya.

Competition

The Competition Act, 2010 was enacted into law and became effective in August, 2011 and was operationalised in 2012. The Competition Act regulates mergers, provides strong guidance for consumer welfare, prevents restrictive trade practices and unwarranted concentrations of economic power and also strengthens the mechanisms for the hearing of appeals. In 2014, the Competition Authority launched a leniency programme which encourages voluntary disclosure of the existence of an agreement or practice that is prohibited under the Competition Act. Merger notification filings with the Competition Authority attract graduated filing fees of between KES 500,000 (approximately US$ 5447) and KES 2,000,000 (approximately US$ 21,785). The Competition Authority may grant exemptions in certain economic sectors or transactions below certain turnover thresholds.

In January 2013, the COMESA Competition Commission **(CCC)** announced that the COMESA competition regime had come into force. The CCC regulates competition and mergers touching on 2 or more COMESA countries provided that each undertaking's annual turnover exceeds US$ 5 million, the target operates in a member state and each of the merging parties does not achieve more than two thirds of its profits within one and the same member state. Stakeholders have, however, raised questions on the manner in which the COMESA competition regime was operationalised. At the moment, a merger notification filing with the CCC attracts graduated filing fees of up to US$ 500,000.

Consumer Protection

Consumer rights are protected under Article 46 of the Constitution and the Consumer Protection Act (Act No 46 of 2012) and apply to goods and services offered by private and public entities. Consumer rights have also been provided for in the Competition Act.

Legal Forms of Incorporation in Kenya

In Kenya, there are a number of types of corporate entities including sole proprietorships, partnerships, cooperative societies and companies. The main vehicles utilised by investors are limited liability companies which can be incorporated either as private companies or as public companies. The law also allows for branches of foreign companies to be set up in Kenya maintaining the same legal personality as the foreign company.

The principal statute dealing with company law is the Companies Act (Chapter 486) (the **Companies Act**) which is based substantively on the 1948 Companies Act of England. The Companies Act sets out provisions dealing with the incorporation of companies, share capital provisions, shareholder rights, offers to the public, the management and administration of companies, accounts, directors' duties, consequences of winding up and the regulation of foreign companies based in Kenya.
Company registration is undertaken through the Companies Registry. On average, completing the necessary registrations required for starting a business in Kenya takes between one to two months. The table below provides a summary of the procedures and the estimated associated completion time and estimated official cost for setting up a private limited liability company:

Procedure		Estimated time to complete (in business days)	Official costs (excluding professional fees, ancillary expenses and vat)
1	Company name search and reservation	3 Days	KES 100 per name reservation (approximately US$ 1)
2	Prepare and execute the memorandum and articles of association and ancillary incorporation documents.	3 Days	Variable
3	Stamp the memorandum and articles and a statement of the nominal capital	5 Days	1% of nominal capital + KES 2020 stamp duty on Memorandum and Articles of Association

Procedure		Estimated time to complete (in business days)	Official costs (excluding professional fees, ancillary expenses and vat)
4	File incorporation documents with the Registrar of Companies and obtain a certificate of incorporation	10 Days	KES 2800 (approximately US$ 33)
5	Register with the Tax Department for a PIN and VAT online	1 Day	No Charge
6	Apply for a business permit	10-20 Days	Permit fees depend on certain factors e.g. type of business, size of premises, number of employees etc.
7	Register with the National Social Security Fund (NSSF)	1 Day	No Charge
8	Register with the National Hospital Insurance Fund (NHIF)	1 Day	No Charge
9	Register for PAYE	1 Day	No Charge
10	Make a company seal after a certificate of incorporation has been issued	2 Days	Between KES 2500 and KES 3,500 (approximately US$ 21 and US$ 41 (respectively)

Industry Sectors

Agriculture

Agriculture is the mainstay of the Kenyan economy, contributing approximately 30% of the country's GDP and responsible for 80% of national employment. In recent years, the areas which have been most heavily invested in are: agro-processing, livestock, fisheries and horticulture. The latter has been the great success story of the past decade, particularly in floriculture.

There are considerable diversification and expansion possibilities in the agricultural sector including accelerated food crop production and increasing non-traditional agricultural exports. There are also opportunities for improvement in technology infrastructure such as packaging, storage and transportation. Intensified irrigation and additional value added processing are also marketable areas for investments. To this end, the Government, being cognisant of inappropriate technology, inaccessible farm inputs and over reliance on rain-fed agriculture, committed KES 9.5 billion(approximately US$ 103.5 million) in the 2014/2015 budget to implement ongoing irrigation projects spread throughout the country. This allocation includes KES 3.5 billion (approximately US$ 38.2 million) to the Galana Irrigation Project, KES 3 billion (approximately US$ 32.7 million) for subsidizing inputs including fertilizer, KES 2.7 billion (approximately US$ 29.5 million) for strategic grain reserves, KES 1 billion (approximately US$ 11 million) for fisheries development and KES 0.7 billion (approximately US$ 7.7 million) for the revival of the Kenya Meat Commission.

Other initiatives taken by the Government in this sector include the allocation of KES 0.3 billion (approximately US$ 3.3

million) for the revival of the Pyrethrum sector and another KES 0.3 billion for eradication of diseases affecting plants. To combat the challenge of floods and drought, the Government has prioritised flood control and water harvesting in the 2014/2015 budget. It has allocated KES 8.2 billion (approximately US$ 89.4 million) for water pan and dam construction, KES 4.1 billion (approximately US$ 44.7 million) for water supply and sanitation, KES 1.5 billion (approximately US$ 16.4 million) for environmental conservation and management and KES 0.5 billion (approximately US$ 5.5 million) for completion of multi-purpose dams that were started under the economic stimulus programme.

Banking and Financial Services

There are over forty commercial banks in Kenya and several financial institutions including building societies and mortgage finance companies. However, the banking industry is dominated by five major banks: Kenya Commercial Bank Limited, Equity Bank Limited, Co-operative Bank Limited, Standard Chartered Bank Kenya Limited and Barclays Bank of Kenya Limited. Credit is now more easily accessible from lending institutions. Credit reference information is shared in the financial sector though credit reference bureaus.

The majority of Kenyans engage in "mobile banking" through the use of mobile payment systems operated by mobile communication companies such as M-Pesa (Safaricom) and Airtel Money (Bharti Airtel). Mobile phone payment services are popular due to their simplicity, convenience and accessibility. The joint partnership between Safaricom and Commercial Bank of Africa Limited, has developed an innovative mobile platform (M-Shwari) for Safaricom's M-Pesa customers which enables individuals to access banking services from their phone. Subscribers can save and borrow money as well as earn interest on the money saved using their mobile phones.

In addition, Kenya has a vibrant micro-finance sector and the Islamic banking market is growing.

The banking industry is governed by the Banking Act (Cap 488) and the Central Bank of Kenya Act (Cap 491) and regulated by the Central Bank of Kenya. The Central Bank has taken steps to regulate previously unregulated areas of the banking sectors, including micro-finance and mobile payment services. Kenya has a small but growing number of investment banks and venture capital funds. These businesses are licensed and regulated by the CMA.

Manufacturing

Although Kenya is the most industrially developed country in East Africa, the World Bank estimates that manufacturing only accounts for approximately 19% of GDP. Nevertheless, manufacturing is Kenya's third largest sector following Wholesale and Retail Trade and Transport and Communication. Opportunities in Kenya's manufacturing industries are expansive, ranging from vehicle assembly and spare-parts manufacturing in the automotive sector, to pharmaceuticals, paper products and edible oils.

According to statistics published by the Kenya National Bureau of Standards, the quantity of cement produced in September 2014 went up to 465,483 MT from 414,807 MT in September 2013. In a move to grow the motorcycle manufacturing industry, a tax waiver on imported motorbike parts was reinstated by the EAC Council of Ministers from June 2014 to June 2015 meaning that motorcycle assemblers are no longer subject to the 15% tax on parts imported from outside the EAC member states.

With Mombasa operating as a free trade zone and the various infrastructure projects planned by the Government (including the Standard Gauge Railway and LAPPSET Corridor), the manufacturing industry is set to grow significantly in the coming years.

Mining, Oil and Gas

Kenya's mining and extractive industry is undergoing a seismic shift from a minor to a major area of investment and growth. Kenya's mining map is comprised of four belts. The under-exploited, gold-rich Greenstone belt in Western Kenya is linked to the lucrative mining belts currently under heavy exploitation in Tanzania. The Mozambique belt, which passes through Central Kenya, is a source of gemstones. The Rift belt is the best known and its resources include soda ash, fluorspar, diatomite and Kenya's considerable geothermal resources. The Coastal belt encompasses existing titanium investments as well as ongoing offshore oil exploration efforts. The country also boasts one of Africa's richest coal deposits and plans to commercially exploit coal are currently underway.

The significant enthusiasm for the economic potential in Kenya's mining sector is demonstrated by its inclusion in Kenya's Vision 2030 programme as a strategic sector and the creation of a new Ministry of Mining (formerly under the Ministry of Environment and Natural Resources) dedicated to the formulation of mining legislation and policies to expand the mining industry. The Ministry of Mining has introduced a Mining Bill which is currently under review. If passed, the Mining Bill would repeal, amongst other legislation, the Mining Act (Cap 306) which has been in force since October 1940. The changes proposed under the Mining Bill would set up a new National Mining Corporation as the investment arm of the Government, increase government revenue, allocate specific proportions of the mining benefits to locals and county governments and impose environmental and rehabilitation obligations on licensees. The cancellation of 31 mining licences by the Cabinet Secretary for Mining in August 2013, has led to expectations that a transparent licensing process will be entrenched in the new legislation.

Kenya is benefitting from recent discoveries of oil reserves (the commercial viability of which was confirmed by Tullow Plc in Northern Kenya in July 2013). The discovery of oil has also resulted in significant interest in many on-shore and off-shore blocks offered to exploration companies by the Ministry of Energy. There has also been an increase in secondary sales of interests in exploration blocks between investors.

With the changing fortunes in the oil sectors, the laws governing this sector have come under scrutiny. The petroleum exploration activities in Kenya are primarily governed by a 1968 statute which is seen as outdated and in need of review. To this end, the Government aims to replace it with new laws and regulations dealing with upstream and downstream activities and local content. When enacted, the local content regulations will require the participation of locals in all aspects of petroleum operations including equity participation, employment and training opportunities and an obligation to prefer the use of local goods and services.

Real Estate and Construction

The real estate market and the building and construction sector have seen immense growth over the past ten years. Due to a steadily growing middle class, there has been increased demand for housing in urban centres. The demand for office and commercial space has also increased greatly in recent years.

There has been a marked increase in apartment blocks and gated estates as developers act to meet the growing demand. According to a 2011 survey by Hass Consult (a local property consulting firm), property values have increased in Kenya by 302% since the year 2000. Kenya currently delivers greater real estate price stability than other leading international markets such as the US, UK, UAE, India and South Africa. The growing market demand, coupled with the high rates of return make real estate development and building and construction two of the most lucrative investment opportunities in Kenya.

Telecommunications

The telecommunications sector is one of the fastest growing sectors in Kenya fuelled by a growing market and developments in fibre-optics. There are currently 4 fibre optic cables which have landed on the Kenyan coast linking Kenya to the rest of the world. According to a quarterly sector statistics report published by the Communications Authority of Kenya **(CAK)**, at the end of June 2014, there were 32.2 million mobile phone subscribers in Kenya, an increase from 31.3 million in December 2013. This growth is attributed to, amongst other things, demand for mobile services and value added services such as mobile banking services.

Mobile internet users grew to 22.3 million as at June 2014 compared to 19.6 million users in the same period in 2013. The ICT sector in Kenya is set to receive a significant boost from ICT business parks currently under development as part of Vision 2030. The Kenya Government has plans to develop a US$ 10 billion ICT business park which will house IT centres, business process outsourcing centres and hotels. Kenya currently has an existing 5,000 seat business process outsourcing centre in the Sameer Industrial Park.

The telecommunications sector in Kenya is primarily governed by the Kenya Information and Communications Act, 1998 **(KICA)** and the various regulations promulgated thereunder. Specific provisions in KICA were amended with the passing of the Kenya Information and Communication (Amendment) Act, 2013 **(KICA Amendment Act)** which came into effect on 2nd January, 2014. The CAK regulates the telecommunications sector and is an independent institution free from any governmental, commercial or political interests.

Following the exit of Yu Mobile from the Kenyan market in 2014, there are currently three mobile telecommunications providers in Kenya: Safaricom, partially owned by the Kenyan Government; French-owned Orange and Indian owned Bharti Airtel.

In comparison to other East African Countries, Kenya's migration from analogue to digital broadcasting has been protracted and subject to various judicial processes. Nonetheless, it is expected that the Country will meet the worldwide deadline of 17^{th} June, 2015. The move is expected to increase the number of television broadcasters and broadcasting licences issued as a result of the increase in television channels that can be hosted on a digital platform.

Tourism

The tourism sector saw a decline in the year 2014 due to insecurity concerns in the coastal region of the country. This led to foreign governments imposing travel advisories against Kenya. The West African Ebola outbreak also resulted in reduced visitor numbers to Kenya due to Kenya's position as a regional hub.

However, the sector is picking up and the end of 2014 saw an upward surge in visitor numbers and the tourism sector remains a lucrative field for consideration by any person wishing to invest in Kenya. The Government has pledged to combat incidents of insecurity and it is likely that the sector will pick up further in 2015.

Kenya has substantial natural assets attracting tourism, ranging from well-known areas such as the Maasai Mara, Mombasa and the Kenyan Coast, to relatively unexploited areas like Lake Victoria. Kenya's tourism infrastructure is well developed and expanding, especially in the aviation arena, where there are an increasing number of budget airlines, direct flights from many tourist source countries and frequent internal connections. It is worth noting that talks between the Ministry of Tourism and Transport and the Ministry of Infrastructure are underway to increase the number of airlines operating scheduled international flights to Mombasa.

The tourism industry is primarily regulated by the Tourist Act (Cap 383). The Kenya Tourism Regulatory Authority is tasked with developing the tourism sectors though policy development and measures which promote sustainable tourism throughout the country.

Intellectual Property

Article 40(5) of the Constitution requires the state to support, promote and protect the intellectual property rights of the people of Kenya. Kenya's legislation protecting intellectual property includes the Trademarks Act (Chapter 506), the Copyright Act (Chapter 130) and the Industrial Property Act, 2001, which relates to patents, industrial designs and utility models.

Regionally, Kenya is a member of the African Regional Intellectual Property Organisation. At the international level, Kenya is a member of the World Intellectual Property Organisation, and is a contracting party to various treaties recognising intellectual property rights such as the WTO Marrakech Agreement, 1994, the Madrid System on the international registration of trademarks and the Patent Cooperation Treaty on the international registration of patents.

Steps have been taken towards controlling the importation and trade of counterfeit goods. In 2008, Parliament passed the Anti-Counterfeit Act, 2008, which established an agency and legal framework to police counterfeit goods.

All locally manufactured goods must have a standardisation mark issued by the Kenya Bureau of Standards and several categories of imported wares must have an import standardisation mark known as an ISM.

Dispute Settlement

The judicial system, as provided for under the Constitution consists of a hierarchy of various courts. These include the Magistrate courts and Kadhi's courts; the High Court; the Court of Appeal; and the newly established Supreme Court. There are also matter specific courts created by the Constitution, such as the Land and Environment Court which is responsible for adjudicating disputes related to land and environment matters and the Industrial Relations and Employment Court which is responsible for all matters relating to employment.

Below is a list of the principal laws governing and regulating the court system in Kenya:

1. The Constitution of Kenya, 2010
2. The Judicature Act, Chapter 8 – sets out provisions concerning the jurisdiction of the High Court, the Court of Appeal, subordinate courts or regarding judges and officers of courts;
3. The Appellate Jurisdiction Act, Chapter 9, (the **Appellate Jurisdiction Act**) – confers on the Court of Appeal jurisdiction to hear appeals from the High Court and for any incidental purposes;
4. The Magistrates' Court Act, Chapter 10 – establishes magistrates' courts, states the jurisdiction and provides for the procedure of such courts. In addition, it also provides for appeals in certain cases and for any incidental and connected purposes;

5. The Kadhis' Court Act, Chapter 11 - establishes the Kadhis' court, having and exercising jurisdiction over the determination of questions of Muslim law relating to personal status, marriage, divorce or inheritance in proceedings in which all the parties profess the Muslim religion. Nevertheless, nothing in this legislation limits the jurisdiction of the High Court or any subordinate court in any proceeding which comes before it.
6. The Environmental and Land Court Act, Chapter 12A - gives effect to Article 162(2)(b) of the Constitution establishing a superior court to hear and determine disputes relating to the environment, the use and occupation of and title to land and also makes provision for its jurisdiction, functions and powers;
7. The Industrial Court Act, Chapter 234, amended to the Employment and Labour Relations Act, **(the Employment and Labour Relations Act)** – establishes the Industrial Court as a superior court of record, confers jurisdiction on the Court with respect to employment and labour relations.

Under the Limitation of Action Act, Chapter 22, Laws of Kenya, **(the Limitation of Action Act)**, time limits for bringing claims for court action or arbitration are set out as follows:
1. actions concerning land must be brought within twelve years from the date of the cause of action;
2. actions concerning contracts must be brought within six years from the date of the cause of action; and
3. actions concerning any tort must be brought within three years from the date of the cause of action.

Kenyan law recognises alternative dispute resolution mechanisms. In particular, the Constitution provides that alternative forms of dispute resolution including reconciliation, mediation, arbitration and traditional dispute resolution mechanisms shall be promoted. Indeed, the Government's enthusiasm for arbitration is demonstrated by the passing of the Nairobi Centre for Arbitration Act, 2012 which came into force in January 2013 and establishes the Nairobi Centre for International Arbitration **(NCIA)**. Together with Rwanda's Kigali International Arbitration Centre, there are now two international arbitration centres in East Africa. It is hoped that the NCIA will provide a cheaper alternative for foreign investors who opt to resolve their disputes in the London or Mauritius arbitration centres and also provide an alternative to the lengthy court processes in Kenya. Notwithstanding these aims, the NCIA has a long way to go before becoming fully operational. It is to be noted that the Board of Trustees charged with the administration of NCIA was inaugurated in November, 2013.
Arbitration is widely embraced in commercial dispute resolution settlement. Kenya is a party to the New York Convention on the Recognition and Enforcement of Foreign Arbitral Awards and New York Convention awards would be recognised in Kenya under the Arbitration Act. Kenya is also a signatory to the International Convention for the Settlement of Investment Disputes.

Foreign judgments from superior courts in certain reciprocating countries can be enforced in Kenya under the Foreign Judgments (Reciprocal Enforcement) Act (Chapter 43) **(FJEA)**. The countries specified to be reciprocating countries under the FJEA are Australia, Malawi, Seychelles, Tanzania, Uganda, Zambia, the United Kingdom and the Republic of Rwanda

Following promulgation of the Constitution in August 2010, Kenya began to implement significant structural changes to its judicial system. The Supreme Court was established as the highest court in the land. In addition, many new judges have been appointed to ease the workload of the courts. Further, the new constitutional requirement for the vetting of judges and magistrates has already resulted in some judges and magistrates having been found unfit to continue serving. The process is expected to restore integrity to a judiciary that has been generally perceived to be slow in delivering justice, corrupt and insufficiently independent.

It is also worth noting that the Tax Appeals Tribunal Act, 2013 **(TATA)** was signed into law on 27th November, 2013 but will enter into force by notice. The TATA establishes a single tax appeals body which has the power to hear appeals against any decision made by the Commissioner on any tax matter. It is expected that the Tribunal will streamline the tax dispute resolution process and make it more efficient.

Anjarwalla & Khanna

Nairobi
A: 3rd Floor, The Oval, Junction of Ring Rd Parklands & Jalaram Rd, Westlands
P: P.O. Box 200-00606, Nairobi, Kenya
T: +254 20 364 0000
F: +254 20 364 0201
E: nbi@africalegalnetwork.com

Mombasa
A: SKA House, Dedan Kimathi Avenue
P: P.O. Box 83156-80100, Mombasa, Kenya
T: +254 41 231 2848
F: +254 41 222 4996
E: mba@africalegalnetwork.com

ALN Head Office

A: Apollo Centre, 2nd floor, Wing A, Ring Road Parklands.
P: P.O. Box 200-00606, Sarit Centre, Nairobi, Kenya
T: +254 20 364 0000, +254 703 032 000
E: alnhq@africalegalnetwork.com
W: www.africalegalnetwork.com