

DOING BUSINESS

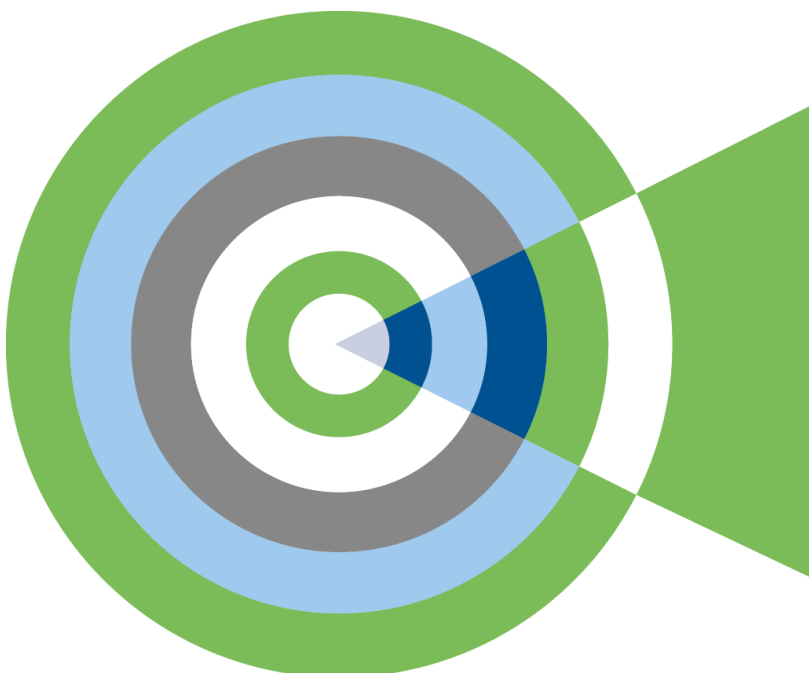
IN KENYA



The network
for doing
business

CONTENTS

| | |
|---------------------------------|----|
| 1 – Introduction | 3 |
| 2 – Business environment | 4 |
| 3 – Foreign Investment | 16 |
| 4 – Setting up a Business | 21 |
| 5 – Labour | 26 |
| 6 – Taxation | 28 |
| 7 – Accounting & reporting | 39 |
| 8 – UHY Representation in Kenya | 40 |



1 – INTRODUCTION

UHY is an international organisation providing accountancy, business management and consultancy services through financial business centres in over 95 countries throughout the world.

Business partners work together through the network to conduct transnational operations for clients as well as offering specialist knowledge and experience within their own national borders. Global specialists in various industry and market sectors are also available for consultation.

This detailed report providing key issues and information for investors considering business operations in Kenya has been provided by the office of UHY representatives:

UHY KENYA

P.O. Box 13550 - 00800

Nairobi

Kenya

Phone +254 20 4442860

Website www.uhy-ke.com

Email info@uhy-ke.com

You are welcome to contact [Mwai Mbuthia \(mmbuthia@uhy-ke.com\)](mailto:mmbuthia@uhy-ke.com) for any inquiries you may have.

A detailed firm profile for UHY's representation in Kenya can be found in section 8.

Information in the following pages has been updated so that they are effective at the date shown, but inevitably they are both general and subject to change and should be used for guidance only. For specific matters, investors are strongly advised to obtain further information and take professional advice before making any decisions. This publication is current at July 2019.

We look forward to helping you do business in Kenya.

2 – BUSINESS ENVIRONMENT

POLITICAL AND LEGAL SYSTEM

Kenya enacted a new constitution on 27 August 2010, replacing the previous one drawn up at Kenya's independence in 1963.

The new constitution includes a greater separation of powers between the legislature, judiciary and the executive. In addition, the constitution:

- Introduces checks and balances on the executive
- Devolves power on local matters to 47 counties
- Creates a new senate to create a bicameral system of parliament
- Lays down minimum quotas for women
- Sets up a new judiciary and screening system for the recruitment of judges and an expansive bill of rights.

There are three arms of government:

- The legislature – this includes the National Assembly and the Senate. The National Assembly controls national expenditure and revenue allocation between the two levels of government. The Senate represents the 47 counties and serves their interests and those of the county governments by debating and approving bills concerning the counties.
- The executive – this consists of the president, who is elected directly by all registered voters for a five-year term and can serve for a maximum of two terms, deputy president and the Cabinet. The president is the head of state and government, the commander in chief of the armed forces and chairs the National Security council.
- The judiciary – this consists of courts and tribunals with the Supreme court at its apex presided by the chief justice who is appointed by the president on the recommendation of the Judicial Service Commission.

The constitution provides for the devolved governments. These are the governments of the 47 counties, which consist of a county assembly, a county executive and a directly elected governor. County governments oversee a range of issues at the local level such as agriculture, health services, public amenities, county trade regulations and development, and county planning and development, among other services they are mandated to provide to local residents.

Kenya held general elections under the new constitution in August 2017 which was disputed and a repeat was held in October 2017.

DOMESTIC MARKET

PEOPLE

- The current population of Kenya is approximate [52,288,347](#) as of July 27, 2019, based on latest United Nation estimates. This is equivalent to 0.68% of total world population. 27.1 % of the population is urban (14,149,974 people in 2019). The population growth rate is 2.65% according to World Bank.

Swahili is the national language, while English and Swahili are both official languages.

COUNTRY

Kenya occupies an area of 582,646 square kilometres (225,000 square miles) with a population density of 69.5 people per square kilometre.

The capital city is Nairobi.

The currency is the Kenya shilling (KES) which is equal to 100 cents.

THE ECONOMY

AGRICULTURE

The agriculture sector continues to play a vital role in the rural economy. The sector was one of the first to fully devolve the function of service provision to the county governments underscoring the importance of County Governments' role in ensuring food security. Agriculture is key to Kenya's economy, contributing 26 per cent of the Gross Domestic Product (GDP) and another 27 per cent of GDP indirectly through linkages with other sectors. The sector employs more than 40 per cent of the total population and more than 70 per cent of Kenya's rural people. Agriculture in Kenya is large and complex, with a multitude of public, parastatal, non-governmental and private sectors.

The sector accounts for 65 per cent of the export earnings, and provides the livelihood (employment, income and food security needs) for more than 80 per cent of the Kenyan population and contributes to improving nutrition through production of safe, diverse and nutrient dense foods. The sector is also the main driver of the non-agricultural economy including manufacturing, providing inputs and markets for non-agricultural operations such as building/construction, transportation, tourism, education and other social services.

The dynamics of poverty within Kenya are changing and directly influence the country's agricultural sector. Currently 46 per cent of the population live on less than 1 USD a day, 36.5 per cent are food insecure and 35 per cent of children under five are stunted (chronically malnourished) in Kenya. The country's population has increased significantly (growing from 11 million in 1970 to 39.5 million in 2011) and at the current rate of growth, it will be double in the next 27 years, reaching 81 million in 2039. As a result of this rapid increase, land parcels in the areas of high agricultural potential are decreasing in size, affecting food production.

Farmers, who are used to rain-fed farming systems, are being pushed into drier, more marginal areas where they become increasingly vulnerable to drought and the unpredictability of weather patterns resulting from climate change. The population increase, coupled with the expansion of agriculture into arid lands, has affected the dynamics of pastoralism, where increased competition for natural resources has sparked escalated conflict in some areas. Furthermore, there has been a marked increase in the number of people dropping out of the nomadic livelihood, often moving into settled communities which are heavily reliant on food aid.

Given the importance of agriculture in rural areas of Kenya where poverty is prevalent, the sector's importance in poverty alleviation cannot be overstated. Strengthening and improving the performance of the agricultural sector and enabling the engagement of the poorest and most vulnerable in this process is therefore a prerequisite and a necessary condition for achieving recovery and growth in Kenya after recent years of drought and slow development.

MANUFACTURING

Kenya, like many other developing countries, has not managed to develop a robust manufacturing sector and growth has been primarily driven by the agriculture and services sectors respectively. The country has thus experienced a premature deindustrialization as evinced by the decline in GDP contribution by the manufacturing sector which was at a paltry 8.4% in 2017 and 9.2% in 2016. Deindustrialization has been characterized by a rising share of the services sector in GDP and fuelled debate as to whether services can replace the manufacturing sector as an engine of economic growth. Despite this debate, boosting outcomes in the manufacturing sector remains an important strategy for countries such as Kenya seeking to boost economic outcomes. And this remains an important policy priority for the Government of Kenya as demonstrated by the raft of proposed interventions for the manufacturing sector developed over the years.

The Vision 2030, the Kenya Industrial Transformation Programme (KITP) and most recently Big 4 Agenda have all been designed by the Government to revamp the manufacturing sector. As expressed under the Medium Term Plan 3 Concept Note, 'the low and declining shares in manufacturing, industrial and exporting

sectors in GDP constitute a major challenge to economic growth'. Increasing the size of the country's manufacturing sector with an emphasis on exported goods is one of the Big Four Agenda. This policy initiative, unveiled on 12th December 2017, places one of the four main targets of the Government's priorities up to the year 2022 as an increase contribution of the manufacturing to GDP from the current 8.4% to 15%. Key to this effort will be strategic efforts to improve economic areas that sit at the cross-section between manufacturing and other sectors of the economy. The Big 4 has identified 8 priority sectors under its manufacturing pillar including agro-processing, textile, leather, construction materials, oil and mining, iron and steel and ICT.

KAM is a key partner to the National Government as it sets out to enhance the role of the manufacturing sector to economic growth and development in Kenya. This "Sector Deep Dive Report" is KAM's own effort to support the government by identifying main cross-cutting constraints to growth, possible solutions and sector specific interventions to unlock growth potential. This document has been developed in collaboration with the Kenya Business Guide think-tank and focuses on outlining the state of the manufacturing sector from the perspective of the industry players themselves.

As such, data and information collected in the development of this report relied heavily on KAM's internal member source focusing on 'expert roundtables' and using both qualitative and quantitative techniques. All 14 Sectors under KAM were engaged while developing this report. This information was then processed and analysed with cognizance of existing research and data from entities such as the Kenya National Bureau of Statistics (KNBS), the World Bank, the Kenya Institute of Public Policy Research and Analysis (KIPPRA) and others. The report is intended to augment and improve the design of appropriate policies for the manufacturing sector by succinctly presenting perspectives and suggestions from the industry players themselves.

TOURISM

Kenya is currently the third largest tourism economy in Sub-Saharan Africa after South Africa and Nigeria, according to the Ministry of Tourism and Wildlife.

In a statement, the ministry said last year, travel and tourism grew by 5.6 per cent to contribute Sh790 billion and 1.1 million jobs to the Kenyan economy. This beats the average global growth of 3.9 per cent and the Sub-Saharan Africa average of 3.3 per cent.

Kenya's tourism performance for the year 2018 has seen a substantial improvement compared to 2017 in both tourism arrivals, domestic tourism performance and earnings. This can be attributed to the following factors:

- Political stability
- Improvement in security

TRANSPORT

Transport and communications are worth approximately 11 percent of GDP. Kenya envisages a massive upgrading and extension of the country's infrastructure. In this regard, the country has highlighted a number of infrastructure projects that present significant opportunities for investors in the coming years.

It is important to note that while the Government has put forward plans on how it would like to develop infrastructure, it is equally open to ideas and proposals from potential investors.

- Redevelopment of the Northern Corridor
- Development of a commuter railways system around Nairobi

- Building of a standard gauge line to replace the current Kenya-Uganda railway which will be commissioned in June 2017.
- Design and Construction of a new terminal at Jomo Kenyatta International Airport
- Development of a new corridor from Lamu to South Sudan and Ethiopia (LAPSET)
- Investments into these projects can either be through direct investments or through public private partnerships.

INFORMATION & COMMUNICATIONS TECHNOLOGY

The advancement of digital technologies at the work place has inadvertently put pressure on Kenyan enterprises to align themselves with emerging technologies in order to reap the benefits of digital transformation.

To participate in the digital economy, enterprises must commit to digital transformation by embracing key enterprise IT technologies. As the New Year dawns, we will continue to witness the advancement of enterprise digital technologies. Let's take a look at some of the trending digital technologies that rocked the Kenyan work place in 2018.

The Rise of Artificial Intelligence (AI)

The advent of cognitive technologies, such as artificial intelligence, at the work place give rise to endless possibilities of automation, increased efficiency, enhanced customer experience and data driven business strategies. Data is the lifeblood of artificial intelligence and Kenyan businesses are now generating vast amounts of data more than ever before. Adding an element of cognition to the plethora of user data results in business intelligence gained through predictive data mining. Enterprise technology architectures are evolving accordingly resulting in new agile business models that are driven largely by intelligence and not just information.

Not only is AI being used in advertising algorithms, it is also driving efficiency and insights in virtually every part of the Kenyan enterprise, including strategic business issues. Enterprises that harness their data can use it to identify new opportunities which, in turn, lead to smarter business decision, more efficient operations, higher revenues and happier customers.

AI workloads require a complete paradigm shift in the underlying hardware and software infrastructure. For instance, the processing power required to maintain high performance analytics is of monumental proportions. Therefore, Kenyan businesses must embark on a holistic digital transformation journey and consider emerging enterprise technologies, such as Cloud Computing, in order to garner the entire benefits of artificial intelligence.

A Journey to the Cloud

Not too long ago 'Cloud' was the hottest buzz word blustering headlines in the ICT industry. Today cloud computing is a concrete reality for the modern Kenyan enterprise. According to a report by World Wide Worx and F5 Networks, 98% of companies in Kenya said they would increase their spending on cloud computing this year, while another 69% of the respondents said that they have seen an impact from cloud computing on market share. Kenyan businesses continue to benefit from two major cloud consumption models, IaaS (Infrastructure-as-a-Service) and SaaS (Software-as-a-Service).

With IaaS, organizations are achieving significant cost saving by cutting capital expenditures and adopting OPEX (pay-as-you-go) models by creating virtual instances of their entire ICT infrastructure on public and private cloud platforms. IaaS has also allowed organizations to achieve rapid scale and efficiency thus giving cloud adopters a faster time to market. A great deal of time, energy and resources are spent on managing on-premises technology infrastructures but with an infrastructure as a service model, organization can focus their time, energy and resources on their core business. With SaaS business software (e.g. ERP / HRM) is delivered on-demand and on a subscription basis thus allowing organizations to run more efficiently while

focused on delivering value to its customers. SaaS provides value creation through the use of resource sharing, standardization of processes and centralized data.

High speed broadband access, affordable data, reliable connectivity and cyber security are some of the obstacles to mass cloud adoption in Kenya but they have fast been eliminated by innovative offerings like the Internet Solutions Open Network (ISON).

Cyber Security

More and more Kenyan organizations are awakening to the reality that cyber security is paramount to their operations. Businesses are operating in an increasingly hazardous cyber landscape as cyber-attacks in the form of viruses, malware and ransomware become the norm of the day. According to the National Kenya Computer Incident Response Team – Coordination Centre (National KE-CIRT/CC), out of the 4,589 cyber threats detected in Kenya between October-December last year 539 were critical and required immediate response. Furthermore, businesses continue to generate vast amounts of valuable user data which is the subject of many data breaches being executed in the cyber world. A case in point is the widely publicized data breach of Sony Pictures which resulted in losses amounting to millions of dollars in damages.

Cyber Security continues to be a cardinal subject for Kenyan businesses as the resultant losses could be momentous. As reported in the 2017 Kenya Cybersecurity Report, Kenyan businesses lost a colossal Sh21.1 billion as a result of cybercrime in the year 2017. Many organizations are increasing their ICT spend on cyber security in a move to bolster their cyber security posture. With cyber attackers growing increasingly sophisticated, no longer is a perimeter firewall the answer to every cyber threat on the internet. With more emerging digital technologies that allow IT resource consolidation and decentralization, the cyber-attack surface is larger than ever before. It is now more critical for organizations to have the right cyber security infrastructure, personnel and road map. Continuous vulnerability checks on the entire enterprise network infrastructure and organizational resources could significantly reduce the cyber-attack surface while mitigating different attack vectors.

In the journey to Cyber Resilience, many organizations are now outsourcing their cyber security requirements as opposed to building in house security teams. This allows organizations to focus solely on their core business as a third party tightens their security posture.

BUILDING & CONSTRUCTION

Kenya has a well-developed building and construction industry with quality engineering, building and architectural design services being readily available. This industry is currently on an upward trend following rehabilitation and reconstruction of roads and bridges under the Kenya Urban Transport Infrastructure Program.

ECONOMIC PERFORMANCE

Kenya's real gross domestic product is projected to grow by 5.7% in 2019, a slight decrease from the estimated 5.8% growth experienced in 2018, according to the new World Bank Kenya Economic Update. While the medium-term growth outlook is stable, the report notes that recent threats of drought and continued subdued private sector investment could drag down growth in the near-term. The growth forecast for 2020 stands at 5.9%.

Growth in 2018 was driven by favourable harvests, a resilient services sector, positive investor confidence and a stable macroeconomic environment. Nonetheless, the demand side shows significant slack with growth driven primarily by private consumption while private sector investment remains subdued. So far in 2019, a strong pick-up in economic activity was underway for Q1 of 2019 as reflected by real growth in consumer spending and stronger investor sentiment. However, a delayed start to the long rain season (March – May 2019) could affect the planting season-resulting in poor harvests. In addition, the below average short rains (October – December 2018) and the ensuing food shortages across several counties in the northern part of the country that has prompted emergency interventions, could impose unanticipated

fiscal pressure constraining development spending. These developments have slowed the growth forecast for 2019.

The 19th Kenya Economic Update (KEU), *Unbundling the Slack in Private Investment*, attributes the slack on the demand side of the economy to two factors: Insufficient credit growth to the private sector (which stands at 3.4% in February 2019), and inherent room for improvement in fiscal management. On private sector credit, the report recommends fast-tracking solutions to factors that led to the imposition of the interest rate cap and building consensus for its eventual reform. On the latter, ensuring prompt payments to firms that trade with the government could restore liquidity and stimulate private sector activities. Other crucial reforms outlined in the report are improved revenue mobilization and accelerated structural reforms that crowd in private sector participation in the Big 4 agenda.

Agriculture remains a key driver of growth in Kenya and a major contributor to poverty reduction. The Special Focus section of the KEU highlights a few of the many factors underlying low agriculture sector productivity and high vulnerability to climate shocks; and proposes policies that could help transform the sector to boost farmers' income—thereby contributing to the overall poverty reduction in Kenya.

Finally, to boost farmers' incomes policy could seek to address post-harvest losses and marketing challenges by fast-tracking implementation of the national warehousing receipt system and commodities exchange, while scaling up agro-processing and value addition to increase returns on agricultural produce.

OVERVIEW OF ECONOMIC PERFORMANCE

GROSS DOMESTIC PRODUCT

According to Africa Development Bank GDP growth Real GDP is projected to grow by 6.0% in 2019 and 6.1% in 2020. Domestically, improved business confidence and continued macroeconomic stability will contribute to growth. Externally, tourism and the strengthening global economy will contribute.

INFLATION

The government plans to continue fiscal consolidation to restrain the rising deficit and stabilize public debt by enhancing revenue, rationalizing expenditures through zero base budgeting, and reducing the cost of debt by diversifying funding sources. Inflation is projected to be 5.5% in 2019 and 5.4% in 2020 due to prudent monetary policy. Kenya also benefits from renewed political momentum (including the 2010 constitution and devolution), a strategic geographic location with sea access, and opportunities for private investors, and the discovery of oil, gas, and coal along with continued exploration for other minerals. This is according to Africa Development Bank.

THE SMALL & MICRO ENTERPRISES

The small and micro enterprises (SMEs) play an important role in the Kenyan Economy. According to the Economic Survey (2006), the sector contributed over 50 percent of new jobs created in the year 2005. Despite their significance, past statistics indicate that three out of five businesses fail within the first few months of operation (Kenya National Bureau of Statistics, 2007). According to Amyx (2005), one of the most significant challenges is the negative perception towards SMEs. Potential clients perceive small businesses as lacking the ability to provide quality services and are unable to satisfy more than one critical project simultaneously. Often larger companies are selected and given business for their clout in the industry and name recognition alone. Despite all the above challenges the Small- and medium-sized enterprises (SMEs) have played a significant role in Kenya's economy. The SME sector is estimated to employ close to 80% of Kenya's total workforce and contribute 20% to GDP. However Measures to support Small and Medium-sized Enterprises, including increased funding to Uwezo (Sh850m), Youth (Sh300m) and Women's (Sh500m) funds and support for Buy-Kenya-Build-Kenya approach to procurement by State bodies are in place.

NAIROBI SECURITIES EXCHANGE

The Nairobi Securities Exchange (NSE) is a leading African Exchange, based in Kenya – one of the fastest-growing economies in Sub-Saharan Africa. Founded in 1954, NSE has a six decade heritage in listing equity and debt securities. It offers a world class trading facility for local and international investors looking to gain exposure to Kenya and Africa's economic growth.

NSE demutualized and self-listed in 2014. Its Board and management team are comprised of some of Africa's leading capital markets professionals, who are focused on innovation, diversification and operational excellence in the Exchange.

NSE is playing a vital role in the growth of Kenya's economy by encouraging savings and investment, as well as helping local and international companies' access cost-effective capital. NSE operates under the jurisdiction of the Capital Markets Authority of Kenya. It is a full member of the World Federation of Exchange, a founder member of the African Securities Exchanges Association (ASEA) and the East African Securities Exchanges Association (EASEA). The NSE is a member of the Association of Futures Market and is a partner exchange in the United Nations-led SSE initiative.

The Nairobi Securities Exchange is licensed and regulated by the Capital Markets Authority. It has the mandate of providing a trading platform for listed securities and overseeing its Member Firms

On 1 July 2014, the NSE received formal approval from the Capital Markets Authority (CMA) to operate as a demutualized entity. Following the approval, it commenced the process of offering its shares to the public through an Initial Public Offering (IPO) and subsequently self-list its shares on the Main Investment Market Segment (MIMS) of the NSE. The NSE was the second exchange in Africa to demutualize and list its shares, after the Johannesburg Stock Exchange (JSE).

On 9 September 2014, the NSE listed 194,625,000 shares at a stock price of Kshs. 9.50 per share. This was after a successful IPO which attracted over 17,000 investors, where we raised Kshs. 4.8 billion recording an overwhelming subscription rate of 763.9 %. Self-listing has enabled the NSE raise capital to fund its growth and expansion strategy and support various initiatives in line with the corporate strategy. NSE's business growth can be viewed in two segments; product diversification and technological improvement.

The Exchange continues to grow its value in line with its corporate vision of becoming a leading Securities Exchange in Africa with a global reach. The company has recorded growth in earnings over the past two financial years posting Profits after Tax (PAT) amounting to Kshs. 183.96 million and Kshs. 216.25 million in the 2016 and 2017 financial years respectively. Additionally, the NSE share price has grown from the initial offer price of Kshs. 9.50 to Kshs. 15.00, representing a 57% increase. The share price touched an all-time high of Kshs. 30.25 in March, 2016.

Since listing, the NSE has adopted a progressive dividends pay-out policy that supports the company's growth and expansion strategy whilst distributing fair shareholder returns. In this regard, the NSE has paid out over Kshs. 200 million in dividends since its listing.

Following the successful IPO, the NSE embarked on the 2015-2019 strategy which focused on enabling the NSE increase its revenue streams as well as offer local and international investors an array of financial instruments for both their short and long term investment needs among other key objectives. To this end, the NSE undertook strategic investment in product diversification which would play a critical role in enabling listed companies mobilize local resources and international capital in their quest to fund their growth and expansion strategies.

NSE launched the Real Estate Investment Trusts (REITs) and the Exchange Traded Funds (ETFs) in 2015 and 2017 respectively.

Since listing, the NSE has created a world class trading infrastructure supported by strategic investments in diverse products and cutting edge technology. NSE's product diversification has made it the second most diverse market in Africa. The Bourse's global standards have enabled it to get admitted as a full member of the World Federation of Exchanges (WFE) joining an elite cadre of Exchanges such as the New York Stock Exchange (NYSE) and the London Stock Exchange (LSE). Additionally, the NSE is a founder member of the African Securities Exchanges Association (ASEA) and the East African Securities Exchanges Association (EASEA). It is a full member of the Association of Futures Markets (AFM) and a partner Exchange in the United Nations Sustainable Stock Exchanges Initiative (SSE).

The following are companies listed under Nairobi Securities exchange:

Agricultural

Eaagads Ltd

Kakuzi

Kapchorua Tea Kenya Plc

Limuru Tea Plc

Sasini Tea and Coffee Ltd

Williamson Tea Kenya Plc

Automobiles and Accessories

Car and General (K) Ltd

Banking

Barclays Bank Ltd

BK Group Plc

Co-operative Bank of Kenya Ltd

Diamond Trust Bank Kenya Ltd

Equity Group Holdings Ltd

HF Group Ltd

I & M Holdings Plc

KCB Group Plc

National Bank of Kenya Ltd

NIC Group Plc

Stanbic Holdings Plc

Standard Chartered Bank Kenya Ltd

Commercial and Services

Deacons (East Africa) Plc

Eveready East Africa Ltd

Express Ltd

Kenya Airways Plc

Longhorn Publishers Plc

Nairobi Business Ventures Ltd

Nation Media Group Plc

Sameer Africa Plc

Standard Group Ltd

TPS Eastern Africa (Serena) Ltd

Uchumi Supermarket Ltd

WPP ScanGroup Plc

Construction and Allied

ARM Cement Ltd

Bamburi Cement Ltd

Crown Berger Ltd

East African Cables Ltd

East African Portland Cement Ltd

Energy and Petroleum

KenolKobil Ltd

Kenya Electricity Generating Company Plc

Kenya Power and Lighting Ltd

KPLC-P4

KPLC-P7

Total Kenya Ltd

Umeme Ltd

Insurance

Britam Holdings Ltd

CIC Insurance Group Ltd
 Jubilee Holdings Ltd
 Kenya Re-Insurance Corporation Ltd
 Liberty Kenya Holdings Ltd
 Sanlam Kenya Plc

Investment

Centum Investment Company Ltd
 Home Afrika Ltd
 Kurwitu Ventures Ltd
 Olympia Capital Holdings Ltd
 Trans-Century Ltd

Investment Services

Nairobi Securities Exchange Plc

Manufacturing and Allied

BAT Kenya Plc
 BOC Kenya Plc
 Carbacid Investments Plc
 East African Breweries Ltd
 Flame Tree Group Holdings Ltd
 Kenya Orchards Ltd
 Mumias Sugar Company Ltd
 Unga Group Ltd

Telecommunication and Technology

Safaricom Plc

Real Estate Investment Trusts

Stanlib Fahari Income-REIT

Exchange Traded Funds

Barclays NewGold ETF

NATURAL RESOURCES

Kenya's natural heritage is globally recognized for its rich biodiversity and iconic landscapes. Kenya's economy and people's livelihoods are highly dependent on these natural resources and nature-based tourism, sectors that are extremely vulnerable to climate change. The arid and semi-arid lands account for 80 percent of the country's land area and climate variability has led to significant economic losses and increased food insecurity. Other external factors such as wildlife crime, urban expansion, and population growth are threatening conservation efforts in Kenya.

USAID addresses these development challenges through the promotion of community-based natural resource management in biodiversity hotspots across Kenya and by working directly with the Government of Kenya (GOK) to promote low emission and climate resilient development. With over 60 percent of Kenya's wildlife ranging outside state-protected areas, sustainable management of community and private lands has proved vital to protecting and conserving Kenya's natural heritage

Kenya's most valuable natural assets are rich agricultural land and a unique physiography and wildlife. The highly diversity of wildlife is a key draw for the tourism industry.

The country is not well-endowed with mineral resources. Mineral resources currently exploited are gold, limestone, soda ash, salt, rubies, fluor spar and garnets. At present, only 3% of the land is forested, a reduction by half over the past three decades. Kenya's water resources are similarly under pressure. Kenya relies to a significant extent on hydropower.

Environment law requires the National Environmental Management Authority (NEMA) to conduct annual environmental audits and to prepare and submit a State of Environment (SoE) report every year to parliament. The report documents environmental issues and potential interventions to be undertaken by various sectors towards enhancing the status and quality of the environment.

UNEMPLOYMENT

Kenya has to create at least 900,000 jobs annually between now and 2025 to absorb the high number of youths joining the job market, according to the latest World Bank report.

Dubbed 'Kenya Social Protection and Job Programmes Public Expenditure Review', shows the country's job creation has failed to keep pace with new job entrants.

According to the report, nine million individuals are expected to enter the labor force in a decade between 2015 and 2025, further pushing up the country's unemployment rate which stood at 9.3 per cent last year, according to Kenya Economic Survey 2019.

The ten year World Bank survey projects unemployment rate in Kenya to rise to 10.5 per cent this year before slowing to 10 per cent in 2020.

In April, the government claimed that the economy grew by 6.3 per cent last year, yielding some 840,600 new jobs. This was a 69,400 decline from 909,800 reported in 2017.

According to World Bank, 60 percent of the working age population in Kenya was employed in 2005, and this has increased significantly to 76 per cent, in 2015.

Despite the growth in jobs creation, the lender said the country is producing low quality jobs.

"In Kenya, only six per cent of total employment is in the formal non-agricultural sector. Almost half of total employment, 49 per cent, is informal non-agricultural employment, with the remaining 45 per cent employed in agriculture," the report says.

It explains that agriculture is a low-productivity sector with high rates of underemployment.

Digital Divide Data, an internationally acclaimed social enterprise that delivers high-quality business process outsourcing (BPO) services to clients worldwide, is providing motivated low-income youth with skills training, followed by employment opportunities for successful graduates. By 2018, the company plans to employ 600 youth from poor families living in the slums of Nairobi. In addition, the company is committed to ensuring that 300 of its work-study graduates receive college degrees, work experience and have secured professional jobs by 2018.

The Youth Enterprise Development Fund, operational over the last five years as the main intervention agency, has disbursed some funds to youth enterprises, organised youth trade fairs, built an infrastructure to support young people and started pre-finance training. The fund will be expanded in the coming years to ensure increased employment for the young.

CURRENCY AND RATES

Exchange rates between Kshs vs USD for the last five years;

| YEAR | Average exchange rate |
|------|-----------------------|
| 2014 | 88.1 |
| 2015 | 98.7 |
| 2016 | 101.4 |
| 2017 | 103.25 |
| 2018 | 100.35 |

TABLE 2

Interest rates

Interest rates According to the CBK, lending rates in Kenya reduced from 13.7% in 2017 to 12.47% in 2018 while deposit rates increased from 7.1% to 7.7% in the same period saving rates decreased from 6.1 % in 2017 to 5.7 % in 2018 as shown in table below:

| INTEREST RATES | 2014 | 2015 | 2016 | 2017 | 2018 |
|----------------|-------|-------|-------|-------|--------|
| Deposit Rate | 6.6% | 6.7% | 7.1% | 7.4% | 7.7% |
| Saving Rate | 1.5% | 1.7% | 2.9 % | 6.1% | 5.7% |
| Lending Rate | 16.5% | 15.5% | 16.6% | 13.7% | 12.47% |

In August of 2016, the President of Kenya signed into law, an amendment to the 2015 Banking Bill which capped lending interest rates. The law caps the maximum lending interest rate at 4% above the base rate set by the Central Bank of Kenya. The Central Bank rate has averaged at 10%.

FOREIGN TRADE AND BALANCE OF PAYMENTS

Kenya's Balance of Payments (BoP) data was reported at -253.420 USD mn in Mar 2019. This records a decrease from the previous number of 250.860 USD mn for Dec 2018. Kenya's Balance of Payments (BoP) data is updated quarterly, averaging 105.000 USD mn from Mar 2015 to Mar 2019, with 17 observations. The data reached an all-time high of 677.000 USD mn in Sep 2017 and a record low of -2.018 USD bn in Mar 2018. Kenya's Balance of Payments (BoP) data remains active status in CEIC and is reported by Central Bank of Kenya. The data is categorized under Global Database's Kenya – Table KE.JB003: BPM6: Balance of Payments: USD: Quarterly.

3 – FOREIGN INVESTMENT

Kenya is one of the economic leaders in sub-Saharan Africa. Like many African countries, it is dependent on Foreign Direct Investment (FDI) for capital and employment.

Kenya's Foreign Direct Investment (FDI) registered a growth equal to 1.8 % of the country's Nominal GDP in Dec 2018, compared with a growth equal to 1.6 % in the previous year. Kenya's Foreign Direct Investment: % of Nominal GDP data is updated yearly, available from Dec 1996 to Dec 2018. The data reached an all-time high of 4.0 % in Dec 2009 and a record low 0.0 % in Dec 2001. CEIC calculates Foreign Direct Investment as % of Nominal GDP from annual Foreign Direct Investment and annual Nominal GDP. The Kenya National Bureau of Statistics provides Foreign Direct Investment in local currency based on BPM6 and Nominal GDP in local currency based on SNA 2008. Foreign Direct Investment as % of Nominal GDP prior to 2009 is calculated from Foreign Direct Investment based on BPM5 and Nominal GDP based on SNA 1993.

In the latest reports of Kenya, Current Account recorded a deficit of 246.0 USD mn in Sep 2018. Foreign Direct Investment (FDI) increased by 1.6 USD bn in Dec 2018. Kenya's Direct Investment Abroad expanded by 164.4 USD mn in Dec 2018. Its Foreign Portfolio Investment increased by 1.7 USD bn in Dec 2018. The country's Nominal GDP was reported at 20.5 USD bn in Dec 2018.

Kenya is one of the largest recipients of FDI in Africa, with FDI inflows significantly increasing since 2010. UNCTAD states that in Kenya, FDI flows increased by 27% to USD 1.6 billion. This rise is related to investments, coming mainly from China, in the mining and hydrocarbon sectors. A Chinese investor positioned itself on a project to create a railroad connecting Rwanda, Uganda, South Sudan and Kenya, for a cost of nearly USD 14 billion. According to figures from UNCTAD's 2019 World Investment Report, in 2018 the FDI influx to Kenya significantly reached to USD 1.6 billion (USD 1.2 billion in 2017). The total stock of FDI stood at USD 14.4 billion in 2018. In recent years, the ICT sector has attracted the most FDI, thanks to the arrival of fibre optics in 2009-2010. The other sectors targeted by FDI are banking, tourism, infrastructure and extractive industries.

The United Kingdom, the Netherlands, Belgium, China and South Africa are the main investors in Kenya.

Kenya is a desirable investment destination due to the following;

- Excellent connectivity to major world-wide hubs and time zones that make it easy to work with most continents. Nairobi is the undisputed transportation hub of Eastern and Central Africa and the largest city between Cairo and Johannesburg. Also the Port of Mombasa is the most important deep-water port in the region, supplying the shipping needs of more than a dozen countries.
- A deep pool of educated and skilled manpower that have made the country the manufacturing, commercial and financial hub in eastern and central Africa.
- A fully liberalized economy without exchange or price controls. There are no restrictions on domestic and foreign borrowing by residents and non-residents.
- The most developed stock market in the Eastern and Central African region i.e. the Nairobi Stock Exchange (NSE).
- A relatively well developed manufacturing base in the Eastern African region.
- Potential for exploration and exploitation of mineral resources. Kenya's mineral resources though limited, are attractive and a potential source of valuable materials such as titanium. At present exploration of oil is ongoing off the Indian Ocean Coast and other parts of the country.
- Favourable weather /Climate as well as attractive and diverse social/cultural environment
- Kenya's membership in regional trading bodies such as COMESA, AU , EAC and provides potential investors with a large potential market

- Investment insurance, this provides potential investors with insurance for their investment in Kenya against a wide range of non-commercial risks.
- Tax Treaties and Investment Promotion and Protection Agreements, Kenya is a signatory to a large and growing number of tax treaties and investment promotion and protection Agreements such as the Multilateral Trade System (MTS) ACP Cotonou Agreement, and the Africa Growth and Opportunities Act. This allows exports from Kenya to enjoy preferential access to world markets under a number of special access and duty reduction programmes.
- Stability, since independence, Kenya has maintained remarkable stability despite changes in its political system since the re-emergence of multiparty democracy and promulgation of a new constitution in 2011, Kenyans have enjoyed an increased degree of freedom.
- Regulatory Reforms, Kenya is making efforts to lower the cost of doing business by conducting extensive business regulatory reforms intended to substantially reduce the number of licensing requirements and to make the licensing regimes more simple and transparent and focused on legitimate regulatory purposes.
- Access to Large pool of Highly Educated and Skilled Work Force, Kenya prides itself in its large pool of highly educated, skilled and sought after work force in Africa, trained from within the country and in institutions in around the world.
- Strategic location, Located on the East African coast and having the port of Mombasa, Kenya is strategically located for investors wanting to access the East and Central African market.
- Kenya is an economic centre of the East Africa Community comprising 138 million people and a GDP of US\$ 138 million.
- As the leading economy in East Africa, Kenya's strategic location and its well-developed business infrastructure make it a natural choice for investors and many international firms have made it their regional hub. This grants investors' access to the larger East African Community and regional markets with access to over 385 million consumers. Nairobi is also a major transport Hub in East Africa with Connections from Jomo Kenyatta International Airport to Major Destinations around the world.
- Highly Developed Social and Physical Infrastructure, Kenya affords a pleasant and quality standard of living with its spectacular and diverse natural resources. Ranging from wildlife and sceneries. Including the world famous Maasai Mara. The country also boasts of high quality social amenities such as restaurants, hospitals and Entertainment spots. A good reason why the country has the highest number of Expatriates living and working in Kenya.
- Fully Liberalized Economy, Kenya fully liberalized its economy by removing all obstacles that previously hampered the free flow of trade and private investment. These include exchange controls, import and export licensing, as well as restrictions on remittances of profits and dividends.
- Preferential Market Access, Kenya is signatory to a number of multilateral and bilateral trade agreements as part of its trade policy. Kenya is a member of the World Trade Organization (WTO) making her products access more than 90% of world markets at Most Favoured Nation (MFN) treatment. In addition, Kenya is member to several trade arrangements and beneficiary to trade-enhancing schemes that include the Africa Growth and opportunity act (AGOA); ACP-EU Trade Agreement and
- Well Established and Vocal Private Sector, Kenya has a very substantial private sector, including a significant number of foreign investors and is touted as one of the most resilient in the world. The country has always been a market economy. Key players in voicing private-sector concerns include, The Kenya Private Sector Alliance (KEPSA), Federation of Kenya Employers (FKE) and The Kenya Association of Manufacturers (KAM).
- Diversified and established economy with strong business sector.
- Opportunities in agriculture and horticulture, tourism, mining, power generation, ICTs, manufacturing and acquisition of state-owned enterprises.
- Strong reform gains to encourage investment: coherent vision for economic development, regular meetings between government leaders and investors, new framework for public private partnerships, reinforced investment authority.
- New constitution with greater separation of powers to maintain broad-based political stability

- **A Range of Tax Treaties and Investment Promotion and Protection Agreements.** Kenya has a number of tax treaties and investment promotion and protection Agreements. Exports from Kenya enjoy preferential access to world markets under a number of special access and duty reduction programmes. Kenya is signatory to various agreements aimed at enhancing trade amongst member states.
- **Multilateral Trade System (MTS):** The World Trade Organization (WTO) is the only international organisation dealing with the global rules of trade between nations. The overriding objective of the WTO is to ensure that trade flows as smoothly, freely and predictably as possible. Kenya has been a member of the WTO since its inception in January 1995.
- **ACP/Cotonou Partnership Agreement.** Exports from Kenya entering the European Union are entitled to duty reductions and freedom from all quota restrictions. Trade preferences include duty-free entry of all industrial products as well as a wide range of agricultural products including beef, fish, dairy products, cereals, fresh and processed fruits and vegetables.
- **African Growth and Opportunity Act (AGOA)** Kenya qualifies for duty free access to the United States of America (USA) market under the African Growth and Opportunity Act enacted by USA. Kenya's major products that qualify for export under AGOA include textiles, apparels, handicrafts among others
- **Generalised System of Preferences (GSP):** Under the Generalised System of Preferences, a wide range of Kenya's manufactured products are entitled to preferential duty treatment in the United States of America, Japan, Canada, New Zealand, Australia, Switzerland, Norway, Sweden, Finland, Austria, and other European countries. In addition, no quantitative restrictions are applicable to Kenyan exports on any of the 3,000-plus items currently eligible for GSP treatment.
- **Infrastructure:** The construction of superhighway in city of Nairobi is a leading link for investors for transportation renovation of Kenya Railways, Kenya Airways (Pride of Africa) and Lamu Port has made Kenya a hub of International Transportation Centre
- **Bilateral Trade Agreements:** Kenya has signed bilateral trade agreements with several countries around the world. Some of the countries are already members of existing schemes offering market access/duty reduction preferences as above

REASONS TO INVEST IN KENYA

A Range of Tax Treaties and Investment Promotion and Protection Agreements.

Kenya has a number of tax treaties and investment promotion and protection Agreements. Exports from Kenya enjoy preferential access to world markets under a number of special access and duty reduction programmes. Kenya is signatory to various agreements aimed at enhancing trade amongst member states.

Multilateral Trade System (MTS)

The World Trade Organization (WTO) is the only international organisation dealing with the global rules of trade between nations. The overriding objective of the WTO is to ensure that trade flows as smoothly, freely and predictably as possible. Kenya has been a member of the WTO since its inception in January 1995.

ACP/Cotonou Partnership Agreement

Exports from Kenya entering the European Union are entitled to duty reductions and freedom from all quota restrictions. Trade preferences include duty-free entry of all industrial products as well as a wide range of agricultural products including beef, fish, dairy products, cereals, fresh and processed fruits and vegetables.

African Growth and Opportunity Act (AGOA)

Kenya qualifies for duty free access to the United States of America (USA) market under the African Growth and Opportunity Act enacted by USA. Kenya's major products that qualify for export under

AGOA include textiles, apparels, handicrafts, etc.

Generalised System of Preferences (GSP)

Under the Generalised System of Preferences, a wide range of Kenya's manufactured products are entitled to preferential duty treatment in the United States of America, Japan, Canada, New Zealand, Australia, Switzerland, Norway, Sweden, Finland, Austria, and other European countries. In addition, no quantitative restrictions are applicable to Kenyan exports on any of the 3,000-plus items currently eligible for GSP treatment.

Investment Protection Guarantee

The constitution of Kenya guarantees protection of life and private property. The Foreign Investment Protection Act guarantees against expropriation of private property by government. Kenya is a signatory to and Member of the Multilateral Investment Guarantee Agency (MIGA) an affiliate of the World Bank which guarantees investors against loss of Investment to political problems in host countries.

Kenya is also signatory to International centre for Settlement of Investment Disputes which is a channel for settling disputes between foreign investors and host governments

Infrastructure

The construction of superhighway in city of Nairobi is a leading link for investors for transportation renovation of Kenya Railways, Kenya Airways (Pride of Africa) and Lamu Port has made Kenya a hub of International Transportation Centre

Bilateral Trade Agreements

Kenya has signed bilateral trade agreements with several countries around the world. Some of the countries are already members of existing schemes offering market access/duty reduction preferences as above.

Kenya has a number of tax treaties and investment promotion and protection Agreements to encourage foreign direct investment. Exporters from Kenya enjoy preferential access to world markets under a number of special access and duty reduction programs.

Exports from Kenya entering the European Union are entitled to duty reductions and freedom from all quota restrictions. Trade preferences include duty-free entry of all industrial products as well as a wide range of agricultural products including beef, fish, dairy, cereals, fresh and processed fruits and vegetables.

Kenya qualifies for duty free access to the United States market under the African Growth and Opportunity Act. Kenya's major products that qualify for export include textiles, apparels and handicrafts. Under the Generalized System of Preferences, a wide range of Kenya's manufactured products are entitled to preferential duty treatment in the United States, Japan, Canada, New Zealand, Australia, Switzerland, Norway, Sweden, Finland, Austria, and other European countries. In addition, no quantitative restrictions are applicable to Kenyan exports on any of the 3,000-plus items currently eligible for GSP treatment.

Kenya is a signatory to and member of the Multilateral Investment Guarantee Agency (MIGA), an affiliate of the World Bank, which guarantees investors against loss of Investment to political problems in host countries. Additionally, Kenya is signatory to International Centre for Settlement of Investment Disputes, which is a channel for settling disputes between foreign investors and host governments

Kenya has signed bilateral trade agreements with more than 20 countries around the world, including Argentina, China, Egypt, India, the Netherlands, Poland, Thailand, Tanzania, South Korea and Pakistan. Kenya is currently negotiating agreements with nine additional countries including Belarus, the Czech Republic, Mozambique and South Africa.

| FOREIGN DIRECT INVESTMENT | 2016 | 2017 | 2018 |
|-------------------------------------|--------|--------|--------|
| FDI Inward Flow (million USD) | 681 | 1275 | 1626 |
| FDI Stock (million USD) | 11,520 | 12,796 | 14,421 |
| Number of Greenfield Investments*** | 40 | 52 | 64 |
| FDI Inwards (in % of GFCF****) | 2.8 | n/a | n/a |
| FDI Stock (in % of GDP) | 16.3 | n/a | n/a |

Source: UNCTAD - Last Available Data.

Besides Kenya being a hub for investments there factors that may discourage investment in the country. These include: corruption, slow judicial system, high unemployment and poverty, uncertainty over land ownership, recent security issues related to terrorism and crime, interethnic tensions, costly skilled labor, high cost of energy, poor infrastructure and administrative difficulties in obtaining work permits, However the Government of Kenya is working hard to eradicate them.

To reduce bureaucracy in relation to licensing requirements, immigration and negotiating tax incentives and exemptions, companies are advised to register potential investments with the Kenya Investment Authority.

For more information and to find the relevant registration/application forms, go to:

Kenya Investment Authority www.investmentkenya.com

Other useful websites for foreign companies interested in investing in Kenya are:

Central Bank of Kenya www.centralbank.go.ke

Kenya Revenue Authority www.kra.go.ke

Nairobi Stock Exchange www.nse.co.ke

4 – SETTING UP A BUSINESS

An investor in Kenya has various options to choose from for the form his/her business enterprise will assume.

The main types of company are set out below.

LIMITED LIABILITY COMPANY

A limited liability company is a company whose registered capital is divided into a certain number of shares of a specific nominal value.

A company's authorised capital is made up by par values of its members' equity stakes.

If the company is incorporated by more than one person (individuals or legal entities), the authorised capital is divided into equity stakes of a certain size. A company's authorised capital determines a minimum size of company property, which guarantees the interests of its creditors.

Members of limited liability companies are not liable for its obligations beyond the size of their capital contribution and any unpaid amounts on issued capital.

A limited liability company is the legal form preferred by state authorities for joint ventures. It is also the form into which former state enterprises undergoing privatisation, have been converted. A joint-stock company can be established by one or more entities, including a state or business entity.

The registered capital of the company must be subscribed by the shareholder(s) and at least 30% of monetary contributions and all in-kind contributions must be paid up before the company is registered by the Registrar of companies.

Any company profit gained as a result of its business activity should be distributed among members in the proportion to their equity stakes in the authorised capital. The distributable profit is subject to withholding tax.

A limited liability company may either be a private or a public company.

PUBLIC LIMITED COMPANY

This is formed by a minimum of 51 members and has the power to invite public subscription for its shares.

Subscription of shares must be made upon incorporation of the company. To this end, a general meeting must be held by the subscribers on the establishment of the company, unless the founder(s) agree in the memorandum of association to pay the total registered capital of the company themselves to a certain ratio.

If the shares of the company are subscribed through a public offering of shares, then a prospectus (in accordance with the Companies Act) must be approved by the Capital Market Authority prior to publication of the announcement on the public offering. This must be published concurrently with the public offering. Where the company is listed in the securities exchange (Nairobi Securities Exchange), the approval of the securities exchange is also needed.

The payment of dividends or profit shares is not restricted, provided the company has sufficient distributable profits.

PRIVATE LIMITED COMPANY

In contrast to a public company, a private company must have a minimum of two shareholders but should not exceed 50 shareholders.

A new bill was assented by the President in September 2015 that allows for companies to have one shareholder.

Furthermore, it cannot invite public subscriptions for its shares; the transfer of shares is restricted in that the consent of other shareholders is required before the transfer of private subscriptions is allowable.

GENERAL PARTNERSHIP

A general partnership is a commercial company, the members of which, in accordance with the agreement concluded between them, carry on the business on behalf of the partnership and are liable for its obligations with their property.

The partners of a general partnership are called members and conclude transactions on behalf of the partnership and carry on its business.

A general partnership is incorporated and operates under the partnership deed, which establishes the size and composition of the capital and size of the members' contributions.

Any profits and losses of a general partnership are divided amongst its members in proportion to their capital contribution as stipulated by the deed.

FUNDS

A fund is a not-for-profit organisation without membership.

It is founded by citizens and/ or legal entities on a voluntary basis by the contribution of money or properties. The aim is to pursue social, charitable, cultural and educational goals, or other such purposes.

The founders or trustees are not liable for the obligations of the fund. The income derived from any economic activities carried out by the fund and contributions received can only be used for the purposes set out in the articles of the association.

ASSOCIATIONS AND UNIONS

Associations and unions are not-for-profit organisations set up to co-ordinate the activities of members and to represent and defend their common rights and interests.

They are separate legal entities independent of the members composing them. They have limited liability status.

The constitutions of the individual associations spell out the obligations of members, which may be in terms of the contributions required from the members.

Associations and unions must be registered with the Registrar of societies, whereupon they acquire a legal status. Their legal status ceases upon being struck off this register.

STARTING A BUSINESS

Underlying the indicators below show a set of specific procedures—the bureaucratic and legal steps that an entrepreneur must complete to incorporate and register a new firm. These are identified by *Doing Business* through collaboration with relevant local professionals and the study of laws, regulations and publicly available information on business entry in that economy. Following is a detailed summary of those procedures, along with the associated time and cost. These procedures are those that apply to a company matching the standard assumptions (the “standardized company”) used by *Doing Business* in collecting the data (see the section in this chapter on what the indicators measure).

TABLE 4

Details – Starting a Business in Kenya – Procedure, Time and Cost

| NUMBER | PROCEDURE | TIME TO COMPLETE | COST TO COMPLETE |
|--------|------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------------------|------------------------------|
| 1. | <p>Reserve a unique company name using the eCitizen Portal</p> <p>The name reservation is regulated by the Companies Act 2015 (Part V, Section 48). As of December 2016, the Business Registration Service has made it easier for applicants to reserve company names by making it mandatory to use the online name reservation system on eCitizen. Applicants can search and reserve company names online at https://ag.ecitizen.go.ke/index.php/forms/view?id=463. After an applicant submits the name search and reservation application, they make payment via mobile money and receive a confirmation of the name reservation within the same day.</p> <p>The name is reserved for 30 days and can be extended to a maximum period of 60 days from the time of reservation. Agency : eCitizen portal</p> | 2 day on average | KES 150 per name reservation |
| 2. | <p>Apply for company registration, PIN, NSSF and NHIF through the online eCitizen portal</p> <p>An applicant is required to submit the application for registration of a company on the eCitizen platform by entering details of the required information in the fields provided. The Applicant has an option of adopting the model Articles of Association provided under the Companies Act 2015.</p> <p>The applicant may also supplement or modify the model Articles of Association and provide these for purposes of registering the company. Payment for the registration of the company is also made online using the stipulated payment methods that include mobile money payment, debit/credit/prepaid cards, local bank transfer and E-citizen agents. Once payment is made, the following forms are generated by the online system:</p> <p>a. Details of the First Directors, Secretary and Authorized Signatory of the Company-This form needs to be signed by all the first directors, secretary and authorized signatory of the company</p> | 14 days on average | Kshs 10650 |

| | | | |
|----|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|--------|-----------------------|
| | <p>b. Form CR 2 (Memorandum and Articles of Association)-This form is to be signed by all the subscribers to the shares of the company</p> <p>c. Form CR 8 (Notice of Residential Address/Change of Address of Director of a Company)-This form is to be signed by the applicant</p> <p>d. Statement of Nominal Capital-This is to be signed by any of the first directors of the company.</p> <p>The forms should be downloaded and signed as required and scans of the signed forms should be uploaded into the system. The application for registration of the company shall be considered complete when all the above mentioned forms are scanned back into the system. The application shall then be reviewed by the Registry officials and if it is in order, a Certificate of Incorporation together with an official Search shall be generated online. According to the official Gazette Notice Legal 61 published April 2016, there is a fee of 10,000 shillings for new company incorporation. The fee for using the online system is currently 50 shillings and the fee for completing the check at the end of the incorporation process is 600 shillings.</p> <p>Agency : eCitizen portal</p> | | |
| 3. | <p>Register for VAT and PAYE</p> <p>Section 34 of the VAT Act 2013, requires that any person who in the course of a business has made or is expecting to make taxable supplies the value of which is KES 5,000,000 or more in any period of twelve months must be registered for VAT. Registration is now conducted online through KRA online services portal;http://www.kra.g.ke/portal. Once the company is registered, they are required by the VAT Law to display your registration certificate in a clearly visible place within your business premises. Failing to do so will result in a default penalty of Kenya shillings 20,000/= and in addition shall be guilty of an offence and liable to a fine not exceeding Kenya shillings 200,000/= or imprisonment for a term not exceeding two years or both. Under the Income Tax Act Cap 470, where a person has employees, they are required to deduct tax due from any remuneration paid to their employees (PAYE tax) and remit this to the KRA. All employers are thus required to register for PAYE once they have employees.</p> <p>Both the application for VAT and PAYE can be completed at the same time</p> <p>Agency: KRA</p> | 2 Days | No Charge |
| 4. | <p>Apply for a unified business permit</p> <p>The Nairobi City County has introduced the new unified business permit online in order to make it easier and simpler for applicants to obtain the unified business permit. The unified business permit consolidates 5 permits</p> <p>i.e. the single business permit, re clearance certificate, advertising signage, health certificate and food hygiene into one permit. Applicants apply for a unified business permit</p> | 5 days | See procedure details |

| | | | |
|----|---------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|----------------------|---------------------------------|
| | <p>online at, https://epayments.nairobi.go.ke/ with an option to make payments online. An assessment of the payable fee for the trading licence can only be done at the agency. Only after the assessment has been done can an invoice be generated and paid online. The applicant can also go in person to submit the application for the unified permit.</p> <p>The applicant then obtains the provisional unified business permit and can display it at their business premises.</p> <p>Cost: KES 15,000 single business permit fee KES 200 for the application fee KES 4,500 for the inter alia a Fire Clearance Certificate Agency: Nairobi City County</p> | | |
| 5. | <p>Register the work place with the Director of Occupational Safety and Health</p> <p>The purpose of the Occupational Safety and Health Act 2007 is to provide a legal framework to promote, stimulate and encourage high standards of safety and health in the workplace. As such employers must:</p> <ul style="list-style-type: none"> • Prepare and, revise a written safety and health policy statement for the workplace giving consideration to the organisation and arrangements for carrying out that policy; • Notify employees any revision of the policy statement; • To establish a safety and health committee in the workplace where there are twenty or more persons employed in the workplace; • not to penalize an employee who is a member of a work place safety and health committee for doing anything in pursuit of safety and health; <p>A company must obtain a Certificate of Registration of a Workplace from the Directorate of Occupational Health and Safety in respect of each of the premises used by the company as a workplace Agency : <i>Occupational Safety and Health</i></p> | 1 days | KES 5000 |
| 6. | <p>Make a company seal</p> <p>The requirement for companies to obtain a company seal has been made optional as a result of passing the Companies Act, 2015. However, in practice companies still get seals made. Seal makers request a copy of the certificate of incorporation in order to make a company seal. Agency : Seal maker</p> | 2 days, simultaneous | between KES 2,500 and KES 3,500 |

5 – LABOUR

The provisions regulating employer-employee relationships are laid out in the Employment Act.

For factory workers, factory wages and conditions of employment, the Act is the binding law.

The employer-employee relationship stems from the agreement signed between an employer and an employee. A responsible officer of the company (e.g. the manager) may represent an employer in this agreement.

The agreement usually contains:

- The terms of reference for the employee detailing their specific duties and responsibilities
- The terms of employment, including hours of work, salary and other benefits, period of paid leave and other entitlements
- The respective rights and obligations of both employer and employee.

The minimum period of annual leave is 21 days per annum. Maternity leave is three months and paternity leave is two weeks. The employment agreement can, however, vary this upwards.

An employment agreement may either specify the period for which it's applicable or may set no period, but instead lay out the situations in which it may be terminated or deemed terminated.

Trade unions are formed to safeguard and champion the interest of either party. The employees' trade unions represent members in negotiating and concluding Collective Bargaining Agreements (CBA) with employers and in industrial disputes flowing from go-slows and strikes inter alia.

SOCIAL SECURITY

The only social security issues in Kenya are pensions and compensation for injuries sustained in the course of employment and loss of earning capacity.

Under the old NSSF Act which is still operational, an employer with more than four employees must make a monthly contribution of a maximum of KES 200 towards each employee's retirement. These are made to the National Social Security Fund (NSSF), a body established by statute. Failure to make contributions leads to penalties and interest being imposed on the company.

For injuries arising from the workplace, employees can only enforce a compensatory payment by instituting legal proceedings in the courts of law against the employer.

Article 43(1)(e) of the Constitution of Kenya provides that every Kenyan has a right to social security and article 21 of Constitution commits the State to take legislative, policy and other measures as necessary, including the setting the standard to ensure effective and efficient provision of social security.

NSSF ACT NO. 45, 2013

The National Social Security Fund Act No. 45 of 2013 was assented by the President of the Republic of Kenya on 24 December 2013 and came into force on 10th January 2014. The implementation of the Act was however halted by a court injunction that maintained a stay of the old rate as at August 2015.

The Act establishes that the National Social Security Fund provides Social Security for Workers and Self Employed Persons and their dependents.

For the purposes of the Act, the Upper Earning Limit (UEL) will be KES. 18,000 while the Lower Earnings Limit (LEL) will be KES 6,000. The pension contribution will be 12% of the pensionable wages made up of two equal portions of 6% from the employee and 6% from the employer subject to an upper limit of KES 2,160 for employees earning above KES 18,000.

The employee contribution shall be drawn directly from his salary and wages while the employers' contribution shall come directly from the employer.

The contributions relating to the earnings below the LEL of the earnings (a maximum of KES. 720) will be credited to what will be known as a Tier I account while the balance of the contribution for earnings between the LEL and the UEL (up to a maximum of KES 1,440) will be credited to what will be known as a Tier II account.

EMPLOYER OBLIGATION

- under the new National Social Security Fund (NSSF) Act, every employer who engages one or more employees is required to promptly register with NSSF as a contributing employer
- Ensure prompt registration of all employees as members of NSSF
- Promptly deduct and remit contributions in full by the 15th day of the following month. Late payments of mandatory contributions shall attract a penalty at the rate of 5% of the total contributions for each month or part of the month that is remitted late
- Promptly submit accurate monthly returns in the prescribed format by the 15th day of the following month
- Maintain proper and up to date records of employees' earnings and particulars
- An employer who fails to comply with the above commits an offence

MEMBERS OBLIGATION

- Under the new National Social Security Fund (NSSF) Act, every employee upon employment is required to furnish his/ her employer with accurate personal details
- Register only ONCE as a member of NSSF
- Where previously registered, produce his/her membership card as evidence of registration to a new employer
- Furnish to the Fund and regularly update his/her particulars and their dependents
- Keep membership card in safe custody

Under the National Social Security Fund (NSSF) Act, employers are required to remit contributions by:

- Cheques
- Bankers cheques
- Real Time Gross Settlement (RTGS)
- Electronic Funds Transfers (EFT)
- Cash subject to a maximum of KSH 5,000
- Through the NSSF M-PESA business No. 333300

However the NSSF Act 2013 is not yet implemented following pending court case.

6 – TAXATION

The Kenyan tax system comprises both direct and indirect form of taxes. This includes include Income Tax, Customs and Excise Duties and Value Added Tax (VAT).

Personal Identification Number (PIN) and VAT registration

Every natural or legal person is required by law to register and obtain a Personal Identification Number (PIN). This is the tax registration document.

An application for pin is done to the Kenya Revenue Authority (KRA) and can be done online as follows;

- Register a local company as a taxpayer
- Register a local individual as a taxpayer
- Register a foreign individual taxpayer
- Register a branch of a foreign company as a taxpayer

Types of taxes

The Kenyan tax system comprises both direct and indirect form of taxes. This includes include Income Tax, Customs and Excise Duties and Value Added Tax (VAT).

New investors are advised to familiarize themselves with the tax regime in Kenya. Penalties and interest levied on non-compliance with tax legislation is punitive.

Brief description of varies taxes is given below:

Corporate tax

Is a direct tax on profits made by corporate bodies and it has its legal basis in the Income Tax Act (Cap 470). It's payable at the corporation rate by companies and unincorporated organisations and associations (excluding partnerships, sole proprietorships, and interest or dividend paid by a designated co-operative society) that have taxable income as defined by the Act.

The income of a partnership or a sole proprietorship is not taxable on the business entity but is taxed on the individual partner or the proprietor. The tax rates differ between resident and non-resident companies as outlined in the table below.

| ITEM | % RATE |
|----------------------------------------------------------------------------------|---------------|
| Resident Company | 30% |
| Unincorporated entity with a turnover of up to Shs 5 million - on gross receipts | 3% |
| Non-resident company operating as a branch under Certificate of Compliance | 37.50% |
| Export Processing Zones Enterprises | |
| First 10 Years | Nil |
| Next 10 Years | 25% |
| Newly listed companies following year of listing | |
| List at least 20% of its shares | 27% for 3 yrs |
| List at least 30% of its shares | 25% for 5 Yrs |
| List at least 40% of its shares | 20% for 5 Yrs |
| Real Estate Investment Trusts | Exempt |

Companies are required to pay instalment taxes on income as the year progresses. For non-agricultural businesses, there are four instalments to be paid by the 20th of the month as set out below:

- 1st instalment – 4th month
- 2nd instalment – 6th month
- 3rd instalment – 9th month
- 4th instalment – 12th month.

Agricultural instalments are payable by the 20th day of the 9th and 12th month in the year of income.

A failure to pay leads to penalties. A company is supposed to use the previous years' income as a guide and an error rate of 10% is allowed on underpayment. Underestimation leads to a penalty of 20% on the difference between the instalment tax payable (based on actual results) and the amount of instalment tax paid, multiplied by a factor of 1.1. Further, a 1% penalty per month is charged on tax unpaid plus the penalty.

Withholding tax

Is deducted on payment by a resident person or non-resident person with a permanent establishment on certain income deemed to have been derived from Kenya (irrespective of whether paid to resident or non-resident persons)

For rates of withholding tax are found in THIRD SCHEDULE HEAD B of Income Tax Act cap 470

Value Added Tax (VAT)

The operation of VAT has its legal basis in the VAT Act 2013. Value Added Tax is charged on supply of taxable goods or services made or provided in Kenya and on importation of taxable goods or services into Kenya. Taxable goods and services are contained in the various schedules of the VAT Act. All goods and services are taxable except those excluded through the second and third schedules respectively. The VAT Act constitutes the following schedules: -
1st Schedule -Specifies the exempt goods supplies, Exempt goods on transition and exempt services
2nd Schedule – Specifies Zero rated supplies

Excise Duty

Excise duty is imposed under the excise duty Act 2015 of laws of Kenya. The tax is levied on various products including alcoholic beverages, tobacco products, petroleum products, motor vehicles, carbonated drinks and mineral water, cosmetics, jewellery, bank charges and cell phone airtime.

1st schedule of the act provides rates of excise duty and 2nd schedule on supplies exempt from excisable goods and services.

Finance Bill 2019 proposed the following amendments to the Income Tax Act Cap 470. VAT and TPA.

INCOME TAX

Turnover Tax and Presumptive Tax

The Cabinet Secretary for treasury through Finance Bill 2019 proposed to re-introduce the turnover tax which was abolished and replaced with presumptive tax by Finance Act of 2018.

The turnover tax shall be payable by any resident whose turnover from business does not exceed or is not expected to exceed five million during the year of income.

However the turnover tax will not apply to rental income, management or professional or training fees, income from of incorporated companies or any other income subject to final withholding tax.

Re-introduction of turnover tax is seen as motive by the government to widen tax base in order to generate more revenue to realize the objectives set out in the "Big Four" Plan.

NB:

- Turnover tax shall be due on or before the 20th day of the month following the end of tax period

- The person paying turnover tax, will also be liable to pay presumptive tax when obtaining business permit or trading license from county government which shall be offset against turnover tax payable.

Effective Date: 1st January 2020

CAPITAL GAIN TAX

Capital tax rate to be increased from 5% to 12.5%

Cabinet Secretary for the National Treasury through the finance bill 2019 proposed to increase the rate of Capital Gain Tax from 5% to 12.5% with aim of enhancing equity and fairness as well as harmonizing the rate with other jurisdictions, including the EAC where the rate ranges 20% to 30%.

Effective Date: 1st October 2019

Exemption from CGT of Corporate Restructuring

The Cabinet Secretary for treasury further proposed to exempt from Capital Gain Tax the transfer of property that is necessitated by the restructuring of corporate entities in order to allow efficiency and market penetration in corporate entities.

Effective Date 1st October 2019

WITHHOLDING TAX

Expansion of Withholding Tax Base

In order to widen the tax base, The Cabinet Secretary for the National Treasury through Finance Bill 2019 proposed to expand the scope of application of withholding tax by subjecting additional services, other than management and professional fees to withholding taxes.

These services include: security services cleaning and fumigation services, catering services offered outside hotel premises, transportation of goods excluding air transport services, sales promotion and marketing and advertising.

Effective Date 1st October 2019

Withholding Tax on Insurance and Reinsurance Premiums Paid to Non-Resident

The Finance Bill 2019 proposed an amendment to introduce withholding tax on insurance and reinsurance premiums excluding insurance and reinsurance premium paid in respect of aircraft to non-resident persons at rate of 5% of gross amount of premium payable.

Effective Date: 1st October 2019

Withholding Tax on Demurrage Charges Dropped

The bill proposed an appeal to drop withholding tax on demurrages charges paid to non-resident ship operators which was introduced by Finance Act of 2018.

Effective Date: 1st October 2019

Payment Liable to Withholding Tax

The finance Bill 2019 requires a Permanent Establishment of Non-resident person to account withholding tax on management or professional fees, interest or royalties paid to its non-resident head office or its other offices if DTA allows the PE to claim a corporate tax deduction in respect of those payments.

Effective Date: 1st October 2019

CORPORATE TAX

Taxation of Digital Economy

The Cabinet Secretary proposed to amend section 3 of Income Tax Act to provide platform for taxation of income generated from the digital economy so as to boost revenues and ensure there is inclusivity in economic development.

The CS further defined the “digital marketplace” to mean a platform that enables the direct interaction between buyers and sellers of goods and services through electronic means.

Income of Certain Non-Resident Persons Deemed Derived From Kenya

The CS Proposed an amendment of Income Tax Act to include income of a non-resident shipping line including income from delay in taking delivery of goods or returning any of the equipment used for transportation of goods to income deemed to be derived in Kenya.

The CS for the Treasury proposed an amendment of Income Tax Act in order to exempt the income of National Housing Development Fund and income earned by an individual who is registered under the Ajira Digital Program for three years beginning 1st January 2020.

Further clarification on this amendment will be issued after consultation between CS for Treasury and CS for Information and Technology.

Effective Date: 1st January 2020

Reduction of Corporate Tax Rate of Plastic Recycling Plant

The CS for Treasury proposed to lower corporate tax to 15% of the first years of a company operating a plastics recycling plant.

Effective Date: 1st October 2019

COMPENSATING TAX

The Finance Bill 2019 proposed an amendment of section 7A of Income Tax Act by substituting the current proviso, which excludes registered collective investments schemes from compensating tax regime with proviso that seeks to effect that compensating tax but will not apply any dividends distributed out of income that is exempt under Income Tax Act.

Effective Date: 1st October 2019

Exemption of Real Estates Investment Trust (REITS)

The CS for Treasury proposed an amendment to exempt from income tax the Investee companies of Real Estates Investments Trust.

Effective Date: 1st October 2019

Penalty on Unpaid Tax

The CS for the Treasury through Finance Bill 2019 proposed to delete the Section 72D of the Income Tax Act that provides for the late payment penalty of 20% of any unpaid tax.

Effective Date: 1st October 2019

Exemption of National Housing Development Fund (NHDF) Income from Tax

The Finance Bill 2019 proposed to exempt from tax income of the NHDF by inclusion in the First Schedule of ITA Cap 470.

Effective Date: 1st January 2020

PERSONAL INCOME TAX

Exemption from Income Tax of Individual Registered Under Ajira Digital Program

Finance Bill 2019 proposed to exempt earned by an individual who is registered under the Ajira Digital Program for three years beginning from 1st January 2020.

Registration fee Kshs. 10,000 will be payable by all individuals.

Effective Date: 1st January 2020

Housing Relief

The Finance Bill proposed to amend the affordable housing relief under Income Tax Act to be computed at 15% of employee contribution and not gross emoluments as it is currently provided.

Effective Date: 1st October 2019

VALUE ADDED TAX

The CS for treasury proposed an amendment of VAT Act to tax the supplies made through digital market place.

Proposed exemption in VAT Act 2013

- Inputs for electric accumulators and separators including lead battery separator rolls supplied to manufacturers of automotive and solar batteries in Kenya upon the recommendation by Cs for Industrialization.
- Agricultural pest controls products
- Locally manufactured motherboards
- Input for the manufacture of motherboards approved by the Cabinet Secretary responsible for IT.
- Plant, machinery and equipment used in the construction of a plastics recycling plant.
- Securities brokerage services

Effective Date: 1st October 2019

Reduction of Withholding Vat

The CS proposed a reduction in WHTVAT rate from six percent to two percent.

NB: withholding VAT will not apply to taxable value of zero-rated supplies.

Effective Date: 1ST October 2019

Imported Services

The Finance Bill 2019 proposed to widen the scope of imported services by including all taxable services received from non-resident persons whether the recipient is registered for VAT or not.

Effective Date: 1st October 2019

Equipment for Generation of Solar and Wind Energy

The Finance Bill 2018 exempted from VAT the equipment made for generation of solar and wind energy. However the Finance Bill 2019 proposes that recommendation be sought from the CS responsible for energy before the exemption is granted.

Effective Date: 1st October 2019

Reduction of Scope of Vat Exempt Tractors

Road tractors for semi-trailers removed from the scope of exempt tractors.

Effective Date: 1st October 2019

Time of Supply of Goods Imported From Special Economic Zones (SEZ)

The Finance Bill 2019 proposed an amendment of Section 12(4) (c) to include the terms or special economic zone immediately after the word export processing zone.

Effective Date: 1st October 2019

Definition of Concessional Loan

The term concession loan for purposes of official aid funded projects defined to mean a loan with at least twenty five Percent grant element.

Effective Date: 1st October 2019

Zero Rating of Denatured Ethanol

The Finance Bill 2019 proposed zero rating of denatured ethanol.

Effective Date: 1st October 2019

EXCISE DUTY

The Finance Bill proposed to increase the excise on Cigarettes, spirits and wines by 15%.

Below is the schedule of revised rates:

| Description | Proposed new rate of excise |
|--------------------------------------------------------------|-----------------------------|
| Cigars, cheroots, cigarillos, containing tobacco substitutes | Shs.12,098 Per kg |
| Electronic cigarettes | Shs. 3,629 per unit |
| Cartridge for use in electronic | Shs. 2,420 per unit |
| Cigarette with filters | Shs. 3,025 per mille |
| Cigarettes without filters | Shs.2,177 per mille |
| Other Manufactured | shs 8,468 per kg |
| Wines including fortified wines and | Shs 181 per Litre |
| Spirit of undenatured ethyl alcohol; spirits | Shs 242 per litre |
| | |
| | |

Effective Date: 1st October 2019

EXCISE DUTY ON MOTOR VEHICLES

The Finance Bill 2019 proposed to amend the excise duty rates on motor vehicles as follows

| Description | Rate of Excise duty |
|-------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------------|---------------------|
| <ul style="list-style-type: none"> • Locally assembled vehicles • School buses for use by public schools • Motor • tariff no. 8703.24.90 and 8703.33.90 • Imported motor vehicles of cylinder exceeding 1500cc | 20% |
| Imported moto vehicles of cylinder capacity exceeding 1500cc of tariff heading 87.02, 87.03, 87.04 | 25% |
| Motor vehicles of tariff no. 8703.24.90 and 8703.33.90 | 35% |
| 100% electric powered motor vehicles of tariff no. | 10% |
| 8702.40.11 | |
| 8702.40.21 | |
| 8702.40.29 | |
| 8702.40.99 | |
| 8702.40.19 | |
| 8702.40.22 | |
| 8702.40.91 | |
| 8702.80.00 | |

Effective Date: 1st October 2019

Introduction of Excise Duty on Betting Activities

The Finance Bill proposed to introduce Excise duty on betting activities at rate of 10% of amount wagered and staked.

NB

Amount wagered or staked means the amount placed by a person for an outcome in a betting transaction.
Effective Date: 1st October 2019

Removal of Excise Duty on Plastic Shopping Bags

The Bill proposed an amendment to delete the provision charging excise duty on plastic shopping bags.
Effective Date: 1st October 2019

Change of Effective Date for Inflationary Adjustments

The Finance Bill proposed an amendment of effective date for adjusting specific excise duty rates for inflation from 1st of July to 1st of October of every year.

Effective Date: 1st October 2019

TAX PROCEDURES ACT (TPA)

Amnesty

The CS proposed to introduce an amnesty on the tax penalties and interest on any outstanding tax for two years prior to listing for SMEs listed under GEMS program provided that the principal will be paid in full. However the amnesty will not apply to the person who should have paid tax and has been assessed or in case of ongoing audit or investigation on undisclosed income.

Expansion of Pin Requirement for Certain Transactions

The CS for treasury proposed an amendment to include the following transactions among the transaction which require PIN. These include:

1. registration and renewal of membership by professional bodies and other licensing agencies and
2. Registration of mobile cellular pay bill and till numbers by telecommunication operators.

Effective Date 1st October 2019

Penalties and Interest for Withholding Tax Non Compliance

The Bill proposed an amendment of TPA to enforce collection and recovery of the tax and penalties and interest from persons who fails to withhold and remit taxes on liable payment.

The taxes, penalties and interest will apply as if the tax were due and payable by the person who fails to withhold tax and remit to KRA.

Effective Date 1st October 2019

Departure Prohibition Orders (DPO) to Tax Representatives

The Bill proposed to amend provision of TPA in relation to persons that are subject to DPO to include tax representatives.

Effective Date: 1st October 2019

60 Day Window for Issuing Objection Decision

The Bill proposed an amendment of the TPA in order to allow the Commissioner additional time to issue an objection where further information is requested from tax payer after filing an objection.

Effective Date: 1st October 2019

Tax Paid to Be Taken Into Account When Determining Penalties on Late Submission of a Return

The Bill proposed an amendment of the TPA in relation to the penalty on tax payable under a return by adding a provision that tax already paid and withholding tax credits shall be taken into account in calculating the late submission penalties.

Effective Date: 1st October 2019

MISCELLANEOUS FEES AND LEVIES (MFLA)

Amendment of Import Declaration Fees (IDF) and Railway Development Levy (RDL) Rates

The Bill proposed to amend the IDL and RDL rates as follows

- Increase IDL on goods imported for use from 2% to 3.5% except raw material and intermediate goods approved manufactures whose rate will be reduced from 2% to 1.5%.
- Increase RDL on goods imported for home use from 1.5% to 2% except raw material and intermediate goods approved manufactures whose rate will continue being 1.5%.

Effective Date: 1st October 2019

Exemption of IDL and RDL On Official Aid Funded Projects

The Bill proposed an amendment of section 2 of MFLA to define the term concessional loan as a loan with at least 25% grant element.

Effective Date: 1st October 2019

Introduction of Export Levy on Tanned or Crust Hides and Skins

The Bill 2019 proposed to amend the First Schedule of the MFLA to introduce export levy on tanned or crust hides and skin at 10%.

Effective Date: 1st October 2019.

MISCELLANEOUS

The Bill also seeks to amend the following laws—

THE PRIVILEGES AND IMMUNITIES ACT (CAP. 179)

The Bill seeks to amend the Fourth Schedule to the Act to exempt goods and services imported or locally purchased by privileged organizations for their official use from taxes.

THE CAPITAL MARKET ACT (CAP. 485)

The Bill seeks to amend the Act to provide for financial penalties imposed by the Authority to be considered as civil debts with the Capital Markets Authority mandated to recover them in line with provisions for the recovery of decretal sums. The amendment is intended to enhance enforcement and recovery of financial penalties imposed by the Authority.

THE BANKING ACT (CAP. 488)

The Bill seeks to amend the Act by repealing section 33B to remove the caps on interest charged on loans. This is aimed at encouraging the banks to provide credit to Small and Medium Enterprises (SMEs).

THE RETIREMENTS BENEFITS ACT (NO. 3 OF 1997)

The Bill proposes to activate the benefits and other accrued income of members of retirement benefits schemes who cannot be traced and that were rendered redundant with the enactment of the Unclaimed Financial Assets Act, 2011. The amendment also intends to provide time limit in which approved issuers shall transfer scheme funds in guaranteed funds to 1 year to protect the interests of members by reducing the exposure to low returns over an extended transfer period.

THE EMPLOYMENT ACT (NO. 11 OF 2008)

The Finance Bill, 2019 29 The Bill seeks to introduce the definition of “basic salary” to guide on the base amount for computing the levy payable to the National Housing Development Fund. The amendment also seeks to delete the definition of “employee’s earnings”, words which have not been used in the Act.

THE ACCOUNTANTS ACT (NO. 15 OF 2008)

The Bill proposes to remove the requirement for the students to register with ICPAK before qualifying as accountants.

THE PROCEEDS OF CRIME AND ANTI-MONEY LAUNDERING ACT (NO. 9 OF 2009)

The Bill seeks to designate lawyers, notaries and other independent legal professionals as amongst reporting entities to whom Anti-Money Laundering/Combating Financing of Terrorism obligations shall apply. Dated the 13th June, 2019.

DOUBLE TAX TREATY

Kenya has double tax treaties with the following countries:

Ratified & in force:

- United Kingdom
- Germany
- Canada
- Norway
- Denmark
- Sweden
- Zambia
- India.

Signed but not in force:

The following DTA's have been signed but have not been ratified by all the Contracting States and are therefore in NOT in force.

- Italy - 15.10.1979
- Tanzania & Uganda - 31.3.1999 L/N no. 45/1999 (Re-negotiated by EAC States on 23rd November 2005 in Arusha, Tanzania)

DRAFT AGREEMENTS UNDER NEGOTIATION:

The following DTA's are at different stages of negotiation. For those that are in force, but under review, the existing DTA's continue to operate until the review is complete. This will be intimated through a Legal Notice revoking the existing one.

- Tanzania & Uganda (renegotiated 23rd November 2005)
- France (2nd round negotiations, Nairobi, 3rd February 2006)
- Thailand {1st round negotiations, Bangkok, 7th July 2006}
- India {review 1st round, New Delhi, 14th July 2006}

DRAFT AGREEMENTS FOR NEGOTIATION:

The following draft DTA's are under discussions by the Task Force on Double Taxation & Investment Agreements under the chair of Ministry of Finance.

- Seychelles
- Nigeria
- South Africa
- Mauritius
- Finland
- Russia
- United Arab Emirates
- Islamic Republic Of Iran

7 – ACCOUNTING & REPORTING

All commercial enterprises are required to prepare accounts for the determination of corporate taxes payable.

The income of not-for-profit organisations is not taxable. However, these organisations have a requirement (set out in their constitutive documents) to prepare accounts, showing funds received and their application.

The Companies Act also lays out requirements which must be met in order for organisations to satisfy reporting requirements. In this regard, accounts must comprise the following:

- Balance sheet
- Profit and loss account
- Cash flow statement.

In addition, financial statements must comply with International Financial Reporting Standards (IFRS). This means that, in addition to the three requirements above, companies must prepare:

- A statement of changes in equity
- Explanatory notes to the financial statements
- Disclosures as required by the IFRS and International Auditing Standards (IAS).

Financial statements are required to be prepared every 12 months.

AUDIT REQUIREMENTS

An individual asked to sign an audit opinion should meet the requirements laid out by the Institute of Certified Public Accountants of Kenya (ICPAK).

Only registered auditors with the Registrar of Accountants Board (RAB) can express audit opinions on any set of accounts required by legislation or regulation for audit.

Audit examinations are either obligatory or initiative in nature. Obligatory audit examinations are established by law and are conducted for:

- Joint stock companies
- Bank, insurance companies and investment institutions.

Obligatory audit examinations should be conducted in accordance with standards approved by the IFRS and sector-specific regulations.

8 – UHY REPRESENTATION IN KENYA

CONTACT DETAILS

UHY Kenya
 PO Box 13550-00800
 1st Floor, Centro House Ring Road
 Westlands
 Nairobi
 Kenya
 Tel: +254 20 444 7196
 Fax: +254 20 4446452
www.uhy-ke.com

Year established: 1976
 Number of partners: 3
 Total staff: 27

CONTACTS

Liaison contact: Daniel Kabiru
 Email: dkabiru@uhy-ke.com

OTHER IN-COUNTRY OFFICE LOCATIONS AND CONTACTS

We operate from Nairobi, the capital city of Kenya. From this location, we can service clients in Tanzania and Uganda.

BRIEF DESCRIPTION OF FIRM

UHY Kenya/ Mungai & Associates has been in operation since 1976 and is currently one of the growing Certified Public Accountants and management consultancy firms in Kenya.

We offer a wide range of financial consulting services all intended to assist clients to undertake and run successful business/ development initiatives in Kenya and other countries of East and Central Africa. The firm joined UHYI in 2006. UHY Kenya Mungai & Associates (the 'Firm') is a member of Urbach Hacker Young International Limited, a UK company, and forms part of the international UHY network of legally independent accounting and consulting firms.

UHY is the brand name for the UHY international network. The services described herein are provided by the Firm and not by UHY or any other member firm of UHY. Neither UHY nor any member of UHY has any liability for services provided by other members.

SERVICE AREAS

Audit
 Accountancy
 Taxation
 Tax News on monthly basis
 Internal audit
 Risk-based audit
 Payroll processing
 Company formations
 Recruitment of accountants
 Investigations

SPECIALIST SERVICE AREAS

Receivership and liquidations
 Company valuations
 Due Diligence assignments
 Tax planning
 Investment appraisals

Filing of annual returns
 Risk base auditing
 Audit of non-governmental organisations

PRINCIPAL OPERATING SECTORS

Agriculture

LANGUAGES

English is the working knowledge while Kiswahili is the national language.

CURRENT PRINCIPAL CLIENTS

Highchem Group of Companies • Equity Building Society (now Equity Bank Limited)- Previous client • Karen Blixen Camp Limited • Cybertrace Limited • Delight Capital Microfinance Limited • OI Pejeta Conservancy- Part of Sweetwaters Camp • Nairobi Flight Training Limited . Young Women Christian Association • Mhasibu Housing Company Limited • Simba Pharmaceuticals Limited • Mangu Investments Co. Limited • Action Aid Kenya Limited – Consultancy • OI Jogi Limited- Ranch and Tourism sector • Oakland Media Services Limited • Delamere Estates Limited • Delamere Holdings Limited • Soysambu Conservancy Limited • Under The Same Sun, Tanzania (parent company based in Canada) • Africa Alliance of Young Men’s Christian Associations • Bahr-El-Ghazal Youth Development Agency (BYDA), Southern Sudan • Kitisuru Water Limited-previous client • The Kenya Young Men Christian Association (KYMCA) • Charleston Travel Limited • African Woman & Child Feature Services • Young Christian Women Association • Independent Adjusters Kenya Limited • Hillcrest Schools Limited (In Receivership) • Triple Nine Associates Limited • Maxam Limited • Media Council of Kenya • Coalition on Violence Against Women • Solidaridad E&CA Expertise

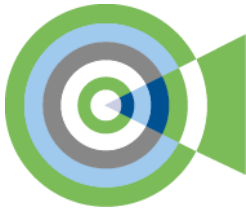
OTHER COUNTRIES IN UHY CURRENTLY WORKING WITH, OR HAVE WORKED WITH IN THE PAST

USA, Denmark, Canada, Malaysia, Netherlands, Germany, Spain, Israel, Malaysia, Uganda

BRIEF HISTORY OF FIRM

Founded in 1976 as Mungai & Associates, the firm has had its fair share of challenges. We have continued to service our medium sized clients especially in the areas of audit, tax etc. In 2006, we joined the UHYI and continue to support the global effort of growing a bigger firm to the satisfaction of our clients.

We have adequate local resources to ensure that our clients receive value added services in any assignments that we undertake



LET US HELP YOU ACHIEVE FURTHER BUSINESS SUCCESS

To find out how UHY can assist your business, contact any of our member firms. You can visit us online at www.uhy.com to find contact details for all of our offices, or email us at info@uhy.com for further information.

UHY is an international network of legally independent accounting and consultancy firms whose administrative entity is Urbach Hacker Young International Limited, a UK company. UHY is the brand name for the UHY international network. Services to clients are provided by member firms and not by Urbach Hacker Young International Limited. Neither Urbach Hacker Young International Limited, the UHY network, nor any member of UHY has any liability for services provided by other members.

UHY Kenya (the “Firm”) is a member of Urbach Hacker Young International Limited, a UK company, and forms part of the international UHY network of legally independent accounting and consulting firms. UHY is the brand name for the UHY international network. The services described herein are provided by the Firm and not by UHY or any other member firm of UHY. Neither UHY nor any member of UHY has any liability for services provided by other members.

© 2019 UHY International Ltd