DOING BUSINESS IN THE EAST AFRICAN REGION.

A Publication by:

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IMPACTING LIVES

DOING BUSINESS IN UGANDA.

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DOING BUSINESS IN UGANDA.

A. Country Overview.

Government Structure

Executive:
The President is both the Chief of State and Head of Government. The President is directly elected by absolute majority popular vote, for a five-year term with no limits to the number of subsequent terms. The Prime minister is appointed by the President. The cabinet is appointed by the President.

Legislature:
Uganda has a unicameral parliament where powers are concentrated in a single house of the Parliament.

Judiciary:
The highest court is the Supreme Court. The subordinate courts are the Court of Appeal (which also sits as the Constitutional Court), High Court which includes 12 High Court Circuits and eight High Court Divisions), Industrial Court, Chief Magistrate Grade One and Grade Two Courts throughout the country, Qadhi's courts, local council courts, and the family and children's courts.

Next Presidential and Parliamentary Elections: January 2026.

Economic Data

- Nominal GDP (USD billions): 37.37
- GDP per capita (USD): 894.35
- Inflation rate (% change): 4.9
- Government revenue (% of GDP): 13.6
- Government gross debt (% of GDP): 51.30

**Source:* *tradingeconomics.com (December 2023)*

- Uganda has substantial natural resources, including fertile soils, regular rainfall, substantial reserves of recoverable oil, and small deposits of copper, gold, and other minerals. One of the most important sectors of the economy is agriculture, which employs approximately 72% of the workforce.
- Uganda has a small industrial sector that is dependent on imported inputs such as refined oil and heavy equipment.
- Uganda's main export partners are the United Arab Emirates and Kenya. The main export commodities include coffee, milk, fish and fish products, tobacco, and gold. Uganda's main import partners are China, India, Kenya, the United Arab Emirates, and Japan. The main import commodities include packaged medicines, aircraft, delivery trucks, cars, and wheat.

Risk Rating

- Sovereign risk is B-rated. The public debt stock is moderately large (at 52.8% of GDP), and a high debt-service ratio, of 23%, amid maturing obligations weighs on the rating. However, strong growth in foreign reserves (of 17.7% in the six months to September 2021), reflecting rising exports, mitigates repayment risks.
- The currency risk rating is at BB. Recent exchange-rate stability supports the rating, but moderate real exchange-rate appreciation highlights currency risks from potentially widening exchange-rate misalignment. However, a robust foreign reserves buffer boosts the capacity of the Bank of Uganda (BoU, the central bank) to defend the shilling against excessive volatility.
- The banking sector risk is B-rated. The ratio of non-performing loans is below the central bank's 5% target (at 4.8% by end-June 2021). Adequate levels of credit growth and fairly sound financial supervision by the BoU further support the rating. However, the declining net foreign asset position of banks, reflecting an increase in foreign currency liabilities, poses a moderate risk.
- Political risk is CCC-rated. Pandemic-related risks are a moderate weight, owing to the declining spread of the fast-spreading Omicron variant in Uganda since December. The re-election of the president, Yoweri Museveni, in January was marked by violence, but election-linked risks have since abated.

- Economic structure risk is at CCC, reflecting a recent trend of export concentration, with precious metals accounting for 44% of total export earnings. Over-reliance on a single category of goods exposes the country to external price and demand shocks. Persistent and large fiscal and current-account deficits and low incomes constitute the main risk factors.

http://country.eiu.com/article.aspx?articleid=1080925091&Country=Uganda&topic=Risk&subtopic=Credit+risk&subsubtopic=Overview

B. International treaties and memberships

International and regional organizations and customs unions

- African, Caribbean, and Pacific Group of States (ACP)
- African Development Bank Group (AfDB)
- African Union/United Nations Hybrid operation in Darfur (UNAMID)
- African Union (AU)
- Common Market for Eastern and Southern Africa (COMESA)
- Commonwealth of Nations
- East African Community (EAC)
- East African Development Bank (EADB)
- Food and Agriculture Organization (FAO)
- Group of 77 (G77)
- Inter-Governmental Authority on Development (IGAD)
- International Atomic Energy Agency (IAEA)
- International Bank for Reconstruction and Development (IBRD)
- International Civil Aviation Organization (ICAO)

Uganda receives preferential treatment under the agreements listed here: s http://ptadb.wto.org/Country.aspx?code=800

Bilateral investment treaties

According to the United Nations Conference on Trade and Development, Uganda has bilateral investment treaties with Denmark, France, Germany, the Netherlands, Switzerland, and the United Kingdom.

Treaties have been signed with the Belgium-Luxembourg Economic Union, China, Cuba, Egypt, Eritrea, Nigeria, South Africa, the United Arab Emirates, and Zimbabwe but these have not yet entered into force.

Investment- related agreements / institutions

- African Growth and Opportunity Act
- Cotonou Agreement
- Multilateral Investment Guarantee Agency
- World Trade Organization

Intellectual property ("IP") treaties

A comprehensive list of IP-related treaties signed by Uganda is available at: http://www.wipo.int/wipolex/en/profile.jsp?code=UG

See the trademarks section below for further detail.

C. Legal Regime

Applicable legal regime

Uganda's legal system is primarily based on statute, supplemented by common law, customary law, and aspects of Islamic law.

The Judicature Act (Cap.13) prescribes the laws applicable in Uganda as the written law, and in so far as not covered by written law, the common law and doctrines of equity, any established and current custom or usage. Where no express rule is applicable, the High Court may act in accordance with the principles of justice, equity, and good conscience.

Dispute Resolution

Disputes may be resolved through courts of judicature, arbitration and mediation.

Land Acquisition, Planning, and Use

Foreigners are only allowed to enter into long-term leases for a maximum period of 99 years. They are not allowed to hold freehold or mailo land.

Advocates/solicitors and estate agents can assist in locating and leasing suitable and available land.

For investors, an application can also be made to the Uganda Investment Authority ("UIA") for the allocation of land for investment and purposes.

Competition

Uganda recently passed the Competition Act 2023.

Uganda is a member of regional competition regulatory bodies such as, COMESA and the EAC. Activities in Uganda should be conducted with these regional competition bodies in mind.

Employment

Employment is primarily governed by the Employment Act Uganda 2006. Other laws include the Occupational Health and Safety Act 2006, Workers' Compensation Act 2006, Labour Disputes (Arbitration and Settlement Act) 2006.

Employees are entitled to annual leave, maternity/paternity leave, sick leave and public holidays. Other statutory benefits include wages and NSSF.

Maximum working hours shall be 56 hours per week except for those employed to work in shifts.

Uganda's minimum wage is UGX 6000 which has not been amended since 1884.
An employer may terminate an employee for misconduct, poor performance and

physical incapacity. Termination of an employee requires notice and a fair hearing. The notice period is determined by length of the contract.

Immigration

Foreign employees require a special pass or a work permit in order to be employed in Uganda.

A special pass is a short-term work facility granted to foreign employees whose term of employment is for a maximum aggregate period of five months, whereas a work permit is granted to foreign employees whose term of employment is for six months to three years.

As a prerequisite for obtaining the work facilities, the company seeking to employ a foreign employee must go through a profiling process and obtain a code number from the Directorate of Citizenship and Immigration Control ("DCIC"). Thereafter, the company can submit the application for the respective work facility online, using the code number issued by the DCIC.

There are no restrictions on the number of work permits available to a company.

In practice, the DCIC approves applications for work facilities as long as the employer provides the required documentation and pays the prescribed fees for the respective work facilities, and successfully demonstrates that expatriate staff will contribute skills and knowledge to the company's business that are not readily available from local Ugandan employees.

The DCIC also sets out different specified requirements for the different sectors of employment.

Classes of work permits include;

Class A: Diplomatic Service
Fee: 0
Class A2: Government Contractors
Fee: 6 months-250 USD, 12months-500 USD, 24 months-1000 USD, 36 months-1500 USD
Class B1: Agriculture
Fee: 6 months-1250 USD, 12months-2500 USD, 24 months-5000 USD, 36 months-7500USD
Class C1: Mining
Fee: 6 months-1250 USD, 12 months-2500 USD, 24 months-5000 USD, 36 months-7500USD.
Class B2, C2, G3, E: Investment Facilitation
Fee: 6 months-400 USD, 12 months-400 USD, 24 months-800 USD, 36 months-1200USD.
Class D: Business and Trade
Fee: 6 months-1250 USD, 12 months-2500 USD, 24 months-5000 USD, 36 months-7500USD.
Class G1: Missionaries and Volunteer NGO workers
Fee: 6 months-250 USD, 12months-250 USD, 24 months-500 USD, 36 months-750 USD
Class G2: Expatriate Employees
Fee: 6 months-1250 USD, 12 months-2500 USD, 24 months-6000 USD, 36 months-7500USD
Class A: Official service
Fees : 0
Class F: Professionals
Fee: 6 months-1500 USD, 12 months-3000 USD, 24 months-5000 USD, 36 months-9000USD.
Class H: Ordinary residents
Fee: 6 months-750 USD, 12 months-1500 USD, 24 months-3000 USD, 36 months-4500USD

Local Employment Versus Secondment

In terms of Uganda's employment legislation, an employee may be seconded to Uganda, as it is not a legal requirement for either local or foreign employees to be employed by a local entity.

However, in terms of Uganda's immigration legislation, employment by a local entity is a prerequisite for applying for a work permit.

Fixed-Term Contracts and Temporary Employment Services

Fixed-term contracts of employment that are either defined by time or purpose are allowed in terms of the Employment Act, 2006. The use of fixed-term contracts of employment should, however, be approached with circumspection as there are risks associated with such contracts. There is no specific regulation regarding the renewal of fixed-term contracts.

The use of temporary employment services (private employment agencies) is provided for, provided the agency is registered and licensed under the Employment Regulations, 2011.

Payment In Local Currency

It is not a legal requirement for remuneration to be paid in local currency.

D. Foreign Investment Regime

Investment Regime

The Investment Code Act governs investment in Uganda.

The UIA serves as a one-stop center for business registration and licensing.

Foreign companies intending to invest in Uganda must apply for an investment license, issued under the Investment Code Act, with the Uganda Investment Authority

Investors in the energy-generation, mining, banking, insurance, payment services, air-transport, pharmaceuticals production, education, health, telecommunications, and oil and gas industries must obtain a "primary license" from the ministry / department / agency regulating such industry, prior to applying for an investment license.

Incentives

Incentives include:

various incentives promoting farming activities;

tax holidays granted to industrial park or free zone developers or operators, depending on the amount of capital invested; and incentives available within the EAC, including duty drawback schemes and no requirement for import or export licenses within the region.

Exchange Control Regulation

Uganda does not impose any exchange control restrictions, however, in terms of the Foreign Exchange Act, 2004 every payment made in foreign currency to or from Uganda between residents and non-residents, or between non-residents, must be made through a commercial bank.

Types of entities available for foreign investment

- Sole proprietorship;
- Public company (joint-stock company);
- Private limited liability company;
- Company limited by guarantee;
- Joint venture;
- Public-private venture; and
- Registered branch of a foreign company.

E. Registration of a Company

Minimum Number of Shareholders

A minimum of two shareholders is required. Whilst the Companies Act, 2012 permits the establishment of single member companies, in practice this appears to be available only to individuals.

Minimum Share Capital

There are no minimum capital requirements in Uganda, except for financial institutions, insurance companies, payment service providers, and companies in the business of gaming, betting and lotteries.

However, the Investment Code Act provides that the Minister will determine the minimum capital requirements for a foreign investor, but this is yet to be announced.

In practice, a company limited by shares will generally only be registered if it has authorised share capital of at least UGX1 million

Directors

A private company must have a minimum of one director. There is no requirement to have any Ugandan resident directors, except for financial institutions regulated by the Bank of Uganda and insurance companies.

Company Secretary

Every company must appoint a company secretary (firm or individual), resident in Uganda.

The sole director of the company may not be the company secretary.

Auditor

A private company must appoint an auditor who is a member of the Institute of Certified Public Accountants of Uganda or one of the other professional bodies referred to in the Ugandan Accountants Act (Cap. 266).

Registered Address

Every company must have a registered office and a postal address in Uganda to which all communications and notices may be addressed and which must constitute the address for service of legal proceedings on the company.

A company may have its registered address at the offices of its company secretary, lawyers, accountants or a third party.

Registration Process

Companies are registered with the URSB and it takes approximately one week to complete registration once all of the required documents have been submitted.

Uganda Revenue Authority (“Ura”)

All taxpayers (including company directors) must register with the URA and obtain a tax identification number (“TIN”), which is used for all types of taxes.

If an enterprise’s expected annual turnover exceeds the value-added tax (“VAT”) registration threshold (see ‘tax’ below), it should also specifically register for VAT purposes.

Kampala Capital City Authority (“KCCA”)

Businesses operating in Uganda must hold a valid trading licence from the relevant municipal licensing authority (in Kampala, the KCCA). A separate trading licence is to be obtained in respect of each branch / store of an entity. Specific licenses may also be required depending on the nature of business.

National Social Security Fund (“NSSF”)

Every employer regardless of the number of employees must register with the NSSF within 21 days of becoming liable to register as a contributing employer.
In addition, each employee is required to have his/her own social security member number under which contributions are made.

F. Tax

Tax System

Uganda has a residence-based tax system in terms of which residents are subject to tax on their world-wide income, whereas non-residents are subject to tax only on their Ugandan-sourced income.

Corporate Residence

A company is resident in Uganda if it:

- is incorporated or formed under the laws of Uganda;
- has management and control exercised in Uganda at any time during the year of income; or
- undertakes the majority of its operations in Uganda during the year of income.

Corporate Tax Rate

Resident companies and permanent establishments of foreign companies are subject to corporate income tax at the rate of 30%.

Tax payable by small businesses (whose annual turnover or income does not exceed UGX150-million) is calculated with reference to turnover.

Capital Gains Tax ("CGT")

Capital gains on the disposal of assets are included in ordinary taxable income and are subject to corporate income tax at the standard rate of 30%.

Withholding Tax ("WHT") Rates

Payment to	WHT rate residents	Non-residents*
branch profits	N/A	15%
dividends	0% (if at least 25% voting rights) 15%	15%
dividends	15% 10% / 20% (on government securities)	15% 10% / 20% (on government securities)
royalties	N/A	15%
management, consulting and technical service fees	6% (unless listed as exempt entity)	15%

- The withholding tax rate may be reduced in terms of a relevant double tax agreement.

Double Tax Agreements ("DTAS")

DTAs are in force with Denmark, India, Italy, Mauritius, the Netherlands, Norway, South Africa, the United Kingdom and Zambia.

Losses

Losses may be carried forward indefinitely.
Losses on foreign-source income cannot be set off against domestic income.

Transfer Pricing

In terms of Ugandan's transfer pricing rules, transactions between associates (related parties) must be entered into on an arm's length basis.

Two persons are treated as associates of each other where any person acts or is likely to act, in accordance with the directions, requests, suggestions, or wishes of another person, whether or not these are communicated to the first-mentioned person.

A company is an associate of another person if that person, either alone or together with an associate or associates, controls 50% or more of the voting power in the company, either directly or through one or more interposed companies, partnerships or trusts.

Limitations on interest deductibility

Interest in respect of all debts owed by a taxpayer who is a member of a group can be claimed as a deduction limited to 30% of the taxable earnings before interest, tax, depreciation and amortisation (EBITDA). The restriction does not apply to financial institutions and insurance companies.

A taxpayer whose interest exceeds the limit may carry forward the excess interest for not more than three years.

Employee Taxes

The income tax rates applicable to resident individuals are:

Annual chargeable income (UGX)	Tax rate
up to 2 820 000	0%
2 820 001 – 4 020 000	10%
4 020 001 – 4 920 000	20%
4 920 001 – 120 000 000	30%
above 120 000 000	40%

Social Security Contributions

Both employees and employers employing five or more employees must make monthly social security contributions to the NSSF.

The employer contribution rate is 10% of the employee's monthly wage, whereas the employee contribution rate is 5%.

Subject to the approval of the NSSF, expatriates are not obliged to contribute to NSSF if they are not ordinarily resident in Uganda and are to be employed in Uganda for a continuous period of not more than three years or such longer period as is allowed by the NSSF.

Payroll Taxes

There is no payroll tax in Uganda.

However, all employees in gainful employment are liable to pay a local service tax ranging from UGX5 000 to UGX100 000 per year, depending on the monthly income earned by such employees.

Stamp Duty

Stamp duty is levied under the Stamp Duty Act, 2014 on a wide range of instruments and documents, either ad valorem at rates ranging from 0.5% to 2% or at a flat rate of between UGX10 000 and UGX100 000, depending on the nature of the instrument.

Stamp duty at a rate of 1.5% is payable on the total value of the transfer of shares in a Ugandan company and immovable property.

Value-Added Tax ("VAT")

taxable supplies
VAT is levied on the supply of goods and services in Uganda and on the importation of goods and services.
VAT rate
18%
registration threshold
• A person whose taxable turnover during any period of three calendar months exceeds or is expected to exceed a quarter of the annual registration threshold of UGX150-million must register for VAT purposes.
reverse VAT on imported services
• Resident companies are required to account for output VAT in respect of imported services rendered by non-resident companies in terms of a reverse charge mechanism. Such VAT is generally not allowed as an input credit.

G. Trademarks

International Conventions, Treaties and Arrangements

- African Regional Intellectual Property Organization (Banjul Protocol)
- Agreement on Trade-Related Aspects of Intellectual Property Rights
- Paris Convention
- Nairobi Treaty
- World Intellectual Property Organization
- World Trade Organization

Note *Although Uganda is a member of the Paris Convention, it is not a signatory to the Madrid Protocol, therefore there is no provision in Uganda's legislation relating to international arrangements for trademarks. As such, it should not be possible to claim convention priority. However, the registry is, in practice, accepting priority claims, although the effectiveness and validity of a priority claim is unclear.*

Classification

The International Classification of Goods and Services (Nice Classification) applies.

A separate application is required for each class.

The register is divided into part A (for trademarks which are distinctive) and part B (trademarks that are capable of distinguishing), per legislation.

Categories Of Trademarks

Provision is made for:

- ordinary trademarks (goods and service marks);
- certification marks;
- defensive marks; and
- series marks.

Filing Requirements

- Simply signed Power of Attorney;
- at least four prints of the mark, except for word marks in ordinary type;
- for device marks, 12 prints and a printing block of the trademarks; and
- priority document (if applicable), with verified English translation.

Procedure

Applications are examined as to inherent registrability and conflict with prior existing registrations / applications. On acceptance, a publication notice is issued and applications are advertised for a period of 60 days.

Oppositions

An opposition may be lodged within the 60 days following the date of advertisement of the trademark application. Extension of the opposition period is possible at the discretion of the registrar.

Duration and Renewal

A trademark registration is effective for an initial period of seven years from the date of application and, thereafter, renewable for further periods of 10 years.

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A. Setting Up Businesses

The most common business vehicles in Kenya are:

- Companies limited by shares (private or public) established under the Companies Act 2015.
- Limited liability partnerships (LLPs) established under the Limited Liability Partnership Act 2011.

a) Companies

i. Private Limited Liability Company

- Must have at least 1 director (natural person) and at least 1 shareholder (natural person or company).
- No requirement to have a local director. However, a local director may be necessary for operational purposes such as initial tax compliance and for bank account opening.
- No requirement for local shareholding except in specific industries such as insurance, banking, telecommunications, and financial advisory services.
- No minimum share capital requirement except for companies in regulated industries such as banking, insurance, and employment.
- Private companies with paid-up share capital of above USD 50,000 must appoint a company secretary.

Documents/Information required for registration

- At least 3 names but up to 5 proposed names listed in order of priority.
- Primary and secondary activities the company intends to engage in.
- The capital structure and division at incorporation.
- Registration documents for a corporation, identification documents for individuals such as national IDs for citizens, valid passports and foreigner certificates for resident foreign nationals and valid passports for non-resident foreign nationals), postal and residential address, passport photos, contact details (cell phone and email) of directors, shareholders, beneficial owners, nominee directors, and nominee partners.
- Proposed company secretaries, where applicable.

Process, timelines, and costs

- Process of name reservation and registration of the company is done simultaneously.
- Application for registration is done through the Business Registration Service on the e-Citizen Portal https://www.ecitizen.go.ke/.
- Cost of incorporation starts from about USD 250 and the process is completed within 1-5 days.

ii. Subsidiary of a Foreign Company

A subsidiary is a separate legal entity from the parent corporation, although owned by the parent corporation.

A company may form a subsidiary either by purchasing a controlling interest in an existing company or creating the company itself.

iii. Branch of a Foreign Company

A branch is the registration of the foreign entity in Kenya.
To obtain the certificate of compliance (of a foreign company in Kenya), the requirements are:

- Certified copies (notarized) of the parent company's registration documents and by-laws/memorandum and articles.
- List of the directors of the parent company, their identification documents, and contact details.
- Name(s) and contact details of one or more people resident in Kenya authorized to receive documents on behalf of the company.
- Physical address of the branch.

b) Partnerships

i. General Partnerships

- Each partner has unlimited liability.
- The partners have general responsibility for the partnership.
- The partners trade in the name of the registered business although the partnership is not a corporate entity.

ii. Limited Partnerships

- At least one general partner with unlimited liability and one partner with limited liability.
- A general partner is liable for all debts and obligations of the partnership while the limited partner is liable for the debts or obligations of the partnership to the extent of the amount contributed to the partnership at the time of joining the partnership.
- The partners trade in the name of the registered business although the partnership is not a corporate entity.

iii. Limited Liability Partnerships (LLPs)

- This is a corporate entity.
- Must have at least 2 partners and at least 1 manager who is a natural person over 18 years old and resident in Kenya.
- Has a manager whose consent to act in that capacity is lodged with the Registrar of LLPs.
- The LLP makes annual declarations of solvency.

Documents/Information required for registration

- Tax PINs of the manager(s) and partner(s).
- Partnership deed detailing the arrangement of partners, contributions, the business, signing mandate for bank accounts and transactions, dissolution, addition, and exit of partners.
- National IDs or passports of the manager(s) and partner (s).
  Process, timelines, and costs
- Application for registration is done through the Business Registration Service on the e-citizen Portal https://www.ecitizen.go.ke/
- Name reservation: 3 names are provided in order of priority.
- The cost is from USD 250 and the process is completed in 3-5 days.

B. Licenses and Permits

The type of business permit to be issued is subject to the geographical location of the business, the number of employees, type, and activities of the business. There are generic and sector-specific permits and licenses.

a) Unified Business Permit
This permit consolidates all the licenses required for running a business including a trading license, fire clearance certificate, advertising signage, health certificate, and food hygiene license. The license is issued by the county authorities where the business will operate.

b) Environmental Impact Assessment (EIA) License
This license is required where the commercial activity may impact the environment such as construction, noise, effluent discharge, manufacturing, and processing industries. The license is issued by the National Environmental Management Authority (NEMA).

c) Sector-specific licenses
These may include:

- Drugs and pharmaceuticals import permit issued by the Pharmacy and Poisons Board to importers of drugs and pharmaceuticals.
- Petroleum, electricity, and renewable energy licenses and permits issued by the Energy Regulatory Commission.
- Telecommunication companies' licenses and permits issued by the Communications Authority such as broadcasting, frequency, and content service provider licences.
- Licences and permits issued in the tourism industry.
- Licences to manufacture excisable goods.

C. IP Protection in Kenya

Registration of intellectual property is necessary as it confers exclusive ownership of intellectual rights in Kenya.

Kenya is a member of the World Trade Organisation (WTO), and the World Intellectual Property Organization (WIPO) and a signatory to the Agreement on Trade-Related Aspects of Intellectual Property Rights (TRIPS).

Kenya is a member of the African Regional Industrial Property Organization (ARIPO). There are several national laws dealing with various aspects of intellectual property in Kenya. These are:

The Constitution of Kenya

The Constitution guarantees the right to property and requires the state to support, promote, and protect intellectual property rights.

Industrial Property Act

Enacted to promote innovation through the grant and regulation of patents, utility models, technovations, and industrial designs. The Act established:

- **a)** The Kenya Industrial Property Institute (KIPI) which considers applications for grant of industrial property rights, screening technology transfer agreements and licenses, providing industrial property information for technological and economic development to the public, and promotion of inventiveness and innovativeness in Kenya.
- **b)** The Industrial Property Tribunal that adjudicates disputes relating to infringement of patents, utility models, and design infringement.

Copyright Act

Provides a framework for the protection of copyright in literary, musical, and artistic works, audio-visual works, sound recordings, and broadcasts. Established the Kenya Copyright Board which is responsible for the implementation of the Act and international treaties and conventions relating to copyright which Kenya is party to.

Anti-Counterfeit Act

Established the Anti-Counterfeit Authority (ACA) to combat counterfeiting in Kenya through the seizure and destruction of counterfeit goods. The Act allows for the imposition of criminal sanctions and penalties against offenders.

Seeds and Plant Varieties Act

Provides for regulation of transactions in seeds, including testing and certification of seeds, the establishment of an index of names of plant varieties, imposition of restriction on the introduction of new varieties, control on importation of seeds, and granting of proprietary rights to persons breeding or discovering new varieties.

Protection of Traditional Knowledge and Cultural Expressions Act

Provides a framework for the protection and promotion of traditional knowledge and cultural expressions. The Act mandates County Governments to register, preserve, and conserve traditional knowledge and cultural expressions within the counties. The national Government is mandated to establish and maintain a Repository of traditional knowledge and cultural expressions at the Kenya Copyright Board and protection of traditional knowledge and cultural expressions from misuse and misappropriation.

D. Data Protection in Kenya

The Data Protection Act, 2019 applies to all processing of personal data by any data controller or data processor established or resident in Kenya and who processes personal data while in Kenya, or not established or residing in Kenya but processing personal data of data subjects located in Kenya.

Data controllers and processors must be registered with the Office of the Data Protection Commissioner and any processing of data must comply with the principles set out in the Data Protection Act, 2019, including, consent, data subject rights, data retention, data minimization, automated decision making, pseudonymization of sensitive data, and purpose limitation.

E. Foreign Direct Investment (FDI)

The primary legislation governing FDI in Kenya are the Constitution of Kenya, the Investment Promotion Act, the Public Private Partnership Act, the Foreign Investment Protection Act, and the Companies Act 2015.

Investment Incentives

The Investment Promotion Act established the Kenya Investment Authority (KenInvest) to promote investments in Kenya. KenInvest is responsible for facilitating the implementation of new investment projects, providing aftercare services for new and existing investments, as well as organizing investment promotion activities locally and internationally.

The Kenya Trade Network Agency (KenTrade) set up the National Electronic Single Window System (KenyaTradeNet System) to facilitate trade. The system is an online platform that serves as a single-entry point for parties involved in international trade and transport logistics to lodge documents electronically, for processing, and approvals and to make payments electronically for fees, levies, duties, and taxes due to the Government, on goods imported to or exported from the country.

The Business Registration Services (BRS) Act established the BRS, which is a corporation dealing with incorporation, registration, operation, and management, of companies, partnerships, and firms. BRS is hosted on a government e-services platform known as "e -Citizen".

The Ministry of Lands, in collaboration with the National Land Commission, established a national land information management system known as "Ardhisasa" which enables access to credible, reliable, and efficient data on land and provides land-based services. The platform allows the presentation of applications for various services offered by the Ministry and the Commission.

The Nairobi International Financial Centre was established to create an efficient and predictable operating framework for firms and investors in Kenya. It provides access to business facilitation services, provides guarantees to businesses (to be free from employment, ownership, and repatriation restrictions), along with additional incentives available for strategic priority to enhance green finance and fintech.

The government's efforts to promote regional and international integration have complimented the legislative and policy reforms aimed at creating a conducive investment environment. Kenya is an active player in the East African Community (EAC), Common Market for Eastern and Southern Africa (COMESA), and African Continental Free Trade Area (AfCFTA), which is the largest free trade area in the world.

Restrictions on FDI

- The Mining Act restricts foreign participation in the mining sector by requiring 60% of the shareholding in mineral dealerships and mining companies to be held by Kenyan citizens.
- The Private Security Regulations Act restricts foreign participation in the private security sector by requiring at least 25% Kenyan ownership of private security firms.
- The National Construction Authority Act requires 30% local contractors.

F. Employment and Immigration

a) Employment- Mandatory Rules of Law

Employment is governed by:

- The Constitution of Kenya
- Employment Act
- Labour Institutions Act
- Labour Relations Act
- Occupational Safety and Health Act
- Work Injury Benefits Act 2007
- Kenya Citizenship and Immigration Act
- The National Social Security Fund
- The National Hospital Insurance Fund

b) Contract of Employment
Employers must provide written contracts for employees. The contract must set out the:

- Name, age, permanent address, and gender of the employee.
- Details of the employer.
- Job description.
- Date of commencement.
- Form and duration of employment.
- Place and hours of work.
- Remuneration.
- Entitlement to annual leave.
- Termination.

c) Termination of employment contracts
Termination of employment is regulated by the Employment Act. An employee may be terminated after giving notice or after payment in lieu of notice.

Notice or pay in place of notice must be given prior to termination. An employer may summarily dismiss an employee without notice or payment in lieu of notice when the employee has, by his or her conduct, indicated that he or she has breached his or her obligations arising under the employment contract.
An employer may terminate an employment contract for misconduct, poor performance or physical incapacity of an employee. Termination of an employment contract may also be done through redundancy or mutual separation agreements or expiry of the term in a contract.

d) Foreign Workers in Kenya
Law and Regulations

- The Kenya Citizenship and Immigration Act
  Provides for matters relating to citizenship, travel documents, and immigration.
- Immigration Act and the Kenya Citizenship and Immigration Regulations
  Regulation of work permits and visas.
- The Citizenship and Immigration Regulations

Govern the issuance of passes, and permits that allow for work in Kenya.

Work Permits
Types of Permits in Kenya:

Class A: Anyone entering the prospecting and mining industries.
Fee: Processing- Kshs. 10,000 non-refundable
Issuance- Kshs. 250,000 per year
East Africa Community Member States - Gratis/Free

Class B: Individuals interested in agriculture or animal husbandry.
Fee: Processing- Kshs. 10,000 non-refundable
Issuance- Kshs. 100,000 per year
East Africa Community Member States - Gratis/Free

Class C: Anyone who is a member of a prescribed profession who will practice it alone or in a partnership in Kenya.
Fee: Processing- Kshs. 10,000 non-refundable
Issuance- Kshs. 100,000 per year

East Africa Community Member States - Gratis/Free

Class D: People offered specific employment with an employer, the Kenyan government, any authority under the Kenyan government, the United Nations (U.N.), or approved agency. Anyone applying for a class D Kenya work permit must have skills and qualifications not available in the country.
Fee: Processing- Kshs. 10,000 non-refundable
Issuance- Kshs. 200,000 per year
East Africa Community Member States - Gratis/Free

Class F: People who want to engage in specific manufacturing activities.
Fee: Processing- Kshs. 10,000 non-refundable
Issuance- Kshs. 100,000 per year
East Africa Community Member States - Gratis/Free
Class G: Anyone who wants to enter a certain trade, business, consultancy role, or profession
Fee: Processing- Kshs. 10,000 non-refundable
Issuance- Kshs. 100,000 per year
East Africa Community Member States - Gratis/Free

Class I: Individuals undertaking religious or charitable activities.
Fee: Processing- KShs. 1,000 non-refundable
Issuance- Kshs. 5,000 per year
East Africa Community Member States - Gratis/Free

Class K: Ordinary residents at least 35 years old with an annual income of a certain amount from sources other than employment.
Fee: Processing- Kshs. 10,000 non-refundable
Issuance- Kshs. 100,000 per year
East Africa Community Member States - Gratis/Free

Class M: Permit is for anyone granted refugee status in the country. Recommendation letter from the UNHCR and Department of Refugee Affairs.
Fee: Gratis/Free

The above fees were reviewed upwards, resulting in a significant increase in the listed work permits to Kshs. 500,000. Additionally, a new category, the work express permit, was introduced with charges set at USD 10,000. This review of the charges was scheduled to become effective on 1 January 2024 but has been suspended by the Court temporarily following a claim challenging the constitutionality of the revision of the fees.

e) Statutory Deductions
Taxation rates in Kenya differ depending on the tax residency of an individual.
Some of the statutory deductions include:

i. Income Tax (Pay As You Earn (PAYE))
It is the employer's obligation to deduct and remit the PAYE tax to the Kenya Revenue Authority (KRA) by the 9th day of the subsequent month. The amount of PAYE tax that is payable is based on a graduated scale ranging from 10% to 35% of gross income. All employees must have a tax Personal Identification Number (PIN) issued by KRA. Employees must file an annual tax return on or before 30th June in the year following the year of the income.

ii. Hospital Insurance

Each employer was obligated to deduct and remit monthly contributions to the National Health Insurance Fund from their employees' salaries, with the specific deduction amount determined by the employee's salary range. However, this deduction would not surpass Kshs 1,700 per month, under the provisions outlined in the National Health Insurance Fund (NHIF) Act.

The Social Health Insurance Act is set to supersede the NHIF Act. Following the release of the expected Social Health Insurance (General) Regulations in 2023, contributions will be raised to an uncapped rate of 2.75% of employees' gross salaries.

iii. National Social Security (NSSF)

All employers who employ one or more people register with the NSSF as a contributing employer and register employees as members of NSSF. The Act makes it mandatory for an employer to make a direct contribution of 6% of the employee's monthly pensionable earnings and deduct from the employee's remuneration and contribute on the employee's behalf 6% of the employee's pensionable earnings.

ii. Housing Levy

The Affordable Housing Levy requires both employees and employers in Kenya to contribute a monthly levy exclusively dedicated to the development of affordable housing, associated social and physical infrastructure, and the provision of affordable home financing for Kenyan citizens. The monthly levy payable by the employer and employee is 1.5%of the employee's gross monthly salary for the employee and 1.5%of the employee's monthly gross salary for the employer.

G. Competition Law Regime In Kenya

Kenya has legislation governing competitive behavior of businesses to safeguard consumers.

a) Regulation of Competition

The Competition Act(Act) established the Competition Authority(the Authority) as the regulatory body. The Authority has the power to investigate complaints, educate consumers, institute investigations on its own motion, and advise the government on matters relating to competition and consumer welfare. It has powers to adjudicate on mergers, establish timelines for the processing of mergers, impose sanctions, provide exemptions for certain mergers, conduct investigations, and order searches and seizures.

b) Key Areas of Competition Law in Kenya

i. Restrictive Trade Practices

The Act prohibits restrictive trade practices. This generally includes agreements between undertakings, decisions by associations of undertakings, decisions by undertakings, or concerted practices by undertakings that have as their object or effect the prevention, distortion, or lessening of competition in trade in any goods or services in Kenya, or a part of Kenya.

One may apply to the Authority to be exempted from applying provisions relating to certain restrictive practices.

ii. Abuse of Dominance

Abuse of dominance typically involves actions taken by firms with market dominance that are more than mere exploitation of existing market power. The Act prohibits abuse of dominant position. An entity is considered to be in a dominant position where it produces, supplies distributes or otherwise controls not less than 50% of the total goods or services of any description that are produced, rendered supplied, or distributed in Kenya.

iii. Abuse of Buyer Power

Buyer power refers to the ability of a powerful buyer to obtain terms of supply outside the scope of normal business practices or that are disproportionate, unfair, and detrimental to a supplier, or unrelated to the objective of a supply contract.

The Act provides a non-exhaustive list of the manner through which abuse of buyer power manifests in the marketplace including reducing supply prices by significant amounts or below competitive levels, threats of termination or unilateral termination of contract without a reasonable justification, delaying payments, refusal to receive or return goods without justifiable reasons, and transfer of costs or risks to suppliers.

iv. Mergers and Acquisitions

The Competition Authority must receive advance written notice of an intention to merge, where a merger falls within the Competition Act, and mergers must be approved or excluded in advance by the Competition Authority. The Competition Authority has been given the power to set a threshold for mergers and may exempt a merger from the Act.

iv. Consumer Welfare

Consumer rights in Kenya are fundamental rights afforded to consumers provided for under the Bill of Rights in the Constitution of Kenya (2010). Article 46(1) of the Constitution of Kenya provides that consumers have certain rights in respect of goods and services offered by public entities or private persons:-

- to goods and services of reasonable quality;
- to the information necessary for them to gain full benefit from goods and services;
- to the protection of their health, safety, and economic interests; and
- to compensation for loss or injury arising from defects in goods or services.

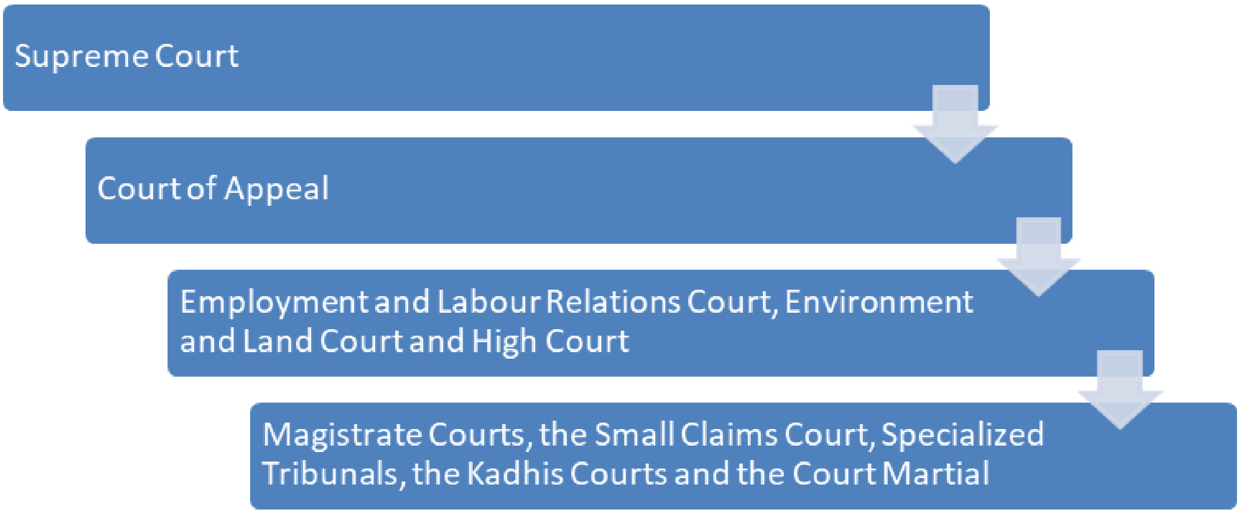
The Courts and the Authority have a responsibility to promote and advance the social and economic welfare of consumers in Kenya including providing for the protection of the consumer and preventing unfair trade practices in consumer transactions.

Why should business entities be vigilant about Competition law in Kenya?
The Competition Authority has imposed hefty sanctions on entities that violated the provisions of competition law in Kenya.

H. Dispute Resolution

a) Court Structure

The Judiciary of Kenya consists of five Superior courts: the Supreme Court, the Court of Appeal, the High Court, the Employment & Labor Relations Court, and the Environment & Land Court. The subordinate courts comprise the Magistrates Courts, Small Claims Courts, Kadhi Courts, Specialized Tribunals, and the Courts Martial.



b) Recognition of Foreign Judgments

The Foreign Judgments (Reciprocal Enforcement) Act makes a provision for the enforcement of foreign judgments. The process of enforcing a foreign judgment is by an application to the High Court, with notice to the respondent, for registration of the foreign judgment within 6 years of issuance of the judgment. If the judgment is not against public policy it will be registered and enforced.

c) Alternative Dispute Resolution

i.Court Annexed Mediation
This is court-mandated mediation. Kenyan courts refer employment claims, family disputes as well as commercial disputes to mediation after screening of cases by the Mediation Deputy Registrar (MDR) to determine the suitability of the cases for the process. Mediation proceedings are concluded within 60 days from the date they are referred to mediation.
If an agreement is reached during mediation, a mediation agreement should be signed and filed with the MDR within 10 days.
If no agreement is reached, the mediator will notify the MDR after which the case will return to court.

ii. Arbitration
Arbitration is governed by the Arbitration Act and the Nairobi Centre for International Arbitration Act. The Arbitration Act applies to both domestic and international arbitration. Kenya is a party to the New York and ICSID conventions and it also has bilateral investment treaties (BITs) with many countries.

I. Tax Regime in Kenya

Kenya has a source-based tax system in which both residents and non-residents are subject to tax on income earned from a source in Kenya.

Double Taxation Agreements are in force with some countries including Canada, Denmark, France, Germany, India, Iran, Korea, Norway, Qatar, South Africa, Sweden, the United Arab Emirates, the United Kingdom, and Zambia.

a) Individual Income Tax
This is a tax charged for each year of income on all the income of a person, whether resident or non-resident, which accrued in or was derived from Kenya. The amount of tax payable is based on a graduated scale ranging from 10% to 35% of gross income.

b) Corporate Tax
A company is resident in Kenya if it is incorporated in Kenya, the management and control of its affairs are exercised in Kenya, or the Cabinet Secretary in charge of the National Treasury declares the company to be tax resident in Kenya.
Resident companies and permanent establishments of foreign companies are subject to corporate income tax at the rate of 35%.

c) Capital Gains Tax (CGT)
CGT is levied on the transfer of land and buildings situated in Kenya and marketable securities at the rate of 5% on the net gain. CGT is a final tax and cannot be offset against other income taxes.

d) Value Added Tax (VAT)
In Kenya, VAT is levied on the supply of taxable goods or services made or provided in Kenya and on the importation to Kenya of taxable goods or services at a rate of 16%.
Any person, company, or partnership that has supplied or is expected to supply taxable goods or services of USD 50,000 and above within 12 months must register for VAT.
Any importer of imported services irrespective of their VAT registration status is liable to pay VAT on the imported service.

e) Stamp Duty
Kenya levies stamp duties under the Stamp Duty Act on various instruments and transactions.
The applicable rate varies from 0.05% to 4% depending on the nature of the instruments, transactions, or the types of property involved.

f) Withholding Tax
Withholding tax is deducted from certain payments made to residents and non-residents such as royalties, dividends, rent, interest, management, and professional fees ranging from 2.5% to 25%. Withholding taxes should be remitted to the Commissioner of Domestic Taxes within 5 working days after the deduction is made.

g) Digital Services Tax (DST)
DST is payable on income derived or accrued in Kenya by a non-resident from services offered through a digital marketplace, which enables direct interaction between buyers and sellers of goods and services through electronic means. The amount of tax payable is 1.5% of the gross transaction value.

h) Transfer Pricing
Under Kenya's transfer pricing rules, transactions between related enterprises must be made on an arm's length basis. An enterprise will be related to another if it participates directly or indirectly in the management, "control" or capital of the other enterprise, or if a third person participates directly or indirectly in the management, control, or capital of both enterprises.

J. Closing a business in Kenya

A company in Kenya may be closed be voluntarily or involuntarily.

a. Voluntary closure

i. Dissolution
Dissolving a company, commonly referred to as 'striking off,' entails submitting an application to the Companies Registry to remove the business's name from the official register at Companies House. Once dissolved, the company ceases to legally exist.

ii. Members' Voluntary Liquidation
This is a process through which the shareholders of a solvent company choose to liquidate its affairs voluntarily because its objectives have been achieved or it is no longer economical to continue the business. The directors of the company prepare a statutory liquidation form confirming that the company can settle its debts in full within 12 months. A liquidator, often appointed by the shareholders, takes charge of realizing the company's assets, settling its liabilities, and distributing any remaining funds among the shareholders.

b. Involuntary closure

i. Creditors voluntary liquidation

This is a process by which an insolvent company, unable to meet its financial obligations, decides to liquidate its affairs voluntarily with the involvement of its creditors. The company's directors convene a meeting of both shareholders and creditors, where a resolution for voluntary liquidation is proposed. This liquidator, often appointed by the creditors, assesses the company's financial position, realizes its assets, and distributes the proceeds to creditors.

ii. By court

This process is typically commenced by a petition filed by creditors, shareholders, insolvency practitioners following an unsuccessful restructuring, or the company itself, usually for failing to meet financial obligations. In Kenya, a company is deemed insolvent if it fails to pay a debt of Kenya Shillings 100,000 or more after 21 days of a written demand being served upon it.

A court can also liquidate a company if: a special resolution has been passed by the company for the court to liquidate it if failed to convene a statutory meeting, if it did not commence business within a year; reduction of members below the statutory minimum; unsuccessful attempts at restructuring through administration or company voluntary arrangements; or if the court deems it just and due to a deadlock in management, impractical business operations leading to losses, engagement in illegal activities, impossibility of pursuing the company's original purpose, or disregard or oppression of minority interests.

The court will assess the company's financial status and, if insolvency is confirmed, it appoints an official liquidator to oversee the liquidation proceedings. The liquidator takes charge of selling the company's assets and settling its debts.

DOING BUSINESS IN TANZANIA.

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A. Country Overview

Tanzania at a glance

More than 120 different ethnic groups live together peacefully in this beautiful country.

Tanzania enjoys abundance of natural wealth, which offers tremendous investment opportunities for investors. These include an excellent geographical location as a number of locked countries depend on Tanzania's ports as their entry and exit ports. Arable land, world renowned tourist attractions, natural resources, a sizeable domestic and sub regional market, a wide local raw materials supply base, abundant and inexpensive skills, assurance of personal safety, warm friendly people and a suitable market policy orientation add to the suitability of Tanzania as an investment destination.

The Tanzanian legal system

The United Republic of Tanzania is a unitary state between Tanganyika and Zanzibar. Mainland Tanzania and Zanzibar each has its own judicial system. However both systems are subordinate to the Court of Appeal of Tanzania. The Tanzanian legal system is largely based on common law but also accommodates Islamic and customary laws. The latter sources of law being called upon in personal or family matters. In Zanzibar, the legal system has evolved from both English common law and Islamic law.

The legal framework in Tanzania comprises of Legislation in the form of statutes or Acts of Parliament and By-Laws, Case laws, Customary law, International laws, The Constitution is the fundamental law prevailing over all other legislation and includes the Bill of Rights.

B. Forms of doing business in Tanzania

The Business Registration and Licensing Agency (BRELA) is the organization that deals with all the incorporation of various business entities in Tanzania Mainland and the Zanzibar Business and Property Registration Agency (BPRA) in Tanzania Zanzibar. Any person wishing to open a business in Tanzania can visit www.brela.go.tz or www.bpra.go.tz to find out all the necessary details required. This is not as simple as it seems as this can be a tedious and lengthy process if one does not know their way around it.

Companies

Limited liability companies are the most popular form of business, and investment vehicle. For the purpose of incorporating a company, one must do the following:

- Conduct a Name Search and securing the company name.
- Registration is done online through the BRELA's Online Registration System (ORS) by uploading different documents including the Memorandum & Articles of Association.
- In respect of foreign branches; name search is also conducted before submitting certified copies of the Memorandum & Articles of Association of the parent company, Notice of the location of the registered office in the country of domicile, list of directors and names of the representatives in the country.

- To set up a limited liability company, the general requirement is a minimum of two shareholders and two directors. A limited liability company can either be private or public.
- A Shareholders' agreement is advisable to complement constitutive documents and to further govern relations between shareholders.
- Companies limited by guarantee are an appropriate business vehicle for promotion of commerce, investment and trade.
- There are generally no minimum share capital requirements. However, there are prescribed capital adequacy requirements for certain sectors such as banks, gaming and insurance.
- Company management structure and key liabilities

The Companies Act has set out key considerations for the management structure of companies as follows:

Company directors:
A company must have a minimum of two directors. The minimum age for a director is 18 years. A foreign resident director must have valid residence and work permits or certificate of exemption.

Company secretary
Every company must have a secretary with the requisite knowledge. There specific requirements for public companies.

The entire process of registration/incorporation of a Company may take up to 7 days.

Other forms of business vehicles include sole proprietorship, partnership, co-operative society.

Post Registration Requirements

- Declaration of Beneficial Owners with atleast 5% interest,
- Obtaining a Tax Identification Number (TIN),
- Obtaining a Business License,
- VAT Registration,
- Register for the workmen's compensation insurance,
- Register with the Occupational Safety and Health Authority (OSHA), and
- Obtain Social Security Registration Number.

Reporting Requirements

Companies are required to file the following with the Business Registration and Licensing Authority (BRELA), the Tanzania Revenue Authority and the Labour Commissioner:
• Annual returns, not more than 18 months after the date of incorporation and on that anniversary thereafter, with BRELA . These must be accompanied with the company's audited accounts;
• tax returns, audited accounts with the Tanzania Revenue Authority;
• statement of audited accounts for a branch/foreign company;
• notifications with respect to any changes that take place in the company (e.g. appointments, changes and termination of directors and secretaries; increases in share capital; alterations of the MEMARTS; changes to the registered address, changes in beneficial owners), with BRELA;
• charges when mortgaging the company's assets (with BRELA); and
• returns on employment of non-citizens (to the Labour Commissioner).

Requisite Licenses
The type and number of required licenses in undertaking business in Tanzania differs from one sector to another depending on the regulatory requirements and compliance of that sector.

Apart from fulfilling the sectoral requirements, where applicable, one must obtain a general business license in accordance with the Business Licensing Act. Both the sectoral and general licenses are granted after payment of specified fees. In other occasions, a business license or permit is only issued after a physical verification of the company's offices is done.

It is generally advisable to seek legal advice on the required licenses in a particular sector to ensure full compliance.

C. Investment Incentives available to Investors

The Tanzania Investment Centre, a One Stop Investment Facilitation Centre, provides for various fiscal benefits upon obtaining the Certificate of Incentives. To enjoy the incentives an investor must meet specified capital threshold.

A holder of a Certificate of Incentives enjoys tax and other benefits applicable to the enterprise. Some of the available fiscal incentives include deduction of import duty on deemed capital goods, reduced import duty on hotel equipment, for semi-processed/ semi-finished goods, import duty drawback, VAT deferment granted on project capital goods such as plant and machinery, capital allowances for plants and machinery used in specified manufacturing processes, the right to repatriate 100% of foreign exchange earned profits and capital, among others.

There are also capital requirements and additional, negotiated benefits for Strategic Investors and Special Strategic Investors.

D. Economic Zones

The Export Processing Zones Authority (EPZA) in Tanzania oversees the Export Processing Zones (EPZ) and Special Economic Zones (SEZ).

The Authority's main aim is to oversee investment in the SEZ and EPZ by creating a suitable business environment through the development of world-class industrial and commercial infrastructure, the provision of competitive investment incentives and efficient investor facilitation services in manufacturing sector to boost export.

The EPZ scheme promotes investment in export-oriented manufacturing activities, while the SEZ is broader and more inclusive and promotes sector-specific investment with an emphasis on agriculture, trade, tourism, mining and forestry.

In Zanzibar, Free Economic Zones (FEZ) have been purposely established to attract foreign direct investment, specifically targeting labour intensive projects and increasing exports in trade, tourism, forestry, mining and agriculture sectors.

Companies that invest in the economic zones enjoy simplified customs and other administrative procedures and must procure requisite licenses.

Eligibility criteria for an EPZ license

- New Investment
- Minimum annual export turnover of US$ 100,000 for local investors and 500,000 for foreign investors
- At least 80% of goods produced must be exported

Eligibility criteria for and SEZ license:

- New investment
- Minimum capital of US$ 100,000 for Local investors and 500,000 for foreign investors
- The investment must be located within the Special Economic Zones parks

E. Land Ownership

Land Tenure and Ownership

All land belongs to the public. It is vested in the President as trustee for and on behalf of all the citizens of Tanzania. A person/citizen can enjoy a legal right to own land under a Granted Right of Occupancy or Granted Customary Right of Occupancy for terms of 33, 66 or 99 years.

There is prohibition of foreign ownership of land unless it is for investment purposes granted under the Tanzania Investment Act. Land Acquisition if NOT allotted for the first time from the Government. Despite this prohibition, a recent development in the country's immigration laws as of June, 2023 introduces the possibility of foreigners to own landed property in exchange for a Class C Resident Permit upon meeting set conditions, including a property value of atleast US$ 100,000 and a recommendation from TIC or ZIPA. While this change sparks hope for the future, the provisions remain inoperable without subsequent amendments to the country's land laws.

Obtaining land ownership for a prospective investor is a process that will include;

- Obtain an official search at the Land Registry to ascertain and confirm land ownership details/status as well as encumbrances registered over the property, if any,
- Ensure land rent is paid and is up to date,
- Engagement of a qualified surveyor to survey and confirm the size of the land as well as to ensure the existence of the beacons,
- Execution of the transaction documents (Sale Agreement, Land Forms and other relevant documents),
- Engagement of a qualified valuer who shall carry out valuation of the land and prepare acceptable valuation reports to be used for computation of taxes,
- Obtaining approval from the Commissioner of Lands for the acquisition of the land. At this stage, TIC would also be involved in case of foreign ownership,
- Obtaining capital gains tax assessment and subsequently capital gains tax certificate from the Tanzania Revenue Authority, and
- Obtaining approval from the Registrar of Titles for registration of the new owner on the Title Deed or Derivative Rights (for foreign ownership).

F. Employment Considerations

Nature of Contracts
It can be either a contract for an unspecified period of time, a contract for a specified period of time for professionals and managerial cadre or a contract for a specific task.

It is important to obtain legal advice before issuing employment contracts to employees as each circumstance of employment may determine the nature of the employment contract to be issued and the terms to be included to avoid or manage potential disputes.

Work and Residence Permits

- Expatriates working in Tanzania must hold a valid work permit issued by the Commissioner for Labour and a residence permit issued by the Director of Immigration Services, or a valid certificate of exemption.
- Every business enterprise granted a Certificate of Incentives is entitled to an initial automatic quota of up to 10 expatriates. Additional permits must be applied for and the TIC makes a determination after consultation with the immigration department taking into consideration the availability of qualified Tanzanians, the complexity of the technology employed by the business enterprise and agreements reached with the investors.
- Employers of non-citizens must submit a workable succession plan.
- It is worth noting that there was advocacy to have short-term permits from the business communities particularly for expatriates who would be contracted for a period of not more than six months. The government has resolved this matter by introducing permits with a span of six months.

Cessation of employment relationships

Legal advice is advisable on deciding a safer and cost effective mode of terminating employment contracts.

Unfair termination do create unnecessary challenges and costly disputes or decisions like re-instatement of the employee without loss of remuneration during the period of unfair termination, re-engagement of the employee on any terms or compensation of not less than twelve months' remuneration to the employee.

G. Energy

Tanzania has abundant and yet to be utilized energy resources such as hydropower, natural gas, coal, uranium, wind, geothermal, biomass, solar, tidal, and waves. There are a wide range of fuel resources and current plans by the Government expressing the desire to diversify generation sources as part of expanding rural access and attracting private sector investment.

H. Protection of Intellectual Property (IP) and Data

Tanzania has ratified a number of conventions relating to IP rights and as such, has legislation that endeavors to protect such rights. The country is also a member of various international organizations dealing with IP, for example the World Intellectual Property Organization and the African Regional Intellectual Property Organization.

The rights protected include:

- Copyrights and copyrights related rights: under the Copyright and Neighbouring Rights Act 7 of 1999
- Trade and service marks service: are protected under the Trade and Service Marks Act, Cap 326 R. E 2002, the Merchandise Marks Act, Fair Competition Act, 2003 (No. 8 of 2003) and the Common Law tort of passing off.
- Patents and Industrial designs: are protected in the Patents Registration Act, Cap 217 R. E 2002 and International Conventions.
- Business names: are protected in the Business Names (Registration) Act, Cap. 213 R. E 2002.
- Domain Names:- protected under the common law.
- Plant Breeders Rights: - are protected under the Plant Breeders' Rights Act of 2012.
- Image Rights:- protected under the common law Right to own Image.

Tanzania has risen to the global call to protect data with the enactment of the Personal Data Protection Act in 2022. The legislation calls for, among other things, the registration of key data handlers who are identified as data contollers and data processors. The Personal Data Protection Commission is the body tasked to regulate this matter. The Tanzania Communications Regulatory Authority (TCRA)has also moved toprohibitthe use of unregistered VPN's in the country. Generally, the usage of VPN in Tanzania is only allowed if required by virtue of the nature of ones work, and only if the VPN IP address and other details are disclosed to TCRA.

I. BANKING

The growth of credit to the private sector is expected to continue to maintain an upward trend towards the target of 10.6 per cent set for 2021/22, supported by the implementation of policy measures recently rolled out by the Central Bank to foster credit growth and lowering of lending rates, the continued recovery of the global economy and sustained accommodative monetary policy. This iniative is demonstrated with the change made to the Monetary Policy by the Bank of Tanzania from an Interest Rate based Monetary Policy to a Central Bank Rate (CBR) policy, starting January 2024. The shift to CBR marks a significant step towards a more modern and efficient way of managing the economy and stimulating economic growth.

Tanzania has also improved access to credit information by creating credit bureaus. Any company incorporated in or outside the United Republic of Tanzania is eligible to make application to the Bank of Tanzania for credit reference bureau license.

J. Tax Matters

Income Tax in Tanzania

Residents in Tanzania pay taxes on worldwide income. This means income sourced from within Tanzania, as well as income sourced outside of Tanzania is taxable to establish personal income tax. However, non-residents pay income tax on income that has been sourced from within Tanzania.

It is important to note that personal services are categorized as such if the given activity is performed within Tanzania, or if performed outside Tanzania but recipient is within Tanzania.
Personal Income Tax Rates
Individuals are progressively taxed from 8% to the maximum of 30%.

On the other hand, non-resident individuals are taxed at a rate of 15%.

Partnerships; the partners are charged income tax on the profits distributed from partnership basing on the agreed sharing ratio.

Corporate Income Taxation

On the income of the resident person is sourced within and outside Tanzania. Non-residents, however, pay taxes on income that has been sourced from within Tanzania only.

Corporate Income Tax is at a rate of 30%. This rate is applicable for both, resident business entities, as well as Permanent Establishments of non-resident business entities.

Alternatively, a 5% turnover fee is charged for technical and management service providers towards mining, oil and gas related services.

A reduced rate of Corporate Income Tax is applicable at 25% for the first three years of operations for a company with at least 30% of its shares listed on the Dar es Salaam Stock Exchange.

Other taxes include;

- Value Added Tax (VAT) at 18% rate and 15% in Zanzibar,
- Custom Duties with varying rates,
- Excise Duties on all luxury based items depending on the product category involved.
- Fuel Levy,
- Petroleum Levy,
- Payroll Taxes deducted at source by the employer including skills development levy at 4% of payroll costs, social security contributions at 20%, equally contributed by both employer and employee, workers compensation fund tariff charged at a rate of 0.6% for the private sector and 0.5% for the public sector,
- Property Taxes,
- Service Levy imposed at 0.3% on turnover generated by corporate bodies and
- Produce Cess imposed at 3% on food, and 5% on forest related products.

NGO's do not automatically qualify for income tax exemptions. Instead, a ruling recognizing an NGO as a charitable organization must be obtained for an NGO to be allowed to enjoy a tax deduction/exemption.

For export and import business, there are regulations that cover; documentary compliance, border compliance and domestic transport requirements.

K. Environmental Considerations

The National Environment Management Council (NEMC) oversees environmental management affairs. NEMC provides for a legal and institutional framework for sustainable management of the environment, prevention and control pollution, waste management, environmental quality standards, public participation, environmental compliance and enforcement, research and awareness rising.

A developer of a project is required to undertake or cause to be undertaken, at own cost, an environmental impact study. The developer is required to use environmental experts or firms approved by NEMC.

Other environmental considerations which are more specific to the nature of the business are governed under several pieces of legislation including:

- The Environmental Management Act,
- The Environment Impact Assessment and Audit Regulations,
- The Wildlife Conservation Act,
- The Mining Act,
- The Petroleum Act,
- The Forest Act,
- The Forest Regulations, and
- The Water Resources Management Act.

By end of 2023, the government had amended the Environment management regime to benefit investors who wish to undertake in carbon trading by expanding and mobilizing climate financing from local and international sources to support the reduction of greenhouse gas emissions for purposes of fostering green investment and facilitating capacity building for mitigating and adapting to climate change.

L. Dispute Resolution

Various forums are available for the settlement of disputes in Tanzania. They range from state regulated forums to private entities engaging in the process of resolving differences that stem out of various social and political undertakings.

Courts of law

The courts offer a formal mechanism for settling disputes among entities in different hierarchies. These include:

- Court of Appeal of Tanzania,
- High Court of Tanzania - specific divisions like the High Court Commercial Division, handles commercial disputes,
- District Courts and The Residents Magistrates Courts, and

- Primary Courts.
- Tribunals : These are quasi-judicial bodies that are made under the law to resolve disputes emanating from various sectors. They include, but are not limited to:
    - District Land and Housing Tribunal which handles land matters;
    - Tax Revenue Appeals Tribunal which handles tax matters;
    - Tax Revenue Appeals Board which handles tax matters;
    - Fair Competition Commission;
    - Fair Competition Tribunal; and
    - Commission for Mediation and Arbitration; which handles employment disputes.

Alternatives to litigation

Disputes in Tanzania can be resolved in a number of ways in addition to adjudication by the courts of law, including arbitration, mediation, reconciliation and negotiations.

M. Anti-corruption, money laundering and bribery

Tanzania has a number of laws that endeavor to combat money laundering and corruption. The laws are:

- Anti-Money Laundering Act;
- Prevention and Combating of Corruption Act;
- Proceeds of Crime Act,
- Economic and Organized Crime Control Act,
- Criminal Procedure Act,
- Mutual Assistance in Criminal Matters Act,
- Extradition Act,
- National Prosecutions Service Act,
- Drugs and Prevention of Illicit Trafficking in Drugs Act, ,
- Anti-Money Laundering (Cross Boarder Declaration of Currency and Bearer Negotiable Instruments) Regulations, 2016,
- Anti-Money Laundering and Proceeds of Crime (AMLPOCA) Regulations, 2015,
- Anti-Money Laundering (AMLA) Regulations, 2012, and
- Anti-Money Laundering Guidelines for Accountants and Auditors and its Regulations, 2007.

Tanzania has also passed the anti-money laundering (Amendment) Act, amending the Anti money laundering Act to the following effect:

- Money laundering to remain unbailable,
- Introduces counter terrorist financing and counter proliferation financing,
- Beneficial ownership definition to be expanded,
- Even 5% shareholding is an indication of direct shareholding,
- Reporting persons proposed to now include auditors, tax advisers, car dealers,
- More obligations on reporting persons,
- Politically exposed person definition widened, and
- Money laundering to be a separate, independent and distinct crime.

N. Exiting a Business

Exiting a business depends on the form of the business.

In the case of a Company, there are two modes of winding up a company in Tanzania:

- Winding up by the Court (compulsory winding up), and
- Voluntary Winding up by Members or by creditors.

The Companies Act regulates the winding up procedures which are lengthy and depend on the mode of winding up. It is advised to seek legal advice and guidance on the mode and process of winding up as well as other tax and registry requirements before winding up is completed.

The contents of this guide are for reference only and should not be considered to be a substitute for detailed legal advice.

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