



**Doing
Business
in Kenya**



Introduction

Kenya, often referred to as the “*Gateway to East Africa*,” is a vibrant and dynamic country that offers a wealth of opportunities for businesses and investors alike. With its strategic location, robust infrastructure and a rapidly growing economy, Kenya is an ideal destination for those looking to expand their business horizons.

In this guide, we will take you through the essential steps and considerations for establishing a successful business in Kenya. From understanding the legal framework and incorporation processes to navigating the tax landscape and employment laws, we aim to provide you with comprehensive insights to help you make your decisions.



CHAPTER ONE

Corporate & Commercial

In this chapter, we explore corporate and commercial considerations for setting up a business in Kenya.



To carry out business in Kenya, a local entity must incorporate or register as a branch of a foreign company. Although various types of companies exist in Kenya, most businesses choose to incorporate as private limited companies. The following section outlines how to incorporate this type of company.

Incorporating a company in Kenya

Vehicle

The most common forms of business organisation in Kenya are:

- Private or public companies established under the Companies Act, 2015.
- Branches of foreign companies in Kenya registered under the Companies Act that maintain the same legal personality as the foreign company.
- Limited liability partnerships established under the Limited Liability Partnership Act, 2011.

The most common form of business vehicle used by foreign companies in Kenya is a private company.

Method of incorporation

All company-related tasks – like incorporation, director changes, annual returns and share updates – must be done through the Companies Registry's online portal on eCitizen, Kenya's official government services platform. This has improved the efficiency of registering business entities and managing company records. The Companies Registry's online platform streamlines the incorporation process into a single-step application, where applicants submit all required information for review.

To incorporate a business, an applicant must:

- Reserve the intended company name. The Business Registration Portal (BRS) allows up to five name suggestions which should be submitted in order of preference.

- Upload the following documents onto the eCitizen platform:
 - The corporate structure, which should include key details such as the company's objectives, share capital, number and class of shares, and intended start date.
 - The physical address and contact details of the company.
 - Details of the proposed shareholders of the company.
 - The details of the beneficial owners.
 - Details of the proposed directors and authorised signatories.
 - Where necessary, details of the proposed company secretary.
 - A history of the company. For example, whether it is a subsidiary, has a parent company in Kenya, or results from a merger or acquisition.





The system generates forms that the company's members, directors and secretary (if any) must sign. After signing, the company uploads the forms to the portal for the Registrar of Companies (Registrar) to review.

The Companies Registry filing fee for incorporation of a company is KES 10,650 (equivalent to about USD 80 to 85, depending on the exchange rate). Incorporation takes about three to seven working days if all the requisite documents are in order. After completing incorporation, the Registrar issues the company a certificate of incorporation.

Branch of a foreign company

Foreign enterprises can set up branches in Kenya. The Finance Act, 2023 lowered the corporate tax rate for branches of foreign companies from 37.5% to 30% and introduced tax on repatriated income at the rate of 15%. Kenyan companies also pay corporate tax at the rate of 30%.

Method of incorporation

To set up a branch in Kenya, foreign companies must first obtain a certificate of compliance. Companies must obtain this before they apply for an entry permit or other registrations. The documents or information required to establish a branch in Kenya are:

- A certified copy of the certificate of incorporation of the parent company.
- A certified copy of the constitution of the parent company.
- Where there are resident directors who are members of a local board of directors, a duly executed memorandum by or on behalf of the foreign company and stating the powers of those directors.
- The physical address of the branch office.
- A copy of the local agent's national ID and address.
- The names, nationalities, personal details and addresses of the parent company's directors and shareholders.
- Details about the nature and scope of the business the branch office will carry out.

Factors to consider

Local content

While foreign investment is encouraged across all sectors, specific industries have ownership requirements, control restrictions and authorisations that foreign investors should be aware of. These affect the level of investment that can be made or the way in which investments should be structured. These restrictions apply to the banking, insurance, mining and telecommunications industries. They also apply to listed companies on the Nairobi Securities Exchange and to acquisitions of land. Companies holding agricultural land, whether by lease or purchase, need approvals or exemptions from the Land Control Board under the Land Control Act, 1967. Additionally, companies with foreign shareholders must obtain a presidential exemption to acquire agricultural land.

Directorship

Private companies must appoint at least one director who is a natural person, while public companies are required to have a minimum of two directors who are natural persons.

There is no legal requirement for a company to have Kenyan directors. However, to register for a tax personal identification number (PIN) with the Kenya Revenue Authority (KRA), a company must provide the KRA PIN of at least one director. This effectively means that at least one director must be registered with the KRA. While not legally required, it is common practice for foreign companies to appoint at least one Kenyan director.

Company secretary

Any company in Kenya with share capital of KES 5 million or more must appoint a certified company secretary. The company secretary is responsible for ensuring that the company files its return with the Registrar at least once a year as required under the Companies Act, 2015.

The company secretary is also responsible for filing changes with the registrar of companies, including updates to:

- The articles of association
- Registration details
- Directors' details
- Secretary's details
- The register of beneficial owners
- Share capital and allotment of shares
- the company name

Auditors

Under the Companies Act, 2015, the directors of a company are required to have their annual financial statements audited. Private companies must appoint an auditor or auditors for each financial year. Companies with a turnover of less than KES 50 million or assets not exceeding KES 20 million in a financial year are exempt from the annual financial statement audit requirement.



Timelines for incorporation

The table provides a summary of the procedures and the estimated completion times:

Procedure	Timeline
Completion of the incorporation application and generation of system generated forms.	One working day.
Completion of the incorporation documents by the shareholders, directors and company secretary and resubmission of execution documents to the Companies Registry.	Depends on co-ordination between the shareholders, directors and company secretary.
Company name search and reservation, processing of incorporation application and issuance of certificate of incorporation.	Approximately one week if the names are available for registration and the Companies Registry does not request further details.
Application for KRA PIN for the company.	Approximately one week if the company has local directors. Where a company has no local directors, it may take two to three weeks to get a PIN through KenInvest.
Registration for value-added tax (VAT) online.	One to two weeks.
Registration for Pay As You Earn online.	One to two weeks.
Registration under the National Social Security Fund (NSSF) and obtaining a NSSF certificate.	Three to five working days.
Registering under the Social Health Insurance Fund (SHIF) (formerly the National Hospital Insurance Fund (NHIF)) and obtaining a SHIF registration number.	Three to five working days.
Applying for a business permit online.	Three to five working days.
Making a company seal after a certificate of incorporation has been issued (optional as a company seal is no longer required).	Two working days.

Exchange controls, transfers and timelines

The Central Bank of Kenya does not set the exchange rate. It is determined by market forces of supply and demand for foreign currency. Forex bureaus and commercial banks set their own rates, which remain competitive due to market forces. Forex bureaus offer better rates for smaller amounts, while commercial banks provide more favourable rates for larger amounts exchanged through foreign accounts. There are currently no foreign exchange controls in Kenya and Kenya's currency (the Kenyan Shilling) is freely tradable with all major world currencies. Banking transactions must be conducted through authorised and licenced banks. Most banks allow customers to operate foreign currency accounts, but they are required to report all transactions in excess of USD 15,000 or its equivalent in any other currency.

An international banking transaction can take from two to four days to be paid into a Kenyan bank account. This timeline may be shorter, but it is important to check with the local Kenyan bank about the corresponding bank, and to check the timelines for international transfers. Most local RTGS transactions clear on the same day if done before 15h00.

Repatriation of profits

The Finance Act, 2023 introduced section 7B to the Income Tax Act, which imposes a 15% tax on repatriated income.

Import/export regulations

Imports and exports are primarily regulated by the East African Community Customs Management Act, 2004. This is a regional statute enacted by the East African Legislative Assembly and regulates the levying of import taxes on goods imported into the East African Community (EAC) member states.

In addition, Kenya has enacted the Miscellaneous Fees and Levies Act, 2016 and the Excise Duty Act, 2015 impose levies and regulations regarding Kenyan imports and exports. The Value Added Tax Act imposes VAT on imports of goods and services into Kenya.

Special Economic Zones

Special Economic Zones (SEZ) in Kenya offer the following important benefits to attract investors:

- Fast project approvals and easy licensing, so businesses can be established quickly.
- Assistance with work permits and labour matters, ensuring compliance with Kenyan laws.

- Support for import-export logistics, facilitating smooth business operations.
- Connection of essential utilities, providing access to water and electricity.
- Financial perks:
- Tax exemptions on imported goods and stamp duty.
- Zero-rated VAT on local supplies.

Any entity intending to operate in a SEZ must obtain a business services permit from the SEZ Authority. Companies enjoy preferential corporate tax rates and 10% income tax for the first 10 years, increasing to 15% thereafter.

These advantages make it easier and more cost-effective for businesses to operate in Kenya.

The Business Laws (Amendment) Act, 2024 (Business Laws Act) amended various sections of the Special Economic Zones Act, 2015 (SEZ Act). The Cabinet Secretary for Investments, Trade and Industry can now declare an area a SEZ without needing approval from Treasury. They have the authority to set the minimum acreage of land and the minimum investment required for an area to be declared a SEZ.

The Business Laws Act clarifies that all goods sold within the customs-controlled zones are exempt from paying customs duty since they are deemed not to have entered the customs territory.

The Business Laws Act expands the scope of entities eligible to apply for licences as SEZ developers and operators to include public entities such as ministries, state departments, corporations and counties and their county departments.

The functions of the SEZ Authority under the Business Laws Act have been expanded to include:

- reviewing and granting SEZ service permits;
- establishing a 'one-stop' shop to channel all applications for permits, approvals and licences not handled by the SEZ Authority; and

- making recommendations to the Cabinet Secretary for Investments, Trade and Industry to suspend or cancel the licence of a SEZ enterprise or developer that violates the SEZ Act, the EAC Customs Management Act and any other applicable law.

Export Processing Zones

Both local and foreign investments benefit from a range of incentives in Export Processing Zones (EPZs):

- No local shareholding requirement for companies operating in EPZs.
- Customs duty exemptions.
- No VAT on input goods and services.
- Ten-year corporate tax holiday.
- Rapid project approval.
- Simplified repatriation of capital and profits.

Small- and medium-sized enterprises (SMEs) with majority Kenyan shareholding can benefit from the SME Development Programme. This programme offers tax incentives, four months of rent-free space followed by reduced rental rates, and strategic assistance in business planning, quality and financial management, human resources and export marketing.



KenInvest

To incentivise foreign investment in Kenya, the Kenya Investment Authority (KenInvest) was set up in 2004. KenInvest was established through the Investment Promotion Act 6, 2004, with the main objective of promoting investments in Kenya. It is responsible for facilitating the implementation of new investment projects, providing "after care" services for new and existing investments, and organising investment promotion activities locally and internationally. An investor making a minimum investment of USD 100,000 may apply for an investment certificate from KenInvest. This certificate entitles them to assistance from KenInvest for the quick processing of necessary business licences and to conduct investment activities in Kenya.

KenInvest assists with:

- Licences and permits: KenInvest assists with obtaining any licences or permits necessary in order to do business, including work permits and liaising with the relevant government authority.
- VAT and customs duty exemptions: KenInvest assists with obtaining VAT and customs duty exemptions on the importation of equipment and machinery.

- Tax holidays: As a rule, Kenya does not provide tax incentives for foreign investment. However, there is a preferential regime for companies situated in and registered as EPZs.

Involvement in a regulated industry may require a licence to carry out business, for instance:

- Banks require licences from the Central Bank of Kenya.
- Insurance companies require licences from the Insurance Regulatory Authority.
- Mining companies require licences from the Mineral Rights Board.
- Telecommunications companies require licences from the Communications Authority of Kenya.

Additionally, companies listed on the Nairobi Securities Exchange are regulated by the Capital Markets Authority.

Timeline and fees

KenInvest does not charge for its services and there are no application fees for the investment certificate, but it can take about a month to obtain a KenInvest certificate (timelines provided by the KenInvest Service Charter).





CHAPTER TWO

Employment Law

In this chapter, we explore employment law and the key regulations governing labour and immigration.

Kenya is an employment friendly jurisdiction where the failure to follow due process may lead to a successful claim by an employee. Therefore, it is important to be aware of Kenya's employment legislation and broadly how it works.

Employment and Immigration

The main employment laws are the:

Act	Description
Employment Act, 2007	Establishes the basic conditions of employment. Employers can offer better terms through employment contracts, collective bargaining agreements and employment manuals, policies or practices.
Labour Institutions Act, 2008	Establishes wage councils and outlines their functions, powers and duties.
Labour Relations Act, 2007	Regulates unions and trade disputes.
Occupational Safety Act, 2007	Regulates workplace health and safety.
Work Injury Benefits Act, 2008	Provides compensation for work-related injuries.
Kenya Citizenship and Immigration Act, 2011	Regulates the issuance of work permits to foreign employees.
Employment and Labour Relations Court Act, 2011	Establishes an industrial court to hear employment disputes.
The National Social Security Fund Act, 2014	Requires employers to register with the NSSF and register their employees as members.
Social Health Insurance Act, 2023	Establishes the Social Health and Insurance Fund (SHIF) and provides rules for payments to the NHIF by employers and employees, as well as benefits to contributors. Funds are used to help employees settle medical bills.
The Industrial Training Act, 1960	Regulates the training of apprentices and indentured learners. Requires employers to pay a monthly training levy of KES 50 to the Industrial Training Levy Fund for each employee.
The Constitution of Kenya, 2010	Establishes the concept of fair labour practices as a constitutional right.
The Affordable Housing Act, 2024	Regulates the Affordable Housing Levy imposed on the gross salary of an employee.
The Data Protection Act, 2019	Regulates the processing of employees' personal data and outlines the rights and obligations of employers.

Kenya has also ratified seven of the fundamental International Labour Organization Conventions, now part of Kenyan law.





Work Permits

Foreign employees need work permits for long-term engagements, typically issued for up to two years and renewable upon payment of a fee. For short-term engagements, a special pass can be obtained for up to six months, usually issued for three months and renewable for another three months. Special passes can also serve as an interim measure while waiting for a work permit.

Work permits and visas are regulated by the Kenya Citizenship and Immigration Act and the Kenya Citizenship and Immigration Regulations, 2012. Non-compliance with work permit conditions is an offence, punishable by a fine of up to KES 500,000 or imprisonment for up to three years, or both.

There are nine categories of work permits:

Class	Description
Class A	For those engaging in mineral prospecting or mining with the necessary licences and capital.
Class B	For those in agriculture and animal husbandry with land permissions and sufficient resources.
Class C	For professionals with prescribed qualifications and sufficient resources.
Class D	For individuals with specific employment offers and qualifications.
Class F	For manufacturers with necessary licences and sufficient resources.
Class G	For investors in trade, business or consultancy.
Class I	For members of approved societies engaging in religious and charitable activities.
Class K	For individuals over 35 with assured income from outside Kenya or from investments, and who will not accept paid employment.
Class M	For refugees or their spouses intending to work or engage in business.

Applicants must demonstrate skills or qualifications not available in Kenya and show that their employment will benefit the country. The Kenyanisation policy reserves jobs for Kenyan nationals, increasing rejection rates for Class D permits when the job can be done by a Kenyan.

Taxes on employees

Income tax

Income tax is charged on all income earned in or derived from Kenya, whether the person is a resident or non-resident.

An individual is considered a resident for tax purposes if they:

- have a permanent home in Kenya and were present in Kenya for any period during the year; or
- do not have a permanent home in Kenya but were present in Kenya for at least 183 days in the year; or
- were present in Kenya for an average of more than 122 days in each of the three consecutive years, including the current year.

A resident individual is liable for tax on their world-wide income arising from their employment, regardless of where it is paid or where the services were rendered. A non-resident is only liable for tax on their income derived from Kenya.

Tax registration

To remit taxes and other mandatory deductions, a PIN must be obtained from the KRA. A PIN is required for, but not limited to, the following transactions:

- Incorporation of companies.
- Registration of property titles.
- Stamping of instruments.
- Approval of plans and payments to county authorities.
- Registration with the National Social Security Service and the Social Health Authority.
- Registration of motor vehicles, transfer of motor vehicles, and licensing of motor vehicles.
- Registration of business names.
- Underwriting of insurance policies.
- Trade licensing.
- Importation of goods and customs clearing and forwarding.
- Payment of deposits for power connections.
- All contracts for the supply of goods and services to government ministries and public bodies.
- Opening accounts with financial institutions and investment banks.
- Registration and renewal of membership by professional bodies and other licensing agencies.
- Registration of mobile cellular pay bill and till numbers by telecommunication operators.
- Carrying out business over the internet or through a digital marketplace.
- Registration of a trust.



Pay As You Earn and personal income tax returns

Pay As You Earn (PAYE) is income tax deducted from salaries and wages. It applies to all income and benefits from any employment (namely, wages, salaries, bonuses, commissions, directors' fees and taxable benefits).

National Social Security Fund

Contributions to the NSSF are mandatory for salaried workers. Both employers and employees contribute, with the employee's portion deducted from their salary and the total amount paid by the employer to the NSSF.

Twelve percent of an employee's monthly earnings are contributed to the pension fund (6% from the employee and 6% from the employer). The maximum contribution is KES 4,320 for employees earning above KES 72,000 per month.

Lower earnings limit (LEL): KES 8,000. Contributions below the LEL (up to KES 480) go to a Tier I account.

Upper earnings limit (UEL): KES 72,000. Contributions between the LEL and UEL (up to KES 4,320) go to a Tier II account.

Employers can opt for "contracting out by employer" by engaging pension managers for a private pension scheme. UEL and LEL are revised annually for the first five years of the NSSF Act, 2013's operation, which started in February 2023.

Employers can fully opt out of Tier II contributions by paying into a contracted-out scheme approved by the Retirement Benefits Authority. Pensionable earnings below the statutory wage are subject to NSSF contributions, while those above are subject to the voluntary scheme.

Social Health Insurance Fund

Each employee contributes a portion of their salary to the SHIF, which is managed by the Social Health Authority. These contributions are deducted by the employer and submitted to the SHIF. The funds are used to help cover medical treatment costs, although they only cover a fraction of the total expenses. The Social Health Insurance Act, 2023 (SHIA), which became operational on 1 October 2024, was enacted to replace the NHIF Act. It introduced three new funds to cover primary healthcare, social healthcare, and emergency, chronic and critical illnesses. SHIA requires every Kenyan resident to register as a member of the SHIF and for each household to make contributions. The contribution rate is 2.75% of gross income.

Housing levy

Pursuant to the Affordable Housing Act, 2024, each employee is required to contribute 1.5% of their monthly gross salary. Employers must make a matching contribution of 1.5%. They are required to deduct the levy from employees' salaries and remit the dues to the KRA on or before the ninth working day of the following month.

Hybrid working policies

For nearly two years during the COVID-19 pandemic, employees were directed to work from home to curb the virus's spread. This period established a new normal, prompting organisations to develop hybrid working policies that outline the processes and procedures for flexible working arrangements, allowing employees to work both from home and the office. Although organisations quickly adapted by creating processes and upgrading technology to ensure work continued smoothly, employers now need to consider the long-term impact of hybrid working on workplace culture, employee training, and well-being. Careful consideration is essential when formulating hybrid working policies to address these aspects effectively.



CHAPTER THREE

Dispute Resolution

In this chapter, we explore dispute resolution mechanisms available under Kenyan law.





In 2010, Kenya enacted a progressive constitution that promotes democracy, natural justice and the sovereignty of the people. The Constitution vests all sovereign power in the people of Kenya, to be exercised in accordance with the Constitution. This power is delegated to the national executive, County Governments, Parliament, legislative assemblies, judiciary and independent tribunals.

The judiciary is an independent branch of government, consisting of superior courts, subordinate courts and independent tribunals. Courts follow previous judgments, except the Supreme Court, and are guided by Article 159 of the Constitution to ensure quick, fair, proportionate and affordable dispute resolutions.

The process in civil courts



Applicant initiates suit by filing pleadings in the registry (the judiciary has adopted an online system for filing, the [efiling portal](#)).



Summons are issued and the applicant serves the respondent with the summons.



The respondent enters appearance by filing a memorandum of appearance then responds to the applicant's claim.



Parties attend the court for a hearing where they call witnesses and present their case.



Court delivers judgment.



Judgment creditor prepares a decree and files it with the court for execution.



Judgment creditor executes the decree.





The structure of Kenyan Courts



The Supreme Court

Composition	There are seven judges who sit in the Supreme Court: 1. The Chief Justice – President of the Court 2. The Deputy Chief Justice – Vice President of the Court 3. Five other judges
Seat of court	Nairobi
Jurisdiction	• The Supreme Court has exclusive original jurisdiction to determine presidential election disputes. • It also has appellate jurisdiction to determine appeals from the Court of Appeal or any other court or tribunal prescribed by law. • The Supreme Court may give an advisory opinion on matters concerning County Governments at the request of the National Government, any state organ, or any County Government.
Initiating proceedings	Presidential election disputes are initiated through election petitions. Appeals from the Court of Appeal are initiated in the Supreme Court through a memorandum of appeal accompanied by a record of appeal.

The Court of Appeal

Composition	The Constitution sets the minimum number of judges at 12.
Seat of court	The court has permanent benches in the following cities/towns: • Nairobi • Nyeri • Kisumu • Mombasa The court also has sub-registries in Nakuru, Eldoret, Garissa, Busia, Kisii, Meru, Malindi and Kakamega where matters are filed and judges visit on circuit.
Jurisdiction	The Court of Appeal can hear appeals from the High Court, Employment and Labour Relations Court, Environment and Land Court, or any other court or tribunal as prescribed by any statute.
Initiating proceedings	One can initiate proceedings in the Court of Appeal by filing a memorandum of appeal and a record of appeal.



The High Court

Composition	The High Court is composed of a principal judge and judges appointed in accordance with the Constitution. The High Court Act caps the maximum number of High Court judges at 200.
Seat of court	Most major towns in the country.
Jurisdiction	The High Court has unlimited original jurisdiction in civil and criminal matters. The High Court also interprets the Constitution and hears cases concerning violations and/or infringements of the Bill of Rights. It also handles appeals emanating from subordinate courts (Magistrates Court, Kadhis Court, Tribunals, Court Martials, Small Claims Court) The High Court exercises supervisory jurisdiction over all subordinate courts as well as persons, bodies and authorities that exercise a judicial or quasi-judicial function, but not over any other superior court.

Employment and Labour Relations Court (ELRC)

Composition	The Employment and Labour Relations Court (ELRC) consists of a presiding judge and a number of judges selected by the Judicial Service Commission.
Seat of court	Currently, the ELRC is established in seven stations: Nairobi, Mombasa, Kisumu, Nakuru, Kericho, Nyeri and Eldoret. In addition, there are eight sub-registries located in Malindi, Machakos, Bungoma, Garissa, Meru, Kisii, Voi and Kitale.
Jurisdiction	The ELRC has jurisdiction to determine employment and labour relation disputes.
Initiating proceedings	Proceedings in the ELRC are initiated through a statement of claim.

Environment and Land Court (ELC)

Composition	The Environment and Land Court (ELC) consists of a presiding judge and a number of judges selected by the Judicial Service Commission.
Seat of court	Most major towns in the country.
Jurisdiction	The ELC has jurisdiction to determine disputes concerning environmental matters as well as titles and use and occupation of land. The court also exercises appellate jurisdiction over the decisions of subordinate courts and local tribunals in respect of matters falling within its jurisdiction. Such tribunals include the National Land Commission, Business Premises Rent Tribunal, Rent Restriction Tribunal, National Environment Tribunal and Co-operative Tribunal (in as far as the dispute relates to land).
Initiating proceedings	Proceedings in the ELC are initiated through a plaint.

The Magistrates' Courts

The Magistrates' Courts are subordinate courts presided over by different classes of magistrates. Each class is governed by a specific financial jurisdiction.

The Magistrates' Court exercises jurisdiction and powers in proceedings of a civil nature in which the value of the subject matter in dispute does not exceed:

	Chief Magistrate	Senior Principal Magistrate	Principal Magistrate	Senior Resident Magistrate	Resident Magistrate
Pecuniary jurisdiction	20 million KES	15 million KES	10 million KES	7 million KES	5 million KES

The Magistrates' Courts also have the authority to decide criminal cases as provided by the Criminal Procedure Code (Cap. 75).



Small Claims Court

Pecuniary jurisdiction	KES 1 million
Nature of matters heard by the court	• Contracts for sale and supply of goods or services. • Contracts relating to money held and received • Liability in tort in respect of loss or damage caused to any property or for the delivery or recovery of movable property. • Compensation for personal injuries. • Set-off and counterclaim under any contract.
Commencing a suit in the court	The claimant files a statement of claim.
Appearance before the court	The court allows parties to a claim to appear and address the court without requiring representation by an advocate.
Rules of the court	The court is not bound by the strict rules of procedure and evidence applied in other courts. The court should hear and determine disputes within 60 days from the date of filing the claim.
Orders the court can make	• Payment in lump sums or instalments. • Restitution of movable property. • Recovery of any sum in the performance of a contract. • Dismissing a claim. • Any consequential or ancillary orders.



Kadhis Court

The Kadhis Court has jurisdiction over civil cases related to Islamic law, such as personal status, marriage, divorce and inheritance. Parties must profess the Muslim faith and submit to the court's jurisdiction.

Court Martial

These handle cases involving members of the Kenya Defence Forces. Decisions made by these courts can be appealed to the High Court.

Tribunals

There are also independent tribunals established by acts of Parliament to decide specific types of cases, such as the:

- Business Premises Rent Tribunal
- Competition Tribunal
- Education Appeals Tribunal
- Industrial Property Tribunal
- Rent Restriction Tribunal
- Standards Tribunal
- Sports Disputes Tribunal
- Tax Appeals Tribunal
- State Corporations Appeals Tribunal

Limitation of action

The Limitation of Action Act, 1968 sets time limits for filing civil claims, which vary based on the type of claim:

Type of claim	Time limit
Contract claims	Must be filed within six years from the date the cause of action arose.
Tort claims	Must be filed within three years, except for libel or slander, which must be filed within 12 months.
Unfair termination claims	Must be filed within three years from the date of termination.
Enforcement actions (recognisance, awards, sums due under law, equitable relief)	Must be filed within six years.
Judgment-based actions	Must be filed within 12 years from the date the judgment was delivered.
Extensions	Allowed in cases of fraud, disability or part payment of a debt.

The right of appeal

The right of appeal is available only when expressly provided for by a statute or the Constitution. The Civil Procedure Act permits appeals from subordinate courts to the High Court on questions of law or fact. Further appeals to the Court of Appeal must address questions of law only. Appeals from the High Court to the Court of Appeal are allowed unless otherwise stated by law. Appeals to the Supreme Court are limited to cases involving the interpretation or application of the Constitution, or where the Court of Appeal or Supreme Court certifies the matter as of general public importance or a substantial miscarriage of justice. to determine appeals where a right of appeal from the decision of an arbitral tribunal lies to the High Court.

Recognition of foreign judgments

The recognition and enforcement of foreign judgments in Kenya is governed by the Foreign Judgments (Reciprocal Enforcement) Act, 1984. This act allows for the enforcement of judgments from countries that offer reciprocal treatment to Kenyan judgments, including Australia, Malawi, the Seychelles, Tanzania, Uganda, Zambia, the UK and Rwanda.

To enforce a foreign judgment in Kenya, a judgment creditor must apply to the High Court for registration within six years of the judgment's delivery. The application can be made without notice if the judgment debtor was served in the foreign court or if the appeal period has lapsed. If the debtor was not properly served, the High Court can issue summons.

The application must include:

- A certificate from the foreign court under its seal and signed by a judge or registrar.
- A certified copy of the foreign judgment.
- An affidavit stating the judgment has not been satisfied and is enforceable by the foreign court, and specifying any parts of the judgment to be registered.

For judgments from superior courts of the Commonwealth, a certificate confirming the court's status is also required. Once the High Court is satisfied, it will order the registration of the foreign judgment, which can then be enforced as a High Court judgment in Kenya.

If no reciprocal agreement exists, foreign judgments can be enforced through common law by filing a plaint at the High Court. The plaint must include a concise statement of the claim, the judgment debt amount, a verifying affidavit, a list of witnesses and a bundle of supporting documents, including a certified copy of the foreign judgment.

A defendant can challenge the validity of a foreign judgment where:

- It has not been pronounced by a court of competent jurisdiction.
- It has not been given on the merits of the case.
- It is based on an incorrect view of international law or refusal to recognise Kenyan law.
- The proceedings in which the judgment was obtained are opposed to natural justice.
- It has been obtained by fraud.
- It sustains a claim founded on a breach of any law in force in Kenya.



Alternative Dispute Resolution

Article 159 of the Constitution of Kenya promotes alternative dispute resolution methods, including reconciliation, mediation, arbitration and traditional mechanisms. Arbitration is commonly used for commercial disputes, while negotiation is preferred for debt collection. Traditional methods are prevalent in rural areas.

In 2012, the Civil Procedure Act was amended to include court-annexed mediation, where courts can direct parties to mediate their disputes with the help of a mediator. Agreements reached through mediation are binding and unappealable.

The Arbitration Act, 1995, based on the UNCITRAL Model Law, governs arbitration in Kenya. An enforceable arbitration agreement must be in writing, either as a clause in a contract or a separate agreement. It can be documented through signed documents, letters or electronic communication. If one party alleges the existence of an arbitration agreement in court pleadings and the other party does not refute it, it is considered valid.

Parties can choose the number of arbitrators, but if unclear, there will be one arbitrator. If a party does not participate in appointing an arbitrator within 14 days of notice, the other party can appoint one, and this appointment is binding. An arbitrator's appointment can be challenged within 15 days if there are doubts about their impartiality, independence, qualifications or capacity.

Parties have autonomy in determining arbitration rules and procedures. In the absence of agreed rules, the Arbitration Act provides default procedures. The act ensures equal treatment and a fair opportunity for parties to present their case, emphasising the expeditious conduct of proceedings.

The Arbitration Act limits interference from courts and provides that the only instances a court can interfere in the proceedings are:

- to set aside the appointment of a sole arbitrator where the defaulting party has good cause for the failure or refusal to appoint the arbitrator in due time;
- to issue interim measures of protection;
- to assist an arbitral tribunal to take evidence by issuing summons to a witness that has refused to appear;
- on an application to set aside an arbitral award;
- on an application for removal of an arbitrator;
- to enforce an arbitral award, including recognition and enforcement of a foreign award; or
- to determine appeals where a right of appeal from the decision of an arbitral tribunal lies to the High Court.

At the end of arbitration, the arbitrator delivers a written, signed and dated award, indicating the arbitration's location. The award must state the reasons unless it is a consent award or the parties agreed otherwise.

Parties can appeal to the High Court on legal questions in the award only if they reserved this right before the award was delivered. Without such an agreement, the award is final and binding. However, the award can be set aside if:

- a party was under some incapacity;
- the arbitration agreement was not valid under Kenyan law or the agreed law;
- there was insufficient notice of the arbitrator's appointment or proceedings, or a party couldn't present their case;
- the award dealt with a dispute not covered by the terms of reference;
- the tribunal's composition or procedure was not in accordance with the parties' agreement, unless it conflicted with the Arbitration Act; or
- the award was induced by fraud, bribery, undue influence or corruption.



CHAPTER FOUR

Competition Law

In this chapter, we explore competition law and how it affects business practices in Kenya.

Competition Authority

Competition law in Kenya is regulated by the Competition Act, 2010 (Competition Act). The Competition Act seeks to enhance the welfare of the people of Kenya by promoting and protecting effective competition in markets and preventing unfair and misleading market conduct in Kenya.

The Competition Act is enforced by the Competition Authority of Kenya (Competition Authority) and the Competition Tribunal, which hears appeals against decisions made by the Competition Authority.

Restrictive trade practices

The Competition Act addresses the prohibition of restrictive trade practices. Part III of the Competition Act prohibits any agreements, decisions or practices by businesses that aim to or result in obstructing, distorting or reducing competition for goods or services in Kenya. The Competition Act applies to agreements, decisions and concerted practices among competing businesses (horizontal relationships) or between a business and its suppliers or customers (vertical relationships). It specifically targets restrictive practices like price fixing, market division, collusive tendering and resale price maintenance.

However, in certain circumstances, the Competition Authority may exempt certain agreements before execution if it deems there to be exceptional public policy reasons. The Competition Authority evaluates the following factors when considering exemptions:

- the maintenance and promotion of exports;
- the enhancement or safeguarding of the production or distribution of goods and services;
- the fostering of technical or economic progress or industry stability; and
- where public benefits outweigh any decrease in competition from the practices under review.

Further, the Competition (General) Rules, 2019 (Competition Rules) allow businesses to seek block exemptions for certain agreements. These are:

- franchise agreements;
- stadium and sports branding agreements;
- content development and broadcasting agreements; and
- one-off sporting and promotional events

When deciding whether to grant an exemption under the Competition Rules, the Competition Authority will consider various factors, including the market share of each business involved in the agreement and whether the agreement contains any restrictions. Upon successful application, the Competition Authority will issue a certificate of exemption, concluding its involvement in the transaction.





Merger control

Pursuant to section 2 of the Competition Act, a merger is the acquisition of shares, assets or business operations that result in a change of control, including takeovers.

A merger takes place when one or more companies directly or indirectly take control of all or part of another company's business. This includes acquiring a controlling interest in a foreign company that controls a subsidiary in Kenya. A person is considered to have control of a company if they:

- own more than half of the company's shares, business, or assets;
- have the right to vote or control the majority of votes at a company's general meeting, either directly or through another entity they control; and
- can appoint or block the appointment of most of the company's directors.

Joint ventures combine existing or planned independent businesses. According to the Competition Authority's Joint Venture Guidelines, 2021, a joint venture is considered a merger under the Competition Act if it is intended to last for at least 10 years. If the agreement is for a shorter period, it must include an option to extend the duration. It must also:

- operate in a market and perform the usual functions of businesses in that market;
- have dedicated management and access to resources like finance, staff, assets and critical facilities to conduct long-term business activities as outlined in the joint venture agreement;
- be a limited partnership where one partner is the general partner making decisions and the other is the limited partner arranging and investing capital;
- provide management or advisory services, liquidity rights and access to confidential information, including data;
- engage in activities beyond just one function of the parent businesses; and
- not depend solely on purchase or supply agreements with its parent businesses.

A sub-category of joint ventures, greenfield joint ventures, involve the collaboration between local and foreign businesses to create a new product. The Competition Authority considers these agreements on a case-by-case basis.

Notifiable mergers

Only mergers that meet or exceed "*notifiable thresholds*" must be reported to the Competition Authority. The Merger Threshold Guidelines (First Schedule to the Rules), 2019 set out the thresholds for merger notifications and categorises them into three types: transactions that are always notifiable, transactions that are potentially excluded by the Competition Authority, and transactions where the Competition Authority does not need to be notified.

Always notifiable transactions

- a) The undertakings have a minimum combined turnover or assets (whichever is higher) of KES 1 billion (approximately USD 10 million) and the turnover or assets (whichever is higher) of the target undertaking is above KES 500 million (approximately USD 5 million).
- b) The turnover or assets (whichever is higher) of the acquiring undertaking is KES 10 billion (approximately USD 10 million) and the merging undertakings are in the same market or can be vertically integrated, unless the transaction meets the Common Market for Eastern and Southern Africa (COMESA) Competition Commission (CCC) merger notification thresholds.
- c) In the carbon-based mineral sector, where the value of the reserves, the rights and the associated assets to be held because of the merger exceeds KES 10 billion (approximately USD 100 million).
- d) Where the undertakings operate in COMESA, meet the criteria set out in the first point above, and two-thirds or more of their turnover or assets (whichever is higher) is generated or located in Kenya.

Potentially excluded transactions

- a) The combined turnover or assets (whichever is higher) of the merging undertakings is between KES 500 million (approximately USD 5 million) and KES 1 billion (approximately USD 10 million).
- b) The firms are engaged in prospecting in the carbon-based mineral sector, irrespective of asset value.

No requirement to notify

- a) The combined turnover or assets (whichever is higher) of the merging undertakings does not exceed KES 500 million (approximately USD 5 million).
- b) The merger meets the CCC merger notification threshold and at least two-thirds of the turnover or assets (whichever is higher) is not generated or located in Kenya. This means that where merger approval is sought from the CCC, additional approval from the Competition Authority is not required. Undertakings are merely required to inform the Competition Authority in writing that an approval application has been made to the CCC within 14 days of filing the approval application with the CCC.

Calculation of turnover and assets

In determining whether the prescribed merger thresholds have been met, the Competition Authority considers the combined Kenyan turnover or assets (whichever is higher) of the undertakings using the relevant undertaking's most recent audited financial statements.

Filing fees for merger notifications

Each party to the merger is required to notify the Competition Authority. Filing fees are payable based on the combined turnover or assets of the merging undertakings in Kenya as follows:

Combined turnover/Assets	Fee
KES 0 – KES 500 million	Nil (excluded from notification)
KES 500 million – KES 1 billion	Nil (excluded transactions requiring approval of the Competition Authority)
≥ KES 1 billion – < KES 10 billion	KES 1 million
≥ KES 10 billion – < KES 50 billion	KES 2 million
> KES 50 billion	KES 4 million

Timelines for filing merger notifications

The merger filing should be submitted before implementing any transaction. Pursuant to the Consolidated Guidelines on the Substantive Assessment of Mergers under the Competition Act, 2021, the Competition Authority will:

- acknowledge receipt of a merger application or complaint within three days of receiving it; and
- determine a merger proposal within 60 days after receiving the complete information.

If the Competition Authority requests further information within 30 days after receiving the merger notification, it will make a determination within 60 days after receiving such information.

Additionally, if the Competition Authority convenes a hearing conference, it will decide the matter within 30 days after the conclusion of the conference. It may also extend the period up to a total of 120 days based on the complexity of the case.

Before implementation of a merger

The Competition Act prohibits the implementation of a proposed merger unless it is approved by the Competition Authority and carried out in accordance with any attached conditions. Merger filings are suspensory, meaning that no merger has legal effect without an authorising order from the Competition Authority. Consequently, any obligations imposed on the participating undertakings by any merger agreement are unenforceable in legal proceedings without such an order. Any merger that is carried out without the authority's approval:

- shall have no legal effect in Kenya and the obligations imposed on the merger undertakings will be unenforceable;
- amounts to an offence under the Competition Act, and the merger undertakings can be liable on conviction to imprisonment for a term not exceeding five years, or a fine not exceeding KES 10 million, or both; and
- may result in the Competition Authority imposing a financial penalty on the involved undertaking or undertakings, not exceeding 10% of the preceding year's gross annual turnover in Kenya.

However, the Competition Authority does not consider a down payment not exceeding 20% of the purchase price to amount to prior implementation of a merger.

Timelines for the determination of a merger filing

A merger determination will be made within 60 days after the Competition Authority receives all information, or within 90 days if a hearing conference is conducted. Additionally, based on the complexity of the case, the Competition Authority may extend the period up to a total of 120 days.

Public interest considerations

In the determination of mergers, the Competition Authority shall consider the public interest, and the extent to which the merger would affect employment, SMEs' ability to compete, national industries' ability to compete in international markets, and the impact on a particular industry.

Some of the specific factors the Competition Authority may consider include:

- whether a merger involving a foreign company would significantly switch its procurement of goods or services from the local market to imports that would detrimentally affect the ability of domestic suppliers to compete; and
- the reputation of the undertaking in relation to neglect or disregard for labour issues.





Investigation

The Competition Act mandates the Competition Authority to investigate and sanction persons in breach of the Competition Act. As part of its investigation, the Competition Authority may, by written notice, require a person to provide any information relevant to the investigation.

If, upon completing its investigation, the Competition Authority finds that a person is in breach of the provisions of the Competition Act, it shall notify the accused person of the proposed decisions and invite them to make a written or oral defence. If the person wishes to make oral representations, the Competition Authority will convene a hearing conference.

After considering any written representations and matters raised at a hearing conference, the Competition Authority may take the following measures:

- Declare that the conduct under investigation constitutes an infringement of the prohibitions contained in the Competition Act.
- Restrain the undertaking or undertakings from engaging in that conduct.
- Direct any action to be taken by the undertaking or undertakings concerned to remedy or reverse the infringement or the effects.
- Impose a financial penalty of up to 10% of the immediately preceding year's gross annual turnover in Kenya of the undertaking or undertakings in question.
- Grant any other appropriate relief.

Enforcement

Further to the Consolidated Administrative Remedies and Settlement Guidelines, 2023 (Settlement Guidelines), enforcement of the Competition Authority's decisions has been streamlined to make them more predictable for businesses in Kenya.

The Settlement Guidelines determine how the Competition Authority calculates penalties for anti-competitive practices:

- **Base percentage:** A base percentage of 10% of the offending undertaking's preceding year's gross turnover is established.
- **Aggravating and mitigating factors:** The severity of the infringement and the undertaking's conduct are considered through aggravating and mitigating factors. These include elements such as the infringement's impact, duration, recidivism, co-operation with the investigation and public interest considerations.

- **Penalty adjustment:** Each aggravating and mitigating factor is assigned a score (0%–3%), which can increase or decrease the final penalty.
- **Maximum penalty:** The maximum penalty is capped at 10% of the undertaking's annual turnover.

Subsequently, the penalty may be adjusted to consider i) restrictive trade practices and control of mergers, ii) abuse of buyer power, and iii) violations under consumer welfare.

Settlement procedures

The Settlement Guidelines encourage alternative dispute resolution through a defined settlement negotiation process. Businesses facing potential penalties can proactively submit settlement proposals to the Competition Authority, which can achieve a more favourable outcome than through protracted litigation.

The settlement process:

- Party initiates a settlement request.
- The Competition Authority consents to request.
- 90-day period of negotiation begins.

Party submits settlement proposal to the Competition Authority.

The Competition Authority provides a counter proposal and convenes an initial settlement meeting.

- The Competition Authority invites party to negotiation meeting.
- Negotiations between the Competition Authority and party.
- 30-day extension upon expiry of the 90-day period.

The Competition Authority informs party of collapse in negotiations (if applicable).

Gazetting of binding settlement agreement.

CHAPTER FIVE

Intellectual Property and Data Protection

In this chapter, we explore intellectual property and data protection frameworks relevant to businesses.



Intellectual Property

Kenya has a robust intellectual property regime that is protected under the Constitution of Kenya, 2010, Industrial Property Act, 2002 (Industrial Property Act), Copyright Act, 2001 (Copyright Act), Trade Marks Act, 1957 (Trade Marks Act), Seeds and Plant Varieties Act, 1975, Anti-Counterfeit Act, 2009 and various ancillary acts of Parliament. Intellectual property rights protected in Kenya include trademark rights, copyright, patents, utility models, industrial design rights, traditional knowledge and plant breeder rights.

On the international stage, Kenya is a member of the African Regional Intellectual Property Organisation and the World Intellectual Property Organisation. Kenya is also a contracting party to an array of treaties recognising intellectual property rights, including the:

- Agreement on Trade Related Aspects of Intellectual Property Rights;
- Paris Convention for the Protection of Industrial Property;

- Madrid Agreement concerning the International Registration of Marks and the Protocol Relating thereto; and
- Patent Co-operation Treaty, which provides the framework for the international filing of patent applications designating various jurisdictions across the globe.

Legal Framework

Constitution of Kenya

Articles 11(2)(c) and 40(5) of the Constitution recognise the value of intellectual property and require the state to support, promote and protect the intellectual property rights of the people of Kenya.

Industrial Property Act

The Industrial Property Act provides for the protection of inventions and innovations, including utility models, technovations and industrial designs, and any other non-patentable creations or improvements.¹

The Industrial Property Act establishes the Kenya Industrial Property Institute (KIPI) and mandates it to administer intellectual property rights in Kenya and to act as the custodian of the Kenyan patent and trademark offices.

Patents may be granted for inventions that satisfy the relevant criteria, including the following essential elements of patentability: novelty, an inventive step, and industrial applicability.

The time it takes to grant a patent can range from two to five years or more, depending on factors like the patent's complexity, actions by patent examiners, and administrative delays. Patents are granted for 20 years, subject to the payment of annual renewal or maintenance fees.

¹ A technovation is defined under the Industrial Property Act as a solution to a specific problem in the field of technology, proposed by an employee of an enterprise in Kenya for use by that enterprise, and which relates to the activities of the enterprise but which, on the date of the proposal, has not been used or actively considered for use by that enterprise.



After 20 years, the patent expires and the invention falls into the public domain and becomes available for commercial use by the public.

Utility model protection is granted for innovations that meet patent criteria, except for the inventive step. This protection lasts for 10 years, subject to annual renewal fees. After 10 years, the utility model expires, and the innovation enters the public domain.

Industrial designs must be globally new to be registered. They are protected for five years and can be renewed twice for five years each. After 15 years, the design enters the public domain.

The Industrial Property Act allows for various proceedings to enforce or dispute patent rights, including revocation and infringement proceedings. These are handled by the Industrial Property Tribunal, which can issue remedies like revocation orders, injunctions and compensation.

Appeals from the Industrial Property Tribunal go to the High Court, with further appeals possible to the Court of Appeal and the Supreme Court. Appeals to the Supreme Court require demonstrating constitutional issues or matters of public importance.

Copyright Act

The Copyright Act provides for the protection and administration of copyright in literary, musical and artistic works, audio-visual works, sound recordings, broadcasts and related rights. Section 3 of the Copyright Act establishes the Kenya Copyright Board (KECOBO) to oversee the administration and enforcement of these rights in Kenya.

Section 22 (i) of the Copyright Act recognises the following works as eligible for copyright or related rights:

- Literary works (which includes software)
- Musical works
- Artistic works
- Dramatic works
- Audio-visual works
- Sound recordings
- Broadcasts

A literary, musical or artistic work is only eligible for copyright protection where:

- sufficient effort has been expended on making the work to give it an original character; and
- the work has been written down, recorded or otherwise reduced to material form.

Broadcasts are not eligible for copyright protection until they have been broadcast.

Although no formalities are required for the protection of copyright as it is protected automatically upon fixation, Kenya has a voluntary registration system for copyright works through KECOBO. Registration may, however, be carried out before KECOBO for the purpose of obtaining a certificate that serves as prima facie proof of ownership of the copyright work. The process of such registration takes approximately one month from submission of the application to the KECOBO office to issuance of a certificate.

The duration of copyright protection under the Copyright Act varies depending on the nature of the work as follows:

Type of work	Date of expiration of copyright
Literary, musical or artistic work other than photographs	Fifty years after the end of the year of the author's death.
Audio-visual works and photographs	Fifty years from the end of the year in which the work was either made, first made available to the public, or first published (whichever date is the latest).
Sound recordings	Fifty years after the end of the year of the recording.
Broadcasts	Fifty years after the end of the year of first broadcast.

Copyright infringement can lead to both civil and criminal penalties. Civil remedies for the owner include injunctions, damages, account of profits, delivery up, and search and seizure. The Copyright Act authorises KECOBO to investigate and sanction violators. Decisions by KECOBO can be appealed to the Copyright Tribunal. Criminal fines under the Copyright Act range from five times the market value of the legitimate work or KES 1,000 per infringing copy (whichever is higher) to a maximum of KES 2 million, or a jail term of up to 10 years. Courts can impose fines, imprisonment or both.

Trade Marks Act

The Trade Marks Act governs the registration and enforcement of trademark rights in Kenya. It defines trademarks, sets the criteria for their registrability, outlines registration procedures, and specifies the duration of trademark validity. The act also covers opposition, cancellation and infringement proceedings related to trademarks. To be registered, a trademark must contain at least one of five essential particulars:

1. The name of a company, individual or firm, represented in a special or particular manner.
2. The signature of the applicant for registration, or some predecessor in their business.
3. An invented word or invented words.
4. A word or words having no direct reference to the character or quality of goods, and not being according to its ordinary signification a geographical name or surname.
5. Any other distinctive mark or marks of the sort mentioned above (subject to the provision of evidence of distinctiveness where their registration is sought on the ground of distinctiveness).

The process of trademark registration generally takes between six to nine months, barring any refusals, amendments, oppositions or unusual delays at the KIPI. Registrations are valid for a period of 10 years from the date of filing of the application (also deemed to be the date of registration), with the option of indefinite renewal of such registrations for further consecutive periods of 10 years each.

It is not mandatory to conduct a trademark availability search at the Trade Marks Registry prior to filing an application for the registration of a trademark. This step reveals if the proposed trademark is available for registration.

Trademark infringement proceedings may be commenced in the High Court. Appeals can be lodged with the Court of Appeal and, subject to specific criteria, with the Supreme Court. Remedies available include damages, injunctions, accounts of profits, and orders for the delivery of possession.

The Data Protection framework in Kenya

The processing of personal data² and sensitive personal data³ in Kenya is regulated under the Data Protection Act 24 of 2019 (DPA), which was enacted in November 2019, and the regulations thereof. These regulations include:

- The Data Protection (General) Regulations
- The Data Protection (Complaints Handling Procedure and Enforcement) Regulations
- The Data Protection (Registration of Data Controllers and Data Processors) Regulations (Registration Regulations)

The DPA applies to processing of personal data by a data controller or data processor who is:

- established or ordinarily resident in Kenya and processed personal data while in Kenya; or
- not ordinarily resident in Kenya but who processes personal data of data subjects located in Kenya.

The DPA is largely based on the EU's General Data Protection Regulation (GDPR). It includes:

- **Territorial and extra-territorial application:** It applies to foreign data controllers and processors handling personal data of individuals in Kenya.
- **Mandatory registration:** Data controllers and processors must register as per the Registration Regulations.
- **Data protection principles:** These include the right to privacy, a valid explanation for family or private information requests, and a prohibition on transferring personal data outside Kenya without adequate safeguards or consent. It also includes GDPR principles like purpose limitation, data minimisation, accuracy, storage limitation, lawfulness, fairness and transparency.
- **Rights of data subjects:** These include the right to be informed about the use of their personal data, access their data, object to processing, correct false data, delete false data, data portability, avoid automated decisions and rectify or erase inaccurate data.
- **Duties of data controllers and processors:** These include mandatory registration, collecting data directly from subjects, notifying subjects before processing, having a specific purpose for data collection, restricting data retention, not processing children's data, conducting impact assessments, implementing data protection by design and reporting breaches.

² The DPA regulates the processing of personal data only, which it defines as, "any information relating to an identified or identifiable natural person". The DPA further defines a data subject as an "identified or identifiable natural person who is the subject of personal data". As such, the processing of any data that belongs to juristic persons is not regulated under the DPA

³ The DPA defines sensitive personal data as data revealing a natural person's race, health status, ethnic social origin, conscience, belief, genetic data, biometric data, property details, marital status, family details – including names of the person's children, parents, spouse or spouses – sex or the sexual orientation of the data subject.



- **Lawful processing grounds:** These include obtaining consent or necessity for specified purposes like contract performance, legal obligations, public functions, legitimate interests, vital interests and research.
- **Sensitive data processing grounds:** These include legitimate activities of not-for-profit bodies, public data, exercising rights and obligations, vital interests or legal claims.
- **Transferring data out of Kenya:** This requires appropriate safeguards, necessity for specified purposes, consent or an adequacy decision from the Data Protection Commissioner.

- **Commercial use of personal data:** This requires consent or legislative authority with notice to the data subject. For direct marketing, data must be collected directly from the subject, with notification and consent, an opt-out mechanism, and no concealed identity or automated calling systems.

Enforcement provisions include enforcement and penalty notices, claims for compensation, fines up to KES 5 million (approx. USD 45,000) or 1% of annual turnover, and jail terms of up to 10 years.



CHAPTER SIX

Environmental Law

In this chapter, we explore environmental law and the obligations businesses must meet.



Kenya is endowed with rich flora, fauna and diverse natural resources essential for human development, economic growth and climate resilience. The country's approach to natural resource and environmental governance is increasingly integrated with climate change mitigation strategies to conserve, sustainably manage and protect its valuable natural assets. By prioritising sustainable resource management, Kenya not only reduces greenhouse gas emissions but also protects biodiversity, advancing both national and global climate goals.

Kenya's legal and regulatory framework is guided by an assortment of national, regional and international laws, which collectively aim to protect, conserve and reduce the impact of human activity and climate change on the environment. The governing framework outlines modalities for environmental management and sets out the duties of the state, corporate bodies and individuals.

The Constitution of Kenya is the overarching law on environmental protection. It obliges every person, including the state, to protect the environment and provides a framework for the administration of environmental laws. Every person has a constitutional duty to co-operate with state organs and other persons to protect and conserve the environment and ensure ecologically sustainable development and use of natural resources.

Constitutional obligations of the state in respect of the environment:

- Ensure sustainable exploitation, utilisation, management and conservation of the environment and natural resources, and ensure the equitable sharing of the accruing benefits.
- Work to achieve and maintain a tree cover of at least 10% of the land area of Kenya.
- Protect and enhance intellectual property in, and indigenous knowledge of, biodiversity and the genetic resources of communities.
- Encourage public participation in the management, protection and conservation of the environment.
- Protect genetic resources and biological diversity.
- Establish systems of environmental impact assessments, environmental audits and monitoring of the environment.
- Eliminate processes and activities that are likely to endanger the environment.
- Utilise the environment and natural resources for the benefit of the people of Kenya.

The Environmental Management and Co-ordination Act, 1999 (EMCA) is the main environmental legislation in Kenya, reinforcing constitutional provisions. It establishes key institutions for environmental governance and provides various management tools.

Other relevant laws include the Climate Change Act, 2016 (Climate Change Act), amended in 2023, and the Climate Change (Carbon Markets) Regulations, 2024. These laws guide participation in carbon markets, the development of carbon market projects, and the institutional and governance framework. The Land Act, Forest Conservation and Management Act, 2016, Water Act, 2016, and Wildlife Conservation and Management Act, 2013, among others, regulate specific environmental sector issues and provide for institutions or bodies that are mandated to enforce legal obligations towards environmental protection in those sectors.

Additionally, regional and international environmental agreements are part of Kenyan law under the Constitution. Treaties ratified by Kenya, such as the United Nations Convention on Biological Diversity, the United Nations Framework Convention on

Climate Change, the Paris Agreement, the United Nations Convention on Combating Desertification, and the Stockholm Convention on Persistent Organic Pollutants, form part of Kenya's environmental legal framework. General international environmental principles such as sustainability, the "polluter pays" principle, public participation, and inter- and intra-generational equity also form part of Kenyan law. Judicial bodies must be guided by these principles in their jurisdictions.

Key environmental considerations

Environmental impact assessments

Kenya's environmental regime uses various tools to protect and conserve environmental resources. These tools are essential for anyone conducting business or undertaking carbon market projects in the country. The climate change regulations require project proponents to complete an environmental impact assessment (EIA) within two years of the regulations' commencement. EIAs are the primary tool for evaluating the environmental impact of proposed projects and ensuring appropriate mitigation measures.

The EMCA and the Environmental (Impact Assessment and Audit) (EIAA) Regulations establish the framework for EIAs. The National Environment Management Authority (NEMA) is responsible for determining EIA applications and issuing licences. Before starting any high-risk project, proponents must obtain an EIA licence from NEMA. Without this licence, any other licences are invalid.

Projects listed in the Second Schedule of the EMCA must undergo an EIA study at the proponent's expense and submit a report to NEMA. Projects are classified as low risk, medium risk or high risk.

Category	Project examples	EIA requirements
High-risk projects	Projects that lead to major changes in land use, urban development projects such as the expansion of industrial areas, transportation, infrastructure projects, mining, and related activities.	Before project approval, a proponent must submit a comprehensive environmental impact assessment report to NEMA.
Medium-risk projects	Urban development projects, including establishing multi-dwelling housing, tourism initiatives and related infrastructure. Transportation, including construction and rehabilitation of roads, construction of light rail transit, helipads and bridges. Water resource infrastructure, including water abstraction works, water supply and distribution infrastructure.	A proponent is only required to submit a summary project report to NEMA at the first instance. After analysing the summary report, NEMA will require the proponent to submit a comprehensive project report where the project is found to have a significant environmental impact. Where the project is not likely to have such effects, NEMA will waive the requirement for a comprehensive report and issue project approval.
Low-risk projects	Establishment of places of worship including churches, mosques and temples, community-based projects such as the establishment of stadia, water boreholes, and social halls, the establishment of dispensaries, cattle dips, expansion and rehabilitation of markets, garages, cottage industry activities, schools and related industries, and establishment of standard warehouses not exceeding 1,400m ² .	Similar to medium-risk project requirements.



Public participation is a crucial feature of the EIA process. Failure to carry out sufficient public participation is one of the most common grounds for the challenging of an EIA licence. Other recent developments related to EIAs include the requirement for climate impact assessments. Failure to incorporate considerations associated with the integration of climate change vulnerability assessments, relevant adaptation and mitigation actions, and conditions of the Climate Change Act in the EIA process may result in the nullification of an EIA licence.

The EIA licence application process is electronic and must be conducted by a NEMA-registered expert. The processing and monitoring fee is 0.1% of the total project cost, with a minimum of KES 10,000. There are also graded fees for registering and licensing EIA experts. These fees were reinstated on 1 June 2022.

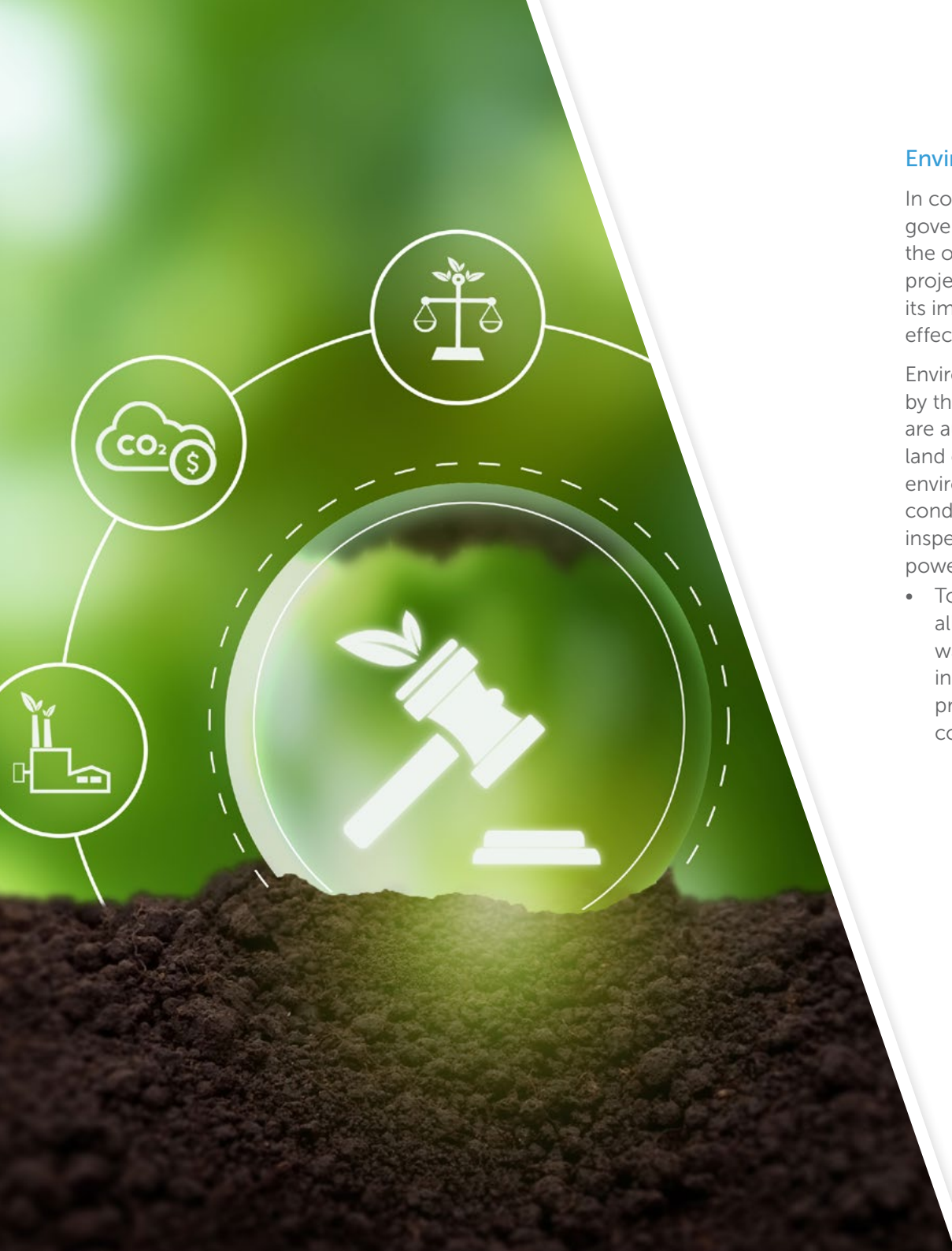
Environmental audits

The owner or operator of a project with an EIA report must keep accurate records and submit annual reports to NEMA, detailing how the project conforms to the EIA report and any

measures taken to mitigate unforeseen negative impacts. Ongoing carbon projects must conduct an environmental audit within six months of the EIAA Regulations' commencement, or risk cancellation of approval.

Self-auditing by the owner or operator is recognised, but NEMA can conduct control audits to check compliance or verify self-auditing reports. NEMA may also audit a project based on a public petition showing reasonable cause. Except for self-audits, all audits must be conducted by a NEMA-registered environmental auditor or inspector.

An initial audit must be conducted within 12 months of starting operations, or within 24 months of project completion, whichever is earlier. NEMA acknowledges receipt of audit reports within a week, and the review process takes about three months. No fees are required to lodge an audit, but the project proponent must cover the costs of the auditor. NEMA may issue improvement orders based on audit findings to address potential environmental threats.



Environmental monitoring

In consultation with other relevant government bodies, NEMA monitors the operation of any industry, project or activity to determine its immediate and long-term effects on the environment.

Environmental inspectors, appointed by the Director-General of NEMA, are authorised to enter any land or premises to monitor the environmental impact of activities conducted there. Environmental inspectors have a wide range of powers, including:

- To enter any land or premises at all reasonable times and without a warrant to make examinations and inquiries to determine whether the provisions of the EMCA are being complied with.

- With the written approval of the Director-General, order the immediate closure of any manufacturing plant or other establishment or undertaking which pollutes or is likely to pollute the environment and order remedial measures or issue an improvement notice.
- With an arrest warrant and the assistance of a police officer, arrest any person they reasonably believe has committed an offense

They may also institute and undertake criminal proceedings against any person before a court of competent jurisdiction.

Project or facility owners must assist environmental inspectors by allowing them entry and providing requested information. Failure to comply is an offense, punishable by one to four years in prison, a fine of between KES 2 million and KES 4 million, or both.

Environmental reporting

Environmental self-reporting requirements vary by sector, with specific laws and regulations for areas like air quality, energy and extractives. When self-reporting is mandated, it is typically required within 24 to 48 hours of the incident. In some cases, the owner or operator of the facility that is the subject of the environmental incident or damage will also be required to describe the circumstances surrounding the event and the corrective measures taken or planned to prevent future incidents.

Carbon projects must submit annual progress reports to the Designated National Authority, outlining performance and carbon credits generated or expected. Failure to report is a criminal offence. Listed companies are also required to disclose environmental information in their annual reports to the Capital Markets Authority, including the commercial, social and environmental context. To support this, the Nairobi Securities Exchange (NSE) issued ESG Disclosures Guidance in November 2021, standardising reporting through integrated or standalone sustainability reports. Companies were given a one-year grace period to familiarise themselves with the guidelines.

Banks and mortgage finance institutions licenced by the Central Bank of Kenya under the Banking Act, 1989 also have environmental reporting obligations. This follows the Central Bank of Kenya's Guidance on Climate-Related Risk Management issued in October 2021, which aims to enhance transparency by developing an appropriate approach for financial institutions to disclose climate-related information. Disclosure is benchmarked to the Task Force on Climate-related Financial Disclosures Framework.

Environmental licensing and permitting

In addition to the EIA licence that is necessary for business operations, sector-specific licences and permits are required. The table below highlights a non-exhaustive list of the environment-related licences and permits applicable in Kenya.



Sector		Example of Licences/Permit	Fees Payable		Renewal
BIODIVERSITY	Genetic resources	Access to genetic resources permit	Permit application fees: Individuals: KES 20,000 Corporate applicants: KES 50,000 To renew permit: Individuals: KES 10,000 Corporate applicants: KES 25,000		Annual
	Wildlife	Game farming permit	Between KES 1,000 and 2,000 depending on the nature of the business		Annual
		Import wildlife specimen permit	Between KES 1,000 and 2,000		Every three months
		Trophy dealer's licence	Between USD 100 and USD 15,000		Annual
		Export/re-export/import permit (universal specimen permit)	Between USD 100 and USD 15,000		Annual
	Forestry	Charcoal production licence	Fees vary depending on the quantity of wood being converted to charcoal		Annual or as specified
		Charcoal export permit	KES 5,000 per tonne		When required
		General forest licence	KES 10,000		Annual
		Movement permit for non-wood forest products	KES 2 per kilogram		When required
		Timber movement permit	2–4 tonnes	KES 1,000	When required
			5–7 tonnes	KES 1,500	
			Over 7 tonnes	KES 2,000	
			Imported timber per consignment	KES 20,000	
	Fisheries	Fish farming	KES 30,000 for farming in freshwater (within 300m ²) KES 50,000 for farming in freshwater over 300m ²		Annual
		Commercial aquaculture (marine)	Large: KES 75,000 Small: KES 20,000		Annual

Sector	Example of Licences/Permit	Fees Payable	Renewal
WASTE	Effluent discharge licence	Sewerage service providers: KES 500,000 Discharging facilities listed under the Fourth Schedule: KES 100,000 Institutions: KES 20,000 Other: KES 10,000	Annual
	Waste disposal licence	Fees vary between KES 3,000 and 75,000	Annual
	Waste transportation licence	Licence application fee: KES 3,000 Renewal fee: KES 5,000	Annual
	Waste treatment licence	Between KES 3,000 and 75,000	Annual
	Biomedical waste permit	Application fee: KES 3,000 Licence fee: KES 30,000	When required
	Hazardous export permit	Application fees: KES 3,000 Licence fees: KES 30,000	When required
	Clearance letter for primary industrial plastic packaging	KES 3,000	Annual
WATER	Water use permit	Depending on the water use category, for example: Category A: The application assessment fee is KES 2,000 without any fees to renew or obtain the permit Category B: The application assessment fee is KES 20,000 Category C: KES 40,000 Category D: KES 80,000 In addition, the water user is required to pay permit fees of KES 1,000, KES 25,000, KES 50,000 and KES 100,000 for categories A,B,C, and D respectively.	Every five years
	Water abstraction permit	KES 90,000 (KES 20,000 for NEMA authorisation, and 70,000 for WRMA authorisation)	Every five years
	Water service provider licence	Very large and large water services providers: Application fee KES 100,000 Medium and small water services providers: Application fee KES 75,000	Upon expiry but not exceeding 10 years
	Water service installation licence	Very large and large water services providers: Application fee KES 100,000 Medium and small water services providers: Application fee KES 75,000	Upon expiry but not exceeding 10 years

Sector		Example of Licences/Permit	Fees Payable	Renewal
INDUSTRY AND MANUFACTURING	Air pollution	Emissions licence	Fees range between KES 3,000 and 50,000 depending on the type and size of the facility	Annual
	Noise pollution	Licence to emit noise/vibrations in excess of permissible levels	Application fee: KES 200 Licence fee: KES 2,000	Annual
	Workplace safety	Workplace registration permit	Registration fee: KES 2,000 Occupational health and safety levy: KES 3,000	Annual
	Fireworks	Permits for fireworks, demolition, firing ranges, and specific heavy-duty industry	Application fee: KES 500 Permit fee: KES 5,000	Every three months
CARBON MARKETS		Carbon project application (letter of no objection)	Citizen fee: KES 10,000 Non-citizen fee: KES 100,000	N/A
		Carbon project design document fee (approval of project design document)	Citizen fee: KES 100,000 Non-citizen fee: KES 200,000	N/A
		Letter of approval	Administrative fee - Carbon projects with projected annual issuance of 15,000 carbon credits per annum or less: KES 150,000 - Carbon project with projected annual issuance of more than 15,000 carbon credits per annum: KES 300,000 Upon issuance - KES equivalent of USD 0.10 per carbon credit issued for the first 15,000 tonnes of CO2 equivalent for which issuance is requested in a given year. - KES equivalent of USD 0.20 per carbon credit issued for any amount in excess of 15,000 tonnes of CO2 equivalent for which issuance is requested in a given year.	N/A
		Authorisation to international transfer of mitigation outcomes (letter of authorisation)	The KES equivalent of USD 4 per unit of Internationally Transferred Mitigation Outcome.	N/A



Liability for environmental harm

The right to a clean and healthy environment is guaranteed under Kenya's Constitution. Everyone must establish a clean and healthy environment. Equally, business undertakings in all sectors of the economy must be carried out in a manner that does not threaten this right.

The Constitution provides a mechanism for enforcing this right. Anyone who alleges a violation or threat to this right can apply to the High Court for redress. The High Court may make orders, issue writs or give direction to protect that right. Notably, a person does not have to show that they have been directly affected by the violation or the threatening violation to seek remedy in court. This has opened a window for public interest environmental litigation, which is increasingly common.

Liability for environmental harm can be determined under civil or criminal law. Environmental inspectors can initiate criminal proceedings for offenses under the EMCA against any person, including company directors.

The climate change framework also provides for a grievance recourse mechanism for carbon market projects. Disputes from a land-based carbon project are to be subjected to the procedure detailed in the project's community development agreement, whereas disputes arising from a non-land-based carbon project are to be subjected to alternative dispute resolution mechanisms. Where the disputes remain unresolved, they may be referred to the National Environmental Tribunal from which the appeal lies at the Environmental Land Court.

The National Environmental Tribunal hears disputes related to decisions by NEMA on licences. The Environment and Land Court enforces environmental rights and has jurisdiction over environmental planning, protection, trade, climate issues, land use and natural resources. The court can act as a first instance or appellate court and may grant various reliefs, including injunctions, orders, damages, compensation, restitution, specific performance and declarations.

A healthy future

Environmental resources are recognised as vital for development, and there are several tools and mechanisms established under the laws of Kenya for environmental protection. Depending on the nature of a business, requirements will range from the need for an EIA, auditing, environmental reporting and facilitating inspection, to obtaining a variety of licences and permits, amongst other requirements.

Increasingly, and buoyed by the Constitution, which guarantees the right to a clean and healthy environment, there is significant concern for ecological issues and the judicial process is often invoked to enforce the requirements set out in law for environmental management, conservation and protection.

Businesses operating in Kenya should therefore put in place adequate measures that yield economic growth, meet societal needs and conserve the environment, and it is advisable for specific legal advice to be sought where necessary, to ensure that corporate operations do not flout environmental laws and regulations.

CHAPTER SEVEN

Tax

In this chapter, we explore the tax regime in Kenya and its implications for businesses.





The tax regime in Kenya

The Kenyan Constitution, 2010 forms the basis upon which taxes are imposed in Kenya. The National Government is responsible for the imposition of:

- Income tax
- Value-added tax
- Customs duties and other duties on import and export goods
- Excise tax

County Governments may impose:

- Property rates
- Entertainment taxes
- Any other tax authorised by an act of Parliament

All taxes must be imposed, waived, or varied in accordance with the relevant tax laws. Tax laws are usually reviewed annually through the Finance Act.

The KRA, established under the Kenya Revenue Authority Act, 1995, collects and receives all national tax revenue on behalf of the Government of Kenya. The Commissioner-General appointed under the Kenya Revenue Authority Act (Commissioner) is responsible for the administration of tax laws, including the control and collection of taxes and accounting for collected taxes.

Governing laws

Multiple laws govern the administration and collection of taxes in Kenya. Tax laws in Kenya include the:

- Tax Procedures Act, 2015
- Income Tax Act, 1974 (Income Tax Act)
- Value Added Tax Act, 2013 (VAT Act)
- Excise Duty Act, 2015 (Excise Duty Act)
- Miscellaneous Fees and Levies Act, 2016
- East African Community Customs Management Act, 2004

The various types of taxes in Kenya

Income tax

Income tax is charged annually on all income earned or derived from Kenya, whether by residents or non-residents. The scope of taxable income has been expanded to include, among other things, regular payments for the use of software through a distributor, and new categories of digital and electronic transactions. Income subject to income tax includes:

- gains or profits from any business;
- gains or profits from employment or services rendered;
- gains or profits from rights granted to any other person for use or occupation of property;
- dividends or interest;
- pension, charge or annuity and any withdrawals out of a registered pension fund or registered provident fund or a registered individual retirement fund or a registered home ownership savings plan;
- income accruing from business carried out over the internet or an electronic network, including a digital marketplace;
- an amount deemed to be income of any person under the Income Tax Act;
- capital gains;
- gains on disposal of an interest in a person, if the interest derives 20% or more of its value directly or indirectly from immovable property in Kenya; and
- a natural resource income.

Income tax rates vary. The corporate income tax rate is 30% for a local company and 30% for a branch (foreign company). Branches of foreign companies will also be subject to a tax on repatriated income at the rate of 15%.

The rates for personal income tax are:

Tax bands	Annual	Monthly	Rate
On the first	KES 288,000	KES 24,000	10%
On the next	KES 100,000	KES 8,333	25%
On the next	KES 5,612,000	KES 467,667	30%
On the next	KES 3,600,000	KES 300,000	32.5%
On all income in excess of	KES 9,600,000	KES 800,000	35%

Corporate income tax is payable in four instalments, and a return must be filed within six months of a company's financial year end. Personal income tax from employment is accounted for monthly by the employer, and the employee must file a return by 30 June of the following year.

The Finance Act, 2025 has now reduced the timelines for carry forward of tax losses. Tax losses can now only be carried forward for a maximum of five years (previously indefinite) with a further extension of five years on application to the Cabinet Secretary.



Significant economic presence tax

The recently enacted Tax Laws (Amendment) Act has introduced the significant economic presence (SEP) tax, replacing the digital service tax (DST) with effect from 27 December 2024. SEP is payable by non-resident persons deriving or accruing income from Kenya from the provision of services over the digital marketplace. A non-resident has a significant economic presence if the user of the digital service is in Kenya. The SEP tax rate is 3% of the gross turnover, with taxable profit deemed to be 10% of the gross turnover.

Income exempt from SEP includes income:

- of non-resident providing digital services through a permanent establishment in Kenya;
- subject to withholding tax pursuant to section 10 of the Income Tax Act;
- of a non-resident person providing digital services to an airline in which the Government of Kenya has at least a 45% shareholding;
- of a non-resident person with an annual turnover of less than KES 5 million; or

- derived from the business of transmitting messages by cable, radio, optical fibre, television broadcasting, Very Small Aperture Terminal, internet, satellite or by any other similar method of communication.

The Finance Act, 2025 expanded the SEP tax to now include income from a business carried out via the internet or an electronic network, not just digital marketplaces and repealed the KES 5 million annual turnover exemption for non-resident persons.

SEP is due monthly, and payments are made on or before the twentieth day of the month after the digital service was offered.

Minimum top-up tax

The Tax Laws (Amendment) Act introduces a minimum top-up tax for covered persons. These include residents or non-residents with a permanent establishment in Kenya who are part of a multinational group with an annual turnover of EUR 750 million or more. The tax applies if their effective tax rate for the year is less than 15%.

The amount payable is the difference between 15% of their net income and their effective tax rate. However, the following are exempt from this tax:

- public entities not engaged in business;
- persons whose income is exempt under paragraph 10 of the First Schedule to the Income Tax Act;
- pension funds and assets of that pension fund;
- a real estate investment vehicle that is an ultimate parent entity;
- non-operating investment holding companies;
- an investment fund that is an ultimate parent entity;
- a sovereign wealth fund; or
- an intergovernmental or supranational organisation, including a wholly owned agency or organ of the intergovernmental or supranational organisation.

Minimum tax is on or before the last day of the fourth month after the end of the year of income.

Digital asset tax

The Finance Act, 2025 has repealed the provision on digital asset tax. This has been substituted by an excise duty at the rate of 10% that is now applicable on the fees charged on virtual asset transactions by virtual asset providers.

Value-added tax

VAT in Kenya is charged on goods and services sold by registered businesses, as well as on imported goods and services, according to the VAT Act. The rate of VAT in Kenya is:

Rate	Supply
0%	Zero-rated supplies listed in the Second Schedule to the VAT Act.
16%	General rate for other goods and services (unless exempt under the First Schedule or zero rated under the Second Schedule).

VAT should be accounted for and remitted on or before the twentieth day of the following month.

Excise duty

Excise duty is established under the Excise Duty Act and is charged on:

- excisable goods manufactured in Kenya by a licenced manufacturer;
- excisable services supplied in Kenya by a licenced person;
- excisable goods imported into Kenya; and
- excisable services offered in Kenya by a non-resident person over the internet, an electronic network or through a digital marketplace.

Excise duty rates are set under Part I of the Excise Duty Act. Licenced manufacturers or service providers must pay excise duty by the twentieth of the following month, while importers must pay at the time of importation. The Tax Laws (Amendment) Act has changed the payment deadlines for licenced manufacturers of alcoholic beverages to the fifth day of the following month upon removal of the goods from the stockroom. The payment deadline for betting and gaming companies was also changed to within 24 hours by the Finance Act, 2023.



Tax incentives and special tax regimes

Currently, there are several corporate tax incentives and special tax regimes available. These include the investment deduction, EPZs and SEZs.

Investment deduction

The Finance Act, 2022 reintroduced a 150% investment deduction allowance for projects. This applies to projects where the cumulative investment value for the preceding four years from 1 July 2022, or the cumulative investment for the succeeding three years, outside Nairobi County or Mombasa County, is at least KES 2 billion.

SEZs

Entities registered under the SEZ regime benefit from a reduced corporation tax rate of 10% for the first 10 years and 15% for the next 10 years. Additionally, the supply of goods or taxable services to a SEZ enterprise is zero rated, meaning it is subject to VAT at 0%. capital gains tax()

EPZs

Companies located in an approved EPZ, primarily for exporting goods, are taxed at a corporate income tax rate of 0% for the first 10 years and at a rate of 25% for the next 10 years. Similar to SEZs, VAT is zero rated for supplies to an EPZ entity.

Tax on repatriation of income (dividends, interest, royalties, management services)

Investors can send their earnings out of Kenya without any foreign exchange restrictions, but they must pay the relevant taxes. The Finance Act, 2023 introduced a 15% tax on income sent out of Kenya by businesses owned by non-residents with a permanent establishment in Kenya.

Capital gains tax

CGT is a tax on the profit made from selling capital assets. The person selling the property must declare and pay this tax. The CGT rate is 15% of the profit and is considered a final tax, meaning no further taxes are applied. The profit is calculated by subtracting the costs of buying and selling the property from the sales proceeds. CGT can be paid upon registration of the transfer of the property. Some allowable expenses for CGT purposes include:

- Loan/mortgage interest
- Cost of advertising to find a buyer
- Valuation costs of the property
- Legal fees
- Costs of enhancements

The transfer value/selling price for the purposes of CGT is determined from:

- The amount received for transferring the property.

- Sums received for the abandonment, forfeiture or surrender of the property.
- The amount received for the use of exploitation of the property e.g. rent.
- Compensation received for damage, injury to the property or the loss of the property.
- Insurance policy reimbursement in respect of injury or loss, or damage to the property.





Notwithstanding the above, not all transfers are subject to CGT. Some of the exemptions include:

- Issuance by a company of its own shares and debentures.
- Transfer of property for the purpose only of securing a debt or a loan.
- Transfer by a creditor for the purpose only of returning property used as security for a debt or a loan.
- Transfer by a personal representative of any property to a person as a beneficiary in the course of the administration of the estate of a deceased person.
- Transfer of assets between spouses.
- Transfer of assets between former spouses as part of a divorce settlement or a bona fide separation agreement.
- Transfer of assets to immediate family.
- Transfer to a company where spouses and immediate family hold 100% shareholding.

Investors who invest at least KES 3 billion in at least one entity registered or incorporated in Kenya within two years will enjoy reduced CGT of 5% (instead of 15%) upon the transfer of their shares where the transfer occurs within five years after the investment. Such investments must, however, be certified by the Nairobi International Financial Centre Authority.

Withholding tax

Withholding tax is a tax withheld at source. The onus is on the person making the payments to deduct tax at the applicable rate and remit the tax to the KRA on behalf of the recipient. Investors should consider withholding tax because dividends, royalties, interest and management fees are also methods of repatriating income which are subject to withholding tax. The percentage deducted varies depending on the source of income and is dependent on whether someone is resident or non-resident. Some of the payments subject to withholding tax include:

	Resident rate	Non-resident rate
Dividends	5%	15%
Management, professional or training fees	5%	20%
Contractual fees	3%	20%
Royalties	5%	20%
Interest	15%	15%
Payments on a digital marketplace	5%	20%

The rates of withholding tax applicable for non-residents may decrease if the payee is a resident of a country that has a double taxation agreement with Kenya.

Dividends paid to a resident corporate shareholder with more than 12.5% voting power are exempt from withholding tax.

Turnover tax

Turnover tax (TOT) is a tax charged on gross sales of a business at the rate of 1.5%. The tax is payable by resident persons whose gross turnover is more than KES 1 million and does not exceed KES 25 million in any given year. The due date for filing and paying TOT is the twentieth day of the following month.

The following incomes are exempt from TOT:

- Rental income
- Management, professional or training fees
- Any income which is subject to a final withholding tax

Advance Pricing Agreements

Following the enactment of the Finance Act, 2025, the KRA is now empowered to enter into Advance Pricing Agreements (APAs) with taxpayers engaged in related party transactions with effect from 1 January 2026. These agreements enable businesses to agree in advance on the most suitable transfer pricing method, which will apply consistently over a defined period of up to five years. By agreeing on the pricing method in advance, APAs provide taxpayers with greater certainty regarding the arm's length nature of their intercompany transactions.

Double taxation treaties

Kenya has double taxation agreements (DTAs) with multiple countries, including: Denmark, Canada, Germany, France, Iran, India, Norway, South Korea, Qatar, Sweden, South Africa, the United Arab Emirates, Zambia, the UK, and the Seychelles. Kenya is also negotiating DTAs with other countries including Belgium, Egypt, Ghana and Japan.

Tax disputes

The dispute settlement process entails the following steps:

1. Request for information/tax audit/assessment/tax decision
2. Objection to the assessment/tax decision
3. Objection decision
4. Appeal to the Tax Appeals Tribunal
5. Appeal to the High Court
6. Appeal to the Court of Appeal
7. Appeal to the Supreme Court

Request for information/tax audit/assessment/tax decision

The KRA typically requests information from taxpayers and engages with them before making an assessment or tax decision. If the KRA is conducting an audit, it will inform the taxpayer and discuss the audit findings. If the taxpayer does not respond or if the KRA is not satisfied with the information provided, it will issue an assessment or tax decision. Taxpayers have the right to object to the assessment or tax decision.

Objection to the assessment/tax decision

If a taxpayer wishes to dispute an assessment or tax decision, they are required to first lodge an objection against the tax decision. The process begins by submitting a notice of objection to the Commissioner of the KRA within 30 days of receiving the decision notification.

The notice of objection must:

- precisely state the grounds of objection, the amendments required to correct the decision, and the reasons for the amendments;
- in relation to an objection to an assessment, state that the taxpayer has paid the entire amount of tax due under the assessment that is not in dispute or has applied for an extension of time to pay the tax not in dispute; and
- be accompanied by all the relevant documents relating to the objection.

Where the Commissioner determines that a notice of objection lodged by a taxpayer has not been validly lodged, the Tax Procedures Act requires the Commissioner to notify the taxpayer in writing within 14 days that the objection has not been validly lodged, and request the taxpayer to submit the information specified in the notice within seven days after the date of the notice.

Objection decision

The following process ensures that taxpayers have a clear and structured path to follow when disputing an assessment or tax decision, providing them with the opportunity to seek further recourse if they are not satisfied with the outcome.

Once a taxpayer lodges a valid objection, the Commissioner reviews it and decides whether to fully or partially allow it, or to disallow it. This decision, known as an objection decision, must be made within 60 days. The Commissioner then notifies the taxpayer in writing about the objection decision and takes the necessary steps to implement it, which may include issuing an assessment or an amended assessment.

According to the Tax Procedures Act, if the Commissioner fails to make a decision within 60 days of receiving a valid notice of objection, the objection is deemed allowed. If the taxpayer is dissatisfied with the Commissioner's decision, they can appeal to the Tax Appeals Tribunal within 30 days by filing a notice of appeal.



Appeal of appealable decision to the tribunal

Further to the Tax Appeals Tribunal Act, an appeal is conducted as follows:

1	Lodge the appeal	The appeal is lodged with the Tax Appeals Tribunal through a notice of appeal, either in writing or electronically, within 30 days of receiving the Commissioner's decision.
2	Submit documents	The appellant must submit sufficient copies of a memorandum of appeal, a statement of facts and the tax decision, as advised by the tribunal, within 14 days of filing the notice of appeal.
3	Serve the Commissioner	The appellant is required to serve a copy of the appeal to the Commissioner within two days of giving notice of appeal to the Tax Appeals Tribunal.
4	Tribunal hearing	The tribunal is obligated to hear and determine the appeal within 90 days from the date the appeal is filed, although in practice, some appeals may take longer.
5	Settling outside the tribunal	Parties to an appeal can apply in writing to the Tax Appeals Tribunal to settle the dispute outside of the tribunal.

Appeals to the High Court

If a party is dissatisfied with the decision of the Tax Appeals Tribunal, they may appeal to the High Court within 30 days of being notified of the decision. The High Court may also allow a further period for the appeal, in accordance with the provisions of the Tax Appeals Tribunal Act, 2013.

Appeals to the Court of Appeal

A party who is dissatisfied with the decision of the High Court in relation to an appealable decision may, within 30 days of being notified of the decision or within such further period as allowed by the court, appeal to the Court of Appeal.

Appeals to the Supreme Court

A party who is dissatisfied with the decision of the Court of Appeal may appeal to the Supreme Court on matters involving interpretation of the Constitution or involving public importance.

Alternative dispute resolution (settlement out of the tribunal or court)

Parties can at any time during the tax dispute settle the case out of the tribunal or court. Alternative dispute resolution is encouraged. If the Tax Appeals Tribunal or courts permit the parties to settle a dispute, the alternative dispute resolution must be conducted within 120 days from the date it was permitted. Any areas of a tax dispute that are not settled through alternative dispute resolution can be referred back to the court or the tribunal for judgment.

Concluding remarks

We hope this guide has given you helpful insights into doing business in Kenya. If you have any questions or would like further support, please feel free to get in touch. We're here to help you navigate the Kenyan business environment and work towards your goals with confidence.



BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

PLEASE NOTE

This information is published for general information purposes and is not intended to constitute legal advice. Specialist legal advice should always be sought in relation to any particular situation. Cliffe Dekker Hofmeyr will accept no responsibility for any actions taken or not taken on the basis of this publication.

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