Chandrawat & Partners

DOING BUSINESS IN KENYA

enquiries@chandrawatpartners.com www.chandrawatpartners.com

CONTENTS — PAGE NO.

INTRODUCTION

Foreign investors from all over the world have long been drawn to Kenya because of its advantageous location in East Africa. Kenya has placed a high priority on fostering economic growth that is driven by the private sector and improving business conditions for both domestic and international companies.

'Vision 2030', the Kenyan government's 23-year development plan, was unveiled in 2007. It seeks to make Kenya a competitive, successful country that offers its residents a high-quality lifestyle in a safe and secure environment. The Kenyan government is actively promoting the Ease of Doing Business Agenda, enhancing infrastructure, and revising legislation in order to achieve this.

Business Culture

Kenya's business culture is respectful, with business meetings made mostly by appointment. Business etiquette is hierarchal, with the most senior person in a room usually acknowledged first with proper protocol as to title, for example, mister, professor, doctor. However, this may vary from business to business.

ECONOMIC REVIEW

Kenya is the only economy in east Africa whose projected economic growth for 2023 has been revised upwards by international Monetary Fund ("IMF") in its latest review, giving Nairobi a major confidence boost as it fights an economic crisis.
In the just released of world economic outlook, IMF now projects that Kenya will grow at a rate of 5.3% in 2023 from 5.1% forecasted in October 2022.

The IMF has revised projections for Rwanda, Uganda, Burundi and the Democratic Republic of Congo ("DRC") downwards. Burundi's projected growth for 2023 has suffered the largest slash of 80 basis points to 3.3 percent followed by Rwanda's whose projected growth has been downgraded by 50 basis points to 6.2 percent.

The strong headline GDP growth amid the poly-crisis highlights the resilience of the Kenyan economy. Like many countries across the world, Kenya faced inflationary pressures amid commodity price volatility, tightening global financing conditions that put major pressure on the exchange rate and foreign exchange reserves, further aggravated by the worst drought in four decades, significantly increasing food insecurity and affecting millions of livelihoods.

Macroeconomic policy aimed at striking a balance in a complicated economic environment through a combination of greater exchange rate flexibility, fiscal consolidation, and a tighter monetary policy.

The fund also expects Kenya's economy to grow faster than had been earlier projecting moderate acceleration in the economy's growth momentum to 5.4% in 2024.

The pervasive downward revision of growth projections in East Africa comes at a time when the region is grappling with a multiplicity of shocks including drought and spill-overs from the war between Russia and Ukraine.

In its latest forecast, IMF has also printed grim picture as far as the cost of living in East Africa is concerned. The fund now projects Kenya's inflation rate to average 7.8% in 2023 a revision from the softer 6.6% that had been projected in October 2022.

This means that IMF expects Kenya's average inflation rate for 2023 to stand above the Central Bank of Kenya's prescribed ceiling of 7.5 percent.

FOREIGN DIRECT INVESTMENT POLICY

The country's dwindling FDI profile appears to reflect its unstable political and economic climate. According to UNCTAD's Investment Report 2022, In early May, it was reported that "foreign investment in Kenyan stocks has nosedived", with the stock market now kept afloat by local investors.

In 2022, foreign investors withdrew $170m from the Nairobi Securities Exchange, citing escalating global risks.

Solomon Kariuki, an Africa research analyst at AIB-AXYS, told Business Daily:

These foreign investors are not really moving back home but playing in frontier markets. There were better returns from markets such as Nigeria, Zimbabwe, and Mauritius. Moreover, a hike in interest rates in developed countries has reduced investment appetite for Africa's capital markets.

KEY SECTORS

The main sectors contributing to economic growth are building and construction, infrastructure development, manufacturing, transport and services, and tourism particularly from emerging markets; agriculture and wholesale and retail.

Agriculture:

Agriculture Sector is the mainstay of the economy. The sector contributes 25% to GDP directly, forms 65% of Kenya's total exports and provides 18% of formal employment. The agricultural sector is not only the driver of Kenya's economy but also the means of livelihood for the majority of Kenyan people.

Tourism:

The sector has been growing fast as a result of various factors such as liberalization, persification of tourist markets and continued Government support and commitment to providing an enabling environment, coupled with successful tourism promotion and political stability.

Manufacturing:

This sector is mainly agro-based at the moment and plays an important role in adding value to agricultural output by providing forward and backward linkages with the agricultural sector. However, there is a shift to export-oriented manufacturing as the main thrust of Kenya's industrial policy since the country aims to raise the share of products in the regional market from 7% to 15 % and develop niche products for existing and new markets.

Transport and Infrastructure:

In this regard, the country has highlighted a number of infrastructure projects that present significant opportunities for investors in the coming years. It is important to note that while the Government has put forward plans on how it would like to develop infrastructure, it is equally open to ideas and proposals from potential investors.

Information and communications technology ("ICT"):

The size of the local ICT market is estimated at US$ 500 million and it is of note that companies such as Spanco, followed Airtel into Kenya to continue servicing them. These companies are expected to expand into the region, given Kenya's relative sophistication compared to neighboring markets, and in order to service clients' expansion plans into the EAC and beyond.

Building and Constructions:

Kenya has a well-developed building and construction industry with quality engineering, building and architectural design services being readily available.

ADVANTAGES

Due to its geographical position, Kenya is one of the most crucial and reliable logistical conduits into East Africa, positioned on the Indian Ocean and with access to key shipping lanes coming from both Europe and Asia. It also serves as the regional financial hub, allowing more than 70% of all Kenyans to have access to financial services, the highest of all countries in the region.

Kenya is an excellent market in the East Africa Community, which is a hub of a 150 million people region (Tanzania, Uganda, Rwanda, Burundi, and Kenya) with a forthcoming monetary union that is expected to attract a surge in foreign investments.

This monetary union is expected to unfold over the next 10 years, allowing for a steady expansion in its economy.

As an ex-British colony, Kenya has inherited their proficiency in English and it is widely spoken in business, schools and government. This has allowed for ease in communication with foreign firms and entrepreneurs. With a relatively high literacy rate of 88%, Kenya has the region’s strongest pool of available human resources to tap into.

Although Kenya does not have a long history of the government supporting startups, the government has recently started developing initiatives to help establish a conducive infrastructure. Recent projects include a giant tech city “Konza city” dubbed the “Savannah Sillicon” as well as legislative overhauls, such as the presidential directive that 30% of public tenders be reserved for companies started by youth (below 25).

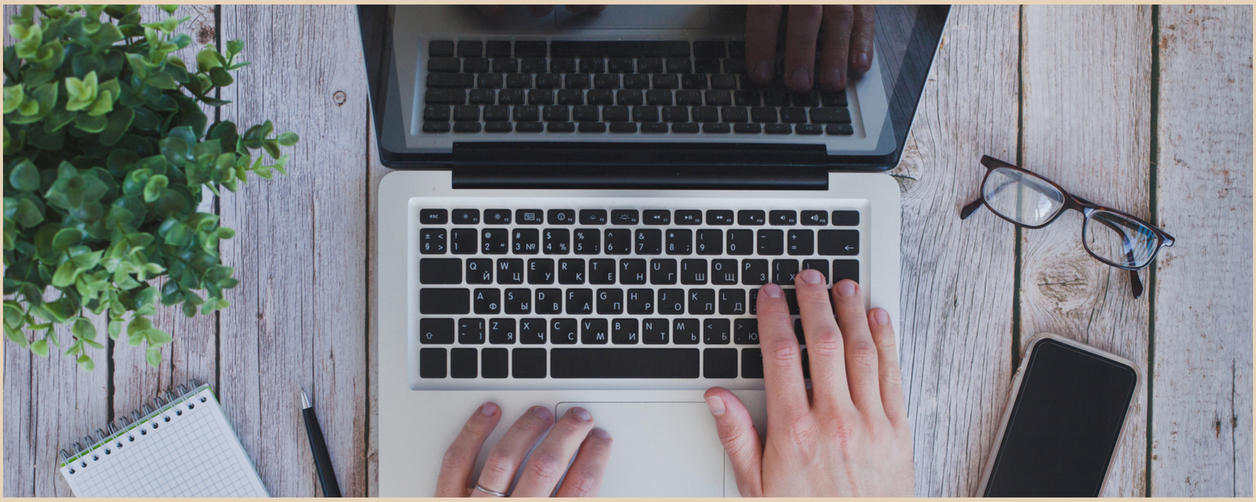
The mobile market has also grown significantly, with mobile subscriptions rising from 10 thousand to 3 million. The growth of mobile money has also resulted in Kenya being the foremost country in the world in terms of mobile money technology. This is definitely an interesting area to look at for any startups looking at the growing market of mobile payments or e-commerce.

The Kenyan economy is also very diversified, with strong growth in its horticulture, financial, transportation and tourist industries. With its strong diversified economy, it has become the main center and headquarters for many industries in the area. At the same time, this opens up many innovation possibilities in the various different industries.

For any startups leveraging on the power of social media, Kenya is an excellent market to leverage on the existing social community. A unique feature of Kenya's economy being the large cooperative & sharing economy that accounts for 42% of GDP. This sharing economy takes place in the form of chamas, something we covered here.

With roughly 8% or nearly 4 million Kenyans currently in diaspora, their potential to the economy is not insignificant. Kenya, growing at roughly 11% every year. This has provided a steady source of income for the domestic population, increasing their disposable income and ability and willingness to engage in social connectivity.

TYPES OF BUSINESS IN KENYA



There are several types of business entities that you can register to do business in Kenya:

Business name/ sole proprietorship: This is the simplest form of business entity that you can register in Kenya. Business name is a sole proprietorship where you and the business are one and the same. This simple form of business structure assumes that the business and its owner share the liabilities of the business.

Partnership: A business partnership requires a maximum of 20 directors to register the partnership business in Kenya. Any numbers higher than this and the company must be registered under the companies Act of 2015. A partnership is registered as a business entity between 2 or more directors where each holds equal liability to the business.

Private limited company: This is a form of limited liability company LLC which considers the shareholders as separate entities to the company. In limited company by shares, the registrar treats the company as a separate entity, to which the subscribers get issued shares depending on the memorandum of association between them. In this case, each shareholder takes out shares in the company and becomes a shareholder of xyz number of shares.

.

Company limited by guarantee: A company limited by guarantee or CLG is an entity registered as a nonprofit organization. This means that the directors cannot draw profits from the income earned by the company. This type of company is primarily used for not-for-profit organizations like NGOs.The directors in this CLG companies must undergo vetting by the National Security and Intelligence Services NSIS before the company can be registered

Public limited company: A public limited company is a business entity that allows the general public to buy, or transfer shares even to non-members of that company. A public limited company is an entity, therefore, that allows its shares to be freely sold and traded to the public.

Foreign company branch office: A foreign company is referred to as a company that is registered in another country outside Kenya and under the laws of that country. In some cases, a parent company located in a second country wishes to start a business in Kenya and retain its identity.

Unlimited company: An unlimited assets company is a type of private company. It is a hybrid company registered with or without a share capital but where the legal liability of the members or shareholders is not limited, that is, its members or shareholders have a joint and several non-limited obligation to meet any insufficiency in the assets of the company to enable settlement of any outstanding financial liability in the event of the company's formal liquidation.

MINIMUM ELIGIBILITY CRITERIA

Here are the general requirements for company registration in Kenya:

Company name: Choose a unique name for your company that is not already in use by another registered entity in Kenya. The name should not violate any trademark laws, and it should not be misleading or offensive.

Registered office: You need to provide a physical address in Kenya where your company's registered office will be located. This address will be used for official correspondence.

Company secretary: Appoint a company secretary who must be a resident of Kenya. For private companies, it is not mandatory to have a company secretary, but it is recommended.

Share capital: There is no minimum share capital requirement for private companies, while public companies must have a minimum authorized share capital of KES 5,000,000.

Tax registration: Register for taxes with the Kenya Revenue Authority (KRA) and obtain a Tax Identification Number ("TIN").

Registration fees:
Pay the prescribed registration fees to the Registrar of Companies. The fee is based on the company's authorized share cap

Submission of documents: Prepare the necessary registration documents, including completed application forms, the Memorandum and Articles of Association, and copies of identification documents for directors and shareholders. Submit these documents to the Registrar of Companies.

HOW TO SET UP BUSINESS?

Step 1 – Select the appropriate business structure. The first step is to select the appropriate business structure for your proposed venture. You can choose to register a sole proprietorship, partnership, Limited partnership, limited liability company (LLC), Branch companies or Companies limited by Guarantee

Step 2 – Choose a company name The next step is to choose a name for your Company/business. The name must be unique and not already registered by another entity, so you should conduct thorough research before selecting your desired name.

Step 3 – Prepare and submit the company registration forms
The forms for company registration in Kenya include the following:

CR1 – Shows the list of Directors in the company
Cr2 – Shows the list of shareholders in a company
Cr8 – Shows the addresses of the directors
Statement of nominal capital – Captures the share capital of the company
BOF1 – Used to declare the beneficial owners of a company

HOW TO SET UP BUSINESS?

Step 4 – Certificate of incorporation. Once the above forms are submitted and payment done, your application is approved within one week and here you will receive a Certificate of Incorporation. The Certificate bears the date of registration, entity registration number and the registered name.

Step 5 – Register for tax After company registration in Kenya, the next step is to register the company for Tax for ease of doing business, payment of relevant taxes and Tax Compliance. The Tax registration Process takes about 7 working days.

Step 6 – Open Bank Account The final step to getting a fully fledged company is to open a corporate bank account. Here you have the option of opening the company account in any of the 28 Local or in the 14 international banks in Kenya. Here we recommend that you choose the bank that is easy to open and run the account. Once the bank account is opened you can go ahead and start the recruitment process, apply for work permits, and process any other relevant registration.

TAXATION

Overview of the taxation framework in Kenya:

Corporation tax

This is a form of Income Tax that is levied on corporate bodies such as Limited companies, Trusts, and Co-operatives, on their annual income.

Companies that are based outside Kenya but operate in Kenya or have a branch in Kenya pay Corporation Tax on income accrued within Kenya only.

Pay as you earn ("PAYE")

This is a method of collecting tax at source from individuals in gainful employment.

Companies and Partnerships with employees are required to deduct tax according to the prevailing tax rates from their employees' salaries or wages on each payday for a month and remit the same to KRA on or before the 9th of the following month

Withholding tax ("WHT")

This is a tax that is deductible from certain classes of income at the point of making a payment, to non-employees.

WHT is deducted at source from the following sources of income:

- ·Interest
- ·Dividends
- ·Royalties

·Management or professional fees (including consultancy, agency or contractual fees)

·Commissions

·Pensions

·Rent received by non-residents

·Other payments specified

Companies and partnerships making the payment, are responsible for deducting and remitting the tax to the Commissioner of Domestic Taxes.

Advance tax
This is a tax paid in advance before a public service vehicle or a commercial vehicle goes for the annual inspection.

Installment tax
Installment tax is paid by persons who have tax payable for any year that amounts to Kshs. 40,000 and above.

Rental income tax. All persons individuals, partnerships and companies that rent out property to other persons for either residential or commercial use are required to pay income tax on rent received.
To facilitate compliance, KRA appoints agents to withhold and pay, a percentage of the gross rent as tax. These agents can be verified via the agent checker on iTax.

Value added tax ("VAT")
Value Added Tax is charged on supply of taxable goods or services

Excise duty
This is a duty of excise imposed on;
- goods manufactured in Kenya, or;
- imported into Kenya and specified in the 1st schedule to Excise Duty Act, 2015.

The List and types of Excisable goods and services are listed in the 5th Schedule as read together with Section 117 (1) (d) of the Customs and Excise Act, CAP 472 Laws of Kenya.

They includes;

- Mineral water
- Juices, soft drinks
- Cosmetics and Preparations for use on hair
- Other beer made from malt
- Opaque beer
- Mobile cellular phone services
- Fees charged for money transfer among others

ACCOUNTING STANDARDS

The accounting standards applicable for doing business in Kenya are based on the International Financial Reporting Standards ("IFRS") as issued by the International Accounting Standards Board ("IASB"). The Accounting Standards Board ("ASB") of the Institute of Certified Public Accountants of Kenya ("ICPAK") is responsible for adopting and implementing these standards in Kenya.

The main accounting standard in Kenya is the Kenya Financial Reporting Standard ("KFRS"), which aligns with the IFRS. The KFRS provides guidelines on financial reporting for various types of entities, including companies, non-profit organizations, and small and medium-sized enterprises ("SMEs").

EMPLOYMENT AND LABOR LAW

Employment and labor law in Kenya is governed by various statutes and regulations that aim to protect the rights of workers and regulate the employer-employee relationship. The primary legislation governing employment and labor law in Kenya includes the Employment Act, the Labor Relations Act, and the Occupational Safety and Health Act, among others. Here are some key aspects of employment and labor law in Kenya:

Employment Contract: The Employment Act requires employers to provide written employment contracts to their employees within three months of the commencement of employment. The contract should include terms and conditions of employment, such as wages, working hours, leave entitlements, and termination procedures.

Minimum wage: The Minimum Wage Order sets the minimum wage rates for different sectors and categories of workers. Employers are required to pay their employees at least the minimum wage specified for their sector.

Working hours: The standard working hours in Kenya are 45 hours per week, with a maximum of 9 hours per day. Any work beyond these hours is considered overtime, and employees are entitled to overtime pay.

Leave entitlements: The Employment Act provides for various types of leave, including annual leave, sick leave, and maternity leave. Employees are entitled to annual leave of at least 21 working days per year, sick leave of up to 7 days per year, and maternity leave of at least 3 months.

Termination of employment: The Employment Act sets out the procedures and requirements for terminating employment contracts. It provides for both the employer's right to terminate employment for various reasons, such as redundancy or misconduct, and the employee's right to terminate employment by giving notice.

Termination of employment: It provides for both the employer's right to terminate employment for various reasons, such as redundancy or misconduct, and the employee's right to terminate employment by giving notice.

Discrimination and harassment: The law prohibits discrimination in employment on grounds of race, color, sex, religion, marital status, disability, or HIV status. It also prohibits sexual harassment in the workplace.

Trade unions and collective bargaining: The Labor Relations Act recognizes the right of workers to form and join trade unions. It also provides for collective bargaining between employers and trade unions, and the resolution of labor disputes through conciliation, mediation, or arbitration.

Occupational safety and health: It imposes obligations on employers to provide a safe working environment, training on health and safety, and proper safety equipment

HOW WE CAN HELP?

We offer a range of services, including company registration, tax advisory, and legal support. Our team of experts has extensive experience working with foreign companies in and can provide tailored solutions to meet the business needs.

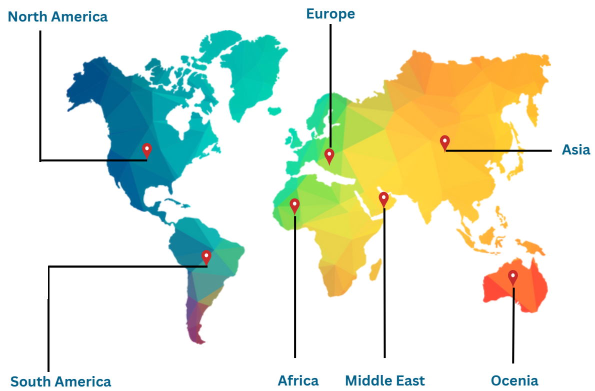
Our team can provide legal advice on the regulatory framework for automotive sectors, and automotive companies to drive efficiencies, unlock new value, improve the customer experience, and generate new business models.

Our team ensure that the business complies with all applicable laws and regulations, including consumer protection, labor, product safety, and environmental laws.

Our team can assist with obtaining the necessary licenses and registrations to operate legally in the jurisdiction. Furthermore, product liability insurance can also help businesses with licensing and registration requirements.

Chandrawat & Partners

SERVING CLIENTS WORLDWIDE



The information contained herein is of a general nature. Although we endeavor to provide accurate and timely information, there can be no guarantee that such information is accurate as of the date it is received or that it will continue to be accurate in the future. The information is not offered as an advice on any matter, and no one should act or fail to act based on such information without appropriate legal advice after a thorough examination of the particular situation. The information does not make us responsible or liable for any errors and/or omissions, whether it is now or in the future. We do not assume any responsibility and/or liability for any consequences.

Key Contact

Surendra Singh Chandrawat

Managing Partner

surendra@chandrawatpartners.com

Connect Surendra on

LinkedIn WhatsApp WeChat

Chandrawat & Partners is a leading and rapidly growing full-service firm providing high quality professional and corporate services to foreign and local clients, representing companies and individuals in a wide range of sectors through separate entities established in various countries worldwide.

Follow us on: LinkedIn twitter facebook Instagram