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KENYA'S GOVERNMENT OWNED ENTERPRISES ACT, 2025: GOVERNANCE, STRATEGIC INVESTMENT, PUBLIC PROCUREMENT AND COMMERCIAL PARTNERSHIPS

Key Legal, Commercial and Regulatory Implications for Government Owned Enterprises, Investors, Contractors, Development Partners, Multinational Businesses and Public Sector Stakeholders

31st August 2026

EXECUTIVE SUMMARY

Kenya has enacted the Government Owned Enterprises Act, 2025 ("the Act") assented to on 21st November 2025 and brought into operation on 5th December 2025, introducing a comprehensive governance, ownership and accountability framework for Government Owned Enterprises ("GOEs").

The Act represents one of the most significant public sector commercial governance reforms in Kenya in recent years and is expected to materially reshape the governance, financing, procurement, reporting and commercial operations of Government-linked enterprises across key sectors of the economy.

The new framework seeks to promote commercial discipline, operational efficiency, governance accountability, fiscal transparency, enterprise sustainability and investor confidence. It also creates a potentially transformative environment for private sector participation in Government-linked commercial projects, public-private partnerships ("PPPs"), strategic

investments, infrastructure development, enterprise restructuring and long-term Government commercial partnerships.

For investors, contractors, lenders, development finance institutions, multinational corporations and development partners, the Act introduces both significant opportunities and enhanced compliance obligations. Stakeholders engaging with GOEs will need to reassess procurement frameworks, governance due diligence, contractual risk allocation, ESG compliance, anti-corruption safeguards, regulatory approvals, financing structures and dispute resolution mechanisms.

The reforms further signal Kenya's continuing alignment with international standards on state-owned enterprise governance, procurement integrity, public accountability and commercially sustainable management of Government-linked enterprises.

LEGISLATIVE BACKGROUND AND POLICY DIRECTION

The Act establishes a unified ownership and governance framework for commercially oriented Government enterprises. It was enacted against a backdrop of longstanding concerns relating to fragmented oversight structures, procurement inefficiencies, governance weaknesses, operational underperformance and increasing fiscal exposure arising from underperforming state corporations.

Historically, many state corporations operated under different statutory regimes with inconsistent governance and accountability standards. The absence of a centralized and commercially focused framework often resulted in overlapping mandates, procurement challenges, weak financial discipline and inconsistent regulatory oversight.

The Act therefore seeks to reposition commercially oriented Government entities as professionally managed and commercially accountable institutions capable of delivering both economic value and strategic national development objectives.

The reforms are expected to materially affect sectors including Infrastructure and transport, Logistics and trade corridors, Energy and utilities, Maritime and blue economy services, ICT and digital infrastructure, Housing and urban development, Agriculture and commodities and financial services and industrial development.

The framework also aligns with Kenya's broader economic agenda on infrastructure modernization, regional trade integration, industrialization, logistics transformation, energy transition and increased private sector participation in strategic public projects.

KEY DEFINITIONS UNDER THE ACT AND SCOPE

Government Owned Enterprise

A Government Owned Enterprise (GOE) is defined as a company under the ownership and control of the national government in which the national government or a national-government entity holds more than fifty percent of the share capital, and which has financial and operational powers to carry on a business activity. Its principal business must be the supply of goods or services on ordinary commercial principles, and it must be financed wholly or substantially from sources that do not require annual appropriation by the National Assembly or the imposition of a tax, levy or other charge.

A GOE is expected to generate revenue, operate on a self-financing basis and function as a commercially sustainable enterprise while remaining publicly accountable through the National Treasury. The Act is therefore directed primarily at commercially oriented Government enterprises and does not apply to state corporations established for non-commercial purposes, such as entities performing purely regulatory, administrative or social-service functions.

The Act applies to GOEs established under the Companies Act, GOEs established under the Companies Act before the commencement of the Act and listed in the First Schedule, and GOEs established under other written laws before commencement and listed in the Second Schedule.

Any future GOE may only be established as a company under the Companies Act following Cabinet approval and upon satisfaction of the statutory requirements, including the preparation of a comprehensive business case, feasibility study and other prescribed due diligence requirements. This reflects a deliberate policy shift towards modern corporate governance, commercial discipline and enhanced accountability in the management of Government-owned enterprises.

Existing entities transitioning to the new framework will require careful review of their enabling legislation, constitutional documents, governance structures, vesting instruments, board composition, assets, liabilities, employees, contracts, procurement commitments, financing arrangements, securities, licences and pending legal proceedings to ensure compliance with the Act and facilitate an orderly transition.

Entities likely to be affected include strategically important institutions such as:

- Kenya Ports Authority;
- Kenya Railways Corporation;
- Kenya Airports Authority;
- Kenya Broadcasting Corporation;
- National Oil Corporation of Kenya;
- Kenya National Shipping Line Limited;
- Kenya Development Corporation; and
- National Housing Corporation.

Independent Director

An independent director refers to a director appointed through a transparent and competitive process to provide objective oversight over the governance and operations of a GOE.

The Act imposes extensive qualification, integrity and governance requirements for appointment as an independent director. Eligible persons are expected to possess significant expertise and leadership experience in areas such as finance, law, engineering, economics, accounting, auditing, risk management and corporate governance.

The legislation also establishes independence safeguards by disqualifying persons with material conflicts of interest, political affiliations or competing commercial interests from appointment.

These reforms are intended to strengthen governance independence, fiduciary oversight, enterprise accountability and investor confidence.

Public Service Obligation

A Public Service Obligation ("PSO") refers to obligations assigned to a GOE to undertake activities that may not be commercially viable but are necessary for public interest or Government policy purposes.

The Act requires PSOs to be separately identified, costed, audited and funded through formal Government budgetary allocations.

This distinction seeks to separate commercially driven enterprise activities from Government-funded public welfare mandates and is expected to improve transparency, fiscal accountability, enterprise valuation and investor confidence.

Governance and Board Accountability Reforms

A central feature of the Act is the introduction of enhanced governance and accountability standards for GOEs.

GOEs are required to operate on commercial principles while boards must include independent directors appointed through competitive and transparent processes. Directors are also expected to satisfy stringent integrity, competency and governance requirements.

Boards will have expanded oversight responsibilities, including:

- Enterprise strategy and performance management;
- Risk governance and internal controls;
- Audit and compliance systems;
- Business continuity planning;
- Procurement oversight;
- ESG governance;
- Anti-corruption safeguards.

These reforms are expected to significantly increase governance scrutiny, enterprise transparency, regulatory oversight and director accountability.

For private sector counterparties, financiers and development partners, the reforms are likely to improve governance predictability, institutional accountability and commercial confidence in transactions involving GOEs.

Public Procurement, PPPs and Strategic Partnerships

The new framework is expected to significantly reshape procurement and strategic partnership arrangements involving GOEs.

As GOEs increasingly transition toward commercially driven operating models, stakeholders should anticipate heightened focus on procurement governance, enterprise sustainability, financial accountability and long-term value creation.

The Act's emphasis on governance accountability, audit oversight, financial sustainability and disclosure obligations is likely to materially influence how GOEs structure Infrastructure Projects, PPP transactions, Concession Agreements, Strategic Joint Ventures, Outsourcing arrangements, Technology Procurement and Infrastructure Financing Structures.

The reforms are also expected to encourage greater participation by private sector investors, infrastructure developers, concessionaires, technology providers and multinational corporations in strategically important Government-led projects.

Private sector entities engaging with GOEs should therefore reassess procurement compliance systems, governance due diligence procedures, anti-corruption safeguards, contractual protections and regulatory approval requirements.

EMERGING COMMERCIAL OPPORTUNITIES WITHIN GOES

The GOE framework is expected to create substantial commercial and investment opportunities across multiple sectors of the Kenyan economy.

(1) Infrastructure and Logistics

Potential opportunities include:

- Port modernization;
- Rail infrastructure;
- Smart logistics systems;
- Cargo handling operations;
- Inland container depots;
- Regional trade corridor development;
- Warehousing and supply chain infrastructure.

(2) Energy and Utilities

Potential opportunities include:

- Renewable energy projects;
- Power generation infrastructure;
- Energy transition projects;
- Smart grid technologies;
- Climate finance initiatives;
- Transmission and distribution modernization.

(3) Housing and Urban Development

Potential opportunities include:

- Affordable housing projects;
- Smart cities initiatives;
- Urban infrastructure development;
- Engineering and construction contracts;
- Institutional housing finance partnerships.

(4) ICT and Digital Infrastructure

Potential opportunities include:

- Data centres;
- Cloud infrastructure;
- Cybersecurity systems;

- Digital transformation projects;
- ICT modernization initiatives.

(5) Maritime and Blue Economy

Potential opportunities include:

- Shipping and logistics partnerships;
- Port services;
- Marine infrastructure;
- Offshore logistics support;
- Blue economy investments.

These reforms are therefore likely to expand opportunities for infrastructure funds, sovereign wealth funds, private equity firms, export credit agencies, engineering contractors, technology providers, development finance institutions and multinational strategic investors.

LEGAL AND REGULATORY RISKS FOR BUSINESSES

As implementation progresses, stakeholders should anticipate increased legal and regulatory scrutiny relating to:

- Procurement and PPP compliance disputes;
- Governance compliance;
- Board appointments;
- Enterprise restructuring;
- Judicial review proceedings;
- Regulatory investigations;
- Existing Government contracts and financing arrangements;
- Asset and liability transfers during corporatization processes.

The transition provisions under the Act are particularly important because they provide for continuity of assets, liabilities, contracts, securities, employees, legal proceedings and operational rights during restructuring exercises.

Businesses engaging with GOEs should therefore proactively review their governance systems, contractual arrangements, financing structures and compliance procedures to align with the evolving regulatory environment.

REPORTING, FINANCIAL TRANSPARENCY AND PERFORMANCE ACCOUNTABILITY

The Act introduces extensive reporting, audit and disclosure obligations for GOEs.

GOEs are required to publish:

- Audited annual reports;
- Enterprise annual performance evaluations results;
- Anti-corruption reports;
- Reports relating to appointment of independent directors and the procedures followed.

The legislation also requires maintenance of financial records identifying related-party transactions, governance compliance matters, director-related benefits and enterprise performance indicators.

These reforms are expected to significantly increase enterprise transparency, public scrutiny and investor confidence within Government-linked commercial entities.

STRATEGIC OUTLOOK

The Government Owned Enterprises Act, 2025 represents a transformative shift in Kenya's governance and regulation of commercially oriented public enterprises.

The reforms are expected to strengthen governance standards, improve fiscal accountability, enhance transparency and create substantial opportunities for private sector participation in Government-linked investments and infrastructure projects.

Investors, contractors, development partners and multinational businesses should closely monitor implementation guidelines, procurement frameworks, governance directives, gazette notices, annual GOE lists and restructuring developments as the new regime becomes operational.

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HOW CM ADVOCATES LLP CAN ASSIST

CM Advocates LLP advises Government entities, investors, contractors, development finance institutions, sponsors, multilateral agencies and multinational businesses on:

- Public procurement and Government contracting;
- PPP and infrastructure transactions;
- Strategic investments and joint ventures;
- Corporate governance and regulatory compliance;
- Enterprise restructuring and commercialization;
- Public law and regulatory advisory;
- Financing, security structuring and lender due diligence for GOE transactions; and
- Dispute resolution and regulatory litigation.

Our multidisciplinary teams support clients navigating governance reforms, procurement frameworks, strategic investments, regulatory transitions and complex Government-linked commercial transactions across Kenya and the wider region.

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Disclaimer: *This CM Regulatory Alert is issued for general information purposes only and does not constitute legal advice. Specific legal advice should be sought regarding procurement arrangements, PPP transactions, governance compliance, enterprise restructuring, financing arrangements, strategic partnerships and regulatory obligations under the Government Owned Enterprises Act, 2025.*

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