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A Focus on:

Corporate, Commercial & Regulatory Advisory Practice

EXCLUSIVE:

- Structuring for Growth in a Changing Zambia: What investors must get right on mining reform, local content and compliance
- AI Regulation and Data Sovereignty in the New African Digital Economy
- Workforce planning in Kenya: From headcount to capabilities

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From the Managing Partner's Desk



Welcome to this edition of CM Navigator, our flagship publication at CM Advocates LLP.

Africa's business landscape continues to evolve, shaped by shifting economic priorities, changing regulatory frameworks, technological advancements, and growing cross-border investment. For businesses operating in this environment, success demands the foresight to anticipate change, the agility to respond to emerging risks, and the right strategic partnerships to navigate an increasingly complex commercial landscape.

It is against this backdrop that we present the second issue of CM Navigator, centred on the theme "Doing Business in a Changing Africa: Investment, Regulation, Risk & Opportunity."

At CM Advocates LLP, we recognise that legal considerations are inseparable from the decisions that drive business growth. Whether entering a new market, structuring an investment, raising capital, adopting emerging technologies or expanding across borders, businesses must navigate a range of legal, regulatory and commercial considerations. Understanding these dynamics early can make the difference between simply meeting obligations and positioning an organisation for sustainable growth.

This issue brings together insights from across our practice areas to explore the issues shaping business and investment in Kenya, East Africa and the wider continent. From taxation and corporate transactions to data protection, intellectual property, workforce transformation and dispute resolution, our contributors examine not only what is changing, but also what these developments mean for businesses, investors, boards and decision-makers.

Our intention is to go beyond explaining the law. We seek to offer practical perspectives that help our readers make informed decisions, manage exposure, structure transactions effectively and identify opportunities in a changing environment. We also recognise that today's commercial challenges rarely exist in isolation. They call for an integrated understanding of the legal, financial, operational and strategic factors that influence business outcomes.

We are pleased to share this edition with our clients, partners and the wider business community. We hope the perspectives within these pages will inform your thinking, challenge conventional approaches and support the decisions that move your organisations forward.

Thank you for your continued trust in CM Advocates LLP. We remain committed to providing clear, commercially grounded and forward-looking legal counsel that enables our clients to navigate complexity with confidence.

Cyrus Maina

Managing Partner,
CM Advocates LLP



UNLOCKING THE INVESTMENT AND COMMERCIAL VALUE OF INTELLECTUAL PROPERTY

For many businesses, intellectual property (IP) forms part of the foundation on which products, and services are built. Protecting these IP rights, however, is only the starting point. The commercial value of IP depends on whether the business has clear ownership of the rights, has a strategy for exploiting them and can demonstrate the value they contribute to the business. These considerations are important when the business seeks to commercialise its products and services.

The law provides a framework for businesses to use their IP in commercial contexts. The Trademarks Act (Cap. 506), the Industrial Property Act (Cap. 509), the Copyright Act (Cap. 130), the Seeds and Plant Varieties Act (Cap. 326) provide for the ownership and commercial use of different categories of IP while the Movable Property Security Rights Act, 2017 recognises IP as an asset over which security rights may be created. The question therefore is not whether IP is capable of protection but whether it has been structured in a way that allows the business to realise its commercial value. This article considers that process, from building a commercially viable IP portfolio and identifying routes for commercialisation to valuation, financing and investment.

1) BUILDING A COMMERCIALLY VIABLE IP PORTFOLIO

A commercially viable IP portfolio starts with identifying the IP that is material to the business and securing ownership of it. Registration alone does not create commercial value. Businesses should assess which IP supports their products, services, technology and brands, whether it is adequately protected and whether that protection covers the markets in which the business operates or intends to expand.

Ownership should also be properly documented. IP created by employees, consultants and other third parties should be subject to contractual arrangements addressing ownership and permitted use. This establishes a clear chain of title and ensures that the business can then commercialise, transfer, license or otherwise deal with the IP without ownership disputes.

2) IP AS A COMMERCIAL ASSET

Once IP ownership is confirmed, it can be used as a commercial asset to generate revenue in various forms including:

2.1. Licensing and assignment

Licensing allows an IP owner to retain ownership while authorising another party to use the IP in return for a fee, royalty or other consideration. A licence can be tailor-made by territory, duration, field of use, exclusivity and other commercial conditions. This allows a business to enter new markets or create additional revenue streams without transferring ownership of the underlying rights.

An assignment by contrast transfers ownership of the relevant IP. This may be appropriate where an IP asset is being sold, transferred as part of a restructuring or

incorporated into a wider business transaction.

2.2. Franchising, merchandising and technology transfer

IP may also be commercialised through arrangements in which the rights are used as part of a broader business or technology model. In franchising, trademarks and other IP may be licensed together with know-how, operating systems and business methods, allowing the franchisee to operate under an established brand and business model. Merchandising involves licensing trademarks, designs or copyright to third parties for use on products beyond the IP owner's line of business, creating an additional source of revenue. Technology transfer involves the allocation of technology, technical know-how and related industrial property to enable another party to develop, manufacture or use the technology.

2.3. Joint ventures and strategic collaborations

IP may also be contributed to or developed through joint ventures, co-development arrangements and other strategic collaborations. This can allow businesses to combine IP with capital, technical expertise, manufacturing capacity, distribution networks or market access.

The key issue is to distinguish between IP contributed to the arrangement and IP created during the collaboration. The parties should agree at the outset who owns existing IP, who will own new IP, what licences are granted for the purposes of the collaboration and what happens to those rights when the relationship ends.

3) VALUING THE IP ASSET

Once IP is being commercialised, its value becomes an important commercial consideration. A business may hold a valuable brand, technology or creative asset but its importance to the business does not, by itself, establish its financial value.

The value of IP may be assessed using three approaches: the **income approach** which considers the economic benefits expected to be generated by the IP; the **market approach** which considers comparable transactions involving similar assets and the **cost approach** which considers the cost of developing or replacing the asset. The appropriate approach will depend on the nature of the IP, the availability and reliability of relevant information and the purpose of the valuation.

For businesses, valuation provides a basis for commercial decision-making. It can inform the terms of a licence or transfer, establish the contribution of IP to the value of a business and support discussions with investors, lenders and potential purchasers. It can also help businesses determine which IP assets warrant further investment and which may no longer justify the cost of maintaining them.

4) IP AS A FINANCING ASSET

The **Movable Property Security Rights Act, 2017** recognises IP within the framework of movable property security rights. This provides a legal basis for using IP interests within secured financing arrangements.

However, the practical financing gap remains significant. According to the KIPI Industrial Property Rights Commercialisation Report, innovators mainly rely on their own resources to fund commercialisation with 44% of financing coming from personal funds, compared with only 7% from financial institutions. Further, data from the Business Registration Service (BRS) shows that while IP is recognised as collateral, its use remains limited. During the period July 2022 to June 2023, only 610 IP assets were registered as collateral compared with the noticeably higher numbers for tangible assets.

These findings are important for businesses seeking to use IP as a financing asset. The existence of an IP right does not make it viable collateral. A lender will need to establish ownership, the scope and enforceability of the right, its economic value and the practical ability to realise that value if the borrower defaults.

5) IP AND REGIONAL EXPANSION

For businesses expanding into other markets, the IP strategy should form part of the expansion plan from the outset. IP rights are territorial and protection obtained in Kenya does not automatically provide equivalent protection in another jurisdiction.

Businesses should therefore identify the markets in which their IP will be used and determine the protection and commercialisation strategy in each market. Depending on the IP and territories involved, this may include national filings or regional systems such as ARIPO and OAPI.

6) CONCLUSION

The commercial value of IP is not determined by the number of registrations held by a business. It depends on whether the business has built the right portfolio, secured ownership, protected the relevant rights and developed a strategy for putting those rights to work.

For businesses in Kenya, IP can generate revenue through commercialisation, contribute to enterprise value, support investment and financing, strengthen a transaction and facilitate expansion into new markets. Treating IP as part of the commercial strategy of the business rather than solely as a legal function allows businesses to make more deliberate decisions about the assets they create, protect and seek to monetise.

7) HOW CM ADVOCATES LLP CAN ASSIST

CM Advocates LLP advises businesses on the full lifecycle of their IP, from portfolio development and ownership structuring to commercialisation, licensing, assignments, technology transfer and strategic collaborations. We also advise on IP due diligence, valuation-related considerations, IP-backed financing structures, transactional matters and regional IP protection, helping businesses align their IP strategy with investment, commercial and growth objectives. Our Intellectual Property, Brands and Commercialisation Unit assists with:

- IP audits, ownership reviews and portfolio strategy;
- Trademark, patent, utility model, industrial design, copyright and plant breeder right protection;
- IP assignments, licensing, franchising and royalty arrangements;
- Technology transfer and commercialisation agreements;
- IP due diligence for investments, mergers and acquisitions;
- IP valuation and transaction support;
- IP-backed financing and security structures;
- Regional IP protection and enforcement; and
- IP disputes and enforcement before the relevant tribunals and courts.

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SELLING ACROSS BORDERS: THE LEGAL AND REGULATORY PLAYBOOK FOR E-COMMERCE BUSINESSES EXPANDING IN AFRICA

The rise of e-Commerce has transformed regional and global commerce, allowing businesses to reach customers across borders like never before. However, with great opportunity comes significant legal and regulatory complexities. For an e-commerce business, expanding into another African country can look deceptively simple. The website already exists. The products are ready. Customers can place orders from anywhere. A payment provider can process the money and a courier can deliver the package.

So why not simply start selling? Because the biggest risks in cross-border e-commerce often appear after the first sale. A product may be legal to sell in Kenya but subject to additional requirements in Ghana. A payment arrangement that works in one market may not work in another. A business may attract tax obligations simply by serving customers in a new jurisdiction. Customer information may be stored or transferred across borders in ways that trigger data protection requirements. A customer may have rights to a refund that the business did not anticipate. A brand that took years to build may not be protected in the new market.

In this article, we explore what you should consider before expanding your e-commerce business into a new market.

1. DECIDE HOW YOU ARE ENTERING THE MARKET

The first question should not be “What legal documents do we need?” It should be “What exactly are we planning to do?”

There is a major difference between shipping products directly from Kenya to customers in Nigeria, appointing a Nigerian distributor, holding stock in Lagos through a fulfilment provider, establishing a Nigerian subsidiary or selling through a local marketplace. The business should understand where its goods will be located, who will sell them, who will receive customer payments, who will import them, who will deliver them and who will deal with returns and complaints. This matters because the structure can determine whether the business needs local registration, tax registration, licences, permits or a local partner.

A useful starting point is therefore a simple market-entry map. Before entering a country, identify where the customer is, where the seller is, where the goods are located, who takes payment, who delivers the goods and who is responsible if something goes wrong. Once those points are clear, the legal questions become much easier to answer. This is also important from an investment perspective because a business should know what regulatory infrastructure it will need before committing significant capital to inventory, local staff, warehouses or marketing.

2. PLATFORM TERMS AND CONDITIONS

One of the most important principles for an expanding e-commerce business is that a website does not become legally neutral simply because it is accessible from different countries. An e-commerce business may operate from Nairobi, but its customer may be sitting in Accra, Johannesburg or Kigali. The customer's rights do not necessarily disappear

because the seller is based elsewhere. Consumer protection laws can regulate advertising, pricing, disclosures, cancellation rights, refunds, warranties, delivery and unfair contractual terms. This means that terms and conditions drafted for the home market should not simply be copied and pasted into every new market.

For a business looking to expand, it should not assume that the terms and conditions written for its home market automatically work in every country. A good approach is to have a core set of terms for the business, then check whether each target market requires additional consumer-facing terms. The same applies to privacy notices, returns policies and customer communications.

A customer should be able to understand, before paying, what they are buying, the total cost, delivery timelines, applicable charges and what happens if the product is defective, delayed or unsuitable. Having clear terms and conditions will minimize disputes, improve customer trust and make the business easier to scale.

3. DATA PROTECTION

Every online sale creates a trail of personal information. Names, telephone numbers, email addresses, delivery addresses, payment information and purchasing behaviour all constitute personal data. That information may then pass through payment providers, cloud platforms, logistics companies, customer-support tools and marketing platforms located in different countries. Data protection should therefore be considered part of market entry.

Most African countries now have data protection laws and regulators responsible for enforcing them. This means that an e-commerce business may come under the jurisdiction of a data protection regulator outside its home country. In most jurisdictions, data protection laws apply even where a business has no physical establishment there, but processes the personal data of individuals located in the country. As a result, expanding into a new market may trigger additional data protection obligations, including registration with the relevant regulator. Failure to comply may amount to unlawful processing of personal data and expose the business to enforcement actions and hefty penalties.

Data protection should be addressed at the point of expansion, not after a complaint or data breach. Before entering a new market, the business should know what customer information it will collect, why it needs it, where that information will be stored, who will have access to it and which third parties, such as payment providers, couriers, cloud providers and marketing platforms, will receive it. It should also establish whether the information will leave the country and what safeguards are required where it does.

A privacy policy alone is not enough. The business's systems, contracts, technology vendors and day-to-day practices must support what the business tells its customers about how their data is collected, used, stored and shared. The privacy policy should reflect what actually happens in the business, rather than simply setting out what the law requires.

4. AI use in business

Artificial intelligence is increasingly being used behind the scenes to support customer service, marketing, fraud detection, recommendations, inventory forecasting, credit assessment and other business functions. This creates another layer of risk that businesses should consider when expanding into new markets. An e-commerce business may use an AI tool to analyze customer behaviour and recommend products. It may also use an AI chatbot to respond to customer enquiries or an automated system to flag potentially fraudulent transactions.

Across Africa, countries have developed national AI strategies and policies to guide and govern the use and deployment of AI tools. Businesses should therefore have clear rules on how AI may be used within their operations. This could include identifying approved AI tools, what information employees can input into those tools, when human review is required and which AI uses require additional checks before deployment. The business should also understand what data is provided to the AI system, how the provider uses and retains it, whether it is used to train models, where it is processed and what safeguards are in place.

For businesses operating across several African markets, this is particularly important because AI regulation is developing at different speeds across jurisdictions. An expansion strategy should therefore consider not only whether an AI tool works technically, but also whether its use is consistent with emerging AI governance requirements.

5. PROTECTING THE TECHNOLOGY AND BRAND THAT MAKE THE BUSINESS VALUABLE

Expansion also creates intellectual property risks. A business may spend years developing its name, software, website, product designs, content and customer-facing technology. Yet entering a new

market without checking the local intellectual property position can leave valuable assets exposed. Trademark protection is generally territorial. Registering a brand in one country does not automatically provide identical protection across the continent. The same applies to software, product designs, photographs, packaging, domain names and other digital assets.

For businesses planning regional expansion, intellectual property should be treated as part of market entry rather than something to address after the brand has become valuable. Protecting those assets should therefore form part of the market-entry strategy rather than being treated as a problem to solve once the business becomes successful.

6. REGULATORY APPROVAL

Not every product can simply be shipped into another African market because it can be sold online. Products such as cosmetics, food, medical devices, medicine, electronics and certain financial or technology products may be subject to additional requirements. Before spending heavily on influencers, advertising and inventory, the business should establish whether the product can legally be imported and sold in the target market and whether any approvals are required.

The practical steps for a business are therefore not simply “ship the product and see what happens”. Before launching, it should first confirm how the destination country classifies the product and identify the regulator responsible. It should then establish whether the product itself requires registration, whether the importer or local representative must be registered, what documents and product information are required, and whether the packaging and labelling comply with local requirements. The business should also confirm whether any testing, inspection or manufacturing information is required and factor the approval process and related costs into its launch timeline.

Where a product requires approval, the business should ideally complete a regulatory check before committing significant capital. This allows the business to identify additional costs, modify its packaging or claims where necessary, appoint a local representative if required and build sufficient time into the launch plan. In some cases, the regulatory position may even influence the decision on whether to enter the market at all or whether to use a local distributor or other partner.

7. TAX

Tax is often one of the biggest hidden costs of cross-border e-commerce. One of the questions an expanding e-commerce business should ask is: **Where does the tax obligation arise?**

A business may think that because it has no office in the destination country, it has no tax obligations there. That assumption can be wrong. The position depends on what is being sold, where the customer is located, how the transaction is structured and whether the business has a physical or economic presence in the market. E-commerce businesses need to consider tax before expanding into a new market. In Kenya, this is particularly important for businesses operating through digital marketplaces, which are platforms that connect buyers and sellers online. Income earned through certain digital marketplace services may be subject to Digital Service Tax (DST).

For a growing business, a simple tax matrix for each target country can be extremely useful. It should identify the relevant taxes, registration triggers, who is responsible for collecting or paying them and whether a local tax representative is required.

8. VENDOR RISK

Cross-border e-commerce rarely operates on its own. As a business expands, it will usually rely on a network of third parties, including couriers, warehouses, fulfilment companies, payment providers, marketplaces, customs agents, technology providers and customer-service platforms. These vendors may make expansion easier, but they can also create legal and commercial risks for the business.

The customer, however, usually sees only one business. If an order is delayed, a package is lost, a refund is not processed or customer information is mishandled, the customer is unlikely to distinguish between the e-commerce business and the vendor it engaged. This makes proper contracts with vendors an important part of the expansion strategy.

Before entering a new market, the business should identify all critical vendors, understand what each vendor will handle and ensure that the relevant contracts allocate responsibilities and risks appropriately. Where a vendor's standard terms do not provide sufficient protection, the business should negotiate additional provisions rather than simply accepting them as part of the onboarding process.

CONCLUSION

Africa's digital economy is creating an increasingly attractive opportunity for businesses that can reach customers beyond their home markets. The businesses that scale successfully across borders will need to think beyond whether a website can accept an order from another country. They will need to understand the regulatory environment behind that order.

Before pressing "launch", the better questions are: Can we legally sell this product? What will the customer actually pay? What taxes will we incur? Do we need a local presence? Who is responsible for importing and delivering the goods? What rights does the customer have? Where will their data go? Is our brand protected? And what happens when something goes wrong?

HOW CM ADVOCATES LLP CAN ASSIST?

CM Advocates LLP supports businesses looking to expand across African markets by combining legal advice with a practical understanding of how businesses operate.

We can assist with:

a. **E-commerce compliance:** Reviewing consumer protection, online selling, advertising, payments and other applicable requirements.
b. **Data protection:** Advising on privacy compliance, cross-border data transfers, customer data and arrangements with technology and service providers.
c. **AI and emerging technology:** Supporting businesses in identifying data governance and regulatory considerations arising from the use of AI and other digital technologies.
d. **Commercial contracts:** Drafting and reviewing agreements with distributors, agents, couriers, payment providers and other vendors.
e. **Regulatory risk:** Identifying key legal and regulatory issues before the business commits significant resources to expansion.
f. **Multi-jurisdictional support:** Through our presence and networks across Kenya, Uganda, Tanzania, Rwanda and South Sudan, we can support businesses navigating different regulatory environments as they expand across the region.

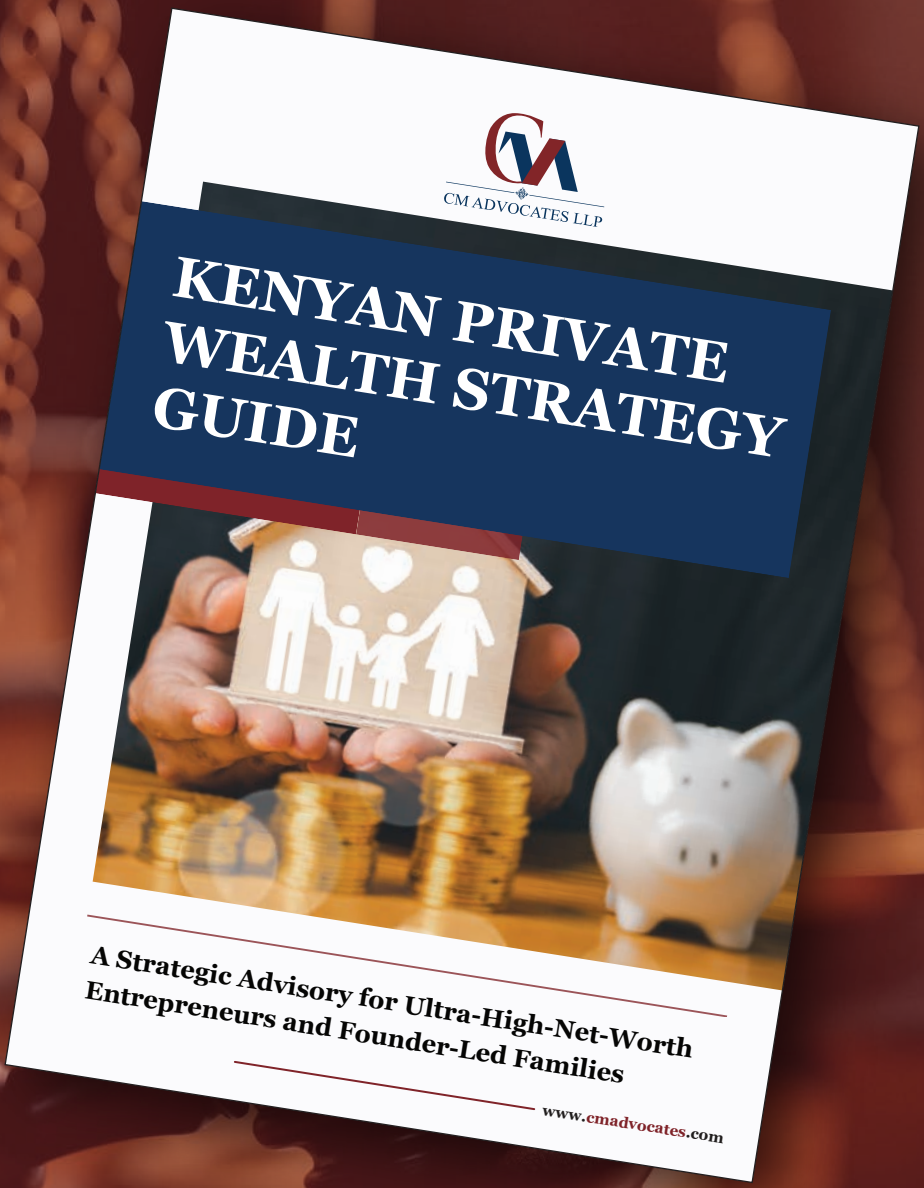
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WORKFORCE PLANNING IN KENYA:FROM HEADCOUNT TO CAPABILITIES

Many organisations still begin workforce planning by counting posts and identifying vacancies. As technology changes what the work involves, that starting point is becoming less reliable. Banks are digitising onboarding and credit decisions, manufacturers are automating production lines, law and accounting firms are being asked by clients about AI, cybersecurity and data protection. Each of these changes the skills a business needs and in many cases the number of people it needs is the less important question.

A job description records what a role does today. It says little about what the business will need in three years. A bank that moves lending onto a digital platform needs people who understand credit risk and can also interrogate the system producing the decisions. A manufacturer installing automated lines needs technicians who can read production data. Neither need appears in an existing organisation chart.

1. THE PRACTICAL STARTING POINT IS A SKILLS AUDIT

What capabilities the workforce already has, where the gaps are and which gaps are better closed by hiring and which by training. Reskilling is often the cheaper route. Existing staff know the systems, the customers and the internal politics, which an external hire takes a year to learn. The caveat is that training has to be continuous. A course that covers this year's tools will not cover next year's.

2. EMPLOYMENT DOCUMENTS THAT MATCH HOW PEOPLE ACTUALLY WORK

Remote and hybrid work widens the talent pool, but most employment contracts and HR policies were written for an office. Typical gaps include:

- no provision on where work may be performed or on equipment and expenses
- confidentiality and data-security clauses that assume company premises
- health and safety obligations that are unclear for home working
- supervision and working-hours rules that do not reflect flexible arrangements

The Employment Act, 2007 still governs the basics regardless of where the employee sits: contracts, hours, leave, termination and employee rights. If a policy does not describe what happens in practice, it will not help the employer in a dispute.

3. CROSS-BORDER ENGAGEMENTS

Hiring someone in Kenya for a foreign company, or a Kenyan company engaging someone abroad, raises questions that a short services agreement does not answer. Which country's employment law applies? Where is tax payable? Does the arrangement create a permanent establishment? Is a work permit needed? Foreign companies with Kenya-based staff also need to consider whether they have PAYE, NSSF, SHIF and Affordable Housing Levy

obligations here.

Calling someone a consultant does not make them one. Kenyan courts look at the substance of the relationship, including control, integration into the business and economic dependence, and the Employment and Labour Relations Court has treated "contractors" as employees where the facts pointed that way. The consequences include liability for notice, leave, statutory deductions and unfair termination claims.

For companies entering Kenya, the choice between a local entity, direct employment, contractors or seconded staff should be made at market-entry stage, because each carry different legal and tax consequences.

4. BRINGING IN FOREIGN EXPERTISE

Some roles cannot be filled locally in the short term. Work permits are issued under the Kenya Citizenship and Immigrations Act and applications typically need to show why the role cannot be filled by a Kenyan and how skills will be transferred, usually through an understudy arrangement. Employers should start the immigration process before staff are due to arrive. Delays in permit issuance regularly hold up project start dates, and working without the correct permit exposes both the individual and the employer. A genuine skills-transfer plan also serves the business, since it builds local capacity that reduces reliance on expatriates over time.

5. EMPLOYEE DATA AND THE DATA PROTECTION ACT

Employers hold a lot of personal data including identification documents, bank details, medical information, performance records and increasingly, data from monitoring and HR software. The Data Protection Act, 2019 applies to all of it. In practice that means employers should be registered with the Office of the Data Protection Commissioner where required, be clear about the lawful basis for processing, collect only what they need and secure it properly.

The risk grows when HR tools use AI or analytics. A recruitment tool that screens out applicants or a system that scores employee performance with no human review, can fall within that protection. Employers should know what data such tools collect, how the scores are generated and who is accountable for the outcome.

6. AI AND RESTRUCTURING

Where AI takes over tasks, employers have to deal with the affected employees as well as the technology. If a role is being abolished, the redundancy rules in section 40 of the Employment Act apply.

7. YOUNG WORKERS AND THE SKILLS GAP

Kenya has a large number of young graduates and many employers say qualifications do not translate into job-ready skills. Internships, apprenticeships, graduate programmes and structured mentoring give employers a way to build the skills they need rather than competing for the same small pool of experienced hires. These programmes need proper written terms.

8. INCLUSION AND RETENTION

Hiring a diverse workforce is only the first step. The more useful measures are who stays, who gets promoted and who reaches leadership. Employers should look at whether pay practices, working arrangements and progression criteria disadvantage women, persons with disabilities and whether the numbers bear that out. Flexible work policies and clear promotion criteria usually do more than a diversity statement.

9. WORKFORCE ISSUES IN DEALS

In acquisitions, employment liabilities are often discovered late. Due diligence on a Kenyan target should cover pending claims in the Employment and Labour Relations Court, unpaid statutory contributions, pension and benefit obligations, the use of contractors who may be employees, and any redundancies planned or recently carried out. These items can affect price and warranties. Where the buyer intends to restructure or automate after closing, the employment law steps and costs should be built into the deal model from the start.

Five steps to take now

1. Map future skills. Work out how technology, customer demand and expansion plans will change the capabilities you need.
2. Audit the workforce. Record the skills you have, where they sit and which gaps are critical.

3. Update employment documents. Check that contracts, policies and contractor agreements describe how people really work, including remote and cross-border arrangements.
4. Focus on continuous training. Go beyond compliance courses and set aside budget for technical and professional development.
5. Involve legal and HR early. Bring employment and immigration questions into market-entry, restructuring and technology decisions at the planning stage.

CONCLUSION

The legal steps in workforce planning are rarely difficult in themselves. Most of the disputes we have described, whether over a misclassified contractor, a redundancy that skipped the section 40 notices or an HR tool nobody checked against the Data Protection Act, come from decisions made first and reviewed later.

The simplest way to avoid them is to put employment, immigration and data questions on the agenda at the point a business decides to hire across borders, adopt a new system or restructure a team. The skills audit and the document review set out above are a good place to start and neither needs to wait for a particular project.

The employment team at CM Advocates LLP advises employers on the legal side of workforce change, including reviewing and drafting employment contracts and policies for remote and cross-border working, restructuring and redundancy processes, employee data and the use of technology in HR and the employment aspects of transactions.

If you would like to consult on this article or any other legal issue, you may contact the commercial team through corporate.commercial@cmadvocates.com

You can also visit our website https://cmadvocates.com/en for more information about us and our services.

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THINKING OF INVESTING IN AFRICA? GET YOUR STRUCTURE RIGHT FIRST

A Guide to Corporate Structuring, Mergers and Joint Ventures in Kenya

1. INTRODUCTION

Africa remains one of the world's most promising investment destinations. With the African Continental Free Trade Area (AfCFTA) opening a market of over 1.3 billion people, and Kenya serving as the commercial gateway to the East African Community (EAC) and COMESA, investor interest is growing in sectors such as technology, energy, agriculture, manufacturing, real estate and financial services.

Yet many investors focus on the opportunity and the price and treat structure as an afterthought. That is a costly mistake. The structure you choose determines how much tax you pay, who controls the business, which approvals you need, how profits leave the country and how easily you can exit. Restructuring after the fact is expensive, slow and sometimes impossible. This guide sets out what investors should get right before committing capital in Kenya.

2. WHY CORPORATE STRUCTURING MATTERS FOR INVESTING IN KENYA

A well-designed investment structure ring-fences liability so that risks in one business do not spill into others, secures efficient tax treatment of profits, dividends and capital gains, protects your control rights, keeps you compliant with ownership and licensing rules, and preserves flexibility to bring in new partners or sell later. Each of these outcomes is decided at the structuring stage, not after the business is running.

3. CHOOSING THE RIGHT INVESTMENT VEHICLE IN KENYA

a) Private limited company

Incorporated under the Companies Act, 2015, this is the most common vehicle for foreign investors. It has a separate legal personality, limits shareholder liability and can be wholly foreign owned in most sectors. Every company must keep and file a register of beneficial owners with the Registrar of Companies, identifying the natural persons who ultimately own or control it.

b) Branch of a foreign company

A foreign company may register a branch under Part XXXVII of the Companies Act and appoint a local authorised representative. A branch is quicker to set up but is not a separate legal person, so the parent bears its liabilities directly. Branch profits are also taxed differently from those of a local subsidiary, including tax on repatriated profits.

c) Limited liability partnership

Under the Limited Liability Partnerships Act, an LLP

offers limited liability with flexible internal arrangements, and suits professional and advisory ventures.

d) Holding company structures
Many investors hold Kenyan operations through a regional or offshore holding company to benefit from double taxation agreements. Kenya's anti-treaty-shopping rules, substance requirements and transfer pricing regulations mean such structures must have genuine commercial substance. The Nairobi International Financial Centre also offers incentives that may make a Kenyan holding company attractive for regional investments.

Foreign investors committing at least USD 100,000 may also apply to the Kenya Investment Authority for an investment certificate under the Investment Promotion Act, which assists with licences, work permits under the Kenya Citizenship and Immigration Act and other facilitation.

4. LOCAL OWNERSHIP AND SECTOR RESTRICTIONS

Kenya is broadly open to foreign investment, but several restrictions must shape your structure. Under Article 65 of the Constitution, non-citizens, including companies not wholly owned by Kenyan citizens, may only hold land on leasehold for up to 99 years, and agricultural land is further regulated under the Land Control Act. Sectors such as insurance, telecommunications, mining, shipping and private security carry minimum local shareholding requirements. Licences in banking, insurance, energy and capital markets also require regulatory approval for changes in ownership. These rules should be mapped before shareholding is agreed, not discovered at the licensing stage.

5. MERGERS AND ACQUISITIONS IN KENYA: REGULATORY APPROVALS

Acquiring an existing Kenyan business is often the fastest way to enter the market, but the transaction must clear several regulatory gateways.

a) Competition Authority of Kenya
Under the Competition Act, 2010, a "merger" includes any acquisition of control of a business through shares or assets and may include joint ventures. Transactions meeting the prescribed thresholds must be approved by the Competition Authority before implementation. Closing without approval renders the transaction void and exposes the parties to fines of up to 10% of their annual turnover in Kenya.

b) COMESA Competition Commission
Where the parties operate in two or more COMESA member states and the regional thresholds are met, notification to the COMESA Competition Commission may also be required. Both regimes should be assessed early to avoid delays.

c) EAC Competition Authority
The East African Community Competition Authority regulates competition matters at the regional level, including cross-border mergers and acquisitions involving businesses operating in two or more EAC Partner States. Where the applicable regional requirements are met, notification and approval may be required before implementation. As Kenya is a member of both the EAC and COMESA, transactions with a regional dimension should be assessed under both regimes at an early stage to determine the applicable merger control requirements.

d) Sector regulators
Acquisitions of significant stakes in banks require Central Bank of Kenya approval, insurers require Insurance Regulatory Authority approval, and listed companies are subject to the Capital Markets Authority's takeover rules, which may trigger a mandatory offer once effective control is acquired.

Investors must also choose between a share purchase and an asset purchase. A share purchase is simpler but carries all historical liabilities of the target, including tax, employment and litigation exposure. An asset purchase lets you select what you acquire, but requires transfer of licences, contracts and employees, and attracts different stamp duty and capital gains tax consequences. Thorough legal, tax, regulatory, employment, land and data protection due diligence is essential, and its findings should be reflected in the warranties, indemnities and price adjustment mechanisms of the sale agreement.

6. JOINT VENTURES IN KENYA: PARTNERING WITHOUT LOSING CONTROL

Joint ventures allow foreign investors to combine capital and expertise with a local partner's market knowledge, networks and, where required, local ownership. A joint venture may be purely contractual or take the form of a jointly owned

company. Either way, the success of the venture depends on the joint venture or shareholders' agreement, which should clearly address capital contributions and funding obligations, board composition and reserved matters requiring unanimous approval, deadlock resolution mechanisms, pre-emption, tag-along and drag-along rights, ownership of intellectual property, restrictive covenants that comply with competition law, and exit and valuation mechanisms.

The company's articles of association must be aligned with the shareholders' agreement, as conflicts between the two are a common source of disputes. Parties should also agree on arbitration, whether through the Nairobi Centre for International Arbitration or an international institution. Kenya is a party to the New York Convention, which supports enforcement of arbitral awards.

7. TAX CONSIDERATIONS IN CORPORATE STRUCTURING

Kenya taxes resident companies at 30%, while dividends paid to non-residents generally attract withholding tax of 15%, which may be reduced under a double taxation agreement. Interest deductibility is restricted under the interest restriction rules, and related-party transactions must comply with transfer pricing regulations. Kenya has no exchange controls, so capital and profits may generally be repatriated freely, subject to tax and anti-money laundering compliance. Investors in Special Economic Zones and Export Processing Zones may also access tax incentives. Modelling the tax position of each proposed structure before investing often makes a significant difference to returns.

8. COMMON MISTAKES INVESTORS SHOULD AVOID

The most frequent pitfalls we see include incorporating before mapping sector ownership limits, closing deals before obtaining competition approval, relying on informal understandings with local partners instead of a robust shareholders' agreement, underestimating tax on exit, and failing to verify land titles and licences during due diligence. Each of these can be avoided with early legal advice.

9. CONCLUSION

Investing in Kenya and the wider African market offers real opportunity, but returns are protected or lost at the structuring stage. Choosing the right vehicle, understanding ownership restrictions, securing regulatory approvals for mergers and acquisitions, and documenting joint ventures properly will save time, money and disputes. Get your structure right first, and your investment will be positioned to grow, adapt and exit on your terms.

10. HOW CM ADVOCATES CAN HELP

At CM Advocates, our Corporate, Commercial and Regulatory Advisory (CCR) team advises local and foreign investors on every stage of investing in Kenya. We design tax-efficient and compliant investment structures, incorporate and register companies and branches, conduct legal due diligence, draft and negotiate share purchase, joint venture and shareholders' agreements, and secure approvals from the Competition Authority of Kenya, COMESA and sector regulators. We also advise on investment certificates, land transactions, employment and ongoing corporate compliance. Contact us to discuss how we can structure your investment in Kenya for success.

For enquiries, kindly contact the contributor or our Corporate, Commercial and Regulatory Advisory (CCR) team at corporate.commercial@cmadvocates.com.

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AI REGULATION AND DATA SOVEREIGNTY IN THE NEW AFRICAN DIGITAL ECONOMY

I. INTRODUCTION: THE LEAPFROG ECONOMY MEETS THE REGULATORY WAVE

Africa's digital economy is expanding exponentially. Mobile-first platforms, cross-border fintech ecosystems and decentralized artificial intelligence (AI) tools are driving unprecedented growth. Yet, as decision-makers scale these innovations across East Africa and the wider continent, they face a historic shift. The era of the digital regulatory vacuum is officially over.

Historically, tech innovation outpaced statutory law. Today, a tightening matrix of domestic data protection acts (DPAs) and emerging AI policies is rapidly closing that gap. In Kenya and across the continent, regulatory compliance is no longer a mere corporate governance chore or a cost centre. Forward-looking boards, investors and entrepreneurs must recognize a new corporate reality: proactive regulatory alignment is now a core framework for securing cross-border market entry, safeguarding data valuations and building consumer trust.

II. THE REGULATORY MATRIX: FRAGMENTED VS. HARMONIZED DATA LAWS

The closing of Africa's regulatory vacuum is nowhere more evident than in digital finance. In July 2026, Kenya officially gazetted the landmark Virtual Asset Service Providers (VASP) Regulations 2026, establishing a strict dual-regulator regime under the Central Bank of Kenya (CBK) and Capital Markets Authority (CMA).

Regulating everything from stablecoin issuers to tokenized real-world assets, the framework enforces extraterritorial reach, catching any entity deriving economic benefit from local consumers regardless of physical presence. For fintech's, financial institutions and investors, the 4th November 2026 compliance deadline marks a permanent transition: virtual assets are no longer speculative grey-market tools, but strictly supervised financial instruments requiring 100% stablecoin reserve backing, local governance and rigorous AML alignment.

Operating a multi-jurisdictional business in Africa therefore requires navigating a complex patchwork of sovereign data frameworks. While Kenya's Office of the Data Protection Commissioner (ODPC) aggressively enforces compliance under the Data Protection Act, neighbouring markets present varying degrees of friction. From South Africa's mature Protection of Personal Information Act (POPIA) to Nigeria's active National Data Protection Act (NDPA), businesses face disjointed compliance standards.

However, a strong countervailing trend toward continental harmonization is underway. The African Continental Free Trade Area (AfCFTA) Digital Trade Protocol, along with its recently adopted implementation annexes, establishes unified baselines for cross-border data flows, digital payments and consumer rights.

Strategic Blueprint for Expanding Enterprises:

Build to the Highest Common Denominator	Rather than fracturing your tech stack and data architectures country by country, implement an integrated data privacy framework that satisfies the strictest regional laws (such as Kenya's ODPC guidelines or South Africa's POPIA). This ensures immediate, lower-friction compliance when scaling into new African markets.
Capitalize on the AfCFTA Framework:	Align corporate expansion plans with major continental initiatives like the Africa Digital Access and Public Infrastructure for Trade (ADAPT) pilot. This helps streamline regional expansions by exploiting harmonized trade documentation and digital payment frameworks.

III. AI GOVERNANCE: MANAGING RISK WHEN THE LAW IS SILENT

Most African nations lack comprehensive, standalone AI statutes, but the legislative landscape is shifting rapidly. Kenya is leading this transition. In 2026, the Ministry of Information, Communications and the Digital Economy introduced the Draft Kenya Artificial Intelligence and Other Emerging Technologies Policy. Concurrently, the Senate is reviewing the Artificial Intelligence Bill 2026, which proposes significant penalties (up to Kshs. 5 million) and creation of a dedicated AI regulator to police high-risk automated systems.

Even before these bills pass into hard law, regulators are leveraging existing data protection acts to scrutinize algorithmic systems. High-profile enforcement actions such as the legal scrutiny surrounding the 'World coin' iris-scanning project, demonstrate that automated profiling, automated credit scoring in fintech and algorithmic bias are already active liabilities under current data privacy frameworks.

AI Hallucinations and Professional Liability

While governments formalize AI statutory bills, East African courts are already establishing a zero-tolerance policy for unchecked AI usage. In a first of its kind ruling on 3rd September 2026, the Tanzanian High Court in ***Registered Trustees of the Assemblies of God Gospel Church International (AGGCI) vs Registrar of Societies and Others (Miscellaneous Civil Application No. 9407 of 2026) [2026] TZHC 5131 (3 September 2026)***, suspended an advocate for citing non-existent Court of Appeal precedents generated by AI hallucination. Whilst acknowledging that the error was a mistake made without bad faith, the Principal Judge held that an advocate's duty of candour to the court is absolute. Submitting hallucinated legal text without verification was ruled as professional negligence and judicial deception, resulting in the advocate's six-month suspension from legal practice and a mandated public apology.

This ruling sets a precedent for professional services across the continent: boards, legal counsel and corporate advisors cannot hide behind algorithmic error; internal human verification is now a non-negotiable legal requirement.

Direct Practice Group Intersections:

Corporate / M&A: Buying a company whose data practices are questionable introduces severe financial and legal risks. If a startup built its core product or AI models using unconsented personal data, that target asset becomes a liability. Tech due diligence therefore must audit legacy training data to avoid inheriting liability.

Standard due diligence is no longer just about reviewing financial records and contract signatures. Deals now require deep technical audits of legacy training data. Acquiring non-compliant data can trigger massive fines, devaluations, or court orders forcing the complete deletion of proprietary AI algorithms.

Banking & Finance: Central Bank digital regulations intersect heavily with data protection laws. Regulators actively review algorithmic credit scoring for systemic bias, predatory behaviours and unauthorized profiling. Financial regulators actively inspect automated lending algorithms, credit-scoring models and fintech tools. Automated systems that inadvertently use biased data, charge predatory interest rates based on user profiling, or scrap mobile contacts without explicit consent face swift legal sanctions and operational shutdowns.

Employment & Labor: AI tools automate and track the employee lifecycle through specialized software that ingests data, evaluates patterns, and generates continuous performance insights. Using these automated tools to screen job applicants, track employee activities, or issue performance ratings requires strict human oversight. Unchecked HR algorithms can unconsciously discriminate against specific demographic groups, leading to union disputes, regulatory investigations and costly employee claims for unfair dismissal.

IV. DATA SOVEREIGNTY AND INFRASTRUCTURE:

Governments across the continent are increasingly enacting data localization mandates. Driven by national security concerns, digital sovereignty and an urgency to protect sensitive citizen data, these rules require specific classifications of data to be hosted on physical servers located within national borders.

For fast-growing companies, true data localization creates operational friction. It complicates the use of seamless, centralized global cloud hyper-scalers (such as AWS, Google Cloud, or Microsoft Azure) and can significantly drive-up local infrastructure budgets.

STRATEGIC APPROACH	OPERATIONAL PROS	COMPLIANCE & COST CONS
Pure Global Public Cloud	High computational speed; lower upfront operational expenditure; rapid scalability.	High risk of data localization fines; potential cross-border data transfer blocks.
Strict On-Premises Hosting	Total control over data residency; full compliance with rigid data sovereignty mandates.	Heavy capital expenditure; slow infrastructure scalability; maintenance burdens.
Hybrid Cloud Architecture (Recommended)	Balances performance with regional compliance; local hubs process sensitive data.	Requires sophisticated data mapping; complex multi-vendor management.

Practical Strategy

To optimize both compliance and performance, deploy a hybrid cloud architecture. Structure your systems to store and process protected, localized data categories (such as health records, public sector data, or primary financial transactions) utilizing established regional data infrastructure hubs in Nairobi, Johannesburg, or Lagos. Concurrently, routing non-sensitive, anonymized operational metrics to global public cloud environments will help preserve processing speed and control costs.

V. CROSS-BORDER TRADE & THE AFCFTA DIGITAL TRADE PROTOCOL

The operational friction caused by localized data silos is countered directly by the AfCFTA Digital Trade Protocol. Designed to build a single African digital market, this protocol systematically targets and dismantles unjustified data localization barriers among member states.

The protocol's practical business impact is accelerated by structural integration projects. On August 31st 2026, the AfCFTA Secretariat formalized a joint venture agreement with Ghanaian technology firm Quest Ghana Limited to establish the $5.17 billion AfCFTA Digital Trade Corridor. This initiative establishes integrated logistical tracking, digital customs clearance and standardized cross-border data protocols across the continent.

Advice to firms seeking to accelerate Intra-African Expansion:

Leverage Regional Pilots

Enterprises should strategically align themselves with cross-border infrastructure initiatives to capitalize on accelerating regional integration. A prime example is the Africa Digital Access and Public Infrastructure for Trade (ADAPT) program, which is currently piloting frameworks across Kenya, Nigeria, and Morocco.

Reduce Settlement Friction

ntegrating business-to-business (B2B) platforms with the Pan-African Payment and Settlement System (PAPSS) is crucial for mitigating cross-border transaction risks. By reducing the costs, structural complexities, and settlement times associated with multi-currency fund transfers, PAPSS serves as a vital mechanism for operational efficiency.

VI. STRATEGIC BLUEPRINT FOR DECISION-MAKERS

To confidently navigate the evolving African digital economy, boards, investors and executives should immediately execute three decisive strategies:

a) Treat data and algorithmic models as financial assets and potential strict liabilities. Before acquiring a tech target, deploying an algorithmic credit-scoring tool, or using automated hiring software, conduct rigorous compliance audits to verify data collection lineage and check for machine learning bias. Crucially, as demonstrated by the Tanzanian High Court in R***egistered Trustees of the Assemblies of God Gospel Church International (TZHC 5131)***, organizations must enforce strict verification protocols. Unchecked reliance on AI outputs, whether in legal filings, corporate disclosures, or financial automated decisioning exposes entities and individual professionals to severe claims of negligence and regulatory sanctions.

b) Review corporate data mapping immediately to isolate protected consumer categories under regional Data Protection Acts. Deploy a hybrid cloud architecture, storing localized sensitive datasets in regional hubs while routing non-sensitive metrics to global public clouds. For enterprises engaged in virtual assets, tokenization or digital payments, align governance structures immediately with Kenya's VASP Regulations 2026 ahead of statutory transition deadlines to prevent operational shutdowns or criminal liabilities.

c) Build software products, privacy policies and payment terms around harmonized continental frameworks like the AfCFTA Digital Trade Protocol. Designing for cross-border interoperability from day one ensures that an enterprise can scale seamlessly across Africa's rapid digital transformation age.

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COLLECTIVE INVESTMENT SCHEMES AND REAL ESTATE INVESTMENT TRUSTS: BROADENING ACCESS TO PROPERTY INVESTMENT IN KENYA

1. EXECUTIVE SUMMARY

Collective Investment Schemes (CIS) and Real Estate Investment Trusts (REITs) represent the twin pillars of modern pooled investment structures that have transformed property investment globally.

Kenya's property market continues to grapple with challenges such as high financing costs, limited liquidity, and concentration of ownership among a few institutional players. The introduction of CIS and REITs frameworks by the Capital Markets Authority (CMA) provides a structured mechanism to democratize access to property investment.

In Kenya, these vehicles have emerged as strategic tools for mobilizing domestic and institutional capital into real estate — unlocking retail participation, promoting financial inclusion, deepening capital markets, and supporting the Government's affordable housing and infrastructure agenda. At CM Advocates LLP, our Real Estate, Banking, and Finance Department has been at the forefront of structuring and advising on these investment vehicles. We combine sector-specific expertise, regulatory mastery, and transactional depth to guide developers, investors, financial institutions, and fund managers through the complex intersection of property, finance, and regulation.

This article examines the structure, regulation, and comparative features of CIS and REITs within the Kenyan context, benchmarking them against global standards, while highlighting how our firm supports clients in navigating and optimizing these vehicles for sustainable investment returns.

2. UNDERSTANDING COLLECTIVE INVESTMENT SCHEMES (CIS)

A Collective Investment Scheme (CIS) is a regulated structure that aggregates funds from multiple investors for investment in a portfolio of assets managed by licensed professionals.

In Kenya, CIS are governed by the Capital Markets Act (Cap 485A) and the Capital Markets (Collective Investment Schemes) Regulations, 2001, with oversight by the Capital Markets Authority (CMA) to ensure investor protection, transparency, and accountability.

Key Structural Features

- **Pooling of Capital:** Investors subscribe to "units" representing proportional ownership in the fund.
- **Professional Management:** Licensed fund managers make investment decisions within approved parameters.
- **Independent Custodianship:** Trustees or custodians safeguard investor assets.
- **Regulatory Oversight:** CMA approval is mandatory for establishment, marketing, and operation.

Disclosure & Reporting: Offering documents, periodic financial statements and performance reports are provided to unit holders for informed decision making. Globally, CIS structures are analogous to mutual funds (U.S.) and unit trusts (U.K.), offering professionally managed portfolios at relatively low entry costs — a model that is now redefining property investment in Kenya.

Additionally, CIS play an important role in diversifying Kenya's investment landscape by providing collective access to regulated, income-generating assets previously limited to high-net-worth individuals.

3. APPLICATION OF CIS IN REAL ESTATE

While traditional CIS invest in equities, bonds, and money market instruments, an emerging category focuses on real estate assets, providing investors with an indirect but secure route into property ownership.

Real estate-based CIS can invest in:

- Completed income-generating properties, such as offices, malls, and apartments.
- Development projects, through structured real estate funds.
- Hybrid portfolios, blending property, debt, and equity exposure.

This model eliminates high capital barriers, allowing retail and institutional investors to access real estate opportunities under professional management and regulatory supervision with diversification across multiple properties and investment horizons. It further enhances market liquidity by facilitating fractional ownership and sustaining continuous capital inflows into the real estate sector.

4. THE RISE OF REAL ESTATE INVESTMENT TRUSTS (REITS)

Real Estate Investment Trusts (REITs) are specialized Collective Investment Schemes that focus exclusively on real estate.

In Kenya, they are regulated under the Capital Markets (Real Estate Investment Trusts) (REITs) Regulations, 2013, modeled on global frameworks such as those in Singapore, South Africa, and the United Kingdom.

REITs are typically listed on the Nairobi Securities Exchange (NSE) for broader investor access (particularly I-REITs), with additional rules on disclosures, distributions and related-party transactions.

Types of REITs in Kenya

- Income REITs (I-REITs): Invest in income-generating properties and distribute rental income to investors.
- Development REITs (D-REITs): Finance property development projects, with returns realized on sale or completion.
- Islamic REITs: Structured in accordance with Shariah-compliant principles.

REITs must be established as trusts, managed by licensed REIT managers, and overseen by independent trustees, ensuring fiduciary accountability and investor protection — key values embedded in CM Advocates LLP's real estate advisory framework.

5. COMPARATIVE ANALYSIS: CIS VS. REITS

Although REITs are a subset of Collective Investment Schemes, they are distinct in asset focus, investor profile, and regulatory treatment.

Feature	Collective Investment Scheme (CIS)	Real Estate Investment Trust (REIT)
Regulatory Framework	CMA Act & CIS Regulations, 2001	CMA Act & REIT Regulations, 2013
Investment Focus	Equities, bonds, and money markets	Exclusively real estate assets
Legal Structure	Unit trust or open-ended fund	Trust holding title to property
Investor Base	Retail and institutional	Institutional and professional (D-REITs); retail (I-REITs)
Minimum Entry	Low (KES 1,000+)	Higher (KES 5M+ for D-REITs)
Minimum Entry	Low (KES 1,000+)	Higher (KES 5M+ for D-REITs)
Returns	Based on NAV growth and dividends	Based on rental income and capital appreciation
Tax Treatment	Standard corporate tax	Corporate income tax exemption for compliant REITs (subject to distribution thresholds and conditions)
Liquidity	High (daily redemption)	Moderate (market/listing dependent)
Distribution Obligation	Optional	Mandatory (≥80% of distributable profits)
Example	Britam Unit Trust, CIC Money Market Fund	Acorn Student Housing REITs, ILAM Fahari I-REIT

Every REIT is a CIS, but not every CIS is a REIT.

REITs are therefore specialized, asset-backed collective investment vehicles focused on generating stable real estate income and optimizing tax efficiency.

While CIS offer flexibility and are suited to short- to medium-term investment horizons, REITs are typically long-term, income-focused vehicles anchored in tangible real estate assets. Both instruments, however, complement each other in deepening Kenya's capital market diversification and enhancing market trust and participation.

6. REGULATORY AND TAX ENVIRONMENT IN KENYA

The Capital Markets Authority (CMA) enforces stringent compliance standards for both CIS and REITs, including:

- Licensing of fund managers, trustees, and property valuers.
- Disclosure of offering memoranda, audited reports, and valuations.
- Minimum capital thresholds and investor protection requirements.
- Periodic reporting obligations and continuous disclosure standards for listed REITs.

7. TAX INCENTIVES

Under the Income Tax Act (Cap 470), qualifying REITs are exempt from corporate income tax. This "pass-through" model mirrors global best practice and enhances investor returns. Additional incentives may be available for approved transactions (e.g., reliefs on certain transfers into a REIT and reduced withholding rates on distributions) subject to prevailing law, approvals, and compliance with eligibility criteria. Sponsors should obtain tailored tax advice at structuring stage.

8. BENEFITS OF REAL ESTATE CIS AND REITS

Investor Benefits	Market Benefits
Affordable entry into real estate	Deepening of domestic capital markets
Professional management & due diligence	Mobilization of long-term housing capital
Diversified exposure across assets	Institutionalization of property ownership
Transparent reporting	Improved market governance
Tax efficiency	Acceleration of housing and infrastructure delivery

The success of ILAM Fahari I-REIT and Acorn Student Housing REITs showcases the growing investor confidence in Kenya's regulated property investment structures. Moreover, REITs have the potential to unlock billions in dormant property value by converting illiquid real estate assets into tradable securities.

9. INTEGRATION WITH CM ADVOCATES LLP'S REAL ESTATE, BANKING & FINANCE PRACTICE

Our Real Estate, Banking and Finance Department is among the most versatile legal practices in East Africa, delivering end-to-end solutions in land, development, finance, and investment structuring.

Strategic Support for Real Estate CIS and REITs

We provide comprehensive support throughout the investment cycle, including:

- Structuring and registration of CIS and REITs under CMA regulations.
- Drafting trust deeds, offering memoranda, and compliance documentation.
- Advising on land acquisition, project development, and financing models.
- Negotiating joint ventures and Public-Private Partnerships (PPPs).
- Tax advisory on real estate and capital markets transactions.
- Governance, investor protection, and regulatory reporting.
- Competition, data protection, AML/CFT, and ESG advisory to align with investor mandates and lender requirements.

Our Banking and Finance Sub-Unit integrates seamlessly with our Real Estate Development and

Joint Venture Projects Team, enabling us to deliver cohesive legal, financial, and regulatory solutions. Whether advising on REIT-backed housing developments, securitization of real estate assets, or compliance for fund managers, our firm ensures precision, compliance, and commercial success.

10. CONCLUSION

Collective Investment Schemes and Real Estate Investment Trusts are transforming how property investment is structured, financed, and accessed in Kenya. By pooling resources, ensuring transparency, and enabling fractional ownership, they promote financial inclusion and sustainable growth.

As Kenya's capital markets evolve, CIS and REITs will be central to bridging the financing gap in housing, infrastructure, and urban regeneration. CM Advocates LLP continues to pioneer legal innovation in this space — aligning local practice with international best standards and positioning clients to capitalize on opportunities within the African and global real estate landscape.

We welcome engagements from developers, fund managers, financiers, institutional investors, trustees, custodians, real estate investment advisers, property managers, valuers, professional service providers, and regulatory stakeholders seeking to originate, scale, or optimize CIS and REIT platforms.

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RETHINKING REAL ESTATE CAPITAL: HOW RCSLNS CAN REPLACE RELIANCE ON OFF-PLAN SALES

INTRODUCTION

For over a decade, off-plan sales have served as the backbone of real estate financing in Kenya. Developers' pre-sold units often before the first brick was laid and relied on deposits from early buyers as quasi-equity to fund construction. The model was practical, even innovative, in a market where bank credit was expensive and institutional capital scarce.

However, the economic terrain has shifted. Rising interest rates, tighter banking regulation, and waning consumer confidence driven by years of delayed and abandoned projects have exposed the fragility of the off-plan model. Developers now face liquidity constraints, while increasingly sophisticated buyers demand completed units or legally protected escrow structures before committing funds.

In response, structured capital instruments are emerging as viable alternatives. The Redeemable Convertible Subordinated Loan Note (RCSLN) blends debt stability with equity upside, enabling developers to build first, sell later and re-establish institutional credibility in project financing.

THE PROBLEM WITH OVER-RELIANCE ON OFF-PLAN SALES

At its peak, the off-plan model offered a bridge between concept and completion. Developers collected deposits of 10–30%, funded early works, and relied on progressive buyer payments to advance construction. When timelines held and markets remained buoyant, the model functioned. But when projects stalled or market conditions tightened, the weaknesses became evident.

Over-reliance on off-plan sales exposes developers to volatile cash flows, heightened litigation and consumer disputes, and erosion of market trust. Critically, buyers who provide upfront capital bear disproportionate risk while exercising minimal control over project governance.

Recent years have seen an increase in stalled developments, trapping purchasers between delayed delivery and lost deposits. In response, lenders and regulators have demanded stronger governance, escrow protections, performance security, and clearer risk allocation before supporting such projects.

Kenya's maturing real estate market can no longer treat buyer deposits as de facto construction

finance. The sector must transition from speculative pre-sales to structured private capital, where risk, return and control are contractually allocated.

THE RISE OF STRUCTURED CAPITAL IN REAL ESTATE

Globally, developers are increasingly adopting layered capital stacks that combine senior secured debt with mezzanine and hybrid instruments designed to bridge the gap between traditional bank lending and sponsor equity.

Within Kenya, the Redeemable Convertible Subordinated Loan Note has emerged as a particularly effective instrument for this purpose. Properly structured, RCSLNs provide developers with patient, flexible capital while offering investors contractual certainty and downside protection without the uncertainties inherent in off-plan sales.

Typically, the structure involves incorporation of a Special Purpose Vehicle to hold project assets, ring-fence liabilities, and serve as the issuing entity. Private or institutional investors inject capital through RCSLNs that sit contractually between senior debt and equity in the project capital stack.

FEATURES OF AN RCSLN

a) Redeemable Instruments

The instrument is redeemable, allowing the SPV to buy back the notes after a defined tenor deliberately aligned to the development lifecycle. In most Kenyan real estate projects, construction, completion, and sales are typically achieved within 24 to 36 months, with an outer horizon of up to 48 months for larger or more complex developments. RCSLNs are therefore structured with a corresponding medium-term tenor, ensuring redemption is closely tied to project completion, unit sales, or refinancing once cash flows crystallize.

b) Convertible Instrument

The instrument is convertible, enabling investors to convert outstanding debt into equity often preferred shares upon achievement of agreed valuation thresholds, completion milestones, or performance triggers. This conversion feature allows investors to participate in project upside following completion while preserving debt-like protections during the construction phase.

c) Subordinated

The RCSLN is subordinated, ranking below senior secured lenders but ahead of sponsor equity. This positioning balances risk and return, provides comfort to senior lenders, and preserves the overall bankability of the financing structure.

In effect, RCSLNs offer a middle path—combining the certainty of debt, the optionality of equity, and the discipline of structured finance.

WHY RCSLNS FIT KENYA'S REAL ESTATE MARKET

Kenya's property sector is at a structural inflection point, shifting away from consumer-funded construction toward institutional capital models aligned with global best practice. RCSLNs are particularly well-suited to this environment for several reasons: -

a) Predictable Cash Flow

RCSLNs provide developers with upfront capital, enabling uninterrupted construction throughout the typical 24–36 month build phase. This reduces reliance on incremental buyer deposits, helping projects stay on schedule and lowering execution risk.

b) Investor Downside Protection

Investors benefit from structured contractual safeguards. RCSLNs rank after senior lenders but before sponsor equity, offering repayment priority and fixed or structured returns during construction. Conversion rights into equity upon project completion or stabilization provide potential upside while preserving initial downside protections.

c) Developer Control and Flexibility

Throughout construction and sales, RCSLNs function as debt instruments, allowing developers to maintain governance and decision-making authority. Redemption or conversion is timed to milestones such as project completion, bulk sales, or refinancing events, providing flexibility without compromising operational control.

d) Market Credibility

Financing through structured private capital signals institutional discipline to the market. Visible progress funded by reliable capital reassures buyers, improves absorption rates, and restores public confidence, reducing reliance on speculative pre-sale activity.

e) Efficient Exit and Refinancing

Upon project completion typically within 24–48 months the SPV redeems the notes, settles investor returns, and distributes residual value to shareholders. This structured exit avoids pre-sale pressures and ensures a clean, predictable conclusion to the financing cycle.

REPLACING PRE-SALES WITH STRUCTURED PRIVATE CAPITAL

Consider a mixed-use development in Nairobi with a total project value of KES 3 billion. A commercial bank provides KES 1.5 billion in senior secured debt. A private investor contributes KES 800 million through RCSLNs bearing a fixed return of 9 percent per annum, structured for redemption or conversion upon completion within an anticipated 36-month horizon. The developer contributes land and equity valued at KES 700 million.

Construction commences immediately, without reliance on off-plan sales. Upon completion and unit sales, cash flows follow a clear repayment waterfall. First, the senior lender is repaid in full. Second, the RCSLN investors are redeemed or elect to convert into preferred equity. Third, residual profits are distributed to the developer.

This layered structure reduces speculative risk, enhances bankability, and transforms development from a transactional exercise into an investment-grade asset class.

LEGAL AND REGULATORY FRAMEWORK OF RCSLNS IN KENYA

RCSLNs are firmly grounded in Kenyan corporate, insolvency, and capital markets law and are widely used in structured finance and private credit transactions.

a) Corporate Law Compliance

Under the Companies Act, 2015, Kenyan companies may raise capital through debt instruments, including debentures and loan notes, which can be structured as redeemable and convertible with shareholder approval. The Act permits conversion of debt into equity in line with constitutional documents and approved terms, while redemption remains subject to a solvency test, ensuring creditor protection at exit.

b) Insolvency Recognition

The Insolvency Act, 2015 explicitly recognizes contractual subordination. Section 472 allows parties to vary the priority of debts by agreement, giving full legal effect to intercreditor arrangements and subordinated instruments. This underpins the enforceability of RCSLNs ranking below senior lenders but ahead of sponsor equity in the capital stack.

c) Capital Markets and Securities Law

RCSLNs are typically issued via private placements rather than public offers. Under the Capital Markets Act (Cap. 485A) and related regulations, offers made to a limited number of sophisticated or institutional investors qualify as private placements and are exempt from full prospectus requirements. Disclosure is provided through an information memorandum or private placement document.

d) Legal Enforceability and Market Compatibility

When properly structured, RCSLNs are legally enforceable, regulatorily compliant, and fully compatible with Kenyan frameworks for project finance, private credit, and hybrid capital. Terms including investor rights, conversion mechanics, redemption, ranking, and risk allocation are clearly documented, ensuring certainty for both developers and investors.

e) Investor Protection Meets Developer Flexibility

RCSLN terms are tailored to project risk and investor appetite, with tenors aligned to anticipated construction and sales cycles. Typical parameters include a tenor of 24 to 36 months, extendable up to 48 months where required, fixed or structured returns of eight to ten percent per annum (paid or capitalised), conversion into preferred equity at completion-linked or milestone-based valuations, redemption from unit sales proceeds or refinancing, and ranking below senior debt but above equity.

These terms are embedded in integrated documentation, including the Loan Agreement, Instrument of Note, Intercreditor Agreement, and Shareholders' Agreement, ensuring enforceability, clarity, and alignment across all stakeholders.

THE BROADER IMPACT: A NEW MODEL FOR KENYAN REAL ESTATE

The shift from pre-sales to structured private capital reflects the maturation of Kenya's real

estate sector. While off-plan sales may remain relevant for smaller or affordable housing projects, mid-scale and large developments increasingly require institutional funding frameworks anchored on defined construction timelines, disciplined governance, and credible exit mechanisms.

In a market once driven by buyer faith, RCSLNs introduce institutional trust, predictability, and bankability—laying the foundation for Kenya's next generation of resilient, investor-ready urban developments.

CONCLUSION

Kenya's real estate sector is entering a new financial era—one that prizes structure over speculation.

Redeemable Convertible Subordinated Loan Notes are not merely financing tools; they are frameworks for confidence, credibility, and sustainable growth. By aligning hybrid capital instruments to actual construction and sales cycles, developers can unlock scale without mortgaging trust, and investors can fund progress with clear, enforceable rights.

The era of relying on off-plan sales to bridge funding gaps is giving way to a more professional, transparent, and legally grounded model of project finance—one that reflects both the ambition and the maturity of Kenya's urban future.

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ESG CONSIDERATIONS IN REAL ESTATE: KENYA AND GLOBAL BEST PRACTICES

Environmental, Social, and Governance (ESG) principles are reshaping real estate development, investment, and management across global markets. Beyond meeting regulatory requirements, ESG integration enhances asset value, reduces operational costs, mitigates climate risks, and demonstrates corporate responsibility.

In Kenya, ESG adoption is gathering pace as developers and investors align with international frameworks and sustainability commitments, including the UN Sustainable Development Goals (SDGs). This shift is also driven by global capital markets and investor expectations that prioritize sustainable and responsible investment.

ENVIRONMENTAL CONSIDERATIONS

Environmental sustainability in real estate focuses on reducing ecological impact while optimizing operational efficiency and long-term resilience. In Kenya, this is critical as urbanization, climate change pressures and infrastructure growth have made sustainability a national priority. International frameworks guiding implementation and are gaining traction in Kenya include:

- LEED (Leadership in Energy and Environmental Design), which measures energy efficiency, water conservation, material use, and carbon emissions reduction.
- EDGE (Excellence in Design for Greater Efficiencies), a World Bank initiative tailored for emerging markets, including Kenya, that promotes resource-efficient building practices.

Best practice measures include:

- Renewable energy integration through solar, wind, and hybrid systems, reducing dependence on fossil fuels. Singapore mandates solar-ready rooftops in new developments, while Dubai incorporates large-scale solar installations into commercial projects. In Kenya, developers are increasingly adopting solar energy, LED lighting.
- Energy-efficient systems such as optimized HVAC, lighting, and smart building technologies. The UK's BREEAM framework emphasizes whole-life energy performance and operational efficiency.
- Water stewardship through rainwater harvesting, greywater reuse, and water-efficient fixtures. Dubai and Singapore are global leaders in urban water recycling initiatives. Tatu City and other master planned communities incorporate rainwater harvesting and water treatment plants as part of the sustainability commitments.
- Sustainable materials, prioritizing locally sourced, recycled, and low-carbon options, which China has mandated in many large-scale developments.

- Climate resilience through design features that withstand flooding, storms, and extreme temperatures, as adopted in coastal developments in the United States.

Global benchmarks highlight diverse approaches: the UK emphasizes net zero standards; Dubai prioritizes solar and water efficiency in arid environments; Singapore integrates smart and energy-efficient infrastructure; the United States leads in renewable energy and indoor air quality; and China advances sustainable urbanization through national green building labels.

Kenya has developed a fairly robust environmental legal regime directly governs real estate ranging from National Environmental Management Authority (NEMA) that oversees compliance with ESIA requirements, waste management, pollution control to Environmental Management and Coordination Act (EMCA) which requires Environmental and Social Impact Assessments (ESIAs)before any project identifying, mitigating and disclosing environmental risks and Climate Change Act which encourages low-carbon, climate resilient development across all sectors including construction amongst other laws.

SOCIAL CONSIDERATIONS

Social sustainability ensures that real estate development enhances well-being, inclusivity of the tenants, workers, surrounding communities and society at large. International best practices emphasize:

- Tenant welfare, ensuring safe, healthy, and amenity-rich environments as majority of Kenyans rely on rental housing. Jurisdictions such as the USA, UK, and Singapore apply WELL Building Standards that focus on occupant health and comfort. ESG demands measuring tenant satisfaction, air quality, energy bills and water savings in developments such as Garden City or Two Rivers.
- Community engagement, including local employment, skills development, and infrastructure investment, a feature of large-scale developments in Dubai and Singapore. In Kenya, Tatu City's partnership with Kiambu County to improve local roads, schools, and health centers demonstrates how developers can contribute to broader social welfare.
- Public participation, mandated in Kenya before the issuance of NEMA licences or change-of-user approvals, ensuring inclusivity, transparency, and responsiveness to community needs. The Environmental Management and Coordination Act(EMCA) requires Environmental and Social Impact Assessments (ESIA) before major real estate projects to assess displacements risks, access to social amenities and affects on local livelihoods.
- Diversity and inclusion, with leading developers in the UK and USA tracking workforce diversity across construction, management, and governance. In Kenya, the government's Affordable Housing Projects in areas such as Pangani, Kikuyu, Mavoko aim to deliver thousands of units at lower cost ensuring inclusivity for lower income groups.
- Health and safety compliance aligned with global standards such as ISO 45001, integrated with national labor laws. The Public Health Act requires real estate developments to provide sanitary conditions, waste management and adequate ventilation whilst the Occupational Safety and Health Act(OSHA)protects construction workers and requires safe building practices. For example, during COVID-A9 pandemic developers shifted to better designs with better ventilation, touchless entry systems responding well to social well being concerns.
- Social value reporting to ensure that developers, investors and property managers measure, disclose and communicate the positive social impacts of their projects touching on how many community amenities such as schools, clinics were created, how many local jobs were generated during construction and operation and how has the development improve health, safety and quality of life in general.

GOVERNANCE CONSIDERATIONS

Effective governance is the foundation for successful ESG performance. It addresses how real estate projects are managed , monitored and held accountable as they are prone to land disputes, opaque transactions, corruption and weak compliance. Best practices include:

- Transparent reporting of ESG commitments, targets, and performance indicators. ESG driven governance requires clear ownership structures, thorough due diligence and adherence to Ardhi sasa for digitized land

records.
- Strong risk management frameworks that integrate sustainability into enterprise risk. In Kenya listed property companies and REITS are required by CMA to report governance practices that intergrate risk registers, compliance dashboards and ESG aligned reporting frameworks.
- Board-level oversight of ESG issues and long-term sustainability strategy by settin gup audit committees, anti-bribery policies and whistleblower mechanisms
- Ethical supply chain management and responsible procurement practices.
- Compliance with disclosure standards set by regulators and international frameworks.

The UK and USA have established ESG disclosure obligations for listed real estate entities, while Dubai and Singapore have introduced mandatory sustainability reporting for significant projects.

STRATEGIC BENEFITS OF ESG INTEGRATION

- Enhanced asset value, with ESG-certified properties achieving higher sales prices and rental yields.
- Improved access to capital, as global investors and financial institutions increasingly tie funding to ESG compliance. Green bonds and sustainability-linked loans offer favorable terms.
- Operational efficiency through reduced energy and water consumption, waste reduction, and smart building management systems.
- Regulatory readiness, with developers anticipating future legislation and avoiding penalties.
- Reputation and marketability, as ESG credentials strengthen brand equity and attract international tenants.
- Risk mitigation, with climate-resilient designs and socially engaged projects reducing exposure to environmental, legal, and community-related risks.
- Long-term competitiveness, ensuring that assets remain viable in markets where sustainable investment is rapidly becoming the norm.

ESG IN KENYA: CURRENT TRENDS

Kenya's real estate sector is steadily aligning with ESG standards:

- Environmental: Developers are pursuing LEED and EDGE certification, adopting renewable energy solutions, complying with the Energy (Solar Water Heating) Regulations, and implementing Appropriate Building Materials and Technology (ABMT).
- Social: Local hiring, training initiatives, and mandatory public participation before approvals are now standard practice.
- Governance: Firms are increasingly focused on transparency, stakeholder engagement, and compliance with both Kenyan regulations and global ESG frameworks.
- ESG Reporting and regulatory evolution. Boards are required to develop sustainability strategies, reflecting global investor expectations and regulations.

ESG COMPLIANCE CHECKLIST FOR DEVELOPERS IN KENYA

1. Integrate renewable energy systems in line with the Energy (Solar Water Heating) Regulations, 2012.
2. Ensure project designs comply with the National Building Code, 2024, including standards for siting, ventilation, drainage, fire safety, and green design.
3. Adopt Appropriate Building Materials and Technology (ABMT) by sourcing locally available, sustainable, and affordable inputs.
4. Conduct Environmental and Social Impact Assessments (ESIAs) and secure NEMA approvals with demonstrated public participation.
5. Engage communities early in the project cycle to address concerns before change-of-user or planning approvals are granted.
6. Implement water conservation strategies, including rainwater harvesting and greywater reuse, and track water use efficiency.
7. Incorporate climate resilience into designs to address risks such as flooding, heat stress, and storms by insurance companies in the real estate premiums.
8. Establish robust occupational health and safety systems aligned with ISO 45001 and the Occupational Safety and Health Act.
9. Promote local hiring whilst upholding labour standard and implementing gender equality and diversity policies.
10. Develop ESG reporting frameworks that measure and disclose energy consumption, emissions, water use, tenant satisfaction, and community impact.

11. Institutionalize governance structures that include board oversight of ESG issues, supply chain due diligence, and transparent stakeholder communication.

CONCLUSION

ESG integration in real estate is no longer optional but rather central to sustainable growth and risk management. It is a strategic imperative that enhances asset value, strengthens market positioning, and ensures resilience against environmental, social, and regulatory risks.

For Kenyan developers and investors, aligning with international ESG frameworks provides a pathway to attract global capital, deliver high-quality assets, and contribute to sustainable urban development. By benchmarking against leading jurisdictions such as the UK, Dubai, Singapore, the United States, South Africa, China, Rwanda and Kenya can accelerate the adoption of sustainable, inclusive, and well-governed practices in real estate, ensuring long-term competitiveness in a global market that increasingly prioritizes sustainability.

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STRUCTURING FOR GROWTH IN A CHANGING ZAMBIA

What investors must get right on mining reform, local content and compliance

Zambia's copper-led recovery is attracting fresh capital, but the rules that govern that capital have moved. Investors and boards who structure for the new regulatory landscape will find opportunity. Those who rely on old assumptions will find risk.

By Muchimwa Mbulo, and Nissiana Mweemba- Mbulo and Partners Legal Practitioners, CM Advocates

A NEW GROWTH CYCLE, AND A NEW RULEBOOK

Zambia is entering a period of renewed commercial momentum. Copper prices have held steady above USD8,000 per tonne, sovereign debt restructuring has progressed, and the recovery is prompting a wave of M&A, cross-border financing, public-private partnerships, joint ventures and offtake agreements. The Government has set an ambitious direction, targeting three million tonnes of copper a year by 2031.

For investors, this is the headline. The detail that decides whether a deal succeeds is less visible. Over the past year, the legal framework for mining, local participation, foreign exchange and data governance has changed materially. Investors who treat these changes as a compliance exercise after the deal is signed will price risk badly. Those who build them into structuring from day one will be better protected and better positioned.

This article sets out what has changed, why it matters commercially, and what boards and investors should do about it.

THE MINING FRAMEWORK HAS BEEN REWRITTEN

The most significant development is in mining. The Geological and Minerals Development Act, 2025 and the commencement of the Minerals Regulation Commission Act together form the most comprehensive update to Zambia's mining legal framework in a decade. The two statutes divide the work between them. One governs the regulation and management of mineral resources and the licensing of small-scale and large-scale operations, while the other covers geological survey, mapping and exploration.

The institutional picture is also new. Oversight now sits with the Ministry of Mines and Minerals Development and the Minerals Regulation Commission, alongside dedicated offices for geological survey, artisanal and small-scale mining, large-scale mining and mineral investment promotion, and foreign investment and partnerships.

The commercial consequence is that investors are now dealing with a more structured, and in some respects more demanding, counterparty landscape. The reforms also create a fund to formalise and support artisanal and small-scale mining, strengthen environmental and social responsibility rules, and introduce mandatory local employment and procurement quotas. Due diligence on any mining asset should now test not only the validity of the licence, but also whether the holder can meet the obligations that come with it.

LOCAL CONTENT: FROM POLICY TO PROCUREMENT BUDGETS

Local content is where the reforms become operational. Mining rights-holders will be required to direct at least 20% of procurement budgets to registered Zambian suppliers within six months of the relevant statutory instrument coming into force, rising to 40% over five years.

This is a commercial issue as much as a legal one. It affects:

- **Supply chains.** Operators need to identify, qualify and contract with registered local suppliers, and to do so early.
- **Contracts.** Procurement agreements, EPC contracts and offtake arrangements should be reviewed for compliance and for flexibility to meet rising quotas.
- **Financing.** Lenders will increasingly ask whether a project's procurement plan can satisfy the local content regime, and may write compliance into covenants.
- **Valuation.** Acquirers should factor the cost of compliance and the risk of non-compliance into price, warranties and indemnities.

Investors who plan for local content will find it a route to stronger community and government relationships. Those who treat it as an afterthought risk operational and reputational cost.

STRUCTURING THE ENTRY

Zambia remains open to foreign investment. Foreign direct investment does not generally require review or approval, although the Zambia Development Agency is the principal body for investors seeking certain tax and non-tax incentives or land rights. That openness has limits that matter for structuring. Some sectors, including banking and finance, mining and energy, telecoms, real estate, and pensions and insurance, impose ownership and licence-transfer restrictions.

In practice, we advise investors to focus on five questions at the outset:

1. **Which vehicle?** Whether to invest through a local subsidiary, a joint venture or an acquisition of an existing holder, and what that means for licences, approvals and tax.
2. **What restrictions apply?** Sector-specific ownership and transfer rules can determine deal structure and timetable.
3. **Who is the partner?** In joint ventures, the shareholder agreement is the real risk-allocation document. Decision rights, funding obligations, deadlock, exit and transfer restrictions should be negotiated with the new regulatory environment in mind.
4. **What conditions must be met?** Conditions precedent should map the licence, regulatory and incentive approvals that the deal depends on.
5. **What happens if the rules change?** Contracts should anticipate legislative and regulatory change through appropriate change-in-law, stabilisation and renegotiation provisions.

MONEY IN, MONEY OUT: FOREIGN EXCHANGE AND FISCAL EXPOSURE

Getting capital into Zambia is rarely the difficulty. Getting returns out predictably is where careful structuring pays off.

Two developments deserve attention. First, policy is moving towards “value addition” in mineral processing and energy minerals, which is raising new questions on royalty rates, transfer pricing and tax incentives. Second, advisers have observed closer scrutiny and stricter enforcement of exchange control and foreign exchange measures as the Bank of Zambia works to stabilise the

kwacha amid growing mining exports and foreign investment.

For investors, the message is to plan repatriation from the start. Dividend and loan-repayment routes, intra-group pricing and reporting obligations should be settled in the structure and documented, not improvised after the first distribution.

COMPLIANCE IS NOW A BUSINESS RISK

Regulatory compliance in Zambia has moved from a paper exercise to an enforcement reality, and data protection is a clear example. The Data Protection Act, No 3 of 2021 entered active enforcement in 2025 after the Data Protection Commission was operationalised, and the Commission's phased guidance and enforcement protocols have placed data governance firmly on the corporate agenda.

Any business that holds customer, employee or supplier data, which means nearly every investor, should be able to demonstrate lawful processing, appropriate security and clear accountability. Acquirers should treat data governance as a due diligence item with a price attached, not a footnote.

The same is true of environmental and social obligations under the new mining framework. The wider risk picture also remains real. Industry participants continue to point to energy shortages, commodity price swings, unregulated artisanal and small-scale mining, unstable legislation and policy, and weak road infrastructure as ongoing challenges. A sound investment case identifies these risks, assigns responsibility for them and prices them in.

A PRACTICAL CHECKLIST FOR INVESTORS AND BOARDS

1. **Map the regulatory landscape before signing.** Identify every licence, approval and sector restriction that touches the deal.
2. **Test local content readiness.** Ask whether the target or project can meet current and rising procurement requirements.
3. **Design the structure around exit and repatriation.** Settle foreign exchange, tax and dividend routes at the outset.
4. **Build change-in-law protection into contracts.** Reform is ongoing, and agreements should be able to absorb it.
5. **Treat data protection and ESG as due diligence items.** Price the exposure and allocate responsibility.
6. **Plan for operational risk.** Energy, logistics and commodity price exposure should be reflected in forecasts and covenants.
7. **Engage early with regulators and communities.** Predictability is built through relationships as well as through statute. The social license is very key.

CONCLUSION: CLARITY, STRATEGY, FORESIGHT

Zambia's opportunity is real, but it is no longer a simple story of resources and returns. The winners in this cycle will be investors who read the regulatory signals early, structure with discipline and treat compliance as part of strategy. In a changing Africa, that combination of clarity about the rules, strategy in the structure and foresight about what comes next is what separates a good investment from a costly lesson.

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