



CREATED BY THE ANDE LEGAL WORKING GROUP

## **EAST AFRICA LEGAL GUIDE**

### **ANDE LEGAL WORKING GROUP TOOLKIT**

#### **NEW MARKETS LAB**

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This legal guide provides an overview of legal issues and requirements for impact investors and social entrepreneurs who are entering into business in East Africa. Understanding the local legal environment streamlines the due diligence process and improves the ongoing viability, sustainability, and growth potential of investments.

The legal guide is organized into eight (8) sections that review different aspects of investment and provide sector-specific overviews. It is important for most investors and entrepreneurs to have a basic understanding of the unique issues and challenges presented in this guide.

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**THE ATTACHED TOOL PROVIDES INFORMATION OF A GENERAL NATURE AND SHOULD NOT BE TAKEN OR USED AS LEGAL ADVICE IN SPECIFIC SITUATIONS, WHICH WILL DEPEND UPON PRECISE FACTUAL CIRCUMSTANCES AND VARIOUS FACTORS UNIQUE TO AN ENTERPRISE. THESE MAY INCLUDE, WITHOUT LIMITATION, TYPE OF ENTITY, NATURE OF ACTIVITIES, STAGE OF GROWTH AND APPLICABLE LAW. PLEASE SEEK APPROPRIATE COUNSEL FOR SPECIFIC LEGAL MATTERS.**

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## EAST AFRICA LEGAL GUIDE

<b>Executive Summary .....</b>	<b>1</b>
<b>Section 1 – Prevailing Law, Choice of Law and Dispute Settlement in East Africa .....</b>	<b>5</b>
<b>Prevailing Law .....</b>	<b>6</b>
Common Law Jurisdictions .....	6
Civil Law Jurisdictions .....	6
<b>Governing law and Choice of Law.....</b>	<b>7</b>
<b>Dispute Settlement Mechanisms .....</b>	<b>9</b>
Arbitration .....	9
Arbitration in the East African Court of Justice.....	11
<b>Section 2 – Types of Business Entities.....</b>	<b>12</b>
<b>Companies with Limited Liability .....</b>	<b>13</b>
<b>Partnerships.....</b>	<b>15</b>
Unlimited Liability .....	15
Limited Liability.....	16
<b>Sole Proprietorships.....</b>	<b>17</b>
<b>Branch Offices of Foreign Owned Companies .....</b>	<b>17</b>
<b>Not-for-Profit Entities .....</b>	<b>17</b>
<b>Figure 1 - Types of Entities by East African Country.....</b>	<b>18</b>
<b>Section 3 – Compliance with National, Foreign, and Regional Law .....</b>	<b>20</b>
<b>National Law .....</b>	<b>20</b>
Social and Environmental Compliance .....	21
Financial Compliance .....	21
<b>Regional Law .....</b>	<b>22</b>
The East African Community (EAC).....	22
Common Market for Eastern and Southern Africa (COMESA) .....	23
<b>Compliance with U.S. Laws .....</b>	<b>24</b>
Foreign Corrupt Practices Act: Anti-bribery and Accounting Provisions.....	24
Anti-Money Laundering .....	25
Sanctions.....	25
Anti-boycott Laws.....	25
<b>Section 4 – Land Tenure Issues in East Africa .....</b>	<b>27</b>

<b>Issues for Investors and Entrepreneurs .....</b>	<b>27</b>
Limits on Foreign Investment in Land .....	27
Issues Facing Entrepreneurs.....	29
<b>History and Legal Structure .....</b>	<b>31</b>
<b>Voluntary Commodity Standards.....</b>	<b>32</b>
<b>Section 5 – Sector-Specific Legal and Regulatory Issues in East Africa: Agriculture... 34</b>	
<b>Agricultural Inputs.....</b>	<b>35</b>
<b>Sector-Specific Regulation.....</b>	<b>36</b>
Regional Market Harmonization .....	37
Food Safety Standards .....	38
Packaging and Labeling.....	39
Transport, Storage, and Distribution Services .....	39
Customs and Trade Facilitation .....	41
<b>Section 6 – Sector-Specific Legal and Regulatory Issues in East Africa: Information and Communications Technology (ICT) .....</b>	<b>44</b>
<b>EAC ICT Policy .....</b>	<b>45</b>
<b>Legal, Regulatory, and Institutional Framework.....</b>	<b>45</b>
Kenya.....	45
Rwanda.....	46
Tanzania.....	47
Uganda.....	48
Licensing Framework.....	49
Kenya.....	49
Rwanda.....	50
Tanzania.....	50
Uganda.....	51
<b>Competition and Price Regulation.....</b>	<b>51</b>
Kenya.....	51
Rwanda.....	52
Tanzania.....	52
Uganda.....	52
<b>Universal Access and Service.....</b>	<b>53</b>
Kenya.....	53
Rwanda.....	53
Tanzania.....	53
Uganda.....	54
<b>Foreign Investment.....</b>	<b>54</b>
Kenya.....	54
Rwanda.....	54
Tanzania.....	55
Uganda.....	55
<b>Section 7 – Sector-Specific Legal and Regulatory Issues in East Africa: Energy.....</b>	<b>56</b>

<b>The East African Community (EAC)</b> .....	<b>56</b>
<b>Access to Energy</b> .....	<b>57</b>
<b>Energy Legislation and Regulation</b> .....	<b>58</b>
<b>Electricity</b> .....	<b>59</b>
<b>Renewable Energy</b> .....	<b>59</b>
<b>Oil and Gas</b> .....	<b>61</b>
Regulation .....	61
Domestic Requirements (and local content).....	62
Foreign Investor Nationality Requirements.....	63
<b>Section 8 – Summary of Investment-Specific Requirements</b> .....	<b>64</b>
<b>Kenya</b> .....	<b>65</b>
<b>Rwanda</b> .....	<b>69</b>
<b>Tanzania</b> .....	<b>72</b>
<b>Uganda</b> .....	<b>75</b>
<b>Matrices</b> .....	<b>80</b>
Kenya Stamp Duty Requirements .....	80
Kenya Registration/Filing Requirements.....	83
Rwanda Stamp Duty Requirements .....	87
Rwanda Registration/Filing Requirements.....	88
Tanzania Stamp Duty Requirements .....	91
Tanzania Registration/Filing Requirements.....	93
Uganda Stamp Duty Requirements .....	98
Uganda Registration/Filing Requirements.....	102

## **EXECUTIVE SUMMARY**

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This Legal Guide provides an overview of common issues and requirements that investors, social entrepreneurs, and their counsel should be aware of when working in East Africa. National, regional, and international law must all be considered. Understanding the legal environment for investment can streamline the due diligence process and improve the ongoing viability, sustainability, and growth potential of investments.

This Legal Guide is organized into eight (8) sections that cover different aspects of the investment environment and specific sectors. It is important for most investors and entrepreneurs to have a basic understanding of the unique issues and challenges presented in this guide, but the Guide is in no way intended to take the place of specialized legal counsel.

The eight sections covered are:

**(1) PREVAILING LAW, CHOICE OF LAW AND DISPUTE SETTLEMENT IN EAST AFRICA**

**(2) TYPES OF BUSINESS ENTITIES**

**(3) COMPLIANCE WITH NATIONAL LAWS, REGIONAL STANDARDS, AND INTERNATIONAL NORMS**

**(4) LAND TENURE ISSUES IN EAST AFRICA**

**(5) SECTOR-SPECIFIC LEGAL AND REGULATORY ISSUES IN EAST AFRICA: AGRICULTURE**

**(6) SECTOR-SPECIFIC LEGAL AND REGULATORY ISSUES IN EAST AFRICA: INFORMATION AND COMMUNICATIONS TECHNOLOGY**

**(7) SECTOR-SPECIFIC LEGAL AND REGULATORY ISSUES IN EAST AFRICA: ENERGY**

**(8) SUMMARY OF INVESTMENT-SPECIFIC REQUIREMENTS**

In each of these areas, this Legal Guide aims to facilitate a better understanding of basic legal issues related to investment in the East Africa region in order to reduce risk, better focus the role of legal counsel, and save time and money for both investors and entrepreneurs. The Legal Guide was developed by lawyers with experience in international trade and investment law, as well as local counsel in East Africa. The overall project also includes model term sheets for debt and equity transactions. We will continue to update this Guide and welcome comments.

**Chapter 1 on PREVAILING LAW, CHOICE OF LAW AND DISPUTE SETTLEMENT IN EAST AFRICA** will discuss differences in legal systems in East Africa and the law that will govern the terms of a contract. While some matters can be dealt with through contractual provisions, others may be determined by local law and custom. In East Africa,<sup>1</sup> most legal systems follow English Common law and have a number of elements in common with the U.S. system, although there are exceptions. This section provides an overview of the legal concepts surrounding governing law and choice of law in the East African context. This chapter will also discuss the implications that arise from the choice of dispute settlement mechanisms. In the event of a dispute, the parties to an agreement will often choose arbitration or another form of alternative dispute resolution instead of litigation, since the courts can be slow and often have a significant backlog of cases.

**CHAPTER 2 ON TYPES OF BUSINESS ENTITIES** will assess one of the first legal aspects of starting a new business, namely the different types of entities that may be formed in different jurisdictions. The different types of business entities allowed will vary among countries as will level of liability, form of taxation, number of desired owners, and type of ownership. The ideal corporate form may not exist, so it will be important for business owners to decide which tradeoffs can be made with the least amount of risk.

**CHAPTER 3 ON COMPLIANCE WITH NATIONAL LAWS, REGIONAL STANDARDS, AND INTERNATIONAL NORMS** will assess elements of compliance that entities operating in East Africa will need to consider. These will include compliance with local laws, international standards, and, in many cases, U.S. laws related to doing business abroad. Relevant issues will include, but are not limited to: social and environmental compliance; compliance issues related to the cross-border nature of the investment; financial compliance; compliance with U.S. laws (or laws of other jurisdictions when foreign investors are involved); compliance with the host country's laws; and enforceability. Similarly, entities operating in East Africa will need to monitor compliance with a variety of laws, regulations, and standards, and compliance will be a considerable factor in investment transactions. This section provides an overview of some of the most common types of compliance issues that may be relevant to a transaction. Before entering into a contract or setting up operations in a foreign country, entities should research the compliance requirements that are specific to the locality.

**CHAPTER 4 ON LAND TENURE ISSUES IN EAST AFRICA** will assess issues surrounding land tenure, which can be particularly complex, with significant social and political implications. Land

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<sup>1</sup> East Africa generally refers to the countries of the East African Community, namely Kenya, Rwanda, Tanzania, Burundi, and Uganda. For purposes of this guide, the laws of Kenya, Rwanda, Tanzania and Uganda will be discussed, with any reference to a particular country's laws explicitly noted.

tenure issues may impact many different sectors, including agriculture, construction, retail, and energy, and economic issues must be balanced with social considerations including the historic use of land in a particular location. Legally, this is an area in which particular attention should be focused and local counsel consulted, regardless of whether a company is seeking to invest directly, do business in the agricultural or natural resources sectors (issues around land can affect investment at any stage in the supply chain), or use land-based collateral to secure an investment transaction.

**CHAPTER 5 ON SECTOR-SPECIFIC LEGAL AND REGULATORY ISSUES IN EAST AFRICA: AGRICULTURE** will present legal issues that may arise all along agricultural value chains. In addition to land tenure issues discussed in the preceding chapter, these can include specific laws and regulations related to different types of activities (production, processing, transport, distribution, etc.); varying product standards, cross-border issues; and numerous, complex food safety and sanitary and phytosanitary (SPS) standards. Markets for inputs (including seeds and fertilizer) can also be quite difficult to navigate from a legal and regulatory perspective, and investors and entrepreneurs, along with their counsel, should be aware of these complexities. Not only are market activities regulated, but as goods enter regional and international markets, they come in contact with a diverse range of rules and standards governed by numerous, often overlapping, laws and standards. These may include tariffs, non-tariff measures, export restrictions, and cross-border trade requirements.

**CHAPTER 6 ON SECTOR-SPECIFIC LEGAL AND REGULATORY ISSUES IN EAST AFRICA: INFORMATION AND COMMUNICATIONS TECHNOLOGY** will examine national and regional rules and regulations in ICT, which is a growing field throughout East Africa. These issues will both impact current and future investment transactions, but they can also shape the ICT sector more broadly, which is a significant element of the infrastructure needed for conducting and growing businesses of all types and sizes. For the social enterprise sector, particular aspects of the ICT sector such as mobile payments, e-commerce, and online media are of relevance. Because of the rapidly changing nature of the industry, ICT measures may be difficult to predict, as lawmakers work to keep up with changes in technology and its application. As is true in other sectors, currently each East African country has its own regulations that do not completely align with other East African countries or the East African Community (EAC) regulations. Some countries' regulatory frameworks tend towards self-regulation (Tanzania, Uganda, and Rwanda), while others provide for stricter control by national regulators (Kenya and Burundi).

**CHAPTER 7 ON SECTOR-SPECIFIC LEGAL AND REGULATORY ISSUES IN EAST AFRICA: ENERGY** will evaluate laws and regulations related to the energy sector. Access to energy is a critical element of countries' development programs, and it relates directly to how all other sectors

will develop. Despite national, regional, and international policies to increase energy availability, access to electricity in East Africa remains low. Not only is energy generation insufficient to meet demand, the existing supply can be unreliable or priced out of reach. For the social enterprise sector, new opportunities exist in off-grid and renewable energy, including hydropower, geothermal, solar, bioenergy, and wind power. The legal and regulatory environment in the energy sector, which is discussed in this chapter, will play an increasingly important role in the sector's development.

**CHAPTER 8 ON THE SUMMARY OF INVESTMENT-SPECIFIC REQUIREMENTS** will outline the numerous registration requirements that relate to investment transactions and ongoing business operations. This section lists common types of investment documentation and presents specific requirements by country.

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## SECTION 1 – PREVAILING LAW, CHOICE OF LAW AND DISPUTE SETTLEMENT IN EAST AFRICA

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In any investment, parties must choose what will happen in the event of a dispute, including the type of dispute settlement mechanism – for example, recourse through the courts, arbitration, mediation, etc. – and the law that will govern the terms of a contract. Effective decision-making in this area can be complicated, especially since some of these issues may be effectively dealt with through contractual provisions, while others may be determined by local law and custom. This section will explain some of the basic considerations related to choice of law and dispute settlement in the East African context.

Legally, the jurisdiction under which a transaction is conducted and how a governing body will determine which law applies in the case of a dispute make up a somewhat complex procedural area referred to as choice of law. Because this can have significant implications for an investment transaction, investors and entrepreneurs are advised to seek experienced counsel. For example, many U.S. investors request that the law of New York or Delaware govern, but this is often not well received by local courts, on the basis that emerging markets have established law that can, and should, apply.

In East Africa,<sup>2</sup> most legal systems follow English Common Law and have a number of elements in common with the U.S. system, although there are exceptions. Because of the Common Law tradition, English law may be an attractive compromise in investment transactions in East Africa. In the event of a dispute, the parties to an agreement will often choose arbitration or another form of alternative dispute resolution instead of litigation, since the courts can be slow and often have a significant backlog of cases. This section provides an overview of the legal concepts surrounding governing law and choice of law as

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well as discusses the implications that arise from the choice of dispute settlement mechanisms.

## **PREVAILING LAW**

### **COMMON LAW JURISDICTIONS**

Most countries in East Africa are Common Law jurisdictions and follow the English legal tradition. This is true of Kenya, Tanzania, and Uganda. In Common Law jurisdictions, statutory law is developed by the legislature and regulatory law is the domain of the executive branch. The courts will define the law when a question of interpretation arises or in the absence of specific applicable statutory or regulatory law. This system should seem familiar to many outside investors, including those from the United States, another Common Law country.

Common Law jurisdictions are sometimes viewed as more commercially friendly, due to the more detailed nature of many legal instruments and court decisions. Common Law jurisdictions can sometimes be silent on some specific elements central to investment transactions, however. For example, Kenya's Companies Act does not include specific provisions on right of first refusal or tag-along rights, drag-along rights, etc.<sup>3</sup> making specific interpretation of these rights difficult. Tanzanian law is similarly silent on these aspects, creating possible difficulties for investors seeking to enforce such provisions.

Common Law courts, while they usually follow precedent, can also reinterpret existing law. This can make litigation outcomes unpredictable. This tends to be more common in jurisdictions that have weak judicial systems and, when coupled with the judicial backlog in the region, recourse through the court system can be a time-consuming and costly proposition.

### **CIVIL LAW JURISDICTIONS**

Rwanda, similar to most of Africa, has traditionally been a Civil Law (or "Code Law") jurisdiction that traces its legal systems back to Roman law and the Napoleonic Code instead of English law. In order to become more investment friendly, Rwanda has begun

#### **Investor's Perspective on Governing Law:**

Most investors will choose governing law that they are familiar with, but this may not stand the test in East Africa. However, choosing governing law that is similar to the laws in the region, i.e. English Law, can often be a good compromise between the interests of investor and entrepreneur.

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<sup>3</sup> For definitions of these, and other related terms, the ANDE Legal Working Group, through the International Transactions Clinic at the University of Michigan Law School, has created a glossary of terms related to social enterprise, including basic business and legal terms.

to move towards a Common Law system since it committed to significant legal reforms in the mid-1990s. While this process is not yet complete, it does signal a significant shift in policy and legal structure.

Civil Law jurisdictions operate quite differently from Common Law jurisdictions. Civil Law jurisdictions will not allow the courts to determine the law where a statute or regulation is silent. Civil Law statutes tend to be more detailed than those in Common Law jurisdictions, so some Civil Law jurisdictions may afford greater certainty to investors. Once again, the overall strength of the legal system will determine how reliable it is for investors and other parties to enter into commercial contracts.

### **GOVERNING LAW AND CHOICE OF LAW**

Governing law determines the rights and obligations of the parties in a commercial contract, so it is an important consideration for both investors and entrepreneurs. Governing law will be the law that applies in the event of a dispute. While some elements will always be subject to local or national law, such as procedural issues and business structure, other issues can be decided under the laws of another jurisdiction. Other factors may also override the “choice of law” clause in the contract. For example, in questions of real property or title, the law of the state in which the property is located will govern. Local jurisdiction rules will also have to be followed, as will statute of limitations provisions, ability to have/waive a jury trial, caps on awards, and any other rules that pertain to whether a claim can be brought, how a trial is conducted, and availability of remedies under litigation.

Most parties can (and should) specify governing law<sup>4</sup> through a “choice of law” clause in the contract, but the courts may intervene to determine the governing law, making custom in a particular region very important. If foreign law is chosen and questioned, the case for applying foreign law will have to be pleaded and proven by a lawyer from that jurisdiction appearing before a local court.

Ultimately, practicality, convenience, and applicability should determine which law the parties choose, and defaulting to a foreign jurisdiction is not recommended as a matter of course. Because contract rules are different across jurisdictions, some claims that would succeed in one jurisdiction will fail in another. This can become an issue if a local judge is asked to apply a foreign law and the result under foreign law is contrary to the local policy. Some judges may claim to be applying the foreign law but will make sure the outcome

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<sup>4</sup> Governing law is also referred to as “applicable law” or “proper law” in Common Law jurisdictions.

aligns with local law. In any case, consulting local counsel is advisable when choosing which law should govern.

In many commercial contracts, New York law is chosen because it transparently protects investors' rights. In East Africa, despite the fact that a party to a transaction wishes to choose New York law, the best path for creating an enforceable contract may be choosing the law of the host country. Even if a contract specifies a particular governing law, a judge or arbitrator may not resolve the dispute in accordance with that law. For example, Kenyan courts prefer to enforce Kenyan law even if New York law is specified in the contract. In investment deals, a variety of traditional financing structures are available under Kenyan law, so many of the same protections will apply.

If governing law is not specified, the Rome Convention on The Law Applicable to Contractual Obligations<sup>5</sup> or local conflict of laws<sup>6</sup> rules will apply. Conflicts of laws rules determine which jurisdiction's laws applies by looking at the domicile of the parties, the jurisdictions that could be applied to the transaction, and the choice of law provisions in the relevant jurisdictions. Contractual choice of law clauses often include a phrase excluding the conflicts of laws rules within the chosen jurisdiction (see box). This is done because certain jurisdictions will have conflicts of laws rules that, when followed, will lead to the laws of a different jurisdiction being applied. By exempting that jurisdiction's conflict of laws rules, the parties are better able to ensure that their chosen jurisdiction's laws will apply.

In some countries, Kenya for example, investors report that the courts will usually respect any contractual terms that do not conflict with domestic laws, but in these cases, consultation with local counsel will be particularly important. To ensure enforceability, investors should consider specifying that agreements carried out in Kenya are governed by Kenyan law. Decisions of English courts and courts based in Commonwealth countries are not binding on the Kenyan courts, but they are taken to be highly persuasive if similar facts and law are involved and they are clearly not inconsistent with the interests and circumstances of Kenya and its inhabitants.

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<sup>5</sup> The Convention on the Law Applicable to Contractual Obligations is a treaty concluded at Rome on June 6, 1980 and registered on April 11, 1991. It applies to contractual obligations in choice of law situations and all members of the EU are members, as well as some non-member states.

<sup>6</sup> Conflict of laws can also be referred to as private international law, particularly in civil law jurisdictions.

Another enforceability issue can appear, either through arbitration or litigation, when a decision is made that needs to be enforced in a different jurisdiction. For example, a loan dispute litigated in a New York court with a personal guarantee in Kenya, under Kenyan law, may prove unenforceable when the prevailing party attempts to collect the money promised under the guarantee, possibly even requiring additional litigation in Kenya. The Kenyan Foreign Judgments (Reciprocal Enforcement) Act provides for the enforcement in Kenya of judgments given in other countries that accord reciprocal treatment to judgments given in Kenya, but so far Kenya has entered into reciprocal enforcement agreements only with Australia, the United Kingdom, Malawi, Tanzania, Uganda, Zambia, and Seychelles. Other East African countries accord reciprocal enforcement of agreements – including with their neighbors – but it is important to verify that reciprocal enforcement exists before dispute settlement.

**Entrepreneurs Perspective  
on Arbitration**

Arbitration is the preferred method of dispute settlement, but the courts can -- and do -- work.

**DISPUTE SETTLEMENT MECHANISMS**

Any investment contract must involve provisions for dealing with a dispute, and the form of dispute resolution should be explicitly stated. Investors, entrepreneurs, and counsel should give proper consideration to the type of dispute resolution that will best protect the interests of the parties and to how the parties' views on governing law will lead to the most efficient resolution of any dispute that does arise.

**ARBITRATION**

Arbitration is often a preferred option to litigation in the case of cross-jurisdictional contracts. Given the weak and slow judicial system, as well as the unpredictability of regional court judgments, arbitration is viewed as a more commercially reliable manner for resolving disputes. Related reasons for choosing arbitration include greater neutrality for foreign parties, flexibility, and the ability to maintain confidentiality of judgments.

**Sample Choice of Law Clause**

This Agreement shall be governed by and construed in accordance with the laws of [jurisdiction], without regard to its conflict of laws rules.

The decision of whether to choose arbitration over litigation is region, and country, specific. While arbitration can be an appealing alternative to litigation in some jurisdictions, including East Africa, it does not always result in quicker resolution or lower and more predictable costs. Arbitration does not have a foreseeable timeline and fixed costs are supplemented with travel, lodging, and hourly arbitrator costs. Ultimately, the

decision of whether to subject a dispute to binding arbitration should be made based on a number of factors, including the reliability of the local court system, availability of qualified arbitrators, and local costs involved.

Arbitrators do not have power to enforce their rulings, though arbitration rulings are legally binding. If a party refuses to comply with an arbitration judgment, the ruling must ultimately be enforced by the local courts. The provisions of the Convention on the Recognition and Enforcement of Foreign Arbitral Awards, also known as the New York Convention, make arbitral awards easier to enforce in foreign jurisdictions than court judgments. The 140 signatories to the New York Convention, including Kenya, Rwanda, Tanzania, and Uganda, have all agreed to recognize and enforce arbitral awards, which are generally final and not subject to appeal.

Choice of law issues will also arise when arbitration is the chosen method for dispute resolution because the arbitrator must apply a specific law in determining the outcome of the dispute. Under Article 35 of the United Nations Commission on International Trade Law (UNCITRAL) Rules, the arbitral tribunal shall apply the rule of laws specified by the parties, and, if the parties fail to specify choice of law, the arbitral tribunal shall decide the governing law. UNICTRAL rules are primarily used in ad hoc arbitration, that is, arbitration in which parties choose their own procedures, rules, and arbitrators without the support of an institution. Institutional arbitration is supervised by an existing arbitral institution that is chosen by the parties and can be international, regional, or local.

Despite the appeal of using arbitration in commercial cases, it does have negative factors that should be considered. Arbitration may be very complex to arrange, and few avenues for appeal exist in most jurisdictions.

#### **Local Counsel Perspective on Arbitration**

Arbitration has been the default because of the backlog in the courts, but the cost balance is shifting, making courts a better alternative for commercial disputes.

#### **Common Arbitration Clause Elements in Kenya**

In many commercial agreements in Kenya, arbitration provisions call for appointment of a single arbitrator, with either party having the ability to apply to the Kenya Branch Chairman of the Chartered Institute of Arbitrators in accordance with the Arbitration Act No. 4 of 1995 or any statutory modification or re-enactment thereof. Arbitration is generally specified to take place in Nairobi.

Arbitration is common in East Africa, with choice of law tending to be the host country's legal system. Rwanda has now established an arbitration center in Kigali, and Kenya is developing an arbitration center as well.

For more detailed information on arbitration, the ANDE Legal Working Group, through the International Transactions Clinic at the University of Michigan Law School, has created a guide to arbitration decisions and annotated arbitration clause.

### **ARBITRATION IN THE EAST AFRICAN COURT OF JUSTICE**

The Treaty for Establishment of the East African Community (EAC Treaty) established the East African Community (EAC) in 2000 in order to foster cooperation between Kenya, Uganda, Tanzania, Burundi, and Rwanda. Article 9 of EAC Treaty established the East African Court of Justice (EACJ),<sup>7</sup> which provides a forum for any person in a member nation to seek arbitration under the EAC Treaty. Under Article 32 of the EAC Treaty, parties may refer arbitration to the EACJ when pursuant to a contractual dispute resolution clause designating the EACJ as having arbitral jurisdiction or, by agreement after a dispute has arisen. In 2001, the EACJ drafted Rules of Arbitration (“EAC Rules”), which govern proceedings referred to EACJ arbitration; these were updated in March 2012.<sup>8</sup> The language of the Tribunal is English (EACJ Rule 22).

The EACJ arbitration may be more beneficial than some other arbitration options because it appoints a tribunal or sole arbitrator from among the judges of the EACJ, has a clearly defined process with time limits (similar to litigation), and keeps fees reasonable. The parties do not have to pay fees to the arbitrator, though they still must pay administrative expenses and other costs of arbitration, and filing fees are relatively low (as low as \$100 if the amount in dispute is under \$10,000).

To date, the EACJ jurisdiction over arbitration has not been utilized fully but the EACJ is working to improve the public’s access to, and understanding of, the process by expanding its regional presence and hosting classes to inform locals about the benefits of its arbitration options.

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<sup>7</sup> Robert Sentner & Paige Berges, *Doing Business in Africa—New Regional Institutions Bring International Arbitration to Sub-Saharan Africa*, NIXON PEABODY (Feb. 4, 2013), [http://www.nixonpeabody.com/New\\_regional\\_institutions\\_bring\\_international\\_arbitration\\_to\\_Sub\\_Saharan\\_Africa](http://www.nixonpeabody.com/New_regional_institutions_bring_international_arbitration_to_Sub_Saharan_Africa).

<sup>8</sup> *Id.*

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## SECTION 2 – TYPES OF BUSINESS ENTITIES

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One of the first concerns when starting a new business is the type of entity that should be formed. Certain types of entities must relate to certain goals so, depending upon the goals of the enterprise, it may be prudent to begin a company's life as one type of entity and transition to a different type after certain goals have been met. Key factors to consider are the level of liability, form of taxation, number of desired owners (ranging from one through publicly traded), and type of ownership (public or private). It is also necessary to consider whether the new enterprise is a not-for-profit or a subsidiary or branch of a foreign company. The ideal corporate form may not exist, so it will be important for owners to decide what tradeoffs can be made with the least amount of risk.

Liability for corporate entities refers to the amount of liability that owners have when an action is brought against a company. Unlimited liability means that parties with claims against the business can recover damages from the company's owners if there is not enough capital in the entity's assets. Limited liability means that the owners cannot lose their personal assets to cover the company's obligations but will be liable only for the amount that they have already invested into the company.

The primary tax issue surrounds whether there is double or pass-through taxation. Double taxation means that the company has to pay corporate taxes on income, and then the owners have to pay personal taxes on the money that the business pays to them. Pass-through taxation does not tax the entity separately from the owners. Instead, the owners are taxed on the business's income when it is made, whether or not it is actually distributed to the owners.

Publicly owned companies are traded on public markets and have few restrictions on trade. Privately owned companies are owned by specific individuals who are usually restricted in to whom, when, and how they can transfer their shares.

This section highlights issues related to type of business entities for entrepreneurs, investors, and their counsel to act as a guide when doing business in East Africa. The guide divides the types of entities into those with limited liability and partnerships. It then briefly discusses sole proprietorships, not-for-profit options, and foreign owned

businesses. As with the other guides in this toolkit, this section is presented for informational purposes only and should not be taken as legal advice.

### **COMPANIES WITH LIMITED LIABILITY**

Most countries have a corporate form that allows for an unlimited number of owners and grants limited liability and freedom to trade shares to all of the entity's owners.

The primary advantage of these types of entities is that they provide the most

liability protection: the members<sup>9</sup> of the entity are not personally liable for its debts. The drawback to this entity usually comes in the form of double taxation and cumbersome registration and reporting requirements. Entrepreneurs should carefully consider the important trade-off between limitations on liability and higher taxes.

These companies are usually the only form that can "go public," be listed on the stock exchange, or offer shares for the general public to buy and sell with little restriction. Public companies usually have stringent, ongoing reporting requirements outlined in the country's corporate laws. Being a public company means that financial information must be regularly disclosed to the government and all shareholders for the life of the public entity. Typically, most companies do not go public at the time of incorporation. Many companies begin as private companies and then go public when the market and timing is right for them. When considering listing as a public company, local counsel should be consulted for guidance on these complex regulations. In some cases, where misstatements in a public prospectus may have led to shareholder reliance on those statements and consequent damage, the company may incur civil or criminal liability.

In Kenya and Rwanda, this type of company is called a Limited Liability Company (LLC) and is the most common corporate structure in either country. The Kenyan<sup>10</sup> and Rwandan<sup>11</sup> LLCs are more analogous to the U.S. C Corporation<sup>12</sup> than the U.S. LLC.

#### **Lawyer's Perspective**

Do not confuse the Limited Liability Company in Kenya and Rwanda with the "limited liability company" entity in the United States. While a U.S. "limited liability company" can choose to be taxed like a partnership, the LLCs in Kenya are more analogous to a U.S. C Corporation wherein both the company profits *and* the individual incomes or dividends of members are taxed.

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<sup>9</sup> Members are those who own shares in the business. Members can also be referred to as shareholders, stockholders, or equity owners.

<sup>10</sup> Companies Act Cap 486 of the Laws of Kenya.

<sup>11</sup> The Companies Act of Rwanda (Law No °7/2009 of 27/04/2009 relating to companies).

The process of registering an LLC in East Africa is the most cumbersome, but they provide other advantages as discussed above. Kenya imposes a direct tax on the profits of LLCs so the members of an LLC are effectively taxed twice: once on the profits of the LLC and once on their personal income.<sup>13</sup> LLCs are further divided between private and public LLCs: a private LLC may have no more than 50 members, excluding its employees, while a public LLC has no cap on membership numbers (but must have a minimum of seven members) and may sell its shares to the public.

#### **Entrepreneur's Perspective**

Many companies attempt to register as a public company early on when there is no need to do so. Companies should wait until they are firmly established, have strong financials, and see evidence of sufficient demand for stock in the company. Otherwise, the company is just going through the hassle of registering and listing, without any of the benefits.

Public LLCs in Kenya that are quoted on the exchange or that otherwise offer shares to the public have reporting and disclosure requirements in accordance with the Capital Markets Act (Cap 485A), the various capital market regulations, the Capital Markets Authority, and the Nairobi Securities Exchange (if listed). Kenyan LLCs are governed by the Companies Act (Cap 486). However, the Companies Bill 2012 is intended to repeal Cap 486 and modernize Kenya's business laws. As

of the writing of this guide, the Companies Bill has yet to be finalized or passed into law, and the Companies Act remains in effect. The current version of the Companies Bill also retains the LLC as a business entity. The general descriptions in this guide will still apply under this version of the Companies Bill, but counsel should be consulted regarding the specifics of any law that may have passed.

Limited Liability Companies (LLCs) and Public Limited Companies (Public LCs) are the two most common forms of corporate organization in Rwanda. Like Kenya, the LLC is the private version of the Public LC, and both offer limited liability to their shareholders. LLCs may have two to fifty shareholders and, as of the time of this publication, a LLC must have a minimum initial share capital of Rwf 500,000 (USD 850). Private companies may not be in the business of banking, insurance, finance, or leasing. A Public LC must have at least seven shareholders, requires an initial share capital of Hundred million Rwandan francs (USD 170,000), and has no restrictions on the type of business it may engage in. Rwanda has

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<sup>12</sup> A C Corporation in the U.S. is the standard type of corporation created that can be publicly traded, is its own legal entity, and grants its owners freedom from liability.

<sup>13</sup> The Income Tax Act (Cap 470) (Kenya).

established a fast, simple procedure for registering businesses online.<sup>14</sup> In Tanzania<sup>15</sup> and Uganda,<sup>16</sup> this entity is called a Company Limited by Shares.

## **PARTNERSHIPS**

A partnership, although regulated under a country's partnership act, can be formed with the act of two people contracting to go into business together. Partnerships consist of a finite group of owners – partners—with pass-through taxation and limited ability to transfer ownership. The primary downside to partnership is that the members are jointly and severally liable; and in a limited liability partnership at least one partner has unlimited liability. There are also numerous restrictions to transferring ownership share in a partnership and, if one partner dies, some jurisdictions will automatically dissolve the partnership.

## **UNLIMITED LIABILITY**

In a simple partnership that is created by two, or more, people who want to go into business together without any additional formalities, members of a Partnership are “jointly and separately” liable for all debts incurred by the Partnership. This means that each partner can be personally liable for all of the businesses' debts.

Kenyan partnerships are regulated under Kenya's Partnership Act (Cap 29) and may not have more than 20 members. If a Partnership gains more than 20 members, it will have to be converted to an LLC or a Limited Liability Partnership (LLP). Partnership agreements or deeds do not have to be registered with the Registrar of Companies, but the Partnership will have to file a Statement of Particulars with the Registrar (along with a filing fee, which, at the time of writing, was Shs 800). A new Partnership Act (2012) has been enacted, but it will come into force by notice in the Kenya Gazette. Local counsel should be consulted regarding the specifics of this law.

Partnerships in Rwanda are classified in the typical manner but are referred to differently than in other jurisdictions. A Limited Partnership consists of two or more partners with unlimited liability (instead of the typical meaning discussed below).

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<sup>14</sup> For a summary of the procedure, visit the Rwanda Office of the Registrar General at <http://org.rdb.rw/>. The Rwanda High Commission in The UK and Ireland also offers helpful resources including a summary of businesses in Rwanda at <http://www.rwandahc.org/trade-and-investment/registering-a-business-in-rwanda/>.

<sup>15</sup> The Companies Act (CAP 212) (Tanzania).

<sup>16</sup> Companies Act No. 1 of 2012 (Uganda)

Partnerships in Tanzania are referred to as firms and are regulated under the Law of Contract Act (Cap.345 Part XI (1961)). They are bound by the contract between partners and have few limitations under law.

Under the Ugandan Partnership Act of 2010, a partnership is a group of fewer than 20 partners who have not incorporated under any other law. If a partnership has been created for the purpose of carrying out a profession (e.g., accountants, lawyers, etc.), it can have up to 50 partners. All partners have joint and several liability.<sup>17</sup>

### **LIMITED LIABILITY**

Partnerships can also be formed so that some partners have limited liability, though there will typically have to be at least one partner with unlimited liability. This partner is often called the general partner and also has control over the day-to-day operations of the business. Limited partners do not have personal liability, but they also do not have any management control over the entity.

In Kenya, Limited Liability Partnerships (LLPs) are formed under the Limited Liability Partnership Act (2011). Members of an LLP are not individually liable for the debt of the LLP. The LLP is a separate legal entity from its partners. An LLP must have at least two partners (individual or corporate) and a manager (individual). Partners of an LLP are not liable for the firm's debts and obligations nor are they liable for each other's debts and obligations. The LLP is liable for a partner's wrongful acts or omissions, to the same extent as that partner, where the partner is engaging in the LLP's business or acting with its authority. Local counsel should be consulted regarding the specifics of this law.

#### **Investor's Perspective**

Investors typically prefer that a company be an LLC as opposed to a Partnership or Sole Proprietorship. In particular, an investor will almost never invest equity into a Partnership because of the risk of liability for the Partnership's debt.

A Rwandan limited liability partnership is called a Commercial Partnership. It has two categories of partners and both have limited liability. The difference between the two partner categories is that one has management capabilities (like a U.S. general partner) and one is simply an investor (like a U.S. silent partner).

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<sup>17</sup> Joint and several liability means that the all the partners are liable as a group but are also liable for the entire problem on their own.

Tanzania does not offer limited partnerships.

In Uganda, Limited Liability Partnerships may be formed with general partners (having unlimited liability) and limited liability partners who are not responsible for more than the amount of capital they contributed and do not take part in the management of the partnership.

### **SOLE PROPRIETORSHIPS**

A sole proprietorship is a company owned by a single person. The sole proprietor is personally liable for all the debts of the company and is typically required to file some registration documents with the registrar.

### **BRANCH OFFICES OF FOREIGN OWNED COMPANIES**

Companies incorporated outside of an East African country may conduct business activities in that country through a subsidiary or branch office. Certification by the state may be required and certain documents will have to be filed.

### **NOT-FOR-PROFIT ENTITIES**

Not-for-profit entities have an almost completely separate set of requirements and restrictions than for-profit entities. While this guide focuses on entrepreneurs in the for-profit field, a brief overview of some not-for-profit options is instructive. In most countries, not-for-profits usually require an application and approval process by a government agency.

Non-governmental organizations are generally non-profit organizations that are organized on a local, national, or international level.<sup>18</sup> Societies are organized for a purpose other than solely for profit, typically associations, non-governmental organizations, or other non-profit organizations.<sup>19</sup> Trusts are organized for any religious, educational, literary,

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<sup>18</sup> Organic Law 55/2008 of 10/09/2008 Governing Non-Governmental Organizations, Law No. 04/2012 of 17/02/2012 Governing the Organization and Functioning of National Non-Governmental Organizations, and Law No. 05/2012 of 17/02/2012 Governing the Organization and Functioning of International Non-Governmental Organizations (Rwanda); Non-Governmental Organizations Act, Act No.24 of 2002 (Tanzania); Non Governmental Organizations (Amendment) Act 2006 and the NGO Registration Regulations, SI 113-1 (Uganda) and the Non-Governmental Organizations Co-ordination Act (1990) (Kenya) which is to be replaced with the newly enacted Public Benefits Organisations Act (2013) that will come into force by notice in the Kenya Gazette.

<sup>19</sup> The Societies Act (Cap 108) (Kenya); The Societies Act (Cap.337), the Building Societies Act (Cap.87), and the Tanganyika Law Society Act (Cap.307) (Tanzania).

scientific, social, athletic, or charitable purpose.<sup>20</sup> Not-for-profit organizations can be organized under many titles for many purposes.<sup>21</sup>

**FIGURE 1 - TYPES OF ENTITIES BY EAST AFRICAN COUNTRY**

<b>Entity Features</b>	<b>Kenya</b>	<b>Rwanda</b>	<b>Tanzania</b>	<b>Uganda</b>
<i>Publicly Traded, Limited Liability, General Purpose, Double Taxation, Multiple Owners</i>	Public LLC ≥ 7 members CAP 485A & 486	Public LC ≥ 7 members Law N°07/2009	Company Limited by Shares Act No. 12 of 2002	Public Company Limited by Shares or Guarantee Unlimited members
<i>Privately Owned, Limited Liability, General Purpose, Double Taxation, Multiple Owners</i>	Private LLC 2-50 members CAP 486	LLC 2-50 members Law N°07/2009	Company Limited by Shares Act No. 12 of 2002	Private Company Limited by Shares or Guarantee ≤ 100 members
<i>Limited or Personal Liability, General Purpose, Single Taxation, Multiple Owners</i>	Limited Liability Partnership ≥ 2 partners Act 42 of 2011	Commercial Partnership Limited Liability (some partners run the organization, while others are only investors) ≥ 2 partners Law N°07/2009	None	Limited Liability Partnership Limited (limited liability partners) and Personal (general partners) Liability ≤20 partners Partnership Act, 2010
<i>Personal Liability, General Purpose, Single Taxation, Multiple Owners</i>	Partnership ≤20 partners Cap 29	Limited Partnership ≥ 2 partners Law N°07/2009	Partnership Under the Law of Contract Act; Cap.345	Partnership ≤20 partners Partnership Act, 2010

<sup>20</sup> Trusts Act (Cap 161) (Kenya); Trustees' Incorporation Act, (Cap. 318, R.E. 2002) (Tanzania).

<sup>21</sup> In Rwanda domestic or foreign non-profit making organizations (NPOs) (the Public Benefit Organisations Bill, 2012) and religious organizations (Law No. 06/2012 of 17/02/2012 Governing the Organization and Functioning of Religious-Based Organizations) may be formed. In Tanzania a private company limited by guarantees may be formed as a not-for-profit without including "limited" in its name if it has a purpose to promote commerce, art, science, education, religion, charity or any other useful or social object. It may not pay dividends, only applying its income to furthering its purpose. In Uganda not-for-profit companies can be formed as community based organizations (CBOs) or charitable organizations under the Companies Act (without tax exemptions). In Kenya, a not for profit entity may be registered under the Non-Governmental Organizations Co-ordination Act (1990). This will soon be replaced by the Public Benefits Organisations Act (2013) that was recently enacted, but to come into force by notice in the gazette. A not for profit entity may also be incorporated as a company limited by guarantee under the Companies Act (Cap 486).

<b>Entity Features</b>	<b>Kenya</b>	<b>Rwanda</b>	<b>Tanzania</b>	<b>Uganda</b>
<i>Personal Liability, General Purpose. Single Taxation, Single Owner</i>	Sole Proprietorship	Sole Proprietorship Law N°07/2009	Sole Proprietorship	Sole Proprietorship
<i>Non-Profit Options</i>	Company Limited by Guarantee NGO Society Trust	NPO NGO Religious Organization	Company Limited by Guarantees NGO Society Partnership Trust	NGOs Trust Community Based Organizations (CBOs)
<i>Foreign Incorporated</i>	Branch Office Cap 486	Subsidiary or Branch Office	Branch Office	Foreign Branch

THE ATTACHED TOOL PROVIDES INFORMATION OF A GENERAL NATURE AND SHOULD NOT BE TAKEN OR USED AS LEGAL ADVICE IN SPECIFIC SITUATIONS, WHICH WILL DEPEND UPON PRECISE FACTUAL CIRCUMSTANCES AND VARIOUS FACTORS UNIQUE TO AN ENTERPRISE. THESE MAY INCLUDE, WITHOUT LIMITATION, TYPE OF ENTITY, NATURE OF ACTIVITIES, STAGE OF GROWTH AND APPLICABLE LAW. PLEASE SEEK APPROPRIATE COUNSEL FOR SPECIFIC LEGAL MATTERS.

### **SECTION 3 – COMPLIANCE WITH NATIONAL, FOREIGN, AND REGIONAL LAW**

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Entities investing in East Africa will need to create a compliance program that incorporates a wide variety of interconnected considerations. These will include compliance with local laws, international standards, and, in many cases, U.S. laws related to doing business abroad. Relevant issues will include, but are not limited to: social and environmental compliance; compliance issues related to the cross-border nature of the investment; financial compliance; compliance with U.S. laws (or laws of other jurisdictions when foreign investors are involved); compliance with the host country's laws; and enforceability. Similarly, entities operating in East Africa will need to monitor compliance with a variety of laws, regulations, and standards, and compliance will be a factor in investment transactions. Enterprises doing business with U.S. entities should also be aware of compliance issues related to U.S. law. In addition, compliance issues will also arise related to an enterprise's business practices. These are touched upon in this guide but will be the subject of additional tools through the ANDE Legal Working Group.

This section provides an overview of some of the most common types of compliance issues that may be relevant to a transaction. A number of these areas are merely highlighted and are not discussed in detail, although some of the areas discussed below are covered in greater detail in sections 4-8 of this guide. Before entering into a contract or setting up operations in a foreign country, investors and other entities should research the compliance requirements that are specific to the locality. It is advisable to retain qualified counsel, including local counsel that is familiar with both the region and the field of law and regulation, in order to ensure compliance with all relevant laws and policies. Appropriate counsel should be obtained to review compliance issues related to each transaction.

#### **NATIONAL LAW**

Compliance with national laws and customs is important, both to ensure legality and to facilitate local cooperation. While legal requirements must be taken into account, an investor entering a new locale should also become familiar with the needs of, and effects on, potential customers, possible suppliers, and third parties, such as communities, that may be affected by the deal.

The laws of the country of investment must be complied with, in addition to local and regional laws and regulations. In some cases local law or custom may not be in line with the laws of the country or region within which the business is incorporated. In these situations, it is important to consult counsel and find an appropriate legal solution. This is also a compelling reason to include a governing law clause in any investment contract.

A host of national laws must be complied with, ranging from laws around land use and ownership (Section 4) to sector-specific laws and regulations (Sections 5-7). Employment and labor requirements within the country of the transaction also must be considered when establishing company practices and hiring employees or contractors. It is notable that many countries in East Africa do not recognize at-will employment (a basic tenant of U.S. employment law) which can severely limit a company's ability to change employees. Local labor union practices must also be taken into account.

Also of note is regulation around the legal profession. In Kenya, for example, simple changes to a transaction that require the work of local counsel can trigger scaling fees that may quickly render a small change quite costly.

#### **SOCIAL AND ENVIRONMENTAL COMPLIANCE**

Many investment transactions – particularly in the impact investment field – include social covenants related to compliance with labor and environmental standards. In addition, a country may have specific laws governing social conduct, *e.g.*, labor or environmental laws, regulations, and standards, to which the parties to an investment agreement must adhere. The parties to an investment transaction may also want to be familiar with relevant international standards, such as the International Labor Organization's Conventions, which may be linked with national law. Social covenants will be enforceable through the same procedures as other contractual provisions and may subject investors to possible breach of contract claims. Accountability may depend largely upon the standards in national legislation and degree to which laws are enforced. In addition to consulting counsel, investors may seek to hire an in-country Environmental & Social Consultant to monitor a company's operations in this area.

#### **FINANCIAL COMPLIANCE**

A number of financial issues come into play with any business transaction. In addition, certain considerations must also be taken into account when transactions cross borders.

Each country has its own tax structure, and some tax laws extend to citizens even when they are not residing, or generating income, within their home country's borders. When entering into a cross-border transaction, investors need to determine what they will be

taxed on and which authority will be taxing them. Categories of taxes can include income, dividends, proceeds from a sale, etc. Some countries have entered into tax treaties that govern these types of issues, and these treaties supersede local law.

Accounting and disclosure requirements will also change based on the countries of investment. Generally Accepted Accounting Principles will change based on the jurisdiction and will not always comply with jurisdictional financial reporting standards. In addition, International Accounting Standards and/or International Financial Reporting Standards may be necessary for certain transactions and do not always harmonize with local requirements.

## **REGIONAL LAW**

All countries in East Africa belong to one of more of the Regional Economic Communities (RECs), which are often formed through trade agreements that govern different aspects of economic law and regulation. In East Africa, the five countries subject to this study (Burundi, Kenya, Rwanda, Tanzania, and Uganda) all belong to the East African Community (EAC), and four (Kenya, Burundi, Rwanda, and Uganda) belong to the larger Common Market of Eastern and Southern Africa (COMESA). All five are also a member of the Cross Border Initiative. Kenya also belongs to the Community of Sahel-Saharan States, Burundi is a member of the Economic Community of Great Lakes Countries, and Tanzania is a member of the Southern African Development Community (SADC).

Of these, the EAC, COMESA, and SADC are all considered significant regional initiatives, and each has its own commitments and governance mechanisms.. In 2008 the EAC, COMESA, and SADC entered into a Tripartite Agreement and agreed to work towards an integrated free trade area. As of June 2015, the Tripartite Agreement has entered a new phase, which will result in new commitments for harmonized regional rules and an accelerated timeline.

While reform of legal and regulatory frameworks under these arrangements has progressed, implementation of commitments remains a challenge. The pace of regional integration is increasing, however, and investors, entrepreneurs, and legal experts are advised to keep abreast of developments at the regional level. Because of its prominence and relevance to all five East African countries, the EAC and COMESA will be discussed briefly below and, where relevant, in the sections to follow.

### **THE EAST AFRICAN COMMUNITY (EAC)**

The EAC is the regional intergovernmental organization to which Kenya, Uganda, Tanzania, Burundi, and Rwanda are parties. The aims and objectives of the EAC include widening and deepening co-operation in, inter alia, political, economic, and social areas. To this extent, the EAC countries established a customs union (2005), a protocol on a common market

(2010), a monetary union (negotiations commenced in 2011), and ultimately aim to develop a Political Federation of the East African States.

The EAC Treaty provides for direct applicability of EAC law, which means that EAC instruments are binding on the EAC countries without further legislative action. Article 8 provides that a regulation shall have general application, shall be binding in its entirety, and is directly applicable in all Member States. Member states of the EAC have enacted legislation giving ‘the force of law’ to ‘the provisions of any Act of the Community ... from the date of the publication of the Act in the Gazette.’ The EAC Treaty provides for the principle of supremacy of the laws of the community, ensuring that conflicts between community law and national law are resolved in favor of the former. Although this gives EAC law supremacy, differences in application between national law and EAC law still exist. However, individuals can invoke EAC law before national courts, and courts can use EAC law as an independent, direct and autonomous basis of decisions. Again, this is still being implemented in practice, but it is an additional aspect of doing business in the region of which investors should become increasingly aware.

### **COMMON MARKET FOR EASTERN AND SOUTHERN AFRICA (COMESA)**

COMESA is a regional economic organization that consists of 19 member states.<sup>22</sup> It is the largest regional economic organization in Africa, with a combined population of nearly 390 million people. COMESA was founded in December of 1994 as a replacement to the Preferential Trade Area, which had been in place since 1981.

COMESA aims to form a large economic and trading unit that will assist in overcoming barriers to development. A free trade area began in 2000 and has expanded to 14 member states (including Burundi, Kenya, Rwanda, and Uganda). In 2009, a customs union was also launched. COMESA also intends to implement a common visa system and create a monetary union. COMESA has also established programs in trade policy, trade facilitation, multilateral transport, information communication technology (ICT), energy, private sector development, investment promotion, and gender mainstreaming. Unlike the EAC, COMESA instruments become binding once domesticated through national law and regulation, meaning that individual member states must take additional steps to implement COMESA obligations.

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<sup>22</sup> Member Countries: Republic of Burundi, Union of the Comoros, Democratic Republic of the Congo, Republic of Djibouti, Arab Republic of Egypt, State of Eritrea, Federal Democratic Republic of Ethiopia, Republic of Kenya, Libya, Republic of Madagascar, Republic of Malawi, Republic of Mauritius, Republic of Rwanda, Republic of Seychelles, Republic of the Sudan, Kingdom of Swaziland, Republic of Uganda, Republic of Zambia, and Republic of Zimbabwe.

COMESA tariffs must be applied when trading with a non-member state. If an investment transaction involves one or more COMESA country, the acquisition must also be filed within COMESA.

### **COMPLIANCE WITH U.S. LAWS**

Any U.S. investor, and some non-U.S. entities that do certain business in the United States, will need to comply with U.S. laws regarding doing business abroad. These restrictions include anti-bribery policies (the Foreign Corrupt Practices Act), prohibitions on the financing of terrorism, anti-money laundering rules, compliance with U.S. sanctions, and anti-boycott requirements.

### **FOREIGN CORRUPT PRACTICES ACT: ANTI-BRIBERY AND ACCOUNTING PROVISIONS**

The Foreign Corrupt Practices Act (FCPA) prohibits the payments or offers of payment (anything of value, with some exceptions) to foreign government officials or public officers in exchange for promises to obtain, retain, or direct business. This includes actions that will give the bribing party an improper advantage or those that will induce the official to take, or not take, an action in violation of his or her duties. It covers U.S. citizens, businesses organized in the United States, and organizations whose principal place of business are in the United States.

The FCPA also requires companies whose securities are listed in the United States to meet its accounting provisions. These accounting provisions require corporations covered by the provisions to (1) make and keep books and records that accurately and fairly reflect the transactions of the corporation and (2) devise and maintain an adequate system of internal accounting controls.

Bribery and corruption are reported to be significant problems in East Africa, and investors should pay particular attention to (1) government entities that have a reputation for soliciting and/or accepting improper payments, as well as (2) industries that are known to operate on a system of improper payments. Before investing, investors should create a risk profile that includes characteristics of the investment destination and all of the actors and entities with which an organization might make contact, including third parties. Any suspected problem should be investigated immediately. Due diligence and appropriate follow-up are necessary to comply with the FCPA and avoid prosecution. The additional risks to investors in the East African market may impact the degree of reporting required. The ANDE Legal Working Group will produce and share a more detailed FCPA compliance guide in the fall of 2013.

The Department of Justice has put forth an FCPA Opinion Procedure, available at <http://www.justice.gov/criminal/fraud/fcpa/docs/frgncrpt.pdf>.

### **ANTI-MONEY LAUNDERING**

Money laundering is prohibited under eight U.S. acts including the Bank Secrecy Act, the Money Laundering Control Act, the Uniting and Strengthening America by Providing Appropriate Tools to Restrict, Intercept and Obstruct Terrorism Act of 2001 (USA PATRIOT Act), and the Intelligence Reform & Terrorism Prevention Act of 2004.

Money laundering occurs when an actor makes illegal gains appear legal (i.e. turning dirty money clean) and usually involves three steps. First, the dirty money is introduced into the legitimate financial system. Then, the money is moved around between accounts. Finally, it is integrated into the financial system through additional transactions until the "dirty money" appears "clean." Because a number of transactions occur outside of the formal legal system in East Africa, businesses need to be certain that the money they are generating comes from legitimate sources.

### **SANCTIONS**

The United States institutes trade and economic sanctions based on U.S. foreign policy and national security goals against targeted foreign countries and regimes, terrorists, international narcotics traffickers, those engaged in activities related to the proliferation of weapons of mass destruction, and other threats to the national security, foreign policy or economy of the United States. Certain sanctions exist against the Ivory Coast, Democratic Republic of the Congo, Libya, Somalia, Sudan, Zimbabwe, and other countries. Sanctions can also apply to certain activities, groups, and particular people. The Specially Designated Nationals and Blocked Persons List is available, and searchable, in order to avoid doing business with these persons at <http://www.treasury.gov/resource-center/sanctions/SDN-List/Pages/default.aspx>.

### **ANTI-BOYCOTT LAWS**

The U.S. Export Administration Act includes anti-boycott laws that discourage, and occasionally prohibit, U.S. companies from taking part in or supporting foreign boycotts that the United States does not sanction. The principle focus of these laws is the boycott of Israel by certain Muslim countries. Prohibited conduct includes agreements to refuse or actual refusal to do business with or in Israel or with blacklisted companies; agreements to discriminate, or actual discrimination, against other persons based on race, religion, sex, national origin or nationality; agreements to furnish, or actual furnishing, of information about business relationships with or in Israel or with blacklisted companies; agreements to furnish, or actual furnishing, of information about the race, religion, sex, or national origin

of another person; and implementing letters of credit containing prohibited boycott terms or conditions.

THE ATTACHED TOOL PROVIDES INFORMATION OF A GENERAL NATURE AND SHOULD NOT BE TAKEN OR USED AS LEGAL ADVICE IN SPECIFIC SITUATIONS, WHICH WILL DEPEND UPON PRECISE FACTUAL CIRCUMSTANCES AND VARIOUS FACTORS UNIQUE TO AN ENTERPRISE. THESE MAY INCLUDE, WITHOUT LIMITATION, TYPE OF ENTITY, NATURE OF ACTIVITIES, STAGE OF GROWTH AND APPLICABLE LAW. PLEASE SEEK APPROPRIATE COUNSEL FOR SPECIFIC LEGAL MATTERS.

## **SECTION 4 – LAND TENURE ISSUES IN EAST AFRICA**

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Throughout sub-Saharan Africa, issues around land tenure can be particularly complex, with significant social and political implications. Land issues may impact many different sectors of business, including in agriculture, construction, retail, and energy.

Legally, this is an area in which particular attention should be paid and local counsel consulted, regardless of whether a company is seeking to invest directly, do business in the agricultural or natural resources sectors (issues around land can affect investment at any stage in the supply chain), or use land-based collateral to secure an investment transaction. The uncertainty around land tenure can raise costs and impact the degree of market risk; ultimately these issues can directly impact investment opportunity and the size of the market itself.

For entrepreneurs, access to land title can be central to securing financing for any type of business activity. Throughout the region, overlapping regimes for land tenure, weak governance, and excessive bureaucratic process can add to uncertainty in the market. Land reform remains on the agenda in East Africa, and most countries continue to debate legal amendments or other changes to existing land tenure regimes.

### **ISSUES FOR INVESTORS AND ENTREPRENEURS**

#### **LIMITS ON FOREIGN INVESTMENT IN LAND**

Constitutional land reform debates continue in all East African countries, and the rights of foreign investors to own or use land are often placed in question. For some countries, e.g. Kenya, foreign investors are outright prohibited from owning or holding title to agricultural land and from owning land with tenure in excess of 99 years.<sup>23</sup> Foreigners are

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<sup>23</sup> Kenya (2010) CAP 302 Part II, Article 9(1) In deciding whether to grant or refuse consent in respect of a controlled transaction, a land control board shall-

also prohibited from owning agricultural land in Uganda<sup>24</sup> and Tanzania.<sup>25</sup> In Tanzania, where long-term leases are used, a land bank is made available to foreigners, but it is limited in size and suitability.

While changes to Land Laws continue to be debated to increase clarity, these processes tend to move forward slowly. For transactions involving foreign investors, cumbersome and time-consuming structures may be used, as discussed below.

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(c) refuse consent in any case in which the land or share is to be disposed of by way of sale, transfer, lease, exchange or partition to a person who is not -

- (i) a citizen of Kenya; or
- (ii) a private company or co-operative society all of whose members are citizens of Kenya; or
- (iii) group representatives incorporated under the Land (Group Representatives) Act; or

(iv) a state corporation within the meaning of the State Corporation Act.

Kenyan Constitution (2010) Chapter 5, Article 65.

(1) A person who is not a citizen may hold land on the basis of leasehold tenure only, and any such lease, however granted, shall not exceed ninety-nine years.

(2) If a provision of any agreement, deed, conveyance or document of whatever nature purports to confer on a person who is not a citizen an interest in land greater than a ninety-nine year lease, the provision shall be regarded as conferring on the person a ninety-nine year leasehold interest, and no more.

(3) For purposes of this Article—

(a) a body corporate shall be regarded as a citizen only if the body corporate is wholly owned by one or more citizens;

and

(b) property held in trust shall be regarded as being held by a citizen only if all of the beneficial interest of the trust is held by persons who are citizens.

(4) Parliament may enact legislation to make further provision for the operation of this Article.

<sup>24</sup> Uganda (2000) Cap 92 Part III, Article 10(2) No foreign investor shall carry on the business of crop production,

animal production or acquire or be granted or lease land for the purpose of crop production or animal production; but a foreign investor may-

(a) provide material or other assistance to Ugandan farmers in crop production and animal production; or

(b) lease land for purposes of manufacturing or carrying out the activities set out in the Second and Third Schedules to this Act.

<sup>25</sup> Tanzania Land Act (199) No. 4, Part V 20.

(1) For avoidance of doubt, a non-citizen shall not be allocated or granted land unless it is for investment purposes under the Tanzania Investment Act, 1997

(2) Land to for investment purposes under subsection (1) of this section, shall be identified, gazetted and allocated to the Tanzania Investment Centre which shall create derivative rights to investors.

(3) Subject to Section 37 (8), all lands acquired Prior to the enactment of this Act shall be deemed to have no value save for unexhausted improvements for No. 4 Land 1999

(4) For the purposes of this Act, any body corporate of whose majority shareholders or owners are non-citizens shall be deemed to be non-citizen or foreign company.

(5) At the expiry, termination or extinction of the occupancy or derivative right granted to a non-citizen or a foreign company, reversion of interests or rights i and over the land shall vest in the Tanzania Investment Centre or any other authority as the Minister may describe in the Gazette,"

In 2013, the government of Rwanda announced that it was considering changes to its 2005 Land Law that would limit the ability of foreign companies with less than 51 percent national shareholder ownership to own land outright or lease it for a period of more than 49 years. The Rwandan Parliamentary Committee on Agriculture, Livestock Development and Environment has been tasked with review of the existing Land Law, and the process has already been criticized for lacking transparency.

### **ISSUES FACING ENTREPRENEURS**

Regardless of whether foreign investors actually seek to own land themselves, numerous land tenure issues can arise for both entrepreneurs and investors. In some jurisdictions (e.g. Kenya), transactions involving foreign partners can require going through a tedious and time-consuming change user process, in which the parties may have to temporarily change corporate forms – and apply for a changed use of the land – in order to gain title and appropriate endorsements. Once a land title is obtained, use can be changed once again and corporate structures restored.

The ability to hold land as collateral will be a significant factor impacting risk and opportunity in any deal for which financing is acquired. Entrepreneurs may find it difficult to access credit without land title or other formal proof of assets. Some countries, such as Uganda and Rwanda, are taking steps to allow agricultural land to be used as collateral, although doing so in practice can be exceedingly difficult. In Uganda, inefficient land registry offices, the prevalence of fraudulent land titles, and the poor condition of many records contribute to the perception that property rights are weak. In practice, land is rarely accepted as collateral, and, if accepted, the transaction incurs high costs.<sup>26</sup> Previously in Rwanda, problems surrounding land registration plagued the practical ability to use land as collateral. Recent land registry improvements in Rwanda have increased the use of land

### **Entrepreneur's Perspective**

“It all starts with land.”  
Land issues are among the most central in most business transactions. Who buys or sells the land and its intended use can be significant factors in the risk equation for a transaction. Spending the time to really understand the seller and history behind a particular parcel of land is worth the time and investment.

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<sup>26</sup> See *Property Rights and Resource Governance: Uganda*, United States Agency for International Development, 8 (August 2010), available at <http://usaidlandtenure.net/>; Elizabeth Kyomugisha, *Land Tenure and Agricultural Productivity in Uganda*, International Food Policy Research Institute 2 (2008); *Innovative Agricultural SME Finance Models*, International Finance Corporation 15 (November 2012), available at [http://www.ifc.org/wps/wcm/connect/04da89804a02e2e19ce0fdd1a5d13d27/G20\\_Agrifinance\\_Report.pdf?MOD=AJPERES](http://www.ifc.org/wps/wcm/connect/04da89804a02e2e19ce0fdd1a5d13d27/G20_Agrifinance_Report.pdf?MOD=AJPERES).

as collateral.<sup>27</sup> The Government of Rwanda has also posted a Procedures Manual and land administration forms online to help navigate the its land administration system.<sup>28</sup>

Tanzania allows land to be used as collateral, but the government owns most land, with individual access through tenancy and leasehold agreements. That ultimately means most individuals do not own the main title and thus cannot consider the land they live on to be an asset, so it cannot be used as collateral.

Often, land must be registered with a National Land Registry, although in many African countries comprehensive land registries do not yet exist. The system for registering land can be complex, costly and slow, involving a number of steps and officials. Steps and costs associated with land registration can include legal fees, property valuation processes, surveyor fees, transfer fees, title searches, consent to transfer, stamp duties, and agent's commissions.<sup>29</sup> As mentioned above, Rwanda recently developed a comprehensive land registry system, which has improved administration of land ownership and use.

Land issues can also arise in the context of cooperatives, in which members can pool resources or collateral to access agricultural inputs, like seeds, or other products. Because of the complicated rules around land use and complexities in laws governing cooperatives, obtaining financing through a cooperative can be an onerous process.

For some entrepreneurs, securing formal title to land may be exceedingly difficult, if not legally prohibited. Women and small agricultural producers face particular challenges.<sup>30</sup>

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<sup>27</sup>See Eugene Rurangwa, *Land Tenure Reform: The Case Study of Rwanda*, 13, 16, Land Divided: Land and South African Society in 2013, in Comparative Perspective (University of Cape Town, Mar. 24-27 2013) available at [http://www.landdivided2013.org.za/sites/default/files/rurangwa%20Land%20Tenure%20Reform\\_Rwanda%20Case.pdf](http://www.landdivided2013.org.za/sites/default/files/rurangwa%20Land%20Tenure%20Reform_Rwanda%20Case.pdf); *Land Registration Reforms Boost Doing Business in Rwanda*, The Rwanda Focus (September 30, 2013), available at <http://focus.rw/wp/2013/09/supplement-land-registration-reforms-boost-doing-business-in-rwanda/>;

<sup>28</sup> available at <http://rnra.rw/index.php?id=135>

<sup>29</sup> In Uganda, contracts for sale of land are filed with the Land registry and then transmitted to the Registrar who completes and Instrument of Transfer. The file then goes to typing and is send to the Commissioner in charge of Land Registration for verification. The Registrar cancels out the old owner by hand and signs in the new owner. (<http://www.doingbusiness.org/data/exploreeconomies/uganda/registering-property>)

<sup>30</sup> See Mary Kimani, *Women Struggle to Secure Land Rights*, Africa Renewal Online, (September 6, 2012), available at <http://www.un.org/africarenewal/magazine/special-edition-women-2012/women-struggle-secure-land-rights>; Gaynor G. Paradza, *Securing Women's Land Rights in Eastern Africa: Time for a Paradigm Shift*, International Land Coalition (March 2011), available at <http://www.landcoalition.org/publications/policy-brief-securing-womens-land-rights-eastern-africa-time-paradigm-shift>.

The complicated history around land ownership and use has given rise to a dual system of formal and customary land tenure, which often conflict and can make it difficult for women and small producers to enforce statutory rights to land. In many cases, women require spousal consent before entering into any transaction involving land.

## **HISTORY AND LEGAL STRUCTURE**

The complex history of land tenure in East Africa continues to impact investment and entrepreneurial opportunity. Historically, African land use was governed by customary law and controlled by tribal and clan leaders. Land was split between communal use and individual/family use, and the leadership structures that administered this system and resolved disputes were well understood and respected. With colonial rule, all land was placed in the hands of the state, and systems for customary land tenure were replaced with formal legal systems. The colonial regimes introduced the legal concepts of freehold (land tenure in perpetuity) and leasehold (land tenure governed by contract). These concepts, along with processes for registering land, were introduced to replace systems for customary land use. Previous owners were often displaced and resettled, with politics playing an increasing role in land use and ownership. In the post-colonial period, land-based conflicts arose as a result.

Since independence, a dual-tenure system of formal and communal approaches has existed, which creates considerable uncertainty for investors and entrepreneurs alike. The different countries in East Africa have moved forward with land tenure reform on different timelines – and with different outcomes.

Kenya's system has gradually moved toward privatization and individual land tenure, and reform has focused on registration and titling. Most land is still leased from the government for a period of 50 or 99 years, however, rather than being owned permanently.<sup>31</sup>

Tanzania abolished freehold land tenure and nationalized all land. Land can be leased for renewable periods of 99 years, pursuant to government clearance. Rwanda has maintained broader state ownership of land. The Ugandan constitution vests interest in land in the people, not the state.

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<sup>31</sup> *Economics, Agriculture and Trade*, NETHERLANDS EMBASSY IN NAIROBI, KENYA, available at <http://kenia.nlembassy.org/organization/departments/economics-agriculture-and-trade.html> (last visited July. 10, 2013).

In Kenya, a constitutional process with implications for land began in 2001. In 2009, the Kenyan Parliament endorsed a National Land Policy. Based on this policy, the 2010 constitutional renewal included a chapter on “Land and Environment.” Implementing regulations under development are required to be in place within five years of the adoption of the constitution. Consequently in 2012, parliament enacted the Land Act, the Land Registration Act and the National Land Commission Act in an effort to streamline the land regime and to align it with the constitution.

Rwanda put forward a land reform policy in 2004, followed by a Strategic Roadmap for Land Sector Reform in 2008 and land sub-sector strategic plan in 2010. As noted above, possible changes are under consideration that could have significant implications for investors.

Uganda introduced land reform provision in its 1995 constitution and passed a 1998 Land Act that, among other things, secured women’s right to land. Uganda also established a National Land Commission, a national land court, and district land tribunals to handle disputes. A more comprehensive land reform package was sent to the Ugandan Cabinet in 2011.

Tanzania, which has pursued a more collective approach to land tenure, also issued its land reform policy in 1995, followed by passage of a Land Act in 1999. Tanzania’s Land Act was amended in 2004. Administration is decentralized to the local level, but implementation has struggled due to poor capacity and administrative systems, among other factors. Women do have rights to own land.

Globally, issues of land tenure have received increasing focus from international bodies and donors, particularly in the context of food security. This has put increased pressure on national governments to improve land tenure regimes and has also made donor resources available to improve land tenure regimes. In 2012, the Committee on Food Security (CFS) of the UN Food and Agricultural Organization (FAO) endorsed a comprehensive set of global guidelines – the Voluntary Guidelines on the Responsible Governance of Tenure of Land, Fisheries and Forests in the Context of National Food Security – of which investors should be aware.

### **VOLUNTARY COMMODITY STANDARDS**

Land issues are exceedingly complicated, and consulting specialized counsel is recommended. In addition to the issues noted above, voluntary commodity standards for different products, e.g. palm oil, cotton, soy, sugar cane, coffee, etc., can apply that specify that companies must follow local and national law and document the legal and customary rights of land used in the production of a particular commodity. This may include

documenting the rights and claims of indigenous populations in supply chains, and these standards have been one way of encouraging growth along value chains while protecting customary land rights.

THE ATTACHED TOOL PROVIDES INFORMATION OF A GENERAL NATURE AND SHOULD NOT BE TAKEN OR USED AS LEGAL ADVICE IN SPECIFIC SITUATIONS, WHICH WILL DEPEND UPON PRECISE FACTUAL CIRCUMSTANCES AND VARIOUS FACTORS UNIQUE TO AN ENTERPRISE. THESE MAY INCLUDE, WITHOUT LIMITATION, TYPE OF ENTITY, NATURE OF ACTIVITIES, STAGE OF GROWTH AND APPLICABLE LAW. PLEASE SEEK APPROPRIATE COUNSEL FOR SPECIFIC LEGAL MATTERS.

## SECTION 5 – SECTOR-SPECIFIC LEGAL AND REGULATORY ISSUES IN EAST AFRICA: AGRICULTURE

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As a sector, agriculture can be subject to a range of complex law and regulation, and investors and entrepreneurs should be aware of the different legal and regulatory issues that can arise all along agricultural value chains. In addition to land issues discussed in the preceding chapter, these can include specific laws and regulations related to different types of activities along the value chain (production, processing, transport, distribution, etc.), varying product standards, cross-border issues and numerous, complex food safety and sanitary and phytosanitary (SPS) standards. Markets for inputs (including seeds, fertilizer, and agrochemicals) can also be quite difficult to navigate from a regulatory perspective, and investors and entrepreneurs, along with their counsel, should be aware of these complexities.<sup>32</sup>

Regulations in these areas can be numerous, overlapping, and sometimes very technical, often impacting the ability of new producers to enter the market. As a first step, market entrants will often be required to obtain licenses based upon type of activity (such as producer, dealer, or importer), while registration requirements (which sometimes overlap

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<sup>32</sup> All countries studies regulate these inputs. In addition to laws and regulations on seeds, *see, e.g.*, the Tanzania Fertilizer Act of 2009, which regulates production, cross-border trade, sale, and use of agricultural fertilizers, and it creates the Tanzania Fertilizer Regulatory Authority (TFRA) regulatory body, <http://www.parliament.go.tz/Polis/PAMS/Docs/9-2009.pdf>. Rwanda requires registration of agrochemicals, imposes quality standards on agrochemicals, and requires agrochemical dealers to be licensed. *See* Ministerial Order No. 001/11.30 of 15/02/2013 *Determining the Duties of the Registrar of Agrochemicals*, available at <http://www.minagri.gov.rw/index.php?id=678>. *See generally* Kenyan Fertilizers and Animal Foodstuffs Act (Chapter 345), available at [http://www.kenyalaw.org/kenyalaw/klr\\_app/frames.php](http://www.kenyalaw.org/kenyalaw/klr_app/frames.php); Kenyan Pest Control Products Act (Chapter 346), available at [http://www.kenyalaw.org/kenyalaw/klr\\_app/frames.php](http://www.kenyalaw.org/kenyalaw/klr_app/frames.php); and Ugandan Agricultural Seeds and Plant Act (Cap. 28), available at <http://www.ulii.org/ug/legislation/consolidated-act/28>.

across ministries) can apply as well.<sup>33</sup> For sales activities, laws and regulations can monitor location, quality, packaging, and labeling.<sup>34</sup> Finally, as goods enter regional and international markets, they come in contact with diverse range of rules and standards governed by numerous, often overlapping, laws and standards. These include tariffs, non-tariff measures, export restrictions, and cross-border requirements.<sup>35</sup>

This section will briefly summarize some of the key issues of which investors should be aware. As always, investors and entrepreneurs should seek qualified counsel. Since agricultural transactions and activities often have unique qualities different from other industries, particular experience with agriculture in East Africa will be an important element in navigating the market.

### **AGRICULTURAL INPUTS**

Many governments, including a number of sub-Saharan African governments, highly regulate seed, fertilizer, and agrochemical development and trade.<sup>36</sup> A number of complex legal and regulatory issues apply along seed value chains, for example, including processes for getting new seeds released in the market, mandatory certification of seeds, control of seed prices and production, diverging quality standards and differing sanitary and phytosanitary (SPS) measures among countries, and duplicative testing and inspection requirements.<sup>37</sup> In many markets, farmers simply do not have access to the highest quality,

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<sup>33</sup> For example, seed and fertilizer dealers must be registered in different jurisdictions. *See, e.g.*, Tanzania Seeds Act of 2003, §13(1), *available at* [http://www.tanzania.go.tz/egov\\_uploads/documents/SEED\\_REGULATIONS-FINAL\\_DRAFT\\_2007\\_en.pdf](http://www.tanzania.go.tz/egov_uploads/documents/SEED_REGULATIONS-FINAL_DRAFT_2007_en.pdf), and Uganda Agricultural Seeds and Plant Act (Ch 28), *available at* <http://www.ulii.org/ug/legislation/consolidated-act/28>. *See also* Tanzania Fertilizer Act of 2009, *available at* <http://www.parliament.go.tz/Polis/PAMS/Docs/9-2009.pdf>.

<sup>34</sup> Many countries also regulate the marketing of produce and food. *See, e.g.*, Agricultural Produce Marketing Act (Chapter 320), *available at* [http://www.kenyalaw.org/kenyalaw/klr\\_app/frames.php](http://www.kenyalaw.org/kenyalaw/klr_app/frames.php) (Kenya); and the Tanzania Food, Drug, and Cosmetics Act, 2003, *available at* [http://www.tfda.or.tz/index.php?option=com\\_phocadownload&view=category&download=39:guidelines-for-registration-and-licensing-of-food-premises&id=37:guidelines&Itemid=276](http://www.tfda.or.tz/index.php?option=com_phocadownload&view=category&download=39:guidelines-for-registration-and-licensing-of-food-premises&id=37:guidelines&Itemid=276).

<sup>35</sup> *See, e.g.* East African Community Customs Management Act, *available at* [www.eac.int/customs/index.php?option=com\\_docman&task=doc\\_download&gid=94&Itemid=164](http://www.eac.int/customs/index.php?option=com_docman&task=doc_download&gid=94&Itemid=164); East African Community Common External Tariffs 2007 *available at* [http://www.eac.int/customs/index.php?option=com\\_content&view=article&id=98:eac-customs-union-common-external-tariffs-2007&catid=3:key-documents&Itemid=141](http://www.eac.int/customs/index.php?option=com_content&view=article&id=98:eac-customs-union-common-external-tariffs-2007&catid=3:key-documents&Itemid=141).

<sup>36</sup> The Seeds and Plant Varieties (Amendment) Act, No. 53 of 2012 (Kenya); Seed Law (N° 14/2003 of 23/05/2003) (Rwanda); The Seeds Act No. 18 of 2003 (Tanzania); The Agricultural Seeds and Plant Act (Cap. 28) (Uganda).

<sup>37</sup> *Ibid.*; *see also* John Moavenzadeh et al, *Enabling Trade Valuing Growth Opportunities*, World Economic Forum (2013), *available at* [http://www3.weforum.org/docs/WEF\\_SCT\\_EnablingTrade\\_Report\\_2013.pdf](http://www3.weforum.org/docs/WEF_SCT_EnablingTrade_Report_2013.pdf) (in collaboration with Bain & Company and the World Bank).

highest yielding seeds, due partly to complexities with legal and regulatory aspects of seed systems and difficulty implementing law and regulation.

In some cases, laws can be particularly detailed, leaving little flexibility in implementation, although many countries in East Africa tend to leave much of this detail to regulation. The process for complying with seed laws and regulations can be lengthy and expensive, often effectively keeping smaller producers out of the market. Regulations may also impose additional requirements related to seed processing, equipment, storage, and testing.

Regional seed protocols and regional seed variety registration systems have been developed, but implementation is in progress and not always consistent. This is a factor of which investors and entrepreneurs should be aware.<sup>38</sup> For investors and entrepreneurs, carefully studying the different measures that apply to seed and inputs markets, whether within a country or across borders, can have a significant impact on long-term viability.

### **SECTOR-SPECIFIC REGULATION**

Different crops and agricultural value chains are regulated to different extents as well. Agro-food products that are part of simpler supply chains (i.e. not processed goods) may face fewer hurdles in terms of transport, border compliance, and competition, but these measures may still have a greater proportional impact on the price of unprocessed agriculture because of low value-weight ratio.<sup>39</sup>

The degree of market complexity tends to rise as goods become processed, or higher value-added. Products that have been processed tend to face higher barriers when entering international markets.

In East Africa, products of interest, including dairy, sugar, and maize, are subject to specific regulation. For example, Kenya's rules on dairy changed in 1992, when milk marketing was liberalized and were further expanded with the National Dairy Development Policy No. 1 of 2010.<sup>40</sup> Tanzania's sugar industry is also regulated, subject to the 2001 Sugar Industry Act, as amended by the Crops Law 2010, and sugar producers are required to be board

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<sup>38</sup> Brenton, P., N. Dihel, R. Gicho, I. Gillson, M. Harber, G. Isik, J. Keyser, R. Kopicki, B. Rippel, and A. Roberts. 'Africa can Help Feed Africa: Removing Barriers to Regional Trade in Food Staples.' Washington D.C.: World Bank (2012).

<sup>39</sup> Moisé, E. et al., *Estimating the Constraints to Agricultural Trade of Developing Countries*, OECD (Trade Policy Papers, No. 142, 2013), <http://dx.doi.org/10.1787/5k4c9kwfdx8r-en>.

<sup>40</sup> Dairy laws can also be found in Tanzania, under the Dairy Industry Act, 2004 (No. 8 of 2004) and Uganda, under the Dairy Industry Act 2000 (Cap. 85).

registered.<sup>41</sup> Tanzania's Sugar Board grants export licenses. Tanzania also regulates cashew nuts through the Tanzania Cashewnut Marketing Board, which was created in 1984.<sup>42</sup> Rwanda regulates tea<sup>43</sup> and coffee<sup>44</sup> through its National Agricultural Export Development Board, which was created in 2011 with the merging of the Rwanda tea Authority, Rwanda Coffee Authority, and Rwanda Horticulture. Cotton<sup>45</sup> and cereals,<sup>46</sup> among others, are also subject to specific regulation.

### **REGIONAL MARKET HARMONIZATION**

Integration within Africa's regional markets can be an important consideration, since efforts are underway to streamline individual national laws, regulations, and specifications and harmonize through regional standards and rules in a number of areas.<sup>47</sup> It is important to note, however, that while numerous legal and regulatory instruments exist to harmonize Africa's regional markets<sup>48</sup> (as discussed briefly in Section 3), implementation of these harmonization plans has been inconsistent.<sup>49</sup> For agriculture, a number of complex, non-tariff issues (including food safety and product standards, import and export requirements, and others) are increasingly being scrutinized at a regional level, making understanding of regional systems central to doing business in the region.<sup>50</sup>

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<sup>41</sup> Specific regulations related to sugar also exist in Kenya, under The Sugar Act of 2001, and Uganda, under the Sugar (Control) Act 1938 (Cap. 34).

<sup>42</sup> Tanzania Cashewnut Marketing Board Act No. 21 of 1984.

<sup>43</sup> Tea is subject to specific regulation through the Tea (Amendment) Act, No. 4 of 2011 (Kenya); Tea Act No. 3 of 1997 (Tanzania); Uganda Tea Authority Act 1974 (Cap. 36).

<sup>44</sup> Coffee is subject to specific regulation through the Coffee Act, No. 9 of 2001 (Kenya); Coffee Industry Act No. 23 of 2001 (Tanzania); Uganda Coffee Development Authority Act 1994 (Cap. 325).

<sup>45</sup> The Cotton (Amendment) Act, 2006 (Kenya); Cotton Industry Act No. 2 of 2001 (Tanzania); Cotton Development Act (Cap. 30) (Uganda).

<sup>46</sup> National Cereals and Produce Board Act (Kenya); Instructions of the minister of trade and industry n°11/2011 of 06/06/2011 on rice processing and trading (Rwanda); Cereals and Other Produce Act, No. 19 of 2009 (Tanzania).

<sup>47</sup> See Stanley Mwachanga, *EAC States Reassure Clearing Agents*, Standard Digital, (6 February 2014), available at [http://www.standardmedia.co.ke/?articleID=2000104133&story\\_title=eac-states-reassure-clearing-agents](http://www.standardmedia.co.ke/?articleID=2000104133&story_title=eac-states-reassure-clearing-agents); East African Community, *Rationale for Common Regional Policy on Genetically Modified Organisms*, available at

[http://www.eac.int/environment/index.php?option=com\\_content&view=article&id=145&Itemid=107](http://www.eac.int/environment/index.php?option=com_content&view=article&id=145&Itemid=107).

<sup>48</sup> Many of the legal and regulatory instruments come in the form of regional trade agreements.

<sup>49</sup> See Christabel Ligami, *Unending Trade Disputes, Barriers Slow Down EAC Integration Process*, The East African (August 17, 2013), available at

<http://www.theeastafrican.co.ke/business/Unending+trade+disputes+and+barriers+slow+down+EAC+integration/-/2560/1957334/-/f96ik7/-/index.html>.

<sup>50</sup> Christoph Pannhausen & Bianca Untied, *Regional Agricultural Trade in East Africa: A focus on Kenya, Tanzania, and Uganda*, GTZ TRADE PROGRAMME (Jan. 2010) (on behalf of Federal Ministry for Economic

## **FOOD SAFETY STANDARDS**

Food safety standards are perhaps one of most complicated issues to contend with in the agricultural sector, and complicated or inconsistently applied standards can add significant cost to transactions.<sup>51</sup> While critical to ensuring food safety, science-based agricultural standards can be subject to differing, sometimes non-transparent processes across jurisdictions. Standards and SPS measures applied at the border are generally regulated by law and regulation,<sup>52</sup> although private standards exist as well, and investors and entrepreneurs should look out for the incidence of multiple standards and standard-regulating bodies, as well as product-specific standards. As commodities are transformed into higher value-added products, many standards become more exacting, and adequate transport and storage become even more critical to ensuring compliance and add extra cost to agricultural transactions.

Many countries are in the process of establishing processes that will recognize the regimes of neighboring countries, in line with regional trade agreements requiring harmonized treatment.<sup>53</sup> In East Africa, some private sector stakeholders note that inspections and application of standards may be arbitrary and informal, and on-the-spot inspections can result in fees and charges for “stamp” approval at borders. For example, Kenyan authorities have reportedly rejected certificates of the Bureaus of Standards from Tanzania and Uganda in the past and have demanded tests at border points before allowing dairy products to go to market.<sup>54</sup> While these issues are often worked out, this is an area that deserves careful attention.

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Cooperation and Development), <http://www2.gtz.de/dokumente/bib-2010/gtz2010-0092en-agricultural-trade-east-africa.pdf>

<sup>51</sup> See Moïsé, E. et al. (2013), “Estimating the Constraints to Agricultural Trade of Developing Countries”, OECD Trade Policy Papers, No. 142, OECD Publishing. <http://dx.doi.org/10.1787/5k4c9kwfdx8r-en>

<sup>52</sup> Standards Act (Cap. 496) (Kenya); Law No 03/2002 of 19-01-2002 Establishing Rwanda Bureau of Standards; The Standards Act No. 2 of 2009 (Tanzania); The Uganda National Bureau of Standards Act Ch. 327.

<sup>53</sup> For example, this is a particular problem in the EAC. See, e.g., Non-Tariff Measures on Goods Trade in the East African Community, World Bank Synthesis Report Prepared for the East African Community, Report No. 45708-AFR (Sept. 29, 2008).

<sup>54</sup> Michael Wambi, *East Africa: Milk Trade War Spills Over Uganda and Kenya*, INTER PRESS SERVICE NEWS AGENCY (Mar. 11, 2009), <http://www.ipsnews.net/2009/03/east-africa-milk-trade-war-spills-over-uganda-and-kenya/>.

Promising signs of regional harmonization and regulatory cooperation do exist. In COMESA, for example, a “green pass” agreement on the application of SPS measures has been developed to help streamline the certification process and reduce transaction costs.<sup>55</sup>

Not only can standards differ by market and stage of the value chain, they may differ depending upon how a product is grown. In the EAC, standards on organic production have been developed,<sup>56</sup> and other standards around GMOs, social factors, biodiversity, and soil fertility management exist in the region as well.<sup>57</sup> Investors and entrepreneurs should be aware of these different requirements and seek specialized counsel where appropriate.

### **PACKAGING AND LABELING**

While standards are perhaps one of the most significant legal and regulatory issues facing investors and entrepreneurs in the agricultural sector, related packaging and labeling requirements will also have an impact.<sup>58</sup> Regulations can cover type of packaging, size, and cleanliness and will apply on a market-specific basis. Many markets have a short supply of packaging materials, which makes it difficult to follow packaging regulations.

In grains, for example, the size of bags used for packaging can be an issue. Often the size of bag required in one country does not match the requirements used in other countries. For Example, in Kenya and Tanzania, the required weight of the bag is 90kg for maize, while in Malawi and Zambia it is 50kg.<sup>59</sup> Differences in packaging and labeling requirements can necessitate repackaging at the border at a significant additional cost.

### **TRANSPORT, STORAGE, AND DISTRIBUTION SERVICES**

A number of different services are needed to move agricultural products and other goods quickly and reliably throughout the value chain. These include transport, storage, and

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<sup>55</sup> COMESA SPS Regulations: Green Pass, available at <http://famis.comesa.int/content/page/78/78/sps/lang.en/Green-Pass-%28CGP%29.html>.

<sup>56</sup> *East African Standard – East Africa Organic Products Standard*, EAST AFRICAN COMMUNITY (EAS 456:2007), <https://law.resource.org/pub/eac/ibr/eas.456.2007.html>.

<sup>57</sup> See Peter Okoth, Saidou Koala, et. al., *Launch of the Global Soil Partnership in Eastern and Southern Africa Report*, 10 (March 2013), available at [www.fao.org/fileadmin/user\\_upload/GSP/docs/.../Launch\\_Report.pdf](http://www.fao.org/fileadmin/user_upload/GSP/docs/.../Launch_Report.pdf).

<sup>58</sup> E.g., the seed potato processing law in the East African Community stipulates “the package shall not be more than 50kg, shall be clean and allow for aeration and which conforms to the regulations in the destination country. The reuse of packages shall not be allowed.” *East African Standard – Seed Potato Specification*, EAST AFRICAN COMMUNITY (EAS 753:2011), <https://law.resource.org/pub/eac/ibr/eas.753.2011.html>

<sup>59</sup> See also Rita Damary, *Kenya: Nakuru MCA to Introduce Maize Packaging Motion*, *The Star* (28 November 2013) posted at <http://www.the-star.co.ke/news/article-145364/nakuru-mca-introduce-maize-packaging-motion>.

distribution services, and all are subject to regulation, particularly at the point of market entry. In most markets, including East Africa, regulation can create a barrier to entry for new market participants and limit the pool of service providers, which is something investors and entrepreneurs should be aware of both with respect to their own projects and with respect to the market in which they are operating.

Regulations around transport in Kenya and Tanzania are becoming more relaxed, opening the sector to much-needed competition and facilitating many different types of new business activity.

There are often delays in the region in transporting food and agricultural inputs, although there have been notable improvements in the legal and regulatory system as noted below. On the whole, it is well documented that it takes longer and costs more to export and import goods in Africa than anywhere else in the world, with more documents and duplicative paperwork required and multiple overlapping policies and agencies involved. Legal and regulatory challenges can include poor customs administration and facilitation (discussed briefly below) as well as weak regulation of the transport sector within countries and across regions.<sup>60</sup> Delays and uncertainty in transportation can lead to spoilage, additional warehousing or port payments, and the need to maintain extra inventory. Numerous checkpoints along transport routes can also run up costs and hamper trade.<sup>61</sup> Laws and regulations covering axle weight requirements for trucks can vary widely across regions, making it difficult move from one market to the other.<sup>62</sup>

Storage is another particularly important element of agricultural value chain development, and, currently, adequate storage is seldom attainable. Cold storage is often unavailable for perishables, and large percentages of crops spoil before reaching the market.<sup>63</sup> In addition

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<sup>60</sup> See generally African Development Bank, *African Development Report 2010* (2010); Brenton, P., N. Dihel, R. Gicho, I. Gillson, M. Harber, G. Isik, J. Keyser, R. Kopicki, B. Rippel, and A. Roberts. 'Africa Can Help Feed Africa: Removing Barriers to Regional Trade in Food Staples.' Washington D.C.: World Bank (2012).

<sup>61</sup> See Kisanga, D. 'Mwakyembe Order Checkpoint Cutback.' IPP Media (23 August 2013); Habiba Ben Barka, *Border Posts, Checkpoints and Intra-African Trade: Challenges and Solutions*, African Development Bank, (5 January 2012).

<sup>62</sup> See generally Michael Ian Pinard, *Overload Control Practices in Eastern and Southern Africa: Main Lessons Learned*, The World Bank ¶¶ 2.3-2.44, 4.19-4.20, 7.3-7.4 (April 2010), available at <http://siteresources.worldbank.org/EXTAFRSubSahtra/Resources/1513929-1262811936256/SSATPWP91-Synthesis-Cover.pdf>; African Development Bank, *Eastern Africa: Regional Integration Strategy Paper 2011-2015*, ¶ 3.3.1.1 (October 2010), available at <http://www.afdb.org/fileadmin/uploads/afdb/Documents/Project-and-Operations/RISP-East%20Africa%20-%20Shortened%20Draft%20-%20Pre%20OpsCom%20Version%20-%20Revision%2028%2010%202010%20RR%20Clean.pdf>.

<sup>63</sup> See Erland Herfindahl, et. al., *Sub-Saharan Africa: Effects of Infrastructure Conditions on Export Competitiveness, Third Annual Report*, United States International Trade Commission, 6-19, (April 2009)

to services regulation, storage and packaging requirements must be followed, as must standards for temperature and moisture content.<sup>64</sup>

While not limited to agriculture, limited distribution services disproportionately impact the agricultural sector where time to market is particularly important. Distribution services include commission agents' services, wholesale trade services, retailing services and franchising. Legal and regulatory challenges can include: foreign equity limitations;<sup>65</sup> economic needs tests on establishment and expansion of stores (government screening to determine whether a foreign firm can enter a market can be needed); limitations on the type of legal entity, including joint-venture requirements; limitations on the scope of operations (e.g. number of outlets, geographical areas); discrimination against franchises or direct selling as opposed to other forms of business;<sup>66</sup> discriminatory taxes and subsidies; limitations on the purchase or rental of specific assets, such as real estate and land; citizenship/residency requirements; and performance requirements on the marketing of domestically produced goods. The lack of licensing and operation rules for distribution companies can also create uncertainty and place an undue onus on firms trying to conduct business in the formal distribution sector.

### **CUSTOMS AND TRADE FACILITATION**

Whenever crossing a border is involved, customs requirements and other import processes can be considerable, with a combination of inspections, taxes, licenses (e.g. import licenses or other specific activity licenses), and permits required to access markets.<sup>67</sup> Particular efforts have focused on streamlining processes at the border, often referred to as trade facilitation, and EAC countries are pursuing additional measures to ease cross-border

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<sup>64</sup> The Tanzania Food and Drugs Authority (TFDA) regulates food storage and packaging requirements. See The Tanzania Food, Drugs, and Cosmetics Act, 2003. Conversely, Uganda does not have a single regulatory body responsible for food safety. See The Uganda National Bureau of Standards (<http://www.unbs.go.ug/>) and the Ministry of Agriculture, Animal Industry and Fisheries regulate many aspects of food safety, although other institutions also may have authority to regulate specific types of products, e.g. the Dairy Development Authority, Cotton Development Authority or the Coffee Development Authority.

<sup>65</sup> Tanzania, Rwanda, Uganda, and Kenya do not limit foreign equity in the agriculture sector, however restrictions exist in related sectors such as banking. See Investing Across Borders 2010, The World Bank Group (2010), available at <http://iab.worldbank.org/>.

<sup>66</sup> Franchising has become increasingly popular in Kenya. Hurdles to franchising in Kenya include poor enforcement of intellectual property protection, frequent breaches of franchise agreements, and confusion about the overall notion of franchising. *Doing Business in Kenya 2013*, U.S. & Foreign Commercial Service and U.S. Department of State (2013), available at [www.buyusainfo.net/docs/x\\_6481692.pdf](http://www.buyusainfo.net/docs/x_6481692.pdf).

<sup>67</sup> E.g., Tanzania requires import and export permits for fertilizers. Tanzania Fertilizer Act of 2009, available at <http://www.parliament.go.tz/Polis/PAMS/Docs/9-2009.pdf>.

trade.<sup>68</sup> Members of the EAC and COMESA have also agreed to develop a common transport policy, but national policies have not been fully changed to implement the broader regional directive.<sup>69</sup> In addition, in December 2013, members of the WTO agreed to conclude an Agreement on Trade Facilitation that, when implemented, would increase transparency in border measures, improve customs administration, and promote effective border cooperation.

Axle load regulations, which often differ among countries, are increasingly being addressed regionally. In May 2013, the East African Legislative Assembly (EALA) passed a bill to restrict vehicle overloading and reduce transport costs by harmonizing axle load regulations (with a maximum axle load limit of 56 tonnes) in all five states of the East African Community.<sup>70</sup>

Other improvement in trade facilitation and border crossing procedures have been made,<sup>71</sup> including through One Stop Border Posts (OSBP) that make border crossing more efficient and less susceptible to inconsistent application. The Malaba border post, which separates Kenya and Uganda and lies along the Northern Corridor route to Mombasa, was the first OSBP project in the region.<sup>72</sup> Joint railway border posts were initiated in 2006, and road transport reform began in 2008.<sup>73</sup> Survey results show that average crossing times

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<sup>68</sup> See generally *Trade Facilitation in the East African Community: Recent Developments and Potential Benefits*, U.S. International Trade Commission (July 2012), available at <http://www.usitc.gov/publications/332/pub4335.pdf>.

<sup>69</sup> Nathan Associates, Inc., Corridor Diagnostic Study of the Northern and Central Corridors of East Africa, Action Plan, USAID vii (April 15, 2011) (USAID Contract No. EEM-I-00-07-00009-00, Order No. 2), [http://tcboostproject.com/resources/resource/Pages%20from%20EA%20CDS%20Action%20Plan%20-%20Volume%202,%20%20Technical%20Papers%20\(Final\),%20File%202.pdf](http://tcboostproject.com/resources/resource/Pages%20from%20EA%20CDS%20Action%20Plan%20-%20Volume%202,%20%20Technical%20Papers%20(Final),%20File%202.pdf).

<sup>70</sup> See East African Community, *EALA Passes EAC Vehicle Load Control Bill* (29 May 2013), available at [http://www.eac.int/index.php?option=com\\_content&id=1279:eala-passes-eac-vehicle-load-control-bill&Itemid=194](http://www.eac.int/index.php?option=com_content&id=1279:eala-passes-eac-vehicle-load-control-bill&Itemid=194); Adam Grodzicki, Harmonization of Axle Load Control at EAC Level, Continental Infrastructure Seminar for Africa, Addis Ababa (2013), available at <http://capacity4dev.ec.europa.eu/public-group-transport/document/harmonization-axle-load-control-eac-level-0>.

<sup>71</sup> John Arnold, *Best Practices in Management of International Trade Corridors*, THE WORLD BANK GROUP (Transport Paper-13, Dec. 2006), <http://siteresources.worldbank.org/INTTRANSPORT/Resources/336291-1227561426235/5611053-1229359963828/itc-1-11-07.pdf>.

<sup>72</sup> See generally *Joint Border Committees: A Look at Malaba Border, Kenya*, United States Agency for International Development (April 2013), available at <http://www.competeafrica.org/resources/index.php>; Christabel Ligami, *Clearance of goods at Malaba Border to Get Better, Faster*, The East African (14 August 2011), posted at East African Community [http://www.eac.int/customs/index.php?option=com\\_content&view=article&id=131:clearance-of-goods-at-malaba-border-to-get-better-faster&catid=1:latest-news&Itemid=163](http://www.eac.int/customs/index.php?option=com_content&view=article&id=131:clearance-of-goods-at-malaba-border-to-get-better-faster&catid=1:latest-news&Itemid=163); Mike Fitzmaurice, Olivier Hartmann, *Border Crossing Monitoring Along the Northern Corridor*, The World Bank, 26 (April 2013).

<sup>73</sup> See *Trade Facilitation in the East African Community: Recent Developments and Potential Benefits*, U.S. International Trade Commission, 2-17 (July 2012), available at <http://www.usitc.gov/publications/332/pub4335.pdf>.

dropped from 24 hours to under four hours; prior to the reforms, over half of the containers and trucks crossed in 48 hours or more, whereas after the reforms all trucks but one crossed in under six hours.<sup>74</sup>

Another OSBP was established along the Northern Corridor at the Uganda-Rwanda border at Gatuna-Katuna in 2010.<sup>75</sup> In 2012, the Rwanda Revenue Authority (RRA) and the Uganda Revenue Authority (URA) signed an agreement to implement joint surveillance at the border post.<sup>76</sup>

In August 2012, the Rwanda Revenue Authority (RRA) implemented the Rwanda Electronic Single Window, an electronic clearing system designed to streamline the import process. The system allows traders to access and submit documents online.<sup>77</sup>

These developments are examples of improvements in trade facilitation, and additional changes in law, regulation, and policy can be expected in East Africa, which, when well designed and implemented, can have a significant impact on the agricultural sector and other sectors across economies.

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<sup>74</sup> Fitzmaurice and Hartmann 2013, 8.

<sup>75</sup> See *Trade Facilitation in the East African Community: Recent Developments and Potential Benefits*, U.S. International Trade Commission, 2-17 (July 2012), available at <http://www.usitc.gov/publications/332/pub4335.pdf>.

<sup>76</sup> See Khen Travor, *Curbing Illicit Trade*, *The Independent* (30 July 2012), available at <http://www.independent.co.ug/rwanda-ed/rwanda/6188-curbing-illicit-trade>.

<sup>77</sup> See *Electronic Single Window Pilot Launched to Facilitate Trade in Rwanda*, Republic of Rwanda Ministry of Trade and Industry (7 February 2012), <http://www.minicom.gov.rw/spip.php?article377>.

THE ATTACHED TOOL PROVIDES INFORMATION OF A GENERAL NATURE AND SHOULD NOT BE TAKEN OR USED AS LEGAL ADVICE IN SPECIFIC SITUATIONS, WHICH WILL DEPEND UPON PRECISE FACTUAL CIRCUMSTANCES AND VARIOUS FACTORS UNIQUE TO AN ENTERPRISE. THESE MAY INCLUDE, WITHOUT LIMITATION, TYPE OF ENTITY, NATURE OF ACTIVITIES, STAGE OF GROWTH AND APPLICABLE LAW. PLEASE SEEK APPROPRIATE COUNSEL FOR SPECIFIC LEGAL MATTERS.

## **SECTION 6 – SECTOR-SPECIFIC LEGAL AND REGULATORY ISSUES IN EAST AFRICA: INFORMATION AND COMMUNICATIONS TECHNOLOGY (ICT)**

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Information and Communications Technology (ICT) is a growing field throughout East Africa, and investors, entrepreneurs, and counsel should be aware of the legal and regulatory issues surrounding the ICT sector. These issues will both impact current and future investment transactions, but they will also shape the ICT sector more broadly, which is a significant element of the infrastructure needed for conducting and growing businesses of all types and sizes.

For the social enterprise sector, particular aspects of ICT such as mobile payments, e-commerce, online media, and gaming are of particular relevance. Because of the rapidly changing nature of the industry, however, ICT measures may be difficult to predict, and lawmakers may have difficulty keeping up with changes in technology and its application.

While a number of legal and regulatory measures and institutions exist at the national level, regional policies have also been put in place through the EAC and COMESA that are binding on the member states and will require further change in law and regulation. In practice, however, these measures have not yet been fully implemented.

Currently, each East African country has its own regulations that do not completely align with other East African countries or the EAC regulations. Kenya, Rwanda, Uganda, and Tanzania have all approved EAC National ICT Policies but have not harmonized them with their own national policies. Rwanda is the only EAC Member State that has developed a corresponding comprehensive implementation plan. Legislation and regulation are equally non-uniform, although all the Member States now have functional, autonomous regulators. Some countries' regulatory frameworks lean towards self-regulation (Tanzania, Uganda, and Rwanda), while others provide for stricter regulation by national regulators (Kenya and Burundi). Overall, regulatory divergence can create a problem for investors and could hinder coordinated development of the sector in East Africa.

## **EAC ICT POLICY**

The five East African countries have committed to harmonization of their regulatory schemes as part of EAC membership, but implementation has been slow. Regulatory harmonization will simplify the regulatory environment in which investors and entrepreneurs are operating, and it will be important to generating necessary competition in the market, creating an infrastructure of interconnected national networks, improving regional economies, and attracting additional investment.

Most service providers are currently providing services in the EAC regionally as opposed to within individual countries, due to the mergers, acquisitions, and continuous expansion of new services to other sectors. Despite this, at the EAC level, individual legislative frameworks are still maintained to date. The individual countries' frameworks provide for different regulatory entities, often giving partial control to numerous agencies. Not only are there multiple regulatory bodies, but conflicting regulations and licensing authorities exist as well. As a result, many choose the regulatory frameworks within the individual countries that have the friendliest policies.

## **LEGAL, REGULATORY, AND INSTITUTIONAL FRAMEWORK**

During the last two decades, each East African country has revised its ICT framework. Previous communications industry regulations were reworked, and often replaced, establishing new structures and regulations that aligned with modern ICT realities. These new frameworks often came with a growth plan to expand access to ICT and to accommodate future technological advances. Governments consider expansion of access necessary to create the types of markets that can support development. A brief summary of significant elements of the legal and institutional framework for different countries is included below.

Most countries have one primary regulating authority with additional offices, committees, and boards providing regulation in specific sectors, overseeing the primary authority, or advising the government on future steps. The new frameworks for ICT concentrate power to control ICT more than the previous frameworks which often had multiple agencies with relevant regulatory power, often resulting in struggles for dominance, or worse, lack of necessary regulation.

### **KENYA**

In Kenya, The Kenya Information and Communications (Amendment) Act (CAA) (2009) (original act, 1998) repealed the Kenya Posts and Telecommunications Act and created the current framework for regulating the communications sector. The Act separated Kenya Post and Telecommunications into five separate entities: Telkom, the fixed line operator;

the Postal Corporation of Kenya (Posta); the Communications Commission of Kenya (CCK) as the sector regulator; the National Communications Secretariat (NCS) to advise the government on the adoption of a communication policy; and an Appeals Tribunal for the purposes of arbitration in cases where disputes arise between parties under the KCA 1998.

The National ICT Policy (2006) established a comprehensive policy, legal, and regulatory framework to support ICT development, investment and application. It addresses convergence, electronic commerce, and e- Government; promotes competition in the industry where appropriate; and addresses issues of privacy, e-security, ICT legislation, cyber crimes, ethical and moral conduct, copyrights, intellectual property rights, and piracy.

This new ICT policy is administered by the Ministry of Information and Communications, which formulates national ICT policy. The National Communications Secretariat (NCS) advises the Ministry of Information and Communications and is the only key organization with an explicit and legislatively mandated policy function that includes overseeing policies which promote the development of technological capabilities, deliver social services and foster economic growth, and encourage competition and efficiency in the industry.

An ICT Board also exists in Kenya which was created to: (a) advise the Government on all relevant matters pertaining to the development, co-ordination and promotion of ICT industries in the country; (b) promote the opportunities for investment in ICT locally and internationally; (c) facilitate and manage ICT industrial incubation parks and technology parks, as well as associated facilities on sites, estates, and land; (d) appoint agents to carry out these functions; and (e) carry out any other activity that will promote and facilitate the development of ICT products and services. The Parliamentary Committee on Energy, Communications and Public Works provides Parliamentary oversight on communications.

## **RWANDA**

The Law Governing Telecommunications (N° 44/2001 of 30/11/2001) established the Rwanda Utilities Regulatory Agency (RURA), with the authority to regulate telecommunications and set up a regulatory board to carry out its goals. The law requires licenses for telecommunications officers and specifies the services that must be licensed. The RURA has rule-making and enforcement power; licenses utility service providers; formulates, enforces, and reviews regulations for the effective and efficient management of ICT; monitors a performance of service providers; monitors and responds to changing market signals; ensures fair and robust competition between utility service providers; creates technical and quality standards; reviews tariffs; supervises consumer and user protection; resolves disputes between service providers, consumers and other stakeholders; and encourages research and development.

Rwanda's development strategy focuses heavily on ICT. The Rwanda Information Technology Authority (RITA) implements all ICT policies and associated projects and programs. Its mission is to promote public awareness about ICT and provide consulting services to the government and public. National policy documents, the National Information and Communications Infrastructure (NICI) Plans, have been enacted. The NICI Plans are organized into four plans, divided by years of implementation.

NICI I (2001-2005) predominantly concentrates on building institutional and policy infrastructure. The government increased privatization and market liberalization and created two mobile network operators, Rwandatel and Rwandacell, and three Internet service providers. RURA and RITA were given power over the ITC sector, while the National Information Technology Commission (NITC) was created as an advisory group and think tank. A universal service fund was also established to promote access among rural and poor populations. Investment was also made in specific infrastructure projects and a national training center

NICI II (2006-2010) promotes wealth creation, poverty reduction, and employment generation. It sought to upgrade the country's ICT infrastructure and began to disseminate wireless broadband.

NICI III (2011-2015) focuses on ICT service delivery and targets local communities. It aims to develop skills, contribute to community development, draw the private sector into improving the ICT sector, advance cyber security, and create e-government.

NICI IV (2016-2020) will attempt to complete the NICI process and turn Rwanda into an information-rich, knowledge-based middle-income country with access to information.

## **TANZANIA**

Tanzania's National Telecommunications Policy (1997) was put forth to guarantee accelerated development of ICT infrastructure and services in order to improve access to telecommunication services as part of the national development strategy. In 2003, a National ICT Policy was established that defines ten focus areas to improve ICT: strategic leadership, infrastructure, industry, human capital, legal and regulatory framework, productive sectors, service sectors, public service, local content, and universal access. The policy is carefully drawn out, but the implementation strategy needs to be restructured. To date, there is no law that enforces this policy.

The Tanzania Communications Regulatory Authority (TCRA) was established in 2003 to regulate and licenses the postal, broadcasting and electronic communications industries. Its establishment consolidated the activities of the Tanzania Communication Commission

and the Tanzania Broadcasting Commission (TBC) into one agency. The TCRA promotes effective competition and economic efficiency in order to protect Tanzanian interests. RCRA licenses and enforces license conditions for broadcasting, postal, and telecommunications operators; establishes standards for regulated goods and services; regulates rates and charges (tariffs); manages the radio frequency spectrum; monitors sector performance; and monitors the implementation of ICT applications. The TCRA affected a Converged Licensing Framework (CLF) in 2005. The TCRA is mandated to oversee the restructuring and liberalization of the sector in line with the government's wider move to liberalize the economy through restructuring and engagement of the private sector.

More recently, the Electronic and Postal Communication Act (2009) required mobile operators to float shares on the Dar es Salaam stock market, re-distribute frequencies in the aftermath of digital broadcasting, share network resources and infrastructure at a time of stiff competition due to many new operators waiting to enter the market, and register SIM-cards. The Electronic and Postal Communications Act (2010) harmonized and replaced a number of other elements of legislation<sup>78</sup> to improve and maintain the legal framework so that it stays current in the rapidly changing ICT environment.

## **UGANDA**

The Uganda Communications Act (2013) consolidated and harmonized the Uganda Communications Act and the Electronic Media Act; dissolved the Uganda Communications Commission and the Broadcasting Council and reconstituted them as one body known as the Uganda Communications Commission, which regulates interconnection and access systems between operators and users of telecommunications services. Its role is to arbitrate disputes, institute levies on gross annual revenue of operators, confiscate apparatus, institute inquiries, and impose fines for breaches. The Act sets out the general legal framework for telecommunications in Uganda, which covers licensing, competition policy, quality service, interconnection, scarce resources management, tariffs regulation, penalties and sanctions. It also covers the postal service. It also covers some postal service issues.

The Ministry of ICT/ National Information and Communications Authority Uganda (NIT A-U) integrates and coordinates ICT activities in the public and private sectors. It also

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<sup>78</sup> The Tanzania Broadcasting Services Act No 6 of 1993; Tanzania Communications Act No 18 of 1993; Tanzania Communications Regulatory Authority Act No 12 of 2003; and Universal Communications Service Access Act of 2006.

initiates and develops the ICT Policy advice and strategy. Uganda's National ICT Policy Framework covers information as a resource for development, mechanisms for accessing information, and ICT as an industry, including e-business, software development and manufacturing. The policy looks at various categories of information from different sectors, essentially aimed at empowering people to improve their living conditions. The sectors include: health, education, agriculture, energy, environment, business, science and technology, etc. The Rural Communications Policy lays focus on three key aspects for the development of Uganda as an information society: coverage, connectivity, and content.

### **LICENSING FRAMEWORK**

Licensing requirements differ in each country, but separate into numerous types of license. Because most service providers operate regionally, they often choose a country with less strict licensing requirements to incorporate in. Licensing tends to fall on a scale from open to restrictive/competition based.

### **KENYA**

Kenya is in the process of shifting its licensing regime to a unified licensing framework and market structure. To date, the focus has been at the service level, with some of the segments being: international gateway, mobile communication, data operator's license, ISP, etc.

The Kenya Unified Licensing Framework (ULF) instilled an open market-based licensing system that issues a license if a potential operator meets the requirements, on a first come first served basis. For scarce resources, the CCK uses an auction process because it is the only viable, transparent, and fair allocation method. The CCK's unified technology-neutral licensing regime (not yet implemented) will license operators and service providers under three broad market segments: (1) Network Facilities Provider (NFP) who provide infrastructure system for long distance transmission and for local access; (2) Applications Service Provider (ASP) who provide all forms of services to end-users using the network services of a facilities provider; and (3) Contents Services Provider (CSP) who provide content services such as broadcast (TV & Radio) material, and other information services and data processing services, etc. ULF has simplified licensing procedures, developed new applications, and increased the penetration and availability of mobile internet, as well as increased infrastructure investment.

The ULF framework does not distinguish between mobile and fixed services, satellite and terrestrial services, or data and voice services. The difference in licenses is dependent on which layers of the model one operates in, though a distinction is made between national and international services. The six main licenses are: (1) National Network Facilities

Providers; (2) International Network Facilities Providers; (3) Non-Infrastructure Based Services Providers; (4) Terminal Equipment Providers; (5) Private Very Small Aperture Terminals (VSAT); and (6) One Time Authorization.

The structure allows direct inter-connectivity between all network operators. Operators who fall into more than one category are expected to obtain licenses for all the categories in which they operate. Cross-subsidization between the various license categories is not allowed and firms with multiple licenses are required to structure their operations and submit distinct operational accounting returns to the CCK as part of their compliance returns.

The broadcasting market structure has remained consistent. It is categorized as public, private, and community broadcasting. Public Broadcasting is operated by the Kenya Broadcasting Corporation (KBC), which remains the public broadcaster operating commercially but with a universal service obligation. Private Broadcasting consists of private entities licensed to provide broadcasting services on a commercial and competitive basis. Community Broadcasting is fully controlled by non-profit agencies to serve particular communities, for example special interest groups.

## **RWANDA**

The Law Governing Telecommunications requires all telecommunications operators to be licensed and licenses are granted by RURA. It created individual licenses and standard licenses. Individual licenses are based on a competition where the best offer is chosen based on submitted technical and financial proposals. Standard licenses do not require competition.

## **TANZANIA**

The Tanzania Converged Licensing Framework (2005) (CLF) is based on the “converged” licensing framework, and is not restrictive regarding entry requirements. The CLF established regulatory flexibility, market entrance of small-scale providers, and technology and service neutrality. The CLF constitutes four license clusters: Network Facilities License (NFL), Network Services License (NSL), Applications Service License (ASL) and Contents Services License (CSL). In a phasing out arrangement, licenses are also issued under the old regime in the areas of Public Data Operators Licenses, Internet Service Providers, Private Dedicated Data Communications, and Postal and Courier Operators.

NFL licensees may install, own, control, and provide access to electronic communications facilities, such as fixed links, radio communications transmitters, satellite stations, submarine cable, fiber/copper cable, towers, switches, etc., to other licensed operators on commercial bases.

NSL licensees may operate and maintain public electronic communication networks with various technologies (like CDMA, GSM WCDMA, WLL, ADSL) that involve intelligent network platform signaling control, traffic distribution switching translation and quality of services control.

ASL licensees provide electronic communications services to end-users through the establishment of private facilities and networks, or through procurement and reselling of services from licensed facilities or/and network service providers.

CSL licensees provide content services such as satellite broadcasting, broadcasting terrestrial free to- air TV, terrestrial radio broadcasting, subscription TV, and other broadcasting services.

The existing market structure comprises basic telephone service, radio mobile services, and value added services (including data). There are four market segments.

### **UGANDA**

The license regime is technology neutral, granting freedom to the licensee to select technology of choice. Licensing is now horizontal, separating the licensing of infrastructure from service provision. There are two types of service licenses. The voice and data license can be seen as service neutral because it recognizes the capability of technology to provide both voice and data at minimal additional cost. The capacity resale license covers resale operations using capacity of other operators, accommodates providers of calling card services and Voice over Internet Protocol (VoIP) call termination providers. The technology neutral approach in licensing taken by the UCC implies that VoIP is permitted. PC (personal computer) to PC type VoIP (Skype, Instant Messenger etc.) is waived from any regulation because it is available over an already regulated service. Private network infrastructure (optical fibre) owned by the electricity transmission company has been made commercially available to the communication market. Provision of services and infrastructure are permitted by the same single license. The infrastructure license permits construction of any form of infrastructure using any type of technology.

### **COMPETITION AND PRICE REGULATION**

Most governments have established plans that keep competition high and prices reasonable for consumers. Foreign participation in the sector can also be limited, as discussed below.

### **KENYA**

The Kenya Information and Communications (Fair Competition and Equality of Treatment) Regulations provide a regulatory framework for the promotion of fair competition and

equal treatment in the communications sector and protect against the abuse of market power or other anticompetitive practices within the communications sector.

The Competition Act (2010) allows the Competition Authority to determine matters that may affect competition in the economy, including those that involve companies in the telecommunications business.

### **RWANDA**

RURA also has the power to maintain and promote effective competition through issuing licenses to ensure that competition in the market is not distorted; refusing to issue licenses that may distort the market; make alterations and additions to license in order to ensure effective competition; require the modification of an interconnection agreement to ensure fair competition; and make sure that actions by public telecommunications operators do not result in competition distortion.

### **TANZANIA**

The Fair Competition Act (No. 8 of 2003) promotes and protects effective competition in markets and prevents unfair and misleading market conduct in order to increase efficiency in production, distribution, and supply of goods and services; promote innovations; maximize the efficient allocation of resources; and protect consumers. The Act establishes the Fair Competition Commission.

The Fair Competition Commission (FCC) is a government agency established to protect consumers from unfair and misleading market conduct and to promote and protect effective competition in trade and commerce. It makes necessary interventions that ensure competition to regulate the market and that prevent significant market dominance, price fixing and extortion of monopoly to the detriment of the consumer and market stability.

### **UGANDA**

The main limitation to entry is the availability of scarce resources. Because of the small size of the market and the large number of competitors, competition occurs naturally. The high competition gives consumers a slightly stronger position with operators competing to attract consumers to their services and consumers having the power to demand the services they want. In 2006, the Government lifted a moratorium on new mobile telephone operator licenses so the telecom sector has grown and seven companies are now in the market. This created more competition, lower prices, wider coverage, and greater telephone penetration among the population and throughout the country.

## **UNIVERSAL ACCESS AND SERVICE**

Access to ICT is highest in heavily populated areas and drops considerably in rural regions. Yet because a large percentage of East African populations live below the poverty line, often in sparsely populated locales, creating universal access and service has been critical but difficult. Universal access has become an important goal as governments strive to improve the livelihood of their citizens and the standing of their countries. Creative steps are being taken to improve rural access, such as mobile telecenters that bring the internet to the countryside through large buses that provide internet access, printing capabilities, etc. This idea of bringing publicly available access is common across East African countries and applies to sectors outside ICT as well, e.g. health services.

### **KENYA**

The Kenya Information and Communications (Universal Access and Service) Regulations (2010) established a Universal Service Fund under the CCK, but the fund is yet to be fully operationalized. The Fund will be at least partially supported by a levy that the CCK charges to licensees.

Fixed-line service has experienced a rapid decline in growth and consistent poor service. The use of mobile phones has grown and caused an increase in demand for data services, which has led to an increase in international gateway bandwidth. However, the quality of mobile calls is relatively low. The price of ICT services has decreased as the uptake has improved. Some of the main issues impeding Internet use include power shortages. There is still a lack of connectivity available in some rural areas.

### **RWANDA**

One of the goals of the NICI plans is to promote universal access to ICTs and systems. Rwanda has developed a national portal, among other programs, to provide public information regarding the state of the government, economy, and country. Community telecentres and information kiosks have been created to provide information to the public. Mobile telecentres, created on buses, have been established to reach rural citizens who are traditionally underserved in this sector.

### **TANZANIA**

The TCRA universal access strategy aims to provide every rural village with telecommunications facilities by 2020. The ICT Development Policy requires every licensed telecommunication service provider to cover rural areas with their services. The Rural Development Strategy (RDS) endorses telecentres, which offer a wide variety of public and private information-based goods and services, to introduce information and

communication technology to rural areas. The telecentre services might include basic communication by telephone, fax, e-mail, internet access, etc.; public and semi-public sector services such as tele-medicine, distance education, municipal governance services, etc.; and private sector services like news distribution, telecommuting services, training, access to information on markets, crops, and weather conditions etc.

### **UGANDA**

The UCC established a rural communication development fund in February 2003. A unit in the UCC administers the fund, although it has its own five-member board with representation from the UCC board/ Commissioners, the Ministry, consumers and other public members. The Universal Access initiative has realized most of its set objectives.

### **FOREIGN INVESTMENT**

Foreign investment in ICT is not outright prohibited in any East African country, but limitations do exist. Kenya and Tanzania limit foreign investment in certain arenas, while Rwanda and Uganda have created inclusive policies in order to attract more foreign investors.

### **KENYA**

Foreign telecom companies can establish themselves in Kenya, but must have at least twenty percent (20%) local ownership. The license fee for third-generation (3G) mobile Internet services was cut sixty percent (60%) in June 2010 to US\$10 million in order to raise market penetration. There is also no charge for an upgrade to 4G.

### **RWANDA**

There are no statutory limits on foreign ownership or control, nor is there an official economic or industrial strategy that has discriminatory effects on foreign investors. There is no required percentage of local ownership, though the government does urge local participation in ventures. There are occasionally some difficulties in foreigners receiving, or renewing, work visas because the government prefers to grant visas to EAC nationals. Under the letter of the law, foreign firms must receive equal treatment in regard to taxes, access to licenses, approvals, and procurement.

Rwandatel, one of the two mobile network operators, was recently sold to Terracom, a U.S. company. The government is taking steps to attract investment by foreign firms that will improve the ICT market and create jobs for Rwandans.

### **TANZANIA**

Tanzania attempts to facilitate investment through joint venture opportunities between local and foreign investors. However, foreigners are not able to run media institutions and foreign investment in any media outlet cannot be more than 49%. Foreigners may only be employed as technical experts and only when such expertise is not available locally. A 2010 legislation required foreign-owned telecommunications firms to list on the Dar es Salaam Stock Exchange (DSE) within three years. Foreign capital participation in the telecommunications sector is also limited to 65 percent for fixed-line and mobile telephony and infrastructure.

### **UGANDA**

Ugandan policies offer incentives and a general open climate for foreign investment; however, government involvement in the sector remains high.

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## **SECTION 7 – SECTOR-SPECIFIC LEGAL AND REGULATORY ISSUES IN EAST AFRICA: ENERGY**

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Energy is becoming an increasing area of focus in East Africa. Access to energy is a critical element of countries' development programs, and it relates directly to how all other sectors, including agriculture, will grow. International programs to increase energy production and availability in sub-Saharan Africa, including the U.S. Obama Administration's Power Africa program, aim to bring greater focus and partnership to the sector.

Access to electricity in East Africa remains low. Power generation and distribution often run on antiquated equipment, and a large number of power plants are out of production because of issues such as obsolete technology and disrepair. Not only is the amount of energy insufficient to meet demand, the existing supply can be unreliable or priced out of reach. For the social enterprise sector, new opportunities exist in off-grid and renewable energy, including hydropower, geothermal, solar, bioenergy, and wind power.

Despite its energy challenges, East Africa is emerging as a potential player in energy production. Possible large oil reserves have been found in Kenya, while natural gas has been discovered in Tanzania. In 2012, the U.S. Geological Survey estimated that East Africa could have as much as 441 trillion cubic feet of natural gas.<sup>79</sup>

### **THE EAST AFRICAN COMMUNITY (EAC)**

The EAC Development Strategy focuses on the supply of sufficient, reliable, cost effective, and environmentally friendly energy through promotion of both renewable and non-renewable energy sources. This strategy has been put in place in order to attract

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<sup>79</sup> World Petroleum Res. Project, *Assessment of Undiscovered Oil and Gas Resources of Four East Africa Geologic Provinces*, U.S. GEOLOGICAL SURVEY (Apr. 2012), <http://pubs.usgs.gov/fs/2012/3039/contents/FS12-3039.pdf>.

investment, increase competitiveness, and bolster trade. The EAC has divided the energy sector into three sub-sectors: (1) power, (2) new and renewable energy sources and energy conservation and efficiency, and (3) fossil fuels.

East African countries are simultaneously facing challenges of energy access, energy security and climate change mitigation.

The United Nations Industrial Development Organisation (UNIDO) and the Austrian Development Agency have partnered with the EAC to establish an East African Centre on Renewable Energy and Energy Efficiency (EACREEE) that will explore the renewable energy and energy efficiency issues faced by Burundi, Kenya, Rwanda, Tanzania, and Uganda. Other regional organizations that have begun power sector projects in the East African Region include the Nile Equatorial Lakes Subsidiary Action Plan (NELSAP), Regional Power Trade Project (RPTP), the Economic Cooperation of the Great Lakes Country (CEPGL), and the Eastern Africa Power Pool (EAPP). The EAC is working with these organizations to encourage growth through regional projects and programs.

### **ACCESS TO ENERGY**

Historically, most of Kenya's electricity supply came from hydroelectric stations. This reliance on hydropower has diminished as geothermal and other renewables have come to account for an increasing share of power production. A significant portion of Kenya's electricity supply also comes from thermal sources, including petroleum, coal, and natural gas. All of Kenya's crude petroleum must be imported, but the Government of Kenya is currently considering plans for recently-discovered oil reserves. Kenya has begun a series of major generation and grid expansion projects that will connect transmission lines within the country and with neighboring countries. The Kenya Electricity Transmission Company Limited (KETRACO) was incorporated in 2008, with the mandate to plan, design, construct, operate, and maintain high-voltage electricity transmission lines and substations.

Historically, most energy in Rwanda comes from biomass fuel, such as firewood and charcoal. Only a small percentage of the energy comes from petroleum products and electricity. Currently, Rwanda is also attempting to meet its generation needs through hydropower. Diesel fuel, petroleum products, and electricity are all imported to increase Rwanda's energy capabilities.

Rwanda is home to the largest single solar installation in Africa. The Ministry of Energy commissioned a feasibility study to determine the wind power capacity of Rwanda, although wind energy is currently only exploited in decentralized off-grid applications. The country is located near the geothermal resource of the Great Rift Valley, so the potential of geothermal energy is very real. Hydropower also has a large amount of untapped potential.

The Ministry of Infrastructure is financing 11 hydropower plants and promoting SMEs in the small-hydro sector.

In Tanzania, large reserves of natural gas have been discovered, and offshore gas fields have been developed to utilize the resource. Tanzania has been doing exploratory research but has found no oil reserves, so it is dependent on imported petroleum products. New regulations are being discussed to implement the Draft National Gas Policy, which might result in limitations in foreign investment.

Interest in the Ugandan upstream oil and gas sector has increased in recent years as a result of oil discoveries. Production of oil is anticipated to grow exponentially 2015-2018. All countries are increasingly looking at renewable energy sources, as discussed below.

### **ENERGY LEGISLATION AND REGULATION**

Each country in East Africa has its own laws and regulatory structure to control the flow of energy within its borders. The typical structure is an act or constitutional imperative that establishes a regulatory agency. The agency then creates regulations for the energy sector, which are carried out by separate government departments. Kenya, Rwanda, Tanzania, and Uganda each also have a specific agency that is devoted to solving rural energy problems.

The Kenya Ministry of Energy and Petroleum (MOE) oversees the energy sector, guiding policy for the industry. The Kenya Energy Regulatory Commission (ERC) is the primary regulator in the sector, writing regulations and issuing relevant permits and licenses in regulated areas.

The Rwanda Utilities Regulatory Agency (RURA) (2001) regulates the electricity and gas sectors. RURA conducts all technical regulatory activities; issues permits and licenses; ensures compliance to the adopted standards and fair competition; oversees tariffs; and promotes sustainable and renewable energy measures. The Ministry of Infrastructure (MININFRA) is responsible for policy formulation and sector oversight in national energy infrastructure, and is the primary government ministry in the energy sector. The Ministry of Natural Resources (MINIRENA) is responsible for managing and protecting forest and water resources. The Rwanda Energy, Water and Sanitation Authority (EWSA) was established as a publicly owned utility responsible for the planning and implementation of power projects in the country.

RURA is empowered to issue licenses to power generators and provides licenses to private power developers. REMA provides environmental clearances to power projects. The RDB negotiates all concession agreements with private project developers.

Tanzania's Energy and Water Utilities Regulatory Authority (EWURA) is responsible for technical and economic regulation of the electricity, petroleum, natural gas, and water sectors. EWURA is supported by the Ministry of Energy and Minerals (MEM), which facilitates development in the energy and mineral sectors through establishing policies, strategies, and laws.

In Uganda, the Ministry of Energy & Mineral Development (MEMD) develops policies and attempts to grow the energy sector for investment and sustainable solutions. It regulates electricity, petroleum supply, and geological surveys and mines.

### **ELECTRICITY**

While electricity is regulated within each country's energy regulatory authority, there are also separate agencies and laws that are solely concerned with the electricity sector. These specifically oversee and regulate the technical aspects of electricity generation, as well as the licensing of electrical generation, transmission, distribution, and supply.

### **RENEWABLE ENERGY**

There is growing recognition that traditional energy sources, already insufficient for the region's needs, must be supplemented with alternative energy sources in order to meet rising demand. East Africa has begun to take steps to fill this void by implementing renewable energy programs regionally and nationally. The EAC has put forth strategies to encourage regional cooperation in developing renewable energy across its member states. Each East African country also has its own scheme for improving renewable energy access.<sup>80</sup>

Renewable energy consists of, among other initiatives, bioenergy, geothermal heat and power, hydropower, ocean energy, solar power, wind power, biofuels, and biomass. Like most of Africa, East Africa has the abundance of sun necessary for the development of solar power. However, the region is also focusing heavily on bioenergy, geothermal sources, and hydropower. Many of these initiatives are funded through public-private partnerships.<sup>81</sup>

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<sup>80</sup> These programs are run through the relevant state agency. In Kenya, it is the Department of Renewable Energy (RED), a department of the Ministry of Energy; Rwanda's Ministry of Infrastructure has an Energy Subsector of the; Tanzania's program runs through the Ministry of Energy & Minerals; and Uganda's Ministry of Energy & Mineral Development has an Energy Resources Department.

<sup>81</sup> A public-private partnership is a contractual agreement between a government and a private entity where, for example, the private entity agrees to build or rehabilitate a typically public enterprise (such as a road, or a power station). After the private entity operates the enterprise for a specified amount of time, the enterprise is then transferred to the government's control.

Feed-in tariffs, preferential electricity pricing for power producers using renewable energy sources, are also a common strategy to encourage development and use of renewable energy sources. Regulatory policies and targets, fiscal incentives, and public financing are all used to encourage renewable energy development.

Kenya, Rwanda, and Uganda have renewable energy targets; Kenya, Rwanda, Tanzania, and Uganda have feed-in tariffs or premium payment. Uganda offers a capital subsidy, grant, or rebate, while Kenya, Rwanda, and Uganda have investment or production tax credits. Kenya has eliminated both the import tariffs and the value-added tax on renewable energy equipment. Uganda also offers public investment, loans, or grants.<sup>82</sup> Renewable energy regulations and policies are primarily in the development stage, and requirements may change.

Kenya has developed and is implementing a geothermal plan, funded largely by China.<sup>83</sup> Kenya implemented amended regulations for geothermal resources, as well as recent regulations for solar photovoltaic systems and solar water heating.<sup>84</sup> Kenya is currently considering draft versions of additional regulations covering renewable energy resources, electricity licensing, and tariffs and account management. Rwanda, Tanzania and Uganda are using biogas made from human, and other, waste (Rwanda) and sugarcane bagasse (Tanzania and Uganda).<sup>85</sup> Uganda recently completed a hydropower project and an Ethiopia-Kenya Electricity Highway has been approved in order to allow Ethiopia to export hydropower to Kenya and the rest of the East Africa region.<sup>86</sup> The United Nations intends

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<sup>82</sup> *Renewables 2013 Global Status Report*, RENEWABLE ENERGY POLICY NETWORK FOR THE 21<sup>ST</sup> CENTURY 78 (2013) [http://www.ren21.net/Portals/0/documents/Resources/GSR/2013/GSR2013\\_highres.pdf](http://www.ren21.net/Portals/0/documents/Resources/GSR/2013/GSR2013_highres.pdf).

<sup>83</sup> *Renewables 2013 Global Status Report*, RENEWABLE ENERGY POLICY NETWORK FOR THE 21<sup>ST</sup> CENTURY 24 (2013), [http://www.ren21.net/Portals/0/documents/Resources/GSR/2013/GSR2013\\_highres.pdf](http://www.ren21.net/Portals/0/documents/Resources/GSR/2013/GSR2013_highres.pdf).

<sup>84</sup> Geothermal Resources (Amendment) Regulations, L.N. No. 130 of 2007; Energy (Solar Photovoltaic Systems) Regulations, L.N. No. 103 of 2012; and [Energy \(Solar Water Heating\) Regulations, L.N. No. 43 of 2012](#).

<sup>85</sup> *Renewables 2013 Global Status Report*, RENEWABLE ENERGY POLICY NETWORK FOR THE 21<sup>ST</sup> CENTURY 29, 31 (2013), [http://www.ren21.net/Portals/0/documents/Resources/GSR/2013/GSR2013\\_highres.pdf](http://www.ren21.net/Portals/0/documents/Resources/GSR/2013/GSR2013_highres.pdf).

<sup>86</sup> *Renewables 2013 Global Status Report*, RENEWABLE ENERGY POLICY NETWORK FOR THE 21<sup>ST</sup> CENTURY 38 (2013), [http://www.ren21.net/Portals/0/documents/Resources/GSR/2013/GSR2013\\_highres.pdf](http://www.ren21.net/Portals/0/documents/Resources/GSR/2013/GSR2013_highres.pdf).

to set up a Clean Development Mechanism (CDM)<sup>87</sup> in Uganda to assist development of CDM projects.<sup>88</sup>

Because of the vitality of growing the energy sector, many investment opportunities are available, and incentives are being offered in this sector. It is also generally recognized that foreign investment will benefit the development of renewable energy sources, so it is highly encouraged.

## **OIL AND GAS**

Fossil fuels are regulated differently in each East African country. Regulation often corresponds to the availability of fuels in the country. Some countries (e.g. Kenya and Tanzania) grant all rights to petroleum and natural gas to the government, which then has the power to grant temporary rights to other entities.

### **REGULATION**

The Constitution of Kenya (2010) grants ownership of all Kenyan mineral resources to the government but requires that it must use them for the good of Kenyan citizens. The National Land Commission holds the mineral rights and Parliament can approve grants of rights or concessions regarding the exploitation of natural resources. Additional government agencies – the National Oil Corporation of Kenya Limited (NOCK), Ministry of Energy, Kenya Power & Lighting Company, etc. – were established to control other aspects of the energy industry and their individual regulations should be consulted before entering into related transactions. The Constitution of Kenya also grants certain powers to county governments, and local rules should be considered as well.

While Rwanda has potential to develop methane and industrial gas industries, these are currently in their infancies. Because Rwanda lacks petroleum or oil deposits within its borders, all such fuel must be imported and thus the only relevant regulation is for importing and storage. The Ministry of Trade and Industry (MINICOM) regulates the price of petroleum products.

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<sup>87</sup> “The CDM allows emission-reduction projects in developing countries to earn certified emission reduction (CER) credits, each equivalent to one tonne of CO<sub>2</sub>. These CERs can be traded and sold, and used by industrialized countries to meet a part of their emission reduction targets under the Kyoto Protocol. The mechanism stimulates sustainable development and emission reductions, while giving industrialized countries some flexibility in how they meet their emission reduction limitation targets.” *What is the CDM, CLEAN DEVELOPMENT MECHANISM*, <http://cdm.unfccc.int/about/index.html>.

<sup>88</sup> *Renewables 2013 Global Status Report*, RENEWABLE ENERGY POLICY NETWORK FOR THE 21<sup>ST</sup> CENTURY 38 (2013), [http://www.ren21.net/Portals/0/documents/Resources/GSR/2013/GSR2013\\_highres.pdf](http://www.ren21.net/Portals/0/documents/Resources/GSR/2013/GSR2013_highres.pdf).

Tanzania's Petroleum (Exploration and Production) Act (1980) vests title to all petroleum within Tanzania and its territorial waters to the United Republic of Tanzania. The Act vests regulatory authority over the oil and gas industry to the Ministry for Energy and Minerals (MEM), which also coordinates the Petroleum Development Corporation and the Energy and Water Utilities Regulatory Authority. The MEM implements its petroleum exploration and development policies through the Petroleum Development Corporation (TPDC).

Uganda's oil and gas sector began development in 2008 after the discovery of commercial petroleum resources with the National Oil and Gas Policy (NOGP). The NOGP gives the MEMD policymaking abilities, the Petroleum Authority of Uganda regulatory powers, and the Uganda National Oil Company control over the commercial aspects.

### **DOMESTIC REQUIREMENTS (AND LOCAL CONTENT)**

Countries that have oil and gas resources sometimes require that a percentage of the resource cannot be exported or that natives of that country must be employed under certain circumstances (local content rules).

Kenya can require a contractor to provide crude oil to the government for domestic consumption. Production Sharing Contracts in Kenya also have an implied term that requires the contractor to give bias to local products, equipment, services, and employees. The Government of Kenya is currently considering two complementary sets of local content rules covering the energy industry: the Energy (Local Content) Regulations and the Petroleum Exploration, Development and Discovery (Local Content) Regulations. The latest drafts of these regulations require that all companies engaged in power projects and upstream oil projects maintain offices in Kenya to oversee local content procurement and project management.

Under Tanzania's model PSA, the Tanzania Petroleum Development Corporation (TPDC) is entitled to a certain amount of profit in oil or gas. If domestic demand exceeds the TPDC's total entitlement, the contractor may be required to share an additional portion of its profit to Tanzania in order to fulfill domestic demand. When applying for exploration or development licenses, contractors must include a proposal regarding the training and employment of Tanzanian citizens and implement the proposals within six months of the grant of a development license. Management and operation functions must be transferred to Tanzanian nationals within five years of the commencement of commercial operations. Preference must also be given to the purchase of Tanzanian goods, services, and materials, among other national requirements.

Uganda does not compel a domestic supply obligation, although under the 2012 Upstream Act, the minister may direct a licensee to make deliveries of its production to cover

Uganda's requirements. Like Tanzania, Uganda also requires proposals for employment and training of citizens of Uganda and local procurement of goods and services.

**FOREIGN INVESTOR NATIONALITY REQUIREMENTS**

Petroleum agreements are often limited in some way to nationals of the country within which the license is being granted. Only a Kenyan incorporated or registered company may enter into a petroleum agreement with the government. Only an entity incorporated in Tanzania can hold an interest in a petroleum license. No license can be granted to a natural person who is not a citizen of Uganda or to a legal entity incorporated outside Uganda unless it has established a place of business in Uganda and is registered as a foreign company under the Companies Act, (Cap 110). Rwanda does not appear to have nationality requirements.

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## SECTION 8 – SUMMARY OF INVESTMENT-SPECIFIC REQUIREMENTS

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Every country has its own registration requirements that relate to investment transactions and ongoing business operations. This section lists common types of investment documentation and discusses the specific requirements for that country. See attached matrices for breakdown (the summaries below and the matrices contain the same information – both forms are presented for ease of use).

The common types of investor documentation included are:

<b>Amendment of Memorandum &amp; Articles of Association</b> .....	49, 53, 55, 58
<b>Assignment of Insurance Policies</b> .....	52, 55, 57, 61
<b>Assignment of Intellectual Property</b> .....	52, 55, 57, 61
<b>Board Resolutions of the Company Approving the Debt Transaction</b> .....	49, 53, 55, 58
<b>Board Resolutions of the Company Approving the Equity Transaction</b> .....	49, 53, 55, 58
<b>Charge over Bank Account</b> .....	52, 55, 57, 61
<b>Charge over Shares</b> .....	52
<b>Chattels Mortgage</b> .....	51, 54, 57, 60
<b>Corporate Guarantee by Non-Local Entity</b> .....	50, 54, 56, 59
<b>Corporate Guarantee Local Entity</b> .....	51, 54, 56, 60
<b>Debenture over All Assets</b> .....	51, 54, 57, 60
<b>Increase in Nominal Capital Resolutions</b> .....	49, 53, 55, 58
<b>Intercreditor Agreement</b> .....	52, 58, 61
<b>Loan Agreement</b> .....	50, 54, 56, 59
<b>Mortgage over Land</b> .....	51, 54, 57, 60
<b>Personal Guarantee by a Director of the Entity</b> .....	50, 54, 56, 59
<b>Promissory Note</b> .....	50, 54, 56, 59
<b>Resolution for the Amendment of Memorandum &amp; Articles of Association</b> .....	53
<b>Resolutions for Share Allotment</b> .....	49, 53, 55, 58
<b>Resolutions for Share Transfer</b> .....	49, 53, 55, 58
<b>Return Allotment</b> .....	50, 59
<b>Share Allotment</b> .....	50, 54, 56, 59

<b>Share Allotment Form</b> .....	50, 54, 56
<b>Share Purchase Agreement</b> .....	52, 58, 62
<b>Share Subscription Agreement</b> .....	52, 58, 61
<b>Share Transfer Form</b> .....	50, 54, 56, 59
<b>Shareholders Agreement</b> .....	52, 58, 62
<b>Special Resolution</b> .....	49, 54, 55, 58
<b>Statement of Nominal Capital</b> .....	54, 56, 58
<b>Supplemental</b> .....	51

## KENYA

**Board Resolutions of the Company Approving the Debt or Equity Transaction:** There are no required registration policies. No stamp duty is required.

**Resolutions for Share Transfer:** Must register a copy of the Resolutions signed by the chair and secretary with the Companies Registry. No stamp duty is required.

**Resolutions for Share Allotment:** Must register a copy of the Resolutions signed by the chair and secretary with the Companies Registry. No stamp duty is required.

**Amendment of Memorandum & Articles of Association:** Must register an Amended Memorandum & Articles of Association (including the resolution) with the Companies Registry within fourteen (14) days of the resolution. It costs K.Shs.1100 for the Resolution and K.Shs.1500 for the Memorandum & Articles of Association. Registration fees are made over the counter. If registration is not made in the required time frame, there is a penalty on resolution of K.Shs.200 per month for first two months and then 100 for each subsequent month of default. No stamp duty is required but some law firms will stamp a copy of the amended Memorandum & Articles of Association. The stamp duty costs K.Shs. 120. It is submitted to the Kenya Revenue Authority (KRA) and designated commercial banks. It typically takes five (5) working days to process the duty.

**Increase In Nominal Capital Resolutions and Form:** Must register a Statement, Resolution, and Notice of Increase with the Companies Registry within fourteen (14) days of the resolution. It costs K.Shs.200 for the Notice and K.Shs.1100 for the Resolution. The Statement is subject to assessment because it depends on the current nominal capital of the country. Registration fees are made over the counter. If registration of the Resolution is not made in the required time frame, there is a penalty of K.Shs.200 per month for first two months and then 100 for each subsequent months of default. The statement of increase must be submitted for stamp duty payment. The stamp duty costs 1% of the increase amount. It is submitted to the KRA and designated commercial banks within thirty (30)

days. It typically takes five (5) working days to process the duty. If the duty is not paid in the required time frame, must pay 5% of the stamp duty per yearly quarter defaulted.

**Special Resolution:** Must register Special Resolutions with the Companies Registry within fourteen (14) days of the date of the resolution. It costs K.Shs.1100 and payment is made over the counter. If registration is not made in the required time frame, there is a penalty of K.Shs.200 per month for first two months and then 100 for each subsequent months of default. No stamp duty is required.

**Share Transfer Form:** Must register a copy of the Share Transfer, Interim Annual Return, and Affidavit by the person transferring the shares (saying he/she owned the shares and is freely transferring the shares), and Board Resolution with the Companies Registry within thirty (30) days of the date of the annual return. It costs K.Shs.400 for Interim Annual Returns, paid over the counter. If registration is not made in the required time frame, there is a penalty of K.Shs.200 per month for first two months and then 100 for each subsequent months of default (up to K.Shs.2600). The Form D, share transfer itself must be submitted for stamp duty payment. The stamp duty costs 1% of the consideration but a minimum of 20 and is submitted to the KRA and designated commercial banks within thirty (30) days. It typically takes five (5) working days to process the duty. If the duty is not paid in the required time frame, must pay 5% of stamp duty per yearly quarter of default.

**Share Allotment Form:** Must register Form 213 and Board Resolution with the Companies Registry within fourteen (14) days of the resolution. It costs K.Shs.200 paid over the counter. If registration is not made in the required time frame, there is a penalty of K.Shs.200 per month for first two months and then 100 for each subsequent months of default. No stamp duty is required.

**Loan Agreement:** Registration is optional, but may choose to register the document with the Registry of Documents. It costs K.Shs.500 and typically takes seven (7) working days to process. Stamping is not mandatory, but the document may be submitted for stamping. The stamp duty costs K.Shs.120 and is submitted to the KRA and designated commercial banks within thirty (30) days. It typically takes five (5) working days to process the duty. If the duty is not paid in the required time frame, must pay 5% of stamp duty per yearly quarter of default.

**Promissory Note:** Registration is optional, but may choose to register the document with the Registry of Documents. It costs K.Shs.500 and typically takes seven (7) working days to process. Stamping is not mandatory, but the document may be submitted for stamping. The stamp duty costs K.Shs.120 and is submitted to the KRA and designated commercial banks within thirty (30) days. It typically takes five (5) working days to process the duty.

**Personal Guarantee by a Director of the Entity:** Registration is optional, but may choose to register the document with the Registry of Documents. It costs K.Shs.500 and typically takes seven (7) working days to process. Stamping is not mandatory, but the document may be submitted for stamping. The stamp duty costs K.Shs.220 and is submitted to the KRA and designated and commercial banks within thirty (30) days. It typically takes five (5) working days to process the duty. If the duty is not paid in the required time frame, must pay 5% of stamp duty per yearly quarter of default.

**Corporate Guarantee by Non-Local Entity:** Registration is optional, but may choose to register the document with the Registry of Documents. It costs K.Shs.500 and typically takes seven (7) working days to process. Stamping is not mandatory, but the document may be submitted for stamping. The stamp duty costs K.Shs.220 and is submitted to the KRA and designated commercial banks within thirty (30) days. It typically takes five (5) working days to process the duty. If the duty is not paid in the required time frame, must pay 5% of stamp duty per yearly quarter of default.

**Corporate Guarantee Local Entity:** Registration is optional, but may choose to register the document with the Registry of Documents. It costs K.Shs.500 and typically takes seven (7) working days to process. Stamping is not mandatory, but the document may be submitted for stamping. The stamp duty costs K.Shs.220 and is submitted to the KRA and designated commercial banks within thirty (30) days. It typically takes five (5) working days to process the duty. If the duty is not paid in the required time frame, must pay 5% of stamp duty per yearly quarter of default.

**Chattels Mortgage:** Must register a copy of the mortgage document with the Companies Registry. It costs K.Shs.50 and typically takes five (5) working days to process. The document must be submitted for stamp duty payment. The stamp duty costs K.Shs.220 and is submitted to the KRA and designated commercial banks within thirty (30) days. It typically takes five (5) working days to process the duty. If the duty is not paid in the required time frame, must pay 5% of stamp duty per yearly quarter of default.

**Mortgage over Land (Where it is Created by a Company):** Must register the mortgage documents and Form 214 with the Companies Registry within forty-two (42) days. It costs K.Shs.600 and typically takes three (3) working days to process. If registration is not made in the required time frame, a court order in order to file out of time, pay K.Shs.200 for court order to be shared with relevant parties. The mortgage documents must be submitted for stamp duty payment. The stamp duty costs 0.1% of the secured amount and is submitted to the KRA and designated commercial banks within thirty (30) days. It typically takes five (5) working days to process the duty. If the duty is not paid in the required time frame, must pay 5% of stamp duty per yearly quarter of default.

**Debenture over All Assets:** Must register the debenture documents and Form 214 with the Companies Registry within forty-two (42) days. It costs K.Shs.600 and typically takes three (3) working days to process. If registration is not made in the required time frame, a court order in order to file out of time, pay K.Shs.200 for court order to be shared with relevant parties. The debenture documents must be submitted for stamp duty payment. The stamp duty costs 0.1% of the secured amount and is submitted to the KRA and designated commercial banks within thirty (30) days. It typically takes five (5) working days to process the duty. If the duty is not paid in the required time frame, must pay 5% of stamp duty per yearly quarter of default.

**Supplemental:** Must register the security documents and Form 214 with the Companies Registry within forty-two (42) days. It costs K.Shs.600 and typically takes three (3) working days to process. If registration is not made in the required time frame, a court order in order to file out of time, pay K.Shs.200 for court order to be shared with relevant parties. The security documents must be submitted for stamp duty payment. The stamp duty costs K.Shs.20 and is submitted to the KRA and designated commercial banks. It typically takes five (5) working days to process the duty. If the duty is not paid in the required time frame, must pay 5% of stamp duty per yearly quarter of default.

**Assignment of Intellectual Property:** There are no required registration policies, but this area is covered by Kenyan law. No stamp duty is required.

**Assignment of Insurance Policies:** There are no required registration policies. No stamp duty is required.

**Charge over Bank Account:** Must register the security document and Form 214 with the Companies Registry within forty-two (42) days. It costs K.Shs.600 and typically takes three (3) working days to process. If registration is not made in the required time frame, a court order in order to file out of time, pay K.Shs.200 for court order to be shared with relevant parties. The charge document must be submitted for stamp duty payment. The stamp duty costs 0.1% of the secured amount and is submitted to the KRA and designated commercial banks within thirty (30) days. It typically takes five (5) working days to process the duty. If the duty is not paid in the required time frame, must pay 5% of stamp duty per yearly quarter of default.

**Charge over Shares:** Must register the security document and Form 214 with the Companies Registry within forty-two (42) days. It costs K.Shs.600 and typically takes three (3) working days to process. If registration is not made in the required time frame, a court order in order to file out of time, pay K.Shs.200 for court order to be shared with relevant parties. The charge document must be submitted for stamp duty payment. The stamp duty costs 0.1% of the secured amount and is submitted to the KRA and designated commercial

banks within thirty (30) days. It typically takes five (5) working days to process the duty. If the duty is not paid in the required time frame, must pay 5% of stamp duty per yearly quarter of default.

**Intercreditor Agreement:** There are no required registration policies. Stamping not usually mandatory, but the document may be submitted for stamping. The stamp duty costs K.Shs.120 and is submitted to the KRA and designated commercial banks within thirty (30) days. It typically takes five (5) working days to process the duty. If the duty is not paid in the required time frame, must pay 5% of stamp duty per quarter of default.

**Share Subscription Agreement:** There are no required registration policies. Stamping is not mandatory, but the document may be submitted for stamping. The stamp duty costs K.Shs.120 and is submitted to the KRA and designated commercial banks within thirty (30) days. It typically takes five (5) working days to process the duty. If the duty is not paid in the required time frame, must pay 5% of stamp duty per yearly quarter of default.

**Shareholders Agreement:** There are no required registration policies. Stamping not usually mandatory, but the document may be submitted for stamping. The stamp duty costs K.Shs.120 and is submitted to the KRA and designated commercial banks within thirty (30) days. It typically takes five (5) working days to process the duty. If the duty is not paid in the required time frame, must pay 5% of stamp duty per yearly quarter of default.

**Share Purchase Agreement:** There are no required registration policies. Stamping not usually mandatory, but the document may be submitted for stamping. The stamp duty costs K.Shs.120 and is submitted to the KRA and designated commercial banks within thirty (30) days. It typically takes five (5) working days to process the duty. If the duty is not paid in the required time frame, must pay 5% of stamp duty per yearly quarter of default

## **RWANDA**

Rwanda does not charge stamp duties. Below are common documents and the required filing procedure, if any, in Rwanda.

**Board Resolutions of the Company Approving the Debt Transaction:** Must register a notarized Original Copy of the Resolution with the Office of the Registrar General. There is no specific timeline as long as the passing of the Resolution, execution and filing is done before the commencement of the transaction.

**Board Resolutions of the Company Approving the Equity Transaction:** Must register notarized Original Copies of the Resolutions with the Office of the Registrar General. There

is no specific timeline as long as the passing, execution and filing of the Resolutions is done before any of these agreements is signed.

**Resolutions for Share Transfer:** Must register notarized Original Copies of the Resolutions with the Office of the Registrar General. The cost of registration per original and per counterpart is RWF 7,000. There is no specific timeline as long as the Resolution is passed, executed and filed before the transfer of shares.

**Resolutions for Share Allotment:** Must register notarized Original Copies of the Resolutions with the Office of the Registrar General. The cost of registration per original and per counterpart is RWF 7,000. There is no specific timeline as long as the passed and executed Resolutions are filed before the share allotment.

**Resolution for the Amendment of Memorandum & Articles of Association:** Must register a notarized Original Copy of the Resolution with the Office of the Registrar General. The cost of registration per original and per counterpart is RWF 7,000. There is no specific timeline as long as the passing, execution and filing of the Resolution is completed before, or concurrently, with the filing and registration of the amended Memorandum & Articles of Association.

**Amendment of Memorandum & Articles of Association:** Must register a Notice of the Alteration and a Notarized Copy of the Amended Memorandum & Articles of Association with the Office of the Registrar General. The cost of registration per original and per counterpart is RWF 7,000. Registration must happen not later than fifteen (15) days after the alteration of the Memorandum & Articles of Association. There is a standard form of the memorandum for companies not having a Memorandum & Articles of Association.

**Increase in Nominal Capital Resolutions:** Must register a Notarized Original Copy of the Resolution with the Office of the Registrar General. The cost of registration per original and per counterpart is RWF 7,000. There is no specificity on this so long as it is before the increase.

**Special Resolution:** Must register notarized Original Copies of the Resolutions with the Office of the Registrar General. The cost of registration per original and per counterpart is RWF 7,000. Registration must happen before the decisions/actions therein are put into effect.

**Statement of Nominal Capital:** Must register the actual Statement of Nominal Capital with the Office of the Registrar General. There is no specific timeline is stipulated in the law.

**Share Transfer Form:** Must register the Completed Share Transfer Form with the Office of the Registrar General. The cost of registration per original and per counterpart is RWF

7,000. Registration must happen not later than fifteen (15) days after the signing of the share certificate.

**Share Allotment Form:** Must register the Completed Share Allotment Form with the Office of the Registrar General. The cost of registration per original and per counterpart is RWF 7,000. Registration must happen before the allotment is to take effect.

**Loan Agreement:** There are no required registration policies.

**Promissory Note:** There are no required registration policies.

**Personal Guarantee by a Director of the Entity:** Must register a Copy of the Personal Guarantee with the Office of the Registrar General. Registration must happen not later than the registration of the documentation in respect of which the guarantee is given.

**Corporate Guarantee by Non-Local Entity:** Must register a Copy of the Corporate Guarantee by the Non-Local Entity with the Office of the Registrar General. Registration must happen not later than the registration of the documentation in respect of which the guarantee is given.

**Corporate Guarantee Local Entity:** Must register a Copy of the Corporate Guarantee by the Local Entity with the Office of the Registrar General. Registration must happen not later than the registration of the documentation in respect of which the guarantee is given.

**Chattels Mortgage:** Must register a Notarized Copy of the Mortgage Deed with the Office of the Registrar General. Registration must happen before the grant of the mortgage facility.

**Mortgage over Land:** Must register a Notarized Copy of the Mortgage Deed with the Office of the Registrar General. The cost of registration per original and per counterpart is RWF 20,000 (mortgage registration fees). Registration must happen before the grant of the mortgage facility.

**Debenture over All Assets:** Must register a Copy of the Executed Debenture with the Office of the Registrar General. Registration must happen not later than all the other documentation creating the charge on the said assets.

**Assignment of Intellectual Property:** Must register a Notarized Copy of the Assignment Deed with the Office of the Registrar General. Registration must happen before the time this assignment is to take effect.

**Assignment of Insurance Policies:** Registration must happen before the time this assignment is to take effect.

**Charge over Bank Account:** Must register a Notarized Copy of the Instrument Creating the Charge with the Office of the Registrar General. Registration must happen before the charge is to take effect.

## **TANZANIA**

**Board Resolutions of the Company Approving the Debt or Equity Transaction:** There are no required registration policies. No stamp duty is required.

**Resolutions for Share Transfer:** There are no required registration policies. No stamp duty is required.

**Resolutions for Share Allotment:** There are no required registration policies. No stamp duty is required.

**Amendment of Memorandum & Articles of Association:** Must register a copy of the Altered Memorandum plus Special Resolution with the Registrar of Companies within fourteen (14) days of passing the Resolution. There is a filing fee of T.Shs. 15,000. It typically takes one (1) day to process. If registration is not made in the required time frame, the company, and every officer of the company who is in default, shall be liable to a default fine. No stamp duty is required.

**Increase in Nominal Capital Resolutions and Form:** Must register Form No. 66 (Increase in Share Capital Beyond Registered Capital) with the Registrar of Companies within thirty (30) days after passing of the Resolution authorizing the increase. There is a filing fee of T.Shs. 15,000. It typically takes one (1) day to process. If default is made in complying with filing, every officer of the company who is in default shall be liable to a default fine. The default fine has not been provided. No stamp duty is required.

**Special Resolution:** Must register the Special Resolution (2 copies) with the Registrar of Companies within thirty-five (35) days from the date on which the Resolution was passed. There is a filing fee of T.Shs. 15,000. It typically takes one (1) day to process. If registration is not made in the required time frame, the company, and every officer of the company who is in default, shall be liable to a default fine. No stamp duty is required.

*Special Resolutions are required: (a) to alter the objects of the company; (b) to alter the articles; (c) to change the name of the company; (d) to create a reserve liability; (e) to authorize the payment of interest on shares out of capital where such authority is not given by the articles; (f) reduction of share capital; (g) to appoint inspectors to investigate the affairs of a company; (h) to make unlimited the liability of directors or managers of a limited company; (i) to authorize an assignment of office by a director; (j) to resolve that a company be wound up by order of the court; (k) to institute a members voluntary winding up; and (l) to*

*authorize the liquidator to accept the shares in consideration for the sale of company's property.*

**Statement of Nominal Capital:** There are no required registration policies. No stamp duty is required.

**Share Transfer Form:** Must register the Instrument of Transfer with the Registrar of Companies. There is a filing fee of T.Shs. 15,000. It typically takes one (1) day to process. If default is made in complying with filing, every officer of the company who is in default shall be liable to a default fine (not provided). The Resolutions Approving Transfer of Shares, Latest Audited Accounts, and Instrument of Transfer must be submitted for stamp duty payment. The stamp duty costs 1% of consideration and must be submitted to the Tanzania Revenue Authority (TRA) thirty (30) days from date of execution of the share transfer Form. It typically takes 4 days to process the duty but can be done in one (1) day.

**Share Allotment Form:** Must register the Share Allotment Form (statutory Form either Form 55a or Form 55b) with the Registrar of Companies within sixty (60) days of allotting shares. There is a filing fee of T.Shs. 15,000. It typically takes one (1) day to process. If default is made in complying with filing, every officer of the company who is in default shall be liable to a default fine (not provided). No stamp duty is required.

**Loan Agreement:** There are no required registration policies. Stamping not mandatory, but the Loan Agreement may be submitted for stamping. The stamp duty is a nominal amount (approximately T.Shs. 2000.00) and is submitted to the TRA.

**Promissory Note:** There are no required registration policies. No stamp duty is required.

**Personal Guarantee by a Director of the Entity:** Registration is optional, but may choose to register the Deed of Guarantee with the Ministry of Lands and Human Settlement Development Registrar of Documents. It typically takes 7-14 days to process. If choosing to register the guarantee, the stamp duty costs T.Shs. 10,000 (nominal value) and must be submitted to the Ministry of Lands and Human Settlement Development Registrar of Documents.

**Corporate Guarantee by Non-Local Entity:** Registration is optional, but may choose to register the deed of guarantee with the Ministry of Lands and Human Settlement Development Registrar of Documents. It typically takes 7- 14 days to process. If choosing to register the Guarantee, the stamp duty costs T.Shs. 10,000 (nominal value) and must be submitted to the Ministry of Lands and Human Settlement Development Registrar of Documents.

**Corporate Guarantee Local Entity:** Registration is optional, but may choose to register the Deed of Guarantee with the Ministry of Lands and Human Settlement Development Registrar of Documents. It typically takes 7- 14 days to process. If choosing to register the Guarantee, the stamp duty costs T.Shs. 10,000 (nominal value) and must be submitted to the Ministry of Lands and Human Settlement Development Registrar of Documents.

**Chattels Mortgage:** Must register the Chattels Mortgage with the Ministry of Lands and Human Settlement Development. It typically takes 7- 14 days to process.

**Mortgage over Land (Where it is Created by A Company):** Must register the Mortgage Deed and Form 96 (Particulars of Mortgage or Charge Created) with the Ministry of Industry and Trade (Registrar of Companies) and Ministry of Lands and Human Settlement Development within forty-two (42) days after date of creation. There is a registration fee of T.Shs. 15,000 (nominal value) payable at the Companies Registry and registration fee of T.Shs. 120,000 (nominal value) payable at the Lands Registry. It typically takes 7- 14 days at the to process if property is located outside Dar es Salaam and 3 – 4 weeks if the property is located in Dar es Salaam. If the corresponding file in respect of property located at the Ministry for Lands is missing, a temporary file in respect of the same will have to be opened and the opening process can take three 3 - 6 months. If registration is not made in the required time frame, security will void against any liquidator or administrator and any creditor of the company. The Mortgage Deed and Form 96 must be submitted for stamp duty payment. The stamp duty costs T.Shs. 10,000 (nominal value) and an additional T.Shs. 500.00 for every copy, which must be submitted to the Companies Registry within one (1) day. It typically takes one (1) day to process the duty.

**Debenture over All Assets:** Must register the Debenture and Form 96 (Particulars of Mortgage or Charge Created) with the Registrar of Companies within forty-two (42) days after date of creation. There is a registration fee of T.Shs. 15,000 (nominal value) payable at the Companies Registry. It typically takes 7- 14 days to process. If registration is not made in the required time frame, security will void against any liquidator or administrator and any creditor of the company. The Debenture and Form 96 must be submitted for stamp duty payment. The stamp duty costs T.Shs. 10,000 (nominal value) and an additional T.Shs. 500.00 for every copy, which must be submitted to the Companies Registry within one (1) day. It typically takes one (1) day to process the duty.

**Assignment of Intellectual Property:** There are no required registration policies. No stamp duty is required.

**Assignment of Insurance Policies:** There are no required registration policies. No stamp duty is required.

**Charge over Bank Account:** Must register the Charge Deed and Form 96 (Particulars of Mortgage or Charge Created) with the Registrar of Companies within forty-two (42) days after date of creation. There is a registration fee of T.Shs. 15,000 (nominal value) payable at the Companies Registry. It typically takes 7- 14 days to process. If registration is not made in the required time frame, security will void against any liquidator or administrator and any creditor of the company. The Charge Deed and Form 96 must be submitted for stamp duty payment. The stamp duty costs T.Shs. 10,000 (nominal value) and an additional T.Shs. 500.00 for every copy, which must be submitted to the Companies Registry within one (1) day. It typically takes one (1) day to process the duty.

**Intercreditor Agreement:** There are no required registration policies. No stamp duty is required.

**Share Subscription Agreement:** There are no required registration policies. No stamp duty is required.

**Shareholders Agreement:** There are no required registration policies. No stamp duty is required.

**Share Purchase Agreement:** There are no required registration policies. No stamp duty is required.

## **UGANDA**

**Board Resolutions of the Company Approving the Debt or Equity Transaction:** Must register the Resolution with the Companies Registry, which costs UGX 22,000. It typically takes 3-5 working days, depending on the availability of the registry file, to process the registration. No stamp duty is required.

**Resolutions for Share Transfer:** Must register the Resolution with the Companies Registry, which costs UGX 22,000. It typically takes 3-5 working days, depending on the availability of the registry file, to process the registration. No stamp duty is required.

**Resolutions for Share Allotment:** Must register the Resolution with the Companies Registry, which costs UGX 22,000. It typically takes 3-5 working days, depending on the availability of the registry file, to process the registration. No stamp duty is required.

**Amendment of Memorandum & Articles of Association:** Must register the Resolution by the Company Sanctioning the Amendment and the Amended Memorandum & Articles of Association with the Companies Registry, which costs UGX 35,000. It typically takes 3-5 working days, depending on the availability of the registry file, to process the registration. No stamp duty is required.

**Increase in Nominal Capital Resolutions:** Must register the Resolution with the Companies Registry, which costs UGX 22,000. It typically takes 3 - 5 working days, depending on the availability of the registry file, to process the registration. No stamp duty is required. *Though a stamp duty is not paid on the Resolution sanctioning the increase in share capital, a stamp duty at the rate of 0.5% of the total value is levied on the Notice of Increase of Share Capital filed with the Registrar of Companies.*

**Special Resolution:** Must register the Resolution with the Companies Registry, which costs UGX 22,000. It typically takes 3 - 5 working days, depending on the availability of the registry file, to process the registration. No stamp duty is required.

**Statement of Nominal Capital:** Must register filed at incorporation with other documents with the Companies Registry, which costs UGX 22,000. It typically takes 3 - 5 working days, depending on the availability of the registry file, to process the registration. No stamp duty is required.

**Share Transfer Form:** Must register Board Resolution Approving the Transfer with the Companies Registry, which costs UGX 27,000. It typically takes 3-5 working days, depending on the availability of the registry file, to process the registration. The assessment and the share transfer must be submitted for stamp duty payment. The stamp duty costs 1% of the consideration and can be submitted to any commercial bank except ABC Bank, Fina Bank, Bank of India, or NIC Bank. Payment must be made thirty (30) days after execution of the document and twenty-one (21) days from the date indicated assessment. However, if the assessment has expired, one will need to get a new assessment form. It typically takes less than a day to process the duty.

**Return/Share Allotment:** Must register Resolution with the Companies Registry, which costs UGX 25,000. No stamp duty is required.

**Loan Agreement:** There are no required registration policies. The Loan Agreement and Copy of Assessment must be submitted for stamp duty payment. The stamp duty costs UGX 5,000 and can be submitted to any commercial bank except ABC Bank, Fina Bank, Bank of India, or NIC Bank. Payment must be made thirty (30) days after execution of the document and twenty-one (21) days from the date indicated on the assessment. However, if the assessment has expired, one will need to get a new assessment form. It typically takes less than a day to process the duty.

**Promissory Note:** There are no required registration policies. The promissory note and the copy of the assessment must be submitted for stamp duty payment. The stamp duty costs UGX 5,000 and can be submitted to any commercial bank except ABC Bank, Fina Bank, Bank of India, or NIC Bank. Payment must be made thirty (30) days after execution of the

document and twenty-one (21) days from the date indicated on the assessment. However, if the assessment has expired, one will need to get a new assessment form. It typically takes less than a day to process the duty.

**Personal Guarantee by a Director of the Entity:** There are no required registration policies. The Guarantee and the Assessment must be submitted for stamp duty payment. The stamp duty costs UGX 5,000 and can be submitted to any commercial bank except ABC Bank, Fina Bank, Bank of India, or NIC Bank. Payment must be made thirty (30) days after execution of the document and twenty-one (21) days from the date indicated on the assessment. However, if the assessment has expired, one will need to get a new assessment form. It typically takes less than a day to process the duty.

**Corporate Guarantee by Non-Local Entity:** There are no required registration policies. The Guarantee and the Assessment must be submitted for stamp duty payment. The stamp duty costs UGX 5,000 and can be submitted to any commercial bank except ABC Bank, Fina Bank, Bank of India, or NIC Bank. Payment must be made thirty (30) days after execution of the document and twenty-one (21) days from the date indicated on the assessment. However, if the assessment has expired, one will need to get a new assessment form. It typically takes less than a day to process the duty.

**Corporate Guarantee Local Entity:** There are no required registration policies. The Guarantee and the Assessment must be submitted for stamp duty payment. The stamp duty costs UGX 5,000 and can be submitted to any commercial bank except ABC Bank, Fina Bank, Bank of India, or NIC Bank. Payment must be made thirty (30) days after execution of the document and twenty-one (21) days from the date indicated on the assessment. However, if the assessment has expired, one will need to get a new assessment form. It typically takes less than a day to process the duty.

**Chattels Mortgage:** Must register the Mortgage Deed and the Receipt for Payment of Stamp Duty with the Uganda revenue authority if the chattel is a motor vehicle and at the Companies Registry if the chattel is created by the company, which costs UGX 52,500. The Mortgage Deed and the Stamp Duty Assessment Form must be submitted for stamp duty payment. The stamp duty costs 1% of the amount borrowed and can be submitted to any commercial bank except ABC Bank, Fina Bank, Bank of India, or NIC Bank. Payment must be made thirty (30) days after execution of the document and twenty-one (21) days from the date indicated on the assessment. However, if the assessment has expired, one will need to get a new assessment form. It typically takes less than a day to process the duty. *The common chattel mortgage is over motor vehicles and an application is made to register a caveat over the motor vehicle.*

**Mortgage over Land:** Must register the Deeds and the Receipt from Payment of Stamp Duty at the Companies and Land's Registry if it's a company and at the Land's Registry if it's an individual. Registration costs UGX 37,500 at the Companies Registry and 47,000 at the Land's Registry. It typically takes five (5) working days, depending on the availability of the registry file, to process the registration. The Mortgage Deed and the Stamp Duty Assessment Form must be submitted for stamp duty payment. The stamp duty costs 0.5% of the amount borrowed and can be submitted to any commercial bank except ABC Bank, Fina Bank, Bank of India, or NIC Bank. Payment must be made thirty (30) days after execution of the document and twenty-one (21) days from the date indicated on the assessment but if the assessment has expired, one will need to get a new assessment form. It typically takes less than a day to process the duty.

**Debenture over All Assets:** Must register the Debenture Deed and the Receipt for Payment of Stamp Duty with the Companies Registry, which costs UGX 37,500. Registration must be completed forty-two (42) days after the date of execution. It typically takes 3-5 working days, depending on the availability of the registry file, to process the registration. If the registration is filed late, the company must make an application for extension of time to the registrar. The debenture deed and the stamp duty assessment Form must be submitted for stamp duty payment. The stamp duty costs 0.5% of the amount borrowed and can be submitted to any commercial bank except ABC Bank, Fina Bank, Bank of India, or NIC Bank. Payment must be made thirty (30) days after execution of the document and twenty-one (21) days from the date indicated on the assessment but if the assessment has expired, one will need to get a new assessment form. It typically takes less than a day to process the duty.

**Assignment of Intellectual Property:** There are no required registration policies. The Deed Assignment and the Stamp Duty Assessment must be submitted for stamp duty payment. The stamp duty costs UGX 5,000 and can be submitted to any commercial bank except ABC Bank, Fina Bank, Bank of India, or NIC Bank. Payment must be made thirty (30) days after execution of the document and twenty-one (21) days from the date indicated on the assessment but if the assessment has expired, one will need to get a new assessment form. It typically takes less than a day to process the duty.

**Assignment of Insurance Policies:** There are no required registration policies. The Deed Assignment and the Stamp Duty assessment Form must be submitted for stamp duty payment. The stamp duty costs UGX 5,000 and can be submitted to any commercial bank except ABC Bank, Fina Bank, Bank of India, or NIC Bank. Payment must be made thirty (30) days after execution of the document and twenty-one (21) days from the date indicated on the assessment but if the assessment has expired, one will need to get a new assessment form. It typically takes less than a day to process the duty.

**Charge over Bank Account:** Must register the Deed and the Receipt of Payment of stamp duty with the Companies Registry if the charge is created by a company, which costs UGX 37,500. Registration must be completed forty-two (42) days after the date of execution. It typically takes 3-5 days, depending on the availability of the registry file, to process the registration. If the registration is filed late, the company must make an application for extension of time to the registrar. The Charge/ Deed and the Stamp Duty Assessment must be submitted for stamp duty payment. The stamp duty costs 0.5% of the amount borrowed and can be submitted to any commercial bank except ABC Bank, Fina Bank, Bank of India, or NIC Bank. Payment must be made thirty (30) days after execution of the document and twenty-one (21) days from the date indicated on the assessment but if the assessment has expired, one will need to get a new assessment form. It typically takes less than a day to process the duty.

**Intercreditor Agreement:** There are no required registration policies. The stamp duty costs UGX 5,000 and can be submitted to any commercial bank except ABC Bank, Fina Bank, Bank of India, or NIC Bank. Payment must be made thirty (30) days after execution of the document and twenty-one (21) days from the date indicated on the assessment but if the assessment has expired, one will need to get a new assessment form. It typically takes less than a day to process the duty.

**Share Subscription Agreement:** There are no required registration policies. The Agreement and the Stamp Duty Assessment Form must be submitted for stamp duty payment. The stamp duty costs UGX 5,000 and can be submitted to any commercial bank except ABC Bank, Fina Bank, Bank of India, or NIC Bank. Payment must be made thirty (30) days after execution of the document and twenty-one (21) days from the date indicated on the assessment but if the assessment has expired, one will need to get a new assessment form. It typically takes less than a day to process the duty.

**Shareholders Agreement:** There are no required registration policies. The Agreement and the Stamp Duty Assessment Form must be submitted for stamp duty payment. The stamp duty costs UGX 5,000 and can be submitted to any commercial bank except ABC Bank, Fina Bank, Bank of India, or NIC Bank. Payment must be made thirty (30) days after execution of the document and twenty-one (21) days from the date indicated on the assessment but if the assessment has expired, one will need to get a new assessment form. It typically takes less than a day to process the duty.

**Share Purchase Agreement:** There are no required registration policies. The agreement and the stamp duty assessment Form must be submitted for stamp duty payment. The stamp duty costs UGX 5,000 and can be submitted to any commercial bank except ABC Bank, Fina Bank, Bank of India, or NIC Bank. Payment must be made thirty (30) days after execution of the document and twenty-one (21) days from the date indicated on the

assessment but if the assessment has expired, one will need to get a new assessment form. It typically takes less than a day to process the duty.

## **MATRICES**

These matrices provide a table version of the summaries listed above. Please note that all timelines, costs and requirements are approximate and are as of May 31, 2013. These requirements are subject to change. These timelines, costs and requirements should only be used as a guide and should be confirmed by local counsel at use.

### **KENYA STAMP DUTY REQUIREMENTS**

TYPE OF DOCUMENT	STAMP DUTY REQUIREMENTS						
	REQUIRE STAMP DUTY?	PLACE OF PAYMENT	COSTS	DOCS REQUIRED	DEADLINE TO PAY DUTY	LATE PAYMENT PENALTY	TIME TO PROCESS
BOARD RESOLUTIONS OF THE COMPANY APPROVING THE DEBT OR EQUITY TRANSACTION	N/A	N/A	N/A	N/A	N/A	N/A	N/A
RESOLUTIONS FOR SHARE TRANSFER	N/A	N/A	N/A	N/A	N/A		N/A
RESOLUTIONS FOR SHARE ALLOTMENT	N/A	N/A	N/A	N/A	N/A	N/A	N/A
AMENDMENT OF MEMO & ARTS OF ASSOC	N/A – some law firms will stamp it as a copy	KRA and designated commercial banks	K.Shs. 120/=	Copy of the Amended Memo & Arts of Assoc	N/A	N/A	5 working days
INCREASE IN NOMINAL CAPITAL RESOLUTIONS AND FORM	Yes	KRA and designated commercial banks	1% of the increase amount	Statement of increase	Within 30 days	5% of the stamp duty per yearly quarter defaulted	5 working days
SPECIAL RESOLUTION	N/A	N/A	N/A	N/A	N/A	N/A	N/A
SHARE TRANSFER FORM	Yes	KRA and designated commercial banks	1% of the consideration but a minimum of 20/=	Form D, share transfer itself	Within 30 days	5% of stamp duty per yearly quarter of default	5 working days
SHARE ALLOTMENT FORM	N/A	N/A	N/A	N/A	N/A	N/A	N/A
LOAN AGREEMENT	Optional	KRA and designated commercial banks	K.Shs. 120/=	The document	Within 30 days	5% of stamp duty per yearly quarter of default	5 working days

TYPE OF DOCUMENT	STAMP DUTY REQUIREMENTS						
	REQUIRE STAMP DUTY?	PLACE OF PAYMENT	COSTS	DOCS REQUIRED	DEADLINE TO PAY DUTY	LATE PAYMENT PENALTY	TIME TO PROCESS
PROMISSORY NOTE	Optional	KRA and designated commercial banks	K.Shs. 120/=	The document	Within 30 days	N/A	5 working days
PERSONAL GUARANTEE BY A DIRECTOR OF THE ENTITY	Optional, more often than not	KRA and designated and commercial banks	K.Shs. 220/=	The document	Within 30 days	5% of stamp duty per yearly quarter of default	5 working days
CORPORATE GUARANTEE BY NON-LOCAL ENTITY	Optional	KRA and designated commercial banks	K.Shs. 220/=	The document	Within 30 days	5% of stamp duty per yearly quarter of default	5 working days
CORPORATE GUARANTEE LOCAL ENTITY	Optional	KRA and designated commercial banks	K.Shs. 220/=	The document	Within 30 days	5% of stamp duty per yearly quarter of default	5 working days
CHATELS MORTGAGE	Yes	KRA and designated commercial banks	K.Shs. 220/=	The document	Within 30 days	5% of stamp duty per yearly quarter of default	5 working days
MORTGAGE OVER LAND (WHERE IT IS CREATED BY A COMPANY)	Yes	KRA and designated commercial banks	0.1% of the secured amount	Mortgage documents	Within 30 days	5% of stamp duty per yearly quarter of default	5 working days
DEBENTURE OVER ALL ASSETS	Yes	KRA and designated commercial banks	0.1% of the secured amount	Debenture documents	Within 30 days	5% of stamp duty per yearly quarter of default	5 working days
SUPPLEMENTAL	Yes	KRA and designated commercial banks	K.Shs. 20/=	The security documents		5% of stamp duty per yearly quarter of default	5 working days
ASSIGNMENT OF INTELLECTUAL PROPERTY	N/A	N/A	N/A	N/A	N/A	N/A	N/A
ASSIGNMENT OF INSURANCE POLICIES	N/A	N/A	N/A	N/A	N/A	NA/A	N/A
CHARGE OVER BANK ACCOUNT	Yes	KRA and designated commercial banks	0.1% of the secured amount	The charge document	Within 30 days	5% of stamp duty per yearly quarter of default	5 working days
CHARGE OVER SHARES	Yes	KRA and designated commercial banks	0.1% of the secured amount	The charge document	Within 30 days	5% of stamp duty per yearly quarter of default	5 working days

TYPE OF DOCUMENT	STAMP DUTY REQUIREMENTS						
	REQUIRE STAMP DUTY?	PLACE OF PAYMENT	COSTS	DOCS REQUIRED	DEADLINE TO PAY DUTY	LATE PAYMENT PENALTY	TIME TO PROCESS
INTERCREDITOR AGREEMENT	Optional, more often than not	KRA and designated commercial banks	K.Shs. 120/=	The document	Within 30 days	5% of stamp duty per quarter of default	5 working days
SHARE SUBSCRIPTION AGREEMENT	Optional	KRA and designated commercial banks	K.Shs. 120/=	The document	Within 30 days	5% of stamp duty per yearly quarter of default	5 working days
SHAREHOLDERS AGREEMENT	Optional, more often than not	KRA and designated commercial banks	K.Shs. 120/=	The document	Within 30 days	5% of stamp duty per yearly quarter of default	5 working days
SHARE PURCHASE AGREEMENT	Optional more often than not	KRA and designated commercial banks	K.Shs. 120/=	The document	Within 30 days	5% of stamp duty per yearly quarter of default	5 working days

**KENYA REGISTRATION/FILING REQUIREMENTS**

TYPE OF DOCUMENT	REGISTRATION/FILING REQUIREMENTS						
	REGISTRATION OR FILING REQUIRED?	REGISTRY	DOCS REQUIRED	COSTS	DEADLINE FOR REGISTRATION	TIME TO PROCESS	LATE PENALTY
BOARD RESOLUTIONS OF THE COMPANY APPROVING THE DEBT OR EQUITY TRANSACTION	N/A	N/A	N/A	N/A	N/A	N/A	N/A
RESOLUTIONS FOR SHARE TRANSFER	Yes	Companies	Copy of the resolutions signed by chair and secretary	N/A	N/A	N/A	N/A
RESOLUTIONS FOR SHARE ALLOTMENT	Yes	Companies	Copy of the resolutions signed by chair and secretary	N/A	N/A	N/A	N/A
AMENDMENT OF MEMO & ARTS OF ASSOC	Yes	Companies	Amended Memo & Arts of Assoc, tog with the resolution	Resolution – K.Shs.1100/= Memo & Arts of Assoc – K.Shs.1500/=	Within 14 days of the resolution	Over the counter payment	Penalty on resolution K.Shs. 200/= per month for first two months and then 100 for each subsequent months of default
INCREASE IN NOMINAL CAPITAL RESOLUTIONS AND FORM	Yes	Companies	Statement, resolution and notice of increase	Notice – K.Shs.200/= Resolution – K.Shs.1100/= Statement – subject to assessment as it depends on the current nominal capital of the country	Within 14 days of the resolution	Over the counter payment	Penalty on resolution K.Shs. 200/= per month for first two months and then 100 for each subsequent months of default
SPECIAL RESOLUTION	Yes	Companies	The special resolutions	K.Shs.1100/=	Within 14 days of the date of the special resolution	Over the counter payment	Penalty on resolution K.Shs. 200/= per month for first two months and then 100 for each subsequent months of default

TYPE OF DOCUMENT	REGISTRATION/FILING REQUIREMENTS						
	REGISTRATION OR FILING REQUIRED?	REGISTRY	DOCS REQUIRED	COSTS	DEADLINE FOR REGISTRATION	TIME TO PROCESS	LATE PENALTY
SHARE TRANSFER FORM	Yes	Companies	Copy of share transfer, interim annual return, affidavit by person transferring the shares saying the shares owned and is freely transferring the shares, board resolution	K.Shs. 400/= for interim annual returns	Within 30 days of the date of the annual return	Over the counter payment	Penalty interim annual returns of K.Shs. 200/= per month for first two months and then 100 for each subsequent months of default but up to max of K.Shs. 2600/=
SHARE ALLOTMENT FORM	Yes	Companies	Form 213, board resolution	K.Shs. 200/=	Within 14 days of the resolution	Over the counter payment	Penalty on resolution K.Shs. 200/= per month for first two months and then 100 for each subsequent months of default
LOAN AGREEMENT	Optional	Registry of Documents	The document	K.Shs. 500/=	N/a	7 working days	N/A
PROMISSORY NOTE	Optional	Registry of Documents	The document	K.Shs. 500/=	N/a	7 working days	N/A
PERSONAL GUARANTEE BY A DIRECTOR OF THE ENTITY	Optional	Registry of Documents	The document	K.Shs. 500/=	N/a	7 working days	N/A
CORPORATE GUARANTEE BY NON-LOCAL ENTITY	Optional	Registry of Documents	The document	K.Shs. 500/=	N/A	7 working days	N/A
CORPORATE GUARANTEE LOCAL ENTITY	Optional	Registry of Documents	The document	K.Shs. 500/=	N/A	7 working days	N/A
CHATELS MORTGAGE	Yes	Companies	Copy of document	K.Shs. 50/=	N/A	5 working days	N/A

TYPE OF DOCUMENT	REGISTRATION/FILING REQUIREMENTS						
	REGISTRATION OR FILING REQUIRED?	REGISTRY	DOCS REQUIRED	COSTS	DEADLINE FOR REGISTRATION	TIME TO PROCESS	LATE PENALTY
MORTGAGE OVER LAND (WHERE IT IS CREATED BY A COMPANY)	Yes	Companies	Mortgage documents and Form 214	K.Shs. 600/=	42 days	3 working days	Court order in order to file out of time, pay K.Shs. 200/= for court order to be shared with relevant parties
DEBENTURE OVER ALL ASSETS	Yes	Companies	Debenture documents and Form 214	K.Shs. 600/=	42 days	3 working days	Court order in order to file out of time, pay K.Shs. 200/= for court order to be shared with relevant parties
SUPPLEMENTAL	Yes	Companies registry	The security documents and Form 214	K.Shs. 600/=	42 days	3 working days	Court order in order to file out of time, pay K.Shs. 200/= for court order to be shared with relevant parties
ASSIGNMENT OF INTELLECTUAL PROPERTY	N/A	N/A	N/A	N/A	N/A	N/A	N/A
ASSIGNMENT OF INSURANCE POLICIES	N/A	N/A	N/A	N/A	N/A	N/A	N/A
CHARGE OVER BANK ACCOUNT	Yes	Companies registry	The security document and Form 214	K.Shs. 600/=	42 days	3 working days	Court order in order to file out of time, pay K.Shs. 200/= for court order to be shared with relevant parties

TYPE OF DOCUMENT	REGISTRATION/FILING REQUIREMENTS						
	REGISTRATION OR FILING REQUIRED?	REGISTRY	DOCS REQUIRED	COSTS	DEADLINE FOR REGISTRATION	TIME TO PROCESS	LATE PENALTY
CHARGE OVER SHARES	Yes	Companies registry	The security document and Form 214	K.Shs. 600/=	42 days	3 working days	Court order in order to file out of time, pay K.Shs. 200/= for court order to be shared with relevant parties
INTERCREDITOR AGREEMENT	N/A	N/A	N/A	N/A	N/A	N/A	N/A
SHARE SUBSCRIPTION AGREEMENT	N/A	N/A	N/A	N/A	N/A	N/A	N/A
SHAREHOLDERS AGREEMENT	N/A	N/A	N/A	N/A	N/A	N/A	N/A
SHARE PURCHASE AGREEMENT	N/A	N/A	N/A	N/A	N/A	N/A	N/A

**RWANDA STAMP DUTY REQUIREMENTS**

TYPE OF DOCUMENT	STAMP DUTY REQUIREMENTS						
	REQUIRE STAMP DUTY?	PLACE OF PAYMENT	COSTS	DOCS REQUIRED	DEADLINE TO PAY DUTY	LATE PAYMENT PENALTY	TIME TO PROCESS
BOARD RESOLUTIONS OF THE COMPANY APPROVING THE DEBT TRANSACTION	NO	N/A	N/A	N/A	N/A	N/A	N/A
BOARD RESOLUTIONS OF THE COMPANY APPROVING THE EQUITY TRANSACTION	NO	N/A	N/A	N/A	N/A	N/A	N/A
RESOLUTIONS FOR SHARE TRANSFER	NO	N/A	N/A	N/A	N/A	N/A	N/A
RESOLUTIONS FOR SHARE ALLOTMENT	NO	N/A	N/A	N/A	N/A	N/A	N/A
RESOLUTION FOR THE AMENDMENT OF MEMO & ARTS OF ASSOC	NO	N/A	N/A	N/A	N/A	N/A	N/A
THE AMENDED MEMO & ARTS OF ASSOC	NO	N/A	N/A	N/A	N/A	N/A	N/A
	there is a standard form of the Memorandum for companies not having a Memorandum & Articles of Association						
INCREASE IN NOMINAL CAPITAL RESOLUTIONS	NO	N/A	N/A	N/A	N/A	N/A	N/A
SPECIAL RESOLUTION	NO	N/A	N/A	N/A	N/A	N/A	N/A
STATEMENT OF NOMINAL CAPITAL	NO	N/A	N/A	N/A	N/A	N/A	N/A
SHARE TRANSFER FORM	NO	N/A	N/A	N/A	N/A	N/A	N/A
SHARE ALLOTMENT FORM	NO	N/A	N/A	N/A	N/A	N/A	N/A
LOAN AGREEMENT	NO	N/A	N/A	N/A	N/A	N/A	N/A
PROMISSORY NOTE	NO	N/A	N/A	N/A	N/A	N/A	N/A
PERSONAL GUARANTEE BY A DIRECTOR OF THE ENTITY	NO	N/A	N/A	N/A	N/A	N/A	N/A
CORPORATE GUARANTEE BY NON-LOCAL ENTITY	NO	N/A	N/A	N/A	N/A	N/A	N/A
CORPORATE GUARANTEE LOCAL ENTITY	NO	N/A	N/A	N/A	N/A	N/A	N/A
CHATTLES MORTGAGE	NO	N/A	N/A	N/A	N/A	N/A	N/A
MORTGAGE OVER LAND	NO	N/A	N/A	N/A	N/A	N/A	N/A
DEBENTURE OVER ALL ASSETS	NO	N/A	N/A	N/A	N/A	N/A	N/A
ASSIGNMENT OF INTELLECTUAL PROPERTY	NO	N/A	N/A	N/A	N/A	N/A	N/A
ASSIGNMENT OF INSURANCE POLICIES	NO	N/A	N/A	N/A	N/A	N/A	N/A

TYPE OF DOCUMENT	STAMP DUTY REQUIREMENTS						
	REQUIRE STAMP DUTY?	PLACE OF PAYMENT	COSTS	DOCS REQUIRED	DEADLINE TO PAY DUTY	LATE PAYMENT PENALTY	TIME TO PROCESS
CHARGE OVER BANK ACCOUNT	NO	N/A	N/A	N/A	N/A	N/A	N/A
INTERCREDITOR AGREEMENT	NO	N/A	N/A	N/A	N/A	N/A	N/A
SHARE SUBSCRIPTION AGREEMENT	NO	N/A	N/A	N/A	N/A	N/A	N/A
SHAREHOLDERS AGREEMENT	NO	N/A	N/A	N/A	N/A	N/A	N/A
SHARE PURCHASE AGREEMENT	NO	N/A	N/A	N/A	N/A	N/A	N/A

**RWANDA REGISTRATION/FILING REQUIREMENTS**

TYPE OF DOCUMENT	REGISTRATION/FILING REQUIREMENTS					
	REGISTRATION OR FILING REQUIRED?	REGISTRY	DOCS REQUIRED	COSTS	DEADLINE FOR REGISTRATION	LATE PENALTY
BOARD RESOLUTIONS OF THE COMPANY APPROVING THE DEBT TRANSACTION	Yes	Office of the Registrar General	A notarized original copy of the resolution	N/A	No specific timeline as long as the passing of the resolution, execution and filing is done before the commencement of the transaction	N/A
BOARD RESOLUTIONS OF THE COMPANY APPROVING THE EQUITY TRANSACTION	Yes	Office of the Registrar General	Notarized original copies of the resolutions	N/A	No specific timeline as long as the passing, execution and filing of the resolutions is done before any of these agreements is signed	N/A
RESOLUTIONS FOR SHARE TRANSFER	Yes	Office of the Registrar General	Notarized original copies of the resolutions	RWF 7,000	No specific timeline as long as the resolution is passed, executed and filed before the transfer of shares	N/A
RESOLUTIONS FOR SHARE ALLOTMENT	Yes	Office of the Registrar General	Notarized original copies of the resolutions	RWF 7,000	No specific timeline as long as the passed and executed resolutions are filed before the share allotment	N/A
RESOLUTION FOR THE AMENDMENT OF MEMO & ARTS OF ASSOC	Yes	Office of the Registrar General	A notarized original copy of the resolution	RWF 7,000	No specific timeline as long as the passing, execution and filing of the resolution is completed before or concurrently with the filing and registration of the amended Memo & Arts of Assoc	N/A
THE AMENDED	Yes	Office of the	A notice of the	RWF 7,000	Not later than 15 days	N/A

TYPE OF DOCUMENT	REGISTRATION/FILING REQUIREMENTS					
	REGISTRATION OR FILING REQUIRED?	REGISTRY	DOCS REQUIRED	COSTS	DEADLINE FOR REGISTRATION	LATE PENALTY
MEMO & ARTS OF ASSOC		Registrar General	alteration and a notarized copy of the amended Memo & Arts of Assoc		after the alteration of the Memo & Arts of Assoc	
INCREASE IN NOMINAL CAPITAL RESOLUTIONS	Yes	Office of the Registrar General	A notarized original copy of the resolution	RWF 7,000	No specificity on this so long as it is before the increase	N/A
SPECIAL RESOLUTION	Yes	Office of the Registrar General	Notarized original copies of the resolutions	RWF 7,000	Before the decisions/actions therein are effected	N/A
STATEMENT OF NOMINAL CAPITAL	Yes	Office of the Registrar General	The actual statement of nominal capital		No specific timeline is stipulated in the law	N/A
SHARE TRANSFER FORM	Yes	Office of the Registrar General	The completed share transfer form	RWF 7,000	Not later than 15 days after the signing of the share certificate	N/A
SHARE ALLOTMENT FORM	Yes	Office of the Registrar General	The completed share allotment form	RWF 7,000	Before the allotment is to take effect	
LOAN AGREEMENT	No	N/A	N/A	N/A	N/A	N/A
PROMISSORY NOTE	No	N/A	N/A	N/A	N/A	N/A
PERSONAL GUARANTEE BY A DIRECTOR OF THE ENTITY	Yes	Office of the Registrar General	A copy of the personal guarantee	N/A	Not later than the registration of the documentation in respect of which the guarantee is given	
CORPORATE GUARANTEE BY NON-LOCAL ENTITY	Yes	Office of the Registrar General	A copy of the corporate guarantee by the non-local entity	N/A	Not later than the registration of the documentation in respect of which the guarantee is given	N/A
CORPORATE GUARANTEE LOCAL ENTITY	Yes	Office of the Registrar General	A copy of the corporate guarantee by the local entity	N/A	Not later than the registration of the documentation in respect of which the guarantee is given	N/A
CHATELS MORTGAGE	Yes	Office of the Registrar General	A notarized copy of the mortgage deed	N/A	Before the grant of the mortgage facility	N/A
MORTGAGE OVER LAND	Yes	Office of the Registrar General	A notarized copy of the mortgage deed	RWF 20,000( Mortgage registration fees)	Before the grant of the mortgage facility	N/A
DEBENTURE OVER ALL ASSETS	Yes	Office of the Registrar General	A copy of the executed debenture	N/A	Not later than all the other documentation creating the charge on the said assets	N/A

TYPE OF DOCUMENT	REGISTRATION/FILING REQUIREMENTS					
	REGISTRATION OR FILING REQUIRED?	REGISTRY	DOCS REQUIRED	COSTS	DEADLINE FOR REGISTRATION	LATE PENALTY
ASSIGNMENT OF INTELLECTUAL PROPERTY	Yes	Office of the Registrar General	A notarized copy of the assignment deed	N/A	Before the time this assignment is to take effect	N/A
ASSIGNMENT OF INSURANCE POLICIES	No	N/A	N/A	N/A	Before the time this assignment is to take effect	N/A
CHARGE OVER BANK ACCOUNT	Yes	Office of the Registrar General	A notarized copy of the instrument creating the charge	N/A	Before the charge is to take effect	N/A
INTERCREDITOR AGREEMENT	No	N/A	N/A	N/A	N/A	N/A
SHARE SUBSCRIPTION AGREEMENT	No	N/A	N/A	RWF 7,000 should the option to register be taken	N/A	N/A
SHAREHOLDERS AGREEMENT	No	N/A	N/A	N/A	N/A	N/A
SHARE PURCHASE AGREEMENT	No	N/A	N/A	RWF 7,000 should the option to register be taken	N/A	N/A

**TANZANIA STAMP DUTY REQUIREMENTS**

TYPE OF DOCUMENT	STAMP DUTY REQUIREMENTS						
	REQUIRE STAMP DUTY?	PLACE OF PAYMENT	COSTS	DOCS REQUIRED	DEADLINE TO PAY DUTY	LATE PAYMENT PENALTY	TIME TO PROCESS
BOARD RESOLUTIONS OF THE COMPANY APPROVING THE DEBT OR EQUITY TRANSACTION	N/A	N/A	N/A	N/A	N/A	N/A	N/A
RESOLUTIONS FOR SHARE TRANSFER	N/A	N/A	N/A	N/A	N/A	N/A	N/A
RESOLUTIONS FOR SHARE ALLOTMENT	N/A	N/A	N/A	N/A	N/A	N/A	N/A
AMENDMENT OF MEMO & ARTS OF ASSOC	N/A	N/A	N/A	N/A	N/A	N/A	N/A
INCREASE IN NOMINAL CAPITAL RESOLUTIONS AND FORM	N/A	N/A	N/A	N/A	N/A	N/A	N/A
SPECIAL RESOLUTION	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Special resolutions are required: (a) to alter the objects of the company; (b) to alter the articles; (c) to change the name of the company; (d) to create a reserve liability; (e) to authorise the payment of interest on shares out of capital where such authority is not given by the articles; (f) reduction of share capital; (g) to appoint inspectors to investigate the affairs of a company; (h) to make unlimited the liability of directors or managers of a limited company; (i) to authorise an assignment of office by a director; (j) to resolve that a company be wound up by order of the court; (k) to institute a members voluntary winding up; and (l) to authorise the liquidator to accept the shares in consideration for the sale of company's property.						
STATEMENT OF NOMINAL CAPITAL	N/A	N/A	N/A	N/A	N/A	N/A	N/A
SHARE TRANSFER FORM	Yes	Tanzania Revenue Authority	1% of consideration	Resolutions approving transfer of shares, latest audited accounts and instrument of transfer	30 days from date of execution of the share transfer form		Approximately 4 days but can be done in a day
SHARE ALLOTMENT FORM	N/A	N/A	N/A	N/A	N/A	N/A	N/A

TYPE OF DOCUMENT	STAMP DUTY REQUIREMENTS						
	REQUIRE STAMP DUTY?	PLACE OF PAYMENT	COSTS	DOCS REQUIRED	DEADLINE TO PAY DUTY	LATE PAYMENT PENALTY	TIME TO PROCESS
LOAN AGREEMENT	Stamping not mandatory	Tanzania Revenue Authority	Nominal Amount (approximately T.Shs. 2000.00)	Loan Agreement	N/A	N/A	N/A
PROMISSORY NOTE	N/A	N/A	N/A	N/A	N/A	N/A	N/A
PERSONAL GUARANTEE BY A DIRECTOR OF THE ENTITY	Yes. This is however payable where one opt to register the guarantee.	Ministry of Lands and Human Settlement Development – Registrar of Documents	T.Shs. 10,000/= (Nominal Value)	N/A	N/A	N/A	N/A
CORPORATE GUARANTEE BY NON-LOCAL ENTITY	Yes. This is however payable where one opt to register the guarantee.	Ministry of Lands and Human Settlement Development – Registrar of Documents	T.Shs. 10,000/= (Nominal Value)	N/A	N/A	N/A	N/A
CORPORATE GUARANTEE LOCAL ENTITY	Yes. This is however payable where one opt to register the guarantee.	Ministry of Lands and Human Settlement Development – Registrar of Documents	T.Shs. 10,000/= (Nominal Value)	N/A	N/A	N/A	N/A
CHATELS MORTGAGE	N/A	N/A	N/A	N/A	N/A	N/A	N/A
MORTGAGE OVER LAND (WHERE IT IS CREATED BY A COMPANY)	Yes	The Companies Registry	T.Shs. (10,000/= Nominal Value) Every copy T.Shs. 500.00	Mortgage Deed Form 96 (Particulars of mortgage or charge created)	1day	N/A	1day
DEBENTURE OVER ALL ASSETS	Yes	The Companies Registry	T.Shs. (10,000/= Nominal Value) Every copy T.Shs. 500.00	Denture Form 96 (Particulars of mortgage or charge created)	1day	N/A	1day
ASSIGNMENT OF INTELLECTUAL PROPERTY	N/A	N/A	N/A	N/A	N/A	N/A	N/A
ASSIGNMENT OF INSURANCE POLICIES	N/A	N/A	N/A	N/A	N/A	N/A	N/A
CHARGE OVER BANK ACCOUNT	Yes	The Companies Registry	T.Shs. (10,000/= Nominal Value) Every copy	The Charge Deed Form 96 (Particulars	1day	N/A	1day

TYPE OF DOCUMENT	STAMP DUTY REQUIREMENTS						
	REQUIRE STAMP DUTY?	PLACE OF PAYMENT	COSTS	DOCS REQUIRED	DEADLINE TO PAY DUTY	LATE PAYMENT PENALTY	TIME TO PROCESS
			T.Shs. 500.00	of mortgage or charge created)			
INTERCREDITOR AGREEMENT	N/A	N/A	N/A	N/A	N/A	N/A	N/A
SHARE SUBSCRIPTION AGREEMENT	N/A	N/A	N/A	N/A	N/A	N/A	N/A
SHAREHOLDERS AGREEMENT	N/A	N/A	N/A	N/A	N/A	N/A	N/A
SHARE PURCHASE AGREEMENT	N/A	N/A	N/A	N/A	N/A	N/A	N/A

**TANZANIA REGISTRATION/FILING REQUIREMENTS**

TYPE OF DOCUMENT	REGISTRATION/FILING REQUIREMENTS						
	REGISTRATION OR FILING REQUIRED?	REGISTRY	DOCS REQUIRED	COSTS	DEADLINE FOR REGISTRATION	TIME TO PROCESS	LATE PENALTY
BOARD RESOLUTIONS OF THE COMPANY APPROVING THE DEBT OR EQUITY TRANSACTION	N/A	N/A	N/A	N/A	N/A	N/A	N/A
RESOLUTIONS FOR SHARE TRANSFER	N/A	N/A	N/A	N/A	N/A	N/A	N/A
RESOLUTIONS FOR SHARE ALLOTMENT	N/A	N/A	N/A	N/A	N/A	N/A	N/A
AMENDMENT OF MEMO & ARTS OF ASSOC	Yes	Registrar of Companies	Copy of the altered Memorandum plus special resolution	Filing fee of T.Shs. 15,000/=	With fourteen (14) days of passing the resolution.	1 day	Company and every officer of the company who is in default shall be liable to a default fine.

TYPE OF DOCUMENT	REGISTRATION/FILING REQUIREMENTS						
	REGISTRATION OR FILING REQUIRED?	REGISTRY	DOCS REQUIRED	COSTS	DEADLINE FOR REGISTRATION	TIME TO PROCESS	LATE PENALTY
INCREASE IN NOMINAL CAPITAL RESOLUTIONS AND FORM	Yes	Registrar of Companies	Form No. 66 (Increase in share capital beyond registered capital)	Filing fee of T.Shs. 15,000/=	Within thirty (30) days after passing of the resolution authorising the increase	1 day	If default is made in complying with filing every officer of the company who is in default shall be liable to a default fine. Default fine however has not been provided.
SPECIAL RESOLUTION	Yes	Registrar of Companies	The special resolution (2 copies)	Filing fee of T.Shs. 15,000/=	Within thirty five (35) days from the date on which the resolution was passed.	1 day	Company and every officer of the company who is in default shall be liable to a default fine.
STATEMENT OF NOMINAL CAPITAL	N/A	N/A	N/A	N/A	N/A	N/A	N/A
SHARE TRANSFER FORM	Yes	Registrar of Companies	Instrument of Transfer	Filing fee of T.Shs. 15,000/=		1 day	If default is made in complying with filing every officer of the company who is in default shall be liable to a default fine. Default fine however has not been provided.
SHARE ALLOTMENT FORM	Yes	Registrar of Companies	Share allotment form (statutory form either Form 55a ) Form 55b )	Filing fee of T.Shs. 15,000/=	Within sixty (60) days of allotting shares	1 day	If default is made in complying with filing every officer of the company who is in default shall be liable to a default fine. Default fine however has not been provided.

TYPE OF DOCUMENT	REGISTRATION/FILING REQUIREMENTS						
	REGISTRATION OR FILING REQUIRED?	REGISTRY	DOCS REQUIRED	COSTS	DEADLINE FOR REGISTRATION	TIME TO PROCESS	LATE PENALTY
LOAN AGREEMENT	N/A	N/A	N/A	N/A	N/A	N/A	N/A
PROMISSORY NOTE	N/A	N/A	N/A	N/A	N/A	N/A	N/A
PERSONAL GUARANTEE BY A DIRECTOR OF THE ENTITY	Yes Registration is however optional	Ministry of Lands and Human Settlement Development – Registrar of Documents	Deed of Guarantee	N/A	N/A	7-14 days	N/A
CORPORATE GUARANTEE BY NON-LOCAL ENTITY	Yes Registration is however optional	Ministry of Lands and Human Settlement Development – Registrar of Documents	Deed of Guarantee	N/A	N/A	7-14 days	N/A
CORPORATE GUARANTEE LOCAL ENTITY	Yes. Registration is however optional.	Ministry of Lands and Human Settlement Development – Registrar of Documents	Deed of Guarantee	N/A	N/A	7-14 days	N/A
CHATELS MORTGAGE	N/A	Ministry of Lands and Human Settlement Development	Chattels Mortgage	N/A	N/A	7-14 days	N/A

TYPE OF DOCUMENT	REGISTRATION/FILING REQUIREMENTS						
	REGISTRATION OR FILING REQUIRED?	REGISTRY	DOCS REQUIRED	COSTS	DEADLINE FOR REGISTRATION	TIME TO PROCESS	LATE PENALTY
MORTGAGE OVER LAND (WHERE IT IS CREATED BY A COMPANY)	Yes	Ministry of Industry and Trade (Registrar of Companies) and Ministry of Lands and Human Settlement Development	Mortgage Deed Form 96 (Particulars of mortgage or charge created)	Registration fees - T.Shs. 15,000/= (Nominal Value) payable at the Companies Registry and Registration fee of T.Shs. 120,000/= (Nominal Value) payable at the Lands Registry	Within forty two (42) days after date of creation	7-14 days at the Companies Registry 3 to 4 weeks if property is located in Dar es Salaam and subject to corresponding file in respect of the property being located at the Ministry for Lands, where corresponding file in respect of property is missing, a temporary file in respect of the same will have to be opened and the opening process can take three (3) to six (6) months. 7-14 days if property is located outside Dar es Salaam.	Security will void against any liquidator or administrator and any creditor of the company
DEBENTURE OVER ALL ASSETS	Yes	Registrar of Companies	Denture Form 96 (Particulars of mortgage or charge created)	Registration fee - T.Shs. 15,000/= (Nominal Value) at the Companies Registry -	Within forty two (42) days after date of creation	7-14 days	Security will void against any liquidator or administrator and any creditor of the company
ASSIGNMENT OF INTELLECTUAL PROPERTY	N/A	N/A	N/A	N/A	N/A	N/A	N/A
ASSIGNMENT OF INSURANCE POLICIES	N/A	N/A	N/A	N/A	N/A	N/A	N/A

TYPE OF DOCUMENT	REGISTRATION/FILING REQUIREMENTS						
	REGISTRATION OR FILING REQUIRED?	REGISTRY	DOCS REQUIRED	COSTS	DEADLINE FOR REGISTRATION	TIME TO PROCESS	LATE PENALTY
CHARGE OVER BANK ACCOUNT	Yes	Registrar of Companies	The Charge Deed Form 96 (Particulars of mortgage or charge created)	Registration fee - T.Shs. 15,000/= (Nominal Value) at the Companies Registry	Within forty two (42) days after date of creation	7-14 days	Security will void against any liquidator or administrator and any creditor of the company.
INTERCREDITOR AGREEMENT	N/A	N/A	N/A	N/A	N/A	N/A	N/A
SHARE SUBSCRIPTION AGREEMENT	N/A	N/A	N/A	N/A	N/A	N/A	N/A
SHAREHOLDERS AGREEMENT	N/A	N/A	N/A	N/A	N/A	N/A	N/A
SHARE PURCHASE AGREEMENT	N/A	N/A	N/A	N/A	N/A	N/A	N/A

**UGANDA STAMP DUTY REQUIREMENTS**

TYPE OF DOCUMENT	STAMP DUTY REQUIREMENTS						
	REQUIRE STAMP DUTY?	PLACE OF PAYMENT	COSTS	DOCS REQUIRED	DEADLINE TO PAY DUTY	LATE PAYMENT PENALTY	TIME TO PROCESS
BOARD RESOLUTIONS OF THE COMPANY APPROVING THE DEBT OR EQUITY TRANSACTION	N/A	N/A	N/A	N/A	N/A	N/A	N/A
RESOLUTIONS FOR SHARE TRANSFER	N/A	N/A	N/A	N/A	N/A	N/A	N/A
RESOLUTIONS FOR SHARE ALLOTMENT	N/A	N/A	N/A	N/A	N/A	N/A	N/A
AMENDMENT OF MEMO & ARTS OF ASSOC	N/A	N/A	N/A	N/A	N/A	N/A	N/A
INCREASE IN NOMINAL CAPITAL RESOLUTIONS	N/A	N/A	N/A	N/A	N/A	N/A	N/A
	Please note that whereas stamp duty is not paid on the resolution sanctioning the increase in share capital, stamp duty at the rate of 0.5% of the total value is levied on the Notice of increase of share capital filed with the Registrar of Companies.						
SPECIAL RESOLUTION	N/A	N/A	N/A	N/A	N/A	N/A	N/A
STATEMENT OF NOMINAL CAPITAL	N/A	N/A	N/A	N/A	N/A	N/A	N/A
SHARE TRANSFER FORM	Yes	All commercial banks except ABC Bank, Fina Bank, Bank of India and NIC Bank.	1% of the consideration	Assessment and the share transfer	30 days after execution of the document and 21 days from the date indicated assessment	N/A. However if the assessment has expired, one will need to get a new assessment form.	Less than a day
RETURN/SHARE ALLOTMENT	N/A		N/A	N/A	N/A	N/A	N/A
LOAN AGREEMENT	Yes.	All commercial banks except ABC Bank, Fina Bank, Bank of India and NIC Bank.	5,000/=	Loan agreement and copy of assessment	30 days after execution of the document and 21 days from the date indicated assessment	N/A. However if the assessment has expired, one will need to get a new assessment form.	Less than a day

TYPE OF DOCUMENT	STAMP DUTY REQUIREMENTS						
	REQUIRE STAMP DUTY?	PLACE OF PAYMENT	COSTS	DOCS REQUIRED	DEADLINE TO PAY DUTY	LATE PAYMENT PENALTY	TIME TO PROCESS
PROMISSORY NOTE	Yes	All commercial banks except ABC Bank, Fina Bank, Bank of India and NIC Bank	5,000/=	Promissory note and the copy of the assessment	30 days after execution of the document and 21 days from the date indicated assessment	N/A. However if the assessment has expired, one will need to get a new assessment form.	Less than a day
PERSONAL GUARANTEE BY A DIRECTOR OF THE ENTITY	Yes	All commercial banks except ABC Bank, Fina Bank, Bank of India and NIC Bank	5,000/=	Guarantee and the assessment	30 days after execution of the document and 21 days from the date indicated assessment	N/A. However if the assessment has expired, one will need to get a new assessment form.	Less than a day
CORPORATE GUARANTEE BY NON-LOCAL ENTITY	Yes	All commercial banks except ABC Bank, Fina Bank, Bank of India and NIC Bank	5,000/=	Guarantee and the assessment	30 days after execution of the document and 21 days from the date indicated assessment	N/A. However if the assessment has expired, one will need to get a new assessment form.	Less than a day
CORPORATE GUARANTEE LOCAL ENTITY	Yes	All commercial banks except ABC Bank, Fina Bank, Bank of India and NIC Bank	5,000/=	Guarantee and the assessment	30 days after execution of the document and 21 days from the date indicated assessment	N/A. However if the assessment has expired, one will need to get a new assessment form.	Less than a day
CHATELS MORTGAGE	Yes	All commercial banks except ABC Bank, Fina Bank, Bank of India and NIC Bank	1% of the amount borrowed.	mortgage deed and the stamp duty assessment form.	30 days after execution of the document and 21 days from the date indicated assessment	N/A. However if the assessment has expired, one will need to get a new assessment form.	Less than a day

TYPE OF DOCUMENT	STAMP DUTY REQUIREMENTS						
	REQUIRE STAMP DUTY?	PLACE OF PAYMENT	COSTS	DOCS REQUIRED	DEADLINE TO PAY DUTY	LATE PAYMENT PENALTY	TIME TO PROCESS
MORTGAGE OVER LAND	Yes	All commercial banks except ABC Bank, Fina Bank, Bank of India and NIC Bank	0.5% of the amount borrowed.	Mortgage deed and the stamp duty assessment form.	30 days after execution of the document and 21 days from the date indicated assessment	N/A. However if the assessment has expired, one will need to get a new assessment form.	Less than a day
DEBENTURE OVER ALL ASSETS	Yes	All commercial banks except ABC Bank, Fina Bank, Bank of India and NIC Bank	0.5% of the amount borrowed	Debenture deed and the stamp duty assessment form.	30 days after execution of the document and 21 days from the date indicated assessment	N/A. However if the assessment has expired, one will need to get a new assessment form.	Less than a day
ASSIGNMENT OF INTELLECTUAL PROPERTY	Yes	All commercial banks except ABC Bank, Fina Bank, Bank of India and NIC Bank	5,000/=	The deed assignment and the stamp duty assessment	30 days after execution of the document and 21 days from the date indicated assessment	N/A. However if the assessment has expired, one will need to get a new assessment form.	Less than a day
ASSIGNMENT OF INSURANCE POLICIES	Yes	All commercial banks except ABC Bank, Fina Bank, Bank of India and NIC Bank	5,000/=	The deed assignment and the stamp duty assessment form.	30 days after execution of the document and 21 days from the date indicated assessment	N/A. However if the assessment has expired, one will need to get a new assessment form.	Less than a day
CHARGE OVER BANK ACCOUNT	Yes	All commercial banks except ABC Bank, Fina Bank, Bank of India and NIC Bank	0.5% of the amount borrowed	The charge/ deed and the stamp duty assessment	30 days after execution of the document and 21 days from the date indicated assessment	N/A. However if the assessment has expired, one will need to get a new assessment form.	Less than a day

TYPE OF DOCUMENT	STAMP DUTY REQUIREMENTS						
	REQUIRE STAMP DUTY?	PLACE OF PAYMENT	COSTS	DOCS REQUIRED	DEADLINE TO PAY DUTY	LATE PAYMENT PENALTY	TIME TO PROCESS
INTERCREDITOR AGREEMENT	Yes	All commercial banks except ABC Bank, Fina Bank, Bank of India and NIC Bank	5,000/=		30 days after execution of the document and 21 days from the date indicated assessment	N/A. However if the assessment has expired, one will need to get a new assessment form.	Less than a day
SHARE SUBSCRIPTION AGREEMENT	Yes	All commercial banks except ABC Bank, Fina Bank, Bank of India and NIC Bank	5,000/=	The agreement and the stamp duty assessment form.	30 days after execution of the document and 21 days from the date indicated assessment	N/A. However if the assessment has expired, one will need to get a new assessment form.	Less than a day
SHAREHOLDERS AGREEMENT	Yes	All commercial banks except ABC Bank, Fina Bank, Bank of India and NIC Bank	5,000/=	The agreement and the stamp duty assessment	30 days after execution of the document and 21 days from the date indicated assessment	N/A. However if the assessment has expired, one will need to get a new assessment form.	Less than a day
SHARE PURCHASE AGREEMENT	Yes.	All commercial banks except ABC Bank, Fina Bank, Bank of India and NIC Bank	5,000/=	The agreement and the stamp duty assessment form.	30 days after execution of the document and 21 days from the date indicated assessment	N/A. However if the assessment has expired, one will need to get a new assessment form.	Less than a day

**UGANDA REGISTRATION/FILING REQUIREMENTS**

TYPE OF DOCUMENT	REGISTRATION/FILING REQUIREMENTS						
	REGISTRATION OR FILING REQUIRED?	REGISTRY	DOCS REQUIRED	COSTS	DEADLINE FOR REGISTRATION	TIME TO PROCESS	LATE PENALTY
BOARD RESOLUTIONS OF THE COMPANY APPROVING THE DEBT OR EQUITY TRANSACTION	Yes	Companies Registry	Resolution	22,000/=	N/A	3-5 working days depending on the availability of the Registry file.	N/A
RESOLUTIONS FOR SHARE TRANSFER	Yes	Companies Registry	Resolution	22,000/=	N/A	3-5 working days depending on the availability of the Registry file.	N/A
RESOLUTIONS FOR SHARE ALLOTMENT	Yes	Companies Registry	Resolution	22,000/=	N/A	3-5 working days depending on the availability of the Registry file.	N/A
AMENDMENT OF MEMO & ARTS OF ASSOC	Yes	Companies Registry	Resolution by the Company sanctioning the amendment and the amended Memo & Arts of Assoc.	35,000/=	N/A	3-5 working days depending on the availability of the Registry file.	N/A
INCREASE IN NOMINAL CAPITAL RESOLUTIONS	Yes	Companies Registry	Resolution	22,000/=	N/A	3-5 working days depending on the availability of the Registry file.	N/A
SPECIAL RESOLUTION	Yes	Companies Registry	Resolution	22,000/=	N/A	3-5 working days depending on the availability of the Registry file.	N/A

TYPE OF DOCUMENT	REGISTRATION/FILING REQUIREMENTS						
	REGISTRATION OR FILING REQUIRED?	REGISTRY	DOCS REQUIRED	COSTS	DEADLINE FOR REGISTRATION	TIME TO PROCESS	LATE PENALTY
STATEMENT OF NOMINAL CAPITAL	Yes	Companies Registry	Filed at incorporation with other documents.	22,000/=	N/A	3-5 working days depending on the availability of the Registry file.	N/A
SHARE TRANSFER FORM	Yes	Companies Registry	Board resolution approving the transfer	27,000/=	N/A	3-5 working days depending on the availability of the Registry file.	N/A
RETURN/SHARE ALLOTMENT	YES	Companies Registry	Resolution	25,000/=	N/A	3-5 working days depending on the availability of the Registry file.	N/A
LOAN AGREEMENT	No	N/A	N/A	N/A	N/A	N/A	N/A
PROMISSORY NOTE	No	N/A	N/A	N/A	N/A	N/A	N/A
PERSONAL GUARANTEE BY A DIRECTOR OF THE ENTITY	No	N/A	N/A	N/A	N/A	N/A	N/A
CORPORATE GUARANTEE BY NON-LOCAL ENTITY	No	N/A	N/A	N/A	N/A	N/A	N/A
CORPORATE GUARANTEE LOCAL ENTITY	No	N/A	N/A	N/A	N/A	N/A	N/A
CHATELS MORTGAGE	Yes (Note: the common chattel mortgage is over motor vehicles and an application is made to register a caveat over the motor vehicle)	Uganda Revenue Authority (if the chattel is a motor vehicle). (At the Companies Registry if the chattel is created by the Company).	The mortgage deed and the receipt for payment of stamp duty.	52,500/=	N/A	N/A	N/A

TYPE OF DOCUMENT	REGISTRATION/FILING REQUIREMENTS						
	REGISTRATION OR FILING REQUIRED?	REGISTRY	DOCS REQUIRED	COSTS	DEADLINE FOR REGISTRATION	TIME TO PROCESS	LATE PENALTY
MORTGAGE OVER LAND	Yes	At the Companies and Land's registry if it's a Company At the land's registry if it's an individual.	The deeds and the receipt from payment of stamp duty	37,500/= at the Companies Registry and 47,000/= at the land's registry.	N/A	5 working days depending on the availability of the registry file	N/A
DEBENTURE OVER ALL ASSETS	Yes	Companies Registry	The debenture deed and the receipt for payment of stamp duty.	37,500/=	42 days after the date of execution.	3-5 working days depending on the availability of the registry file.	If filed out of time, the company must make an application for extension of time to the Registrar.
ASSIGNMENT OF INTELLECTUAL PROPERTY	No	N/A	N/A	N/A	N/A	N/A	N/A
ASSIGNMENT OF INSURANCE POLICIES	No	N/A	N/A	N/A	N/A	N/A	N/A
CHARGE OVER BANK ACCOUNT	Yes	Companies Registry if the charge is created by a Company	The deed and the receipt of payment of stamp duty.	37,500/=	42 days after the date of execution	3-5 days depending on the availability of the registry file	If filed out of time, the company must make an application for extension of time to the Registrar.
INTERCREDITOR AGREEMENT	No	N/A	N/A	N/A	N/A	N/A	N/A
SHARE SUBSCRIPTION AGREEMENT	No	N/A	N/A	N/A	N/A	N/A	N/A
SHAREHOLDERS AGREEMENT	No	N/A	N/A	N/A	N/A	N/A	N/A
SHARE PURCHASE AGREEMENT	No	N/A	N/A	N/A	N/A	N/A	N/A