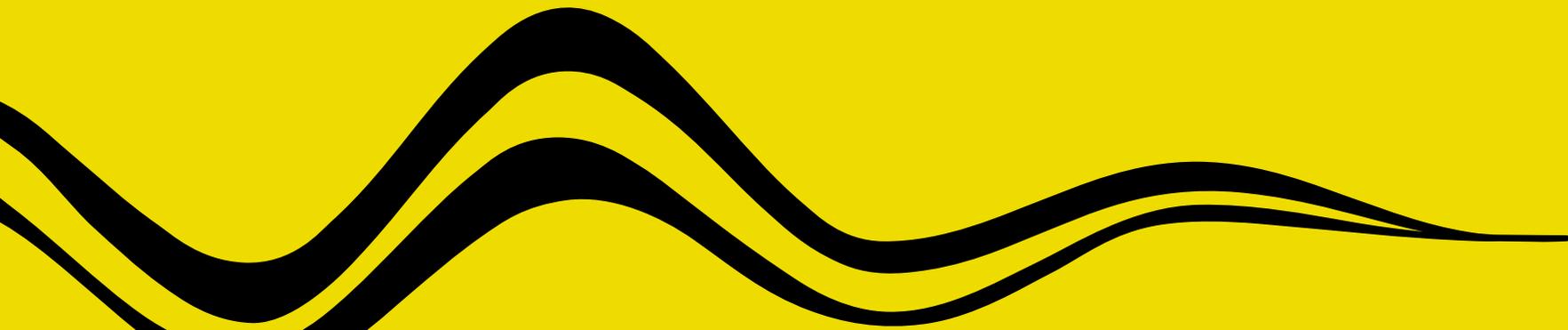




ENS  
AFRICA REGULATORY  
ROUND-UP

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**EDITION 3 | 2023**



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# PART ONE:

BEYOND BORDERS: WHY ESG  
IS RELEVANT IN AFRICA



# ESG IN THE AFRICAN CONTEXT

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As an African firm, we often encounter questions about the relevance of Environmental, Social, and Governance (“ESG”) principles in the African context. To address this, it is essential to understand what ESG represents and what it aims to achieve.

ESG has a dual focus, known as double materiality. On one hand, it aims to incorporate non-financial factors into strategic decisions to enhance or protect corporate value, focusing on understanding, disclosing, and mitigating impacts on profit. This aspect of ESG is widely accepted in financial markets, acknowledging that factors like climate-related impacts, for example effects of flooding and droughts, can significantly affect a company’s profits and must be taken into account and disclosed. On the other hand, ESG also examines the impacts of corporate behaviour on stakeholders and the environment (for example plastics or greenhouse gases released into the environment), seeking to understand, disclose, and mitigate impacts on people and the planet. While this aspect is less widely recognised in financial markets, the perception is changing.

In the African context it is unsurprising that there may be resistance to the part of ESG that scrutinises corporate impact in the double materiality enquiry, especially when it comes to aspects like climate change and its impact on the planet. Africa’s carbon emissions, only an estimated 4% of global emissions, seems immaterial when compared to those of developed nations. Africans have the lowest emissions of citizens living on all continents on a per capita basis. Yet African countries are under the same pressures to steer away from the use of fossil fuels to develop their economies. Africans have the equivalent real access to electricity that United States citizens had in the 1890s, with more than 40% of the continent still living without access to electricity. Ensuring modern energy for all while keeping pace with rising energy demand remains a primary focus for African governments. If the broader context of the climate emergency is not taken into account and if the opportunities presented by the transition to a green economy are ignored, one can understand how ESG can be perceived as prioritising the environment at the expense of energy security and poverty reduction in Africa.



Climate mitigation efforts can be challenging for African leaders due to budget allocation competing with the urgent need for essential services like healthcare and education, along with tempting opportunities in high-carbon sectors promising economic growth. But, despite its minimal contribution to global warming, Africa faces the brunt of the climate impact. The Climate Vulnerability Index identified sub-Saharan Africa as home to 9 of the world's top 10 most vulnerable countries. Even with global efforts to limit warming to 2°C, climate adaptation costs in Africa could reach USD50-billion annually by 2050, raising questions about the “polluter pays” principle and developed countries’ contributions under the Paris Agreement.

Beyond climate change, ESG considerations encompass a range of critical issues, including widespread corruption challenges, particularly in sub-Saharan Africa, where transparency and governance scores are low. South Africa has the world's highest income inequality, while other African nations like Namibia, Zambia, and Mozambique also struggle with high Gini coefficients. As Africa experiences significant population growth, with the United Nations (“UN”) projecting a billion more people by 2050, there is pressure on the continent's natural resources. Effective and sustainable management by African states is crucial to prevent adverse global consequences.

However, ESG also offers opportunities amid

these challenges. Africa's critical minerals and renewable energy resources have the potential to contribute significantly to a greener future. Protecting Africa's rich biodiversity aligns with global climate mitigation efforts. International agreements and ESG-driven investments can support sustainable enterprises in Africa, encouraging ESG alignment. African countries can leverage their natural resources to finance a green transition and achieve the UN Sustainable Development Goals.

Establishing modern legal frameworks, implementing environmental tax policies, and ensuring good governance are crucial. African legislators have already started integrating ESG principles into their laws and regulations.



# ESG ELEMENTS



## ENVIRONMENTAL

**RENEWABLE ENERGY:** Investing in renewable energy projects in Africa, such as solar, wind, and hydropower, to reduce carbon emissions, provide clean energy, and combat climate change.

**SUSTAINABLE AGRICULTURE:** Supporting agriculture and agribusiness initiatives that use eco-friendly farming practices, reduce deforestation, and promote responsible land use.

**CONSERVATION:** Investing in initiatives that protect and conserve Africa's rich biodiversity, natural resources, and ecosystems, including wildlife reserves and sustainable forestry.

**CLEAN TECHNOLOGY:** Supporting companies that develop and implement clean and green technologies to reduce pollution, enhance resource efficiency, and minimise environmental impact.



## SOCIAL

**SOCIAL DEVELOPMENT:** Investing in projects that aim to improve the living conditions of local communities, such as affordable housing, healthcare facilities, and access to clean water and education.

**POVERTY ALLEVIATION:** Funding programmes that help reduce poverty, unemployment, and income inequality, including microfinance initiatives and job creation efforts.

**HUMAN RIGHTS:** Supporting businesses that respect human rights and labour standards, ensuring fair treatment of workers and preventing exploitation.

**HEALTHCARE:** Investing in healthcare infrastructure, services, and access to medical care to improve public health outcomes.



## GOVERNANCE

**TRANSPARENCY:** Backing companies and organisations that prioritise transparency in their operations, financial reporting, and decision-making processes.

**ETHICAL LEADERSHIP:** Investing in entities that demonstrate ethical leadership and strong corporate governance practices, including effective board structures and anti-corruption measures.

**ACCOUNTABILITY:** Supporting initiatives that hold companies accountable for their actions and promote responsible business conduct.

**RISK MANAGEMENT:** Encouraging companies to integrate ESG factors into their risk management strategies to ensure long-term sustainability.

# ESG LEGISLATION AND RESPONSIBILITIES



ESG policies and laws form a critical framework that transcends national borders, corporate structures, and directorial responsibilities. At the international level, organisations and countries increasingly recognise the imperative to address global challenges such as climate change, social inequality, and ethical business conduct. International agreements and standards, cross-border supply chain regulation, and cross-border ESG disclosure and reporting requirements set the tone for ESG compliance on a global scale.

Within countries, ESG policies and laws provide guidance on sustainable practices, responsible investments, and stakeholder engagement. At the corporate level, boards and executives are under mounting pressure to align their strategies with ESG goals to mitigate risks, enhance reputation, and drive long-term value. Directors bear a fiduciary duty to ensure that ESG-related considerations are integrated into their decision-making processes to contribute towards a sustainable future while meeting the expectations of diverse stakeholders.

Ultimately, the interconnection of international, corporate, and directorial requirements emphasises the integral role of ESG in shaping a more sustainable and responsible global business landscape. This report examines key ESG-related developments in various African countries, focusing on international legislation, local laws integrating ESG considerations, and corporate responsibilities related to ESG at a domestic level.

# INTERNATIONAL LEGISLATION SHAPING GLOBAL IMPACT



## SUPPLY CHAIN AND ESG EXPORT RELATED LAWS

ESG considerations have become a business imperative for investees looking to attract sustainable finance, while ESG is used by investors as a means of better understanding material risk in their investments. Cross-border regulations play a pivotal role in harmonising ESG standards across jurisdictions. Collaborative efforts between states to establish consistent frameworks for reporting, disclosure, and enforcement enable effective cross-border investment and trade while preventing regulatory arbitrage. However, the stringent ESG criteria set by international investors and markets may create additional barriers for businesses in developing countries, as compliance with these standards often requires substantial investments in technology, infrastructure, and regulatory frameworks.

Relevant examples of cross-border regulation from the European Union (“EU”) include the following emanating from:

- European Green Deal (“EGD”): A comprehensive and ambitious initiative launched by the EU in December 2019 which

serves as a roadmap and policy framework to make the EU’s economy sustainable, address climate change, and transition towards a more environmentally friendly and low-carbon society by 2050. The EGD has both potential benefits and challenges for developing nations. “Its implications for Africa are multifaceted. Most prominently, a decline in European demand for fossil fuels alongside rising demand for cobalt, nickel, and other critical minerals for the energy transition will greatly affect global markets and, by implication, the economies of oil-dependent and mineral-rich African countries. The economy-wide effects of the EGD, however, extend beyond the energy transition.”<sup>1</sup>

- EU Carbon Border Adjustment Mechanism (“CBAM”): The EU proposal to implement a carbon border tax on embedded greenhouse gases of carbon-intensive products imported into the EU, calculated based on the carbon emissions associated with specific imports, is anticipated to shift the responsibility of climate action towards developing economies. This would place potentially disproportionate and inequitable pressure on African nations and specific industries.

- Corporate Sustainability Due Diligence Directive (“CSDDD”): On 1 June 2023, the European Parliament approved the CSDDD which will require companies to identify and address the adverse human rights and environmental impacts of their operations throughout their value chains. Member states will have two years to implement the CSDDD into national legislation once it is formally adopted, which is not expected before 2024.
- EU Deforestation and Forest Degradation Regulations: The EU Deforestation and Forest Degradation Regulations came into force on 29 June 2023 and will from 30 December 2024 (30 June 2025 for micro or small businesses) require any EU and non-EU company trading in specific commodities (cocoa, coffee, soy, palm oil, wood, rubber, and cattle), their derivatives, and products made using these commodities to prove that they are deforestation-free, have been produced in accordance with the relevant legislation of the country of production and are covered by a due diligence statement. The Regulations may have an impact on African exporters to the EU.



## CORPORATE DISCLOSURE AND REPORTING REQUIREMENTS

ESG-related disclosure requirements are crucial for fostering a standardised and harmonised approach to corporate disclosures and reporting in line with evolving global developments. Current and anticipated ESG disclosure requirements with international effect include:

- International Sustainability Standards Board (“ISSB”): On 26 June 2023, the ISSB published the inaugural global sustainability disclosure standards – International Financial Reporting Standards (“IFRS”) S1 (General Requirements for Disclosure of Sustainability-Related Financial Information) and IFRS S2 (Climate-Related Disclosures) – that aim to promote consistency and comparability in sustainability reporting and disclosure. The IFRS S1 and S2 are developed on the underlying concepts of the IFRS Accounting Standards, which are required by more than 140 jurisdictions. Mandatory application of these standards – through their adoption into applicable law – is at the discretion of a jurisdiction. However, companies can voluntarily apply them.
- The International Accounting Standards Board (“IASB”): The IASB indicated that companies may have to disclose material emerging environmental risks in financial statements.
- The Task Force on Climate-related Financial Disclosures (“TCFD”): At the Paris COP21 in 2015, at which the Paris Agreement was agreed upon, the Financial Stability Board (“FSB”) launched the TCFD. TCFD’s goal is to develop voluntary, consistent climate-related financial risk disclosures. The TCFD recommendations were published in June 2017. Since then, the recommendations have been widely adopted with a general move to make them mandatory in some countries and in some sectors.
- The Task Force on Nature-related Financial Disclosures (“TNFD”): At the Kunming-Montreal COP15 in 2022, at which the Kunming-Montreal Global Biodiversity Framework (“GBF”) was agreed, corporate disclosures for biodiversity came under the spotlight. Target 15 of the GBF creates obligations for governments to require

businesses to evaluate and disclose their biodiversity dependencies and impacts. The TNFD recommendations were published in September 2023 and are likely to be widely adopted as investors’ attention to biodiversity is likely to affect the duties of disclosing companies and, through market practice, other companies.

Our review of the sample of jurisdictions did not indicate the development of laws by African states to expressly provide for the harmonisation of requirements to continue to allow for trade with regions that are developing ESG-related standards, such as the EU. However, ESG principles related to supply chain and corporate disclosures and reporting have found their way into domestic laws and industry guidelines, often with significant sanctions for non-compliance. The domestic laws and guidelines that are identified below will potentially enhance the ability for entities operating in those jurisdictions to demonstrate ESG alignment. Although, despite these laws, there will be the potential for the lack of harmonisation on ESG-related criteria between the importing and exporting jurisdictions in the absence of agreed harmonised standards and requirements.



# LOCAL LEGISLATION IMPACTING ESG

Regulatory requirements imposed by states often compel companies to adhere to specific sustainability and ethical standards. These regulations vary but often encompass environmental mandates such as emissions reductions, resource conservation, and waste management. For example, Ghana's National Climate Change Policy, 2013 provides strategic direction and coordinates issues of climate change in Ghana, while the Low Carbon Development Strategy, 2016 provides for a consistent set of policy objectives and strategies to guide the implementation of enhanced carbon emission mitigation measures.

Negotiations for the EU-Kenya Economic Partnership Agreement were concluded in June 2023 to boost trade in goods and create new economic opportunities. This trade deal includes sustainability provisions such as climate and environmental protection and labour rights. Upon conclusion and implementation, this is likely to impact ESG supply chain due diligence of operations in Kenya and enable compliance in the EU.

The Institute of Certified Public Accountants of Kenya ("ICPAK"), regulator of the accountancy profession responsible for setting financial reporting standards, announced the launch of the ISSB IFRS S1 and IFRS S2 in Kenya on 4 September 2023

and noted that ICPAK will continue to work with other industry players, regulators, development partners and other stakeholders to ensure compliance with the new standards.

Social responsibilities – provided for in the corporate governance codes and labour legislation of some of the sample jurisdictions for instance – may include labour rights, diversity, and community engagement.

Governance aspects typically involve transparent reporting, board accountability, and ethical decision-making. The Nigerian Exchange Group has, for example, issued the Sustainability Disclosure Guidelines in 2018 as a framework or set of recommendations that provide organisations with guidance on how to report and disclose their ESG-related performance and impact to promote transparency, accountability, and standardised reporting practices. The Ghana Stock Exchange has also issued an ESG Disclosures Guidance Manual which sets out the key steps on how listed companies in Ghana and other organisations interested in ESG can collect, analyse, and publicly disclose important ESG information using an approach that meets international standards in sustainability reporting. Kenya's Nairobi Securities Exchange ESG Guidance Manual guides companies on corporate disclosures and reporting obligations on ESG matters that

meet international standards.

While in the countries under review there are limited ESG-specific policies, laws or guidelines which impose ESG compliance and reporting requirements on local and/or foreign companies operating in these jurisdictions, the existing general policies, laws and guidelines, incorporate ESG aspects.

[Click here](#) to view non-exhaustive examples of local legislation for each country.



# DIRECTOR ESG RESPONSIBILITY

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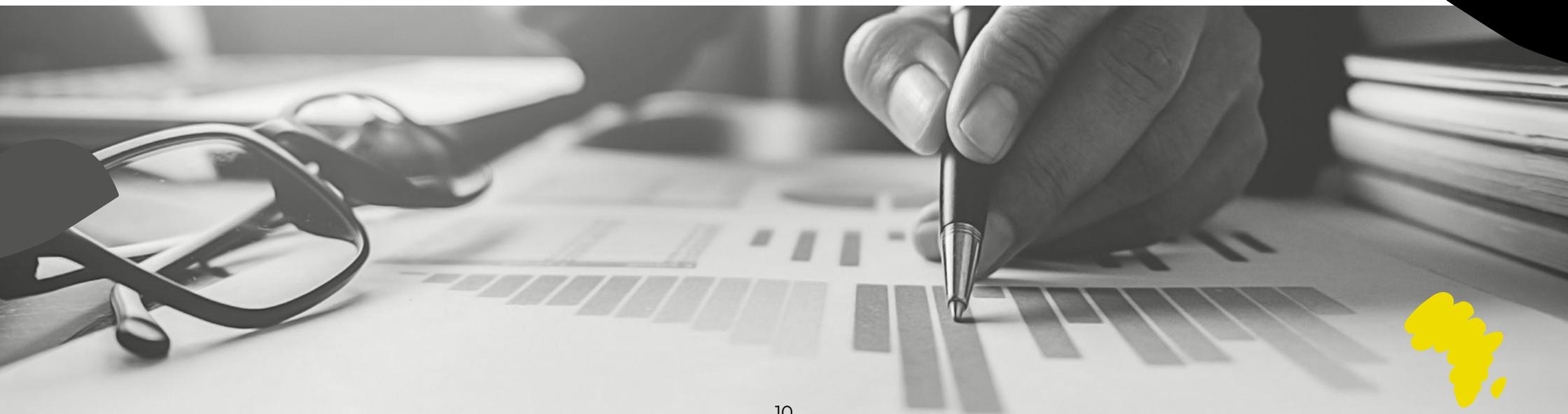
Generally, fiduciary obligations require directors to act in the best interests of the companies which they serve. These duties are exercised in strategic planning, oversight of foreseeable and material risks, and attesting to disclosure and financial reports. Legal provisions commonly set the required standard for directors' care and loyalty by reference to the market, social and regulatory context. In the countries under review, there are currently no standalone policies, laws or guidelines that expressly expand director's fiduciary duties to include consideration of the environmental and social impact of a company. There are also no specific guidelines to steer directors on their shifting and evolving obligations

and fiduciary duties when it comes to ESG-related matters. However, to varying extents, the corporate governance codes, company laws and securities exchange guidelines and rules of these countries incorporate ESG aspects.

In Nigeria for example, the Code of Corporate Governance, issued by the Financial Reporting Council of Nigeria, provides principles and practices that guide directors in fulfilling their fiduciary duties, including considerations related to ESG. The Securities and Exchange Commission has also issued guidelines and regulations that provide guidance on ESG-related compliance to directors of regulated entities. The Rwanda Stock

Exchange draft ESG Reporting Guidelines provides guidance for directors in respect of their responsibility for ESG-related matters. In Mozambique, in addition to the codes of ethics and conduct for certain sectors which indirectly contribute to compliance with ESG practices and standards, directors usually follow international ESG practice and standards.

As local and international stakeholders demand greater transparency and accountability, directors will be expected to increasingly navigate and integrate ESG considerations into their decision-making processes, considering not only financial implications but also the broader impacts of their actions on the environment, society, and governance.



# POTENTIAL REPERCUSSIONS OF ESG NON-COMPLIANCE



The potential repercussions of non-compliance with ESG-related regulations and requirements come in various forms. Below we highlight some significant repercussions in the countries under review which may emanate from statutory, industry and social obligations.

## FINES, PENALTIES AND IMPRISONMENT

In KENYA, section 145 of Environmental Management and Co-ordination Act, 1999 extends the liability for environmental offences to the directors of a corporation. In the cases listed below the National Environment Management Authority (“NEMA”) has initiated criminal proceedings against directors for various environmental offences. In such instances, the directors have approached civil courts to have this decision by NEMA reviewed under the judicial review process. These cases are still ongoing, and we are yet to see a matter that has been concluded where a court finds a director personally culpable for environmental damage or other non-compliance with ESG regulations and requirements.

- In the case of *John Mutungu Waititu vs China Wuyi (Kenya) Co. Limited (2018)* eKLR in Kenya, the Respondent had leased the Appellant’s land for a period of one

year, with the purpose of excavating murrum. After excavating the murrum, the Respondent failed to push back the top soil to make the ground level and leave the ground the way they had found it. This in turn left the land vulnerable and prone to grave environmental degradation. The court found the Respondent liable and imposed civil remedies including nominal damages of KES25 000 and a restoration order directing the Respondent move to the Appellant’s land and ensure that the same is restored to sound environmental standards not harmful to the environment, residents and animals.

- In *Esther Wanjiru Mwangi & 3 Others vs Xinghui International (K) Limited (2016)* eKLR, the defendant dumped large quantities of lead waste on a road adjoining the Plaintiffs’ land and as a consequence, the hazardous waste negatively affected the Plaintiff’s crops and animals. The Plaintiffs lost three cows due to indigestion of the poisonous waste material and argued that continued dumping and staying on site of the waste posed real danger to their health as well as to their animals and crops. The court found the Defendant liable for negligence and granted several civil remedies in favour

of the Plaintiffs, including KES270 000 being the value of the dead cows; an order directing the Defendant to remove the dumped lead contaminated soil and waste on the road between its land and the Plaintiffs’ parcels; and a mandatory injunction restraining the Defendant from dumping any contaminated waste from its factory to the Plaintiffs’ land parcels.

- In *Republic v National Environment Management Authority & another Ex-parte Taherali Hassan Ali & Another [2018]* eKLR, Join Zein Investments Limited developed apartments. The directors of this company faced criminal charges for the discharge of effluent without a licence granted by NEMA in relation to the property on which the apartments are situated. The directors approached the court for a judicial review of the decision to bring criminal charges against them on the basis of procedural impropriety. The directors argued that they ought not to be charged with the offences in question since the apartments from where the effluent is alleged to be discharged were erected and sold to third parties upon the issuance of certificates of occupation. Accordingly, the management of the





affairs of the units vested in a management company which had third party purchasers constituted as shareholders and that neither of the directors resided in the said units nor were they directors of the management company. However, NEMA argued that the responsibility to set up a sewerage treatment plant was the responsibility of the directors at the time of development and not the subsequent owners of the apartments. The court found that the arguments brought before it did not sufficiently challenge the actual fairness of the criminal proceedings against the directors and found that the directors should defend their case before the criminal courts. This case is still ongoing, and it is yet to see if the directors of Join Zein Investments Limited will be held personally liable for the offence.

- In **Republic v National Environment Management Authority Ex Parte Nairobi City Waters and Sewerage Company & Another [2020] eKLR**, the managing director of Nairobi City Waters brought an application for judicial review before the court in order to have NEMA’s decision to bring criminal charges relating to the discharge of pollutants into the aquatic environment and failure to exercise due diligence to ensure compliance against him reviewed. He argued that he had not been accorded notice or fair administrative action in respect of the

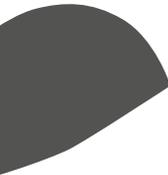
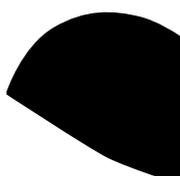
criminal charges brought against him and that Nairobi City Waters is a body corporate capable of being sued in its own right. The court granted the managing director’s request to stop the criminal proceedings against him and allowed him to bring the matter before the courts for the judicial review of NEMA’s decision to bring criminal charges against him personally. The judicial review case is yet to be concluded and the determination as to whether the managing director can be sued in his personal capacity is still pending.

In GHANA the Hazardous and Electronic Waste Control and Management Act, 2016 prohibits the generation, import, export, transport, sale, purchase, dealing in, treatment and disposal of hazardous and other waste in ways inconsistent with its provisions. A person who contravenes this provision commits an offence and is liable on summary conviction to a fine of the GHS equivalent of USD2-million or a term of imprisonment of up to 20 years and in addition, must re-export the waste and pay for the cost of cleaning up any contamination caused by the hazardous waste. While there are currently no court cases in Ghana that have found entities to be liable for environmental damage, in 2022 the Ministry of Lands and Natural Resources, after an investigation, fined a Ghanaian subsidiary of a Spanish company rendering mining support services USD6-million when a truck transporting

the company’s mining explosives exploded in Apeatse, a community in Western Ghana, killing people and destroying property.

An entity found to have contravened the Carbon Trading Regulations in TANZANIA may face a fine ranging from TZS10-million to TZS10-billion, or a term of imprisonment for period not exceeding 12 years. Additionally, an individual convicted of such an offence may be barred from participating in any carbon trading projects. Non-compliance with the Environmental Management Act constitutes a legal offence, and individuals found guilty of an offence may face the following consequences:

- a fine ranging from TZS3-million to TZS50-million, imprisonment for a period not exceeding 12 years, or both such fine and imprisonment. Furthermore, the court may issue additional directives, including:
  - requiring the offender to cover the entire expense associated with cleaning up the polluted environment and mitigating pollution;
  - mandating the offender to remediate the polluted environment and eliminate the effects of pollution to the satisfaction of the National Environment Management Council; and
  - the court may order the polluter to address the costs, injuries, or adverse impacts of pollution on any third parties





by providing suitable compensation, restoration, or restitution.

The UGANDA National Environment Act, 2019 (“NEA”) provides that any person who discharges or emits any pollutant into the environment contrary to approved standards or causes emissions to escape into the air in any manner contrary the NEA may if found liable be subjected to a fine of approximately USD271 000 or imprisonment for a period not exceeding 15 years, or both such fine and imprisonment. NEMA is empowered to enforce penalties against directors for environmental breaches contrary to the NEA. The National Environment (Waste Management) Regulations of 2020 provide that a person who dumps waste that is rejected by a waste handler commits an offence and is liable on conviction, to the following penalties:

- in the case of an individual, to a fine not exceeding approximately USD55 000 or imprisonment not exceeding two years, or both such fine and imprisonment;
- in the case of a body corporate, to a fine not exceeding approximately USD270 000; or
- in the case of a continuing offence, to a fine not exceeding approximately USD11 000 in respect of each day or part of day on which the offence continues.

In 2019, the MOZAMBICAN courts ordered a foreign mining company to compensate small

farmers after its subsidiary in the country built a barrier around its mining complex in the Province of Tete preventing individuals from reaching their territories.

There are several cases in NIGERIA, particularly in the oil and gas sector, where the courts have found entities liable for environmental damage. An example is the case of *S.P.D.C.N Ltd. V. Okeh* [2018] 17 NWLR (Part 1649), where the Court of Appeal entered judgment for the Plaintiffs against a subsidiary of Shell BP in Nigeria and awarded damages for environmental damage caused by spillages. In a similar matter, the Supreme Court in January 2019 entered a USD17-billion judgment against Shell in favour of 88 communities in Ejama-Ebubu, Rivers State Nigeria for oil spillage.

#### **CANCELLATION OF PERMITS, LICENCES OR AUTHORISATIONS**

RWANDA’S Ministerial Order No. 004/2021 of 12/02/2021 governing the use of substances that deplete the ozone layer or may cause climate change permits the suspension or revocation of authorisation of importation, exportation, recovery, maintenance, repair, reclamation or recycling of controlled substances and related equipment if an authorised person does not comply with the requirements of the Order.

The legal repercussions of non-compliance with the Corporate Social Responsibility Regulations in TANZANIA include the suspension or cancellation of a mining licence.

In *Scheer Property Limited v National Environment Management Authority* (High Court Miscellaneous Cause No. 232 of 2008) in UGANDA, the Plaintiff challenged the decision of NEMA to refuse to grant him a permit required for his real estate project on the parcel of land he owned on the shores of Lake Victoria. The court dismissed the petition because he did not follow the legal requirement to conduct an environmental impact assessment.

The ZAMBIAN case of *Moses Lukwanda and Nine others vs. Zambia Airforce Projects Limited and Seven Others* involved nine headmen from Chongwe district and the Chalimbana River Headwaters Conservation Trust suing private investors and government agencies for initiating development projects in the environmentally sensitive Lusaka East Forest Reserve, known as Forest 27, in violation of environmental and water resource laws. The Appellants sought a declaration protecting the right of local residents to access clean water from the Chalimbana River, which was threatened by the Respondents’ development activities. They requested an injunction to stop the construction in Forest 27 and other appropriate remedies. Initially, the Lusaka High Court granted an interim injunction to halt construction, but the judge recused themselves. Subsequently, another judge vacated the injunction, leading the Appellants to appeal to the Court of Appeal. The Court of Appeal found merit in the application for an interim injunction and



granted it. The five respondent investors were prohibited from continuing their development work in Forest 27 until they complied with pre-conditions set by the Zambia Environmental Management Agency and obtained a Court of Appeal order to that effect. The court also awarded costs to the Appellants.

### **LABOUR-RELATED SANCTIONS**

The Labour Act in GHANA does not prescribe any penalty for the breach of a worker's rights. However, an employee may report an employer to the National Labour Commission which is mandated to investigate and mediate disputes between employers and their employees. Alternatively, the employee may sue the employer.

In case of death as a result of contravention of the Occupational Safety and Health Act in UGANDA, an employer is liable to a fine not exceeding approximately USD541 000 or 50 months imprisonment, or both such fine and imprisonment. An employer who interferes with the employees' right of association as provided for in the Labour Unions Act is liable on conviction to a fine not exceeding USD519 000 or imprisonment for a term not exceeding four years, or both such fine and imprisonment.

Under the Companies Act in GHANA, where a director breaches his/her duty, the director and any other person who knowingly participated in the breach are liable to compensate the company

for any losses incurred as a result of the breach and account to the company for any profits gained from the breach.

The penal sanctions for directors of both listed and non-listed companies who do not comply with their fiduciary duties and responsibilities are provided for in NAMIBIA'S Companies Act, 2004. These may include removal from their position, being held personally liable by shareholders for company losses and liabilities and criminal charges.

In UGANDA, under the Capital Markets Authority Act, 2013, listed companies may be subjected to a penalty of up to USD271 000 for inaccurate reporting.

### **COMMUNITY OPPOSITION AND COMPENSATION**

MAURITIUS has a corporate social responsibility ("CSR") programme which requires all profitable companies to allocate 2% of their chargeable income of the proceeding income year to a "CSR programme", which is defined in the Income Tax Act as "a programme having as main objective to alleviate poverty, to relieve sickness or disability, to advance the education of vulnerable persons or to promote any other public object beneficial to the Mauritian Community". Where the Director-General of the Mauritius Revenue Authority has reason to believe that a company has not complied with the CSR requirements, he may raise an assessment under the Income Tax

Act, and the said company may be subject to penalties.

The Petroleum (Exploration, Development and Production) Act, 2013 provides that the licensee for the exploration and production of petroleum in UGANDA shall take into account the interests of the community. A licensee who fails to do so may be required to compensate the community for the infringement of their rights.

In NAMIBIA, ESG litigation can be brought through the courts, tribunals or before quasi-judicial bodies such as the Ombudsman. Legal challenges involving ESG risks have mostly occurred in tribunals or quasi-judicial forums as opposed to superior courts. Although not specifically predicated on the basis of environmental damage, in 2022, concerned residents of the Kavango East and West Regions lodged an appeal with the Minister of Environment, Forestry and Tourism against the Environmental Commissioner's decision to permit an oil exploration company to increase its onshore operations. The appeal's premise is that the decision disregarded potential negative effects of the expanded exploration on local communities, wildlife, and natural resources. This case highlights a growing trend of opposition to the establishment of carbon-intensive industries due to inadequate public engagement. Similarly, a marine phosphate mining company was granted an environmental clearance certificate for marine phosphate mining in 2017 by the

Environmental Commissioner. The Second Respondent appealed against the Commissioner's decision to the Minister of Environment, Forestry and Tourism. The minister set aside the granting of the certificate, primarily on the ground that the Commissioner did not adequately consult the public and interested persons.

### **OTHER REPERCUSSIONS**

Other consequences of non-compliance may include revocation of "green" accreditation or certification, leading to the withdrawal of investment, credit, or financing. Additionally, stakeholders closely monitor an entity's adherence to sustainability standards, and any deviation can result in reputational damage. Negative publicity

due to non-compliance can affect consumer trust and loyalty, as well as investor perceptions, trust and confidence. Investors may opt to withdraw their investments from a company or refrain from making new investments due to reputational damage.

### **SOURCES:**

1. Subject matter experts in the ENS offices and partner firms in the countries under review.
2. Websites of various international organisations and local online newspapers, Parliaments, ministries, and departments in the countries under review.

**"ESTABLISHING MODERN  
LEGAL FRAMEWORKS,  
IMPLEMENTING  
ENVIRONMENTAL TAX  
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GOOD GOVERNANCE  
IS CRUCIAL"**





# PART TWO:

A CLOSER LOOK AT REGULATORY  
DEVELOPMENTS IN KEY ANGLOPHONE  
AFRICA JURISDICTIONS

# BOTSWANA



Over the course of 2023, Botswana has witnessed significant regulatory developments in the sphere of financial services. The developments are aimed at enhancing the country's regulatory frameworks to ensure stability, transparency, and competitiveness in its financial sector and enhancing corporate governance and the supervision of banks and non-bank and deposit-taking institutions.

## REGULATORY DEVELOPMENTS

### Corporate / Commercial

- In terms of the **Ombudsman Act (Date of Commencement) Order, 2023**, the Ombudsman Act No. 22 of 2021 came into operation on 3 July 2023.<sup>1</sup> The Act provides for the continuation of the Office of the Ombudsman, for the powers and functions of the Ombudsman, the investigation of administrative actions taken on behalf of the government, the protection and promotion of human rights, and the investigation of human rights violations by a government department or a private entity.

### Financial services

- The **Banking Act, 2023**, which was gazetted in May 2023, provides for the licensing, regulation and supervision of banks and deposit-taking institutions and promotion of the safety and soundness of banks.

- In June 2023, the **Non-Bank Financial Institutions Regulatory Authority (Supervisory Levies) Regulations, 2023** were gazetted. The Regulations set out the supervisory levies payable by non-bank financial institutions in each financial year and the interest payable by these institutions on unpaid supervisory levies. They provide for the imposition of a penalty levy on a non-bank financial institution where a misstatement or other non-compliance by the non-bank financial institution leads to an under-collection of a supervisory levy, thereby deterring misstatements by non-bank financial institutions.
- The **Non-Bank Financial Institutions Regulatory Authority Bill, 2023** seeks to re-enact, with amendments, the Non-Bank Financial Institutions Regulatory Authority ("NBFIRA") Act (Cap. 46:08) to:
  - continue the establishment and enhance the regulatory capacity of NBFIRA;
  - enhance corporate governance in the non-bank financial sector;
  - provide for matters relating to compromises, arrangements, amalgamations, statutory management and winding up of non-bank financial institutions; and
  - provide for the regulation of conglomerates to meet the growth and

<sup>1</sup> The Order refers to the "Ombudsman Act, 2023". However, it is understood that as per the Ombudsman Act currently in force, this should read "Ombudsman Act, 2021". Clarification from the authorities had not been provided at the time of publication of this Round-up.





development of the non-bank financial sector.

- The following rules and guidelines were issued by the NBFIRA in early 2023:
  - Non-Bank Financial Institutions Regulatory Authority (Capital Markets Sector Corporate Governance) Rules, 2023, of February 2023;
  - Financial Resources Requirements Rules for Asset Managers, 2023, effective from 1 April 2023;
  - Financial Resources Requirements Rules for Custodians, 2023, effective from 1 April 2023;
  - Financial Resources Requirements Rules (FRRRs) for Securities Brokers or Dealers, 2023, effective from 1 April 2023; and
  - Pension Fund Investment Rules 2 (PFR2), 2023, effective from 1 June 2023.
- The Related Party Transactions Guidelines for Non-Bank Financial Institutions aim to improve disclosure requirements on related party transactions and outstanding balances with an NBFI's related party.
- As a consequence of the enactment of, and for consistency with, the Movable Property (Security Interests) Act (Act No. 5 of 2022), the Insolvency (Amendment) Bill, 2023 seeks to amend the Insolvency Act (Cap. 42:02) to introduce the term "security interest". The Movable Property (Security Interests) Act was enacted to harmonise the existing fragmented pieces of legislation on movable property as collateral in accordance with international best practices and creditors' preferences.

“STABILITY, TRANSPARENCY  
AND COMPETITIVENESS  
OF THE FINANCIAL  
SECTOR ENHANCED”

# GHANA



In the latter part of 2022, Ghana faced macroeconomic challenges as a result of a mix of domestic imbalances and external shocks. Pre-existing fiscal vulnerabilities, such as rising debt burdens, high energy sector debt and low public revenues, together with the new economic challenges led, to the government applying to the International Monetary Fund (“IMF”) for relief funding of USD3-million, which has been granted. Based on the terms of the IMF package, the government amended a number of business laws to provide for increased tax revenue and a widening of taxable products or services, aimed at increasing government’s revenue.

In addition to tax law amendments, Ghana has made several regulatory amendments to improve various aspects of the law, such as expanding Ghanaian content and participation requirements in the petroleum downstream sector and providing modes of rewarding whistleblowers.

Leading up to 2024, it is expected that government will use the revenue from the new and amended tax laws to facilitate economic stability and growth. Further, with 2024 being an election year, it is envisaged that the Bank of Ghana will

work keenly to ensure fiscal stability and economic growth to rebuild investor confidence in the country.

## REGULATORY DEVELOPMENTS

### Corporate / Commercial

- The **Whistleblower (Amendment) Act, 2023** amends the Whistleblower Act, 2006 to expand the sources of money for the Whistleblower Reward Fund (the “Fund”), to provide a ceiling for the Fund and to specify the mode of rewarding a whistleblower.

### Energy

- The **National Petroleum Authority (Amendment) Act, 2023**, which was assented to on 21 April 2023, amends the National Petroleum Authority Act, 2005 (Act 691) to provide for the promotion, monitoring and enforcement of Ghanaian content and Ghanaian participation in the petroleum industry. The Act provides the enabling environment and opportunities for Ghanaians through the enforcement of mandatory participation of Ghanaians in the ownership,

operations, control and management of activities in the petroleum downstream industry.

### Finance

- On 3 April 2023, the president assented to the **Growth and Sustainability Levy Act, 2023** (Act 1095) which repeals, subject to specified savings, the National Fiscal Sustainability Levy Act, 2013 (Act 862). The Act imposes a special levy, known as the Growth and Sustainability Levy, to raise revenue for growth and fiscal sustainability of the economy. The levy is based on the percentage of the profit before tax or the percentage of gross production of specified categories of companies.
- The **Standard for Automatic Exchange of Financial Account Information (Amendment) Act, 2023** (Act 1099) was assented to on 5 May 2023 to amend the Standard for Automation Exchange of Financial Account Information Act, 2018 to strengthen due diligence procedures and proscribe circumvention practices.

# KENYA



Kenya hosted a number of high-level forums in 2023 to showcase Africa's potential as a powerhouse for clean, green energy and its active role and commitment to global climate action efforts. In June 2023, the 25<sup>th</sup> edition of the [Africa Energy Forum](#) was held in Nairobi, where investors and stakeholders addressed key strategic topics such as energy for mining, connectivity, the just energy transition, and Africa's potential in the global hydrogen sector in a bid to develop plans to drive the continent's energy agenda forward. During the forum, the Government of Kenya, together with other stakeholders, addressed the development of public-private partnership ("PPP") projects, as well as efforts to lower electricity expenses for Kenyan citizens and businesses.

Kenya also hosted the Africa Climate Summit alongside the Africa Climate Week in September 2023. African leaders called for a comprehensive and structured approach to addressing the emerging debt crisis in order to create the necessary fiscal space required by all developing nations for financing both development and climate-related initiatives.

During President William Ruto's first year in office, there has been a trend towards adopting pro-business laws to attract foreign investments into Kenya. The government has also implemented a tax exemption for companies on unrealised gains relating to employee-allocated shares commencing 1 July 2023. Furthermore, it allowed for the removal of the 30% local shareholding requirement for foreign information and communication technology ("ICT") companies.

During the African private sector dialogue conference on the African Continental Free Trade Area ("AfCFTA"), the president proposed to remove visa fees for African nationals travelling to Kenya for business purposes in a bid to align Kenya's policies with the AfCFTA's objectives of eliminating trade barriers and enhancing intra-African trade. In the energy sector, the Government of Kenya lifted the moratorium on power purchase agreements ("PPAs") not concluded by 29 March 2021 and the renewal of expiring PPAs.

This trend is expected to continue in 2024 given the president's determination to make Kenya an attractive investment destination. A reduction in corporate tax rates from 30% to 25% is anticipated in 2024, according to the draft Medium-term Debt Strategy for the period 2024/2025 – 2026/2027 to further encourage investors to invest in Kenya. The adoption of a single merger notification and analysis regime between the Competition Authority of Kenya and the East African Community Competition Authority, as per the bilateral agreement between the two regulators which was signed in May 2023, is also expected.

## REGULATORY DEVELOPMENTS

### Agriculture & Fisheries

- **The Fisheries Management and Development Bill, 2023** seeks to provide a comprehensive legislative framework for the investment in and development and governance of the oceans and fisheries resources; in line with

<sup>2</sup> Also refers to countering the financing of proliferation of weapons of mass destruction.





the national development policy objectives envisaged in the Vision 2030. It is aligned to international and regional instruments governing global fisheries and the relevant national laws. The Bill seeks to align the governance of the fisheries sector to the Constitution of Kenya, 2010 which provides for the sustainable use of natural resources for the benefit of the Kenyan people and governance at county and national levels. The Bill passed the First Reading on 6 July 2023.

#### AML/CFT

- The **Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Act, 2023** was enacted on 1 September 2023 and amends the laws relating to anti-money laundering (“AML”), countering the financing of terrorism (“CFT”) and countering proliferation financing (“CPF”)<sup>2</sup> by *inter alia* amending the Extradition (Contiguous and Foreign Countries) Act (Cap. 76). The Act empowers regulators in the financial sector, such as the Central Bank of Kenya, the Insurance Regulatory Authority and the Capital Markets Authority, to enforce compliance with the legal requirements for AML/CFT/CPF. The Act also aligns the Companies Act with provisions of the Financial Action Task Force (“FATF”) standards and further prescribes statutory obligations for filing a statement of particulars of beneficial owners and keeping a register of beneficial owners for every company.

#### Corporate / Commercial

- The **Privatisation Act, 2023** replaces the Privatisation Act, 2005 to improve the efficiency and competitiveness of Kenya’s productive resources. It was assented to by President William Ruto on 9 October 2023 and its implementation commenced on 27 October 2023. The Act establishes a Privatisation Authority which will advise the government on the privatisation of public entities, including facilitating government privatisation policies and implementing the privatisation programme. Through the Privatisation Programme, the Cabinet will identify and approve public entities for privatisation. The Act also provides for various methods of privatisation including initial public offering of shares, the sale of shares by public tendering, and sale resulting from the exercise of pre-emptive rights.
- The government has withdrawn the 2020 ICT Policy requirement that licensed companies in the ICT sector should have at least 30% substantive local ownership by March 2024. This move by the government is driven by the realisation that the regulation made it impossible for large corporations to invest in Kenya’s ICT sector.
- The **Limited Liability Partnership Act, 2011** is amended to prescribe statutory obligations for filing a register of beneficial owners with the Registrar and keeping of a register of beneficial owners for every limited liability partnership.





- The Companies Act, 2015 is amended to prescribe statutory obligations for filing a statement of particulars of beneficial owners and to keep a register of beneficial owners for every company. It also aligns various provisions of the Act with the FATF Standards.

Immigration

- The Kenya Citizenship and Immigration (Amendment) Bill, 2023, which is currently waiting to be tabled before the Senate for its First Reading, seeks to establish mechanisms for the protection of the interests of Kenyans living abroad. This Bill has put forward some key amendments to the Kenya Citizenship and Immigration Act No. 12 of 2011 such as: introducing the filing of statutory declarations or affidavits for applications for citizenship by persons seeking to regain their citizenship; allowing adopted children to apply to be registered citizens where their parents or legal guardians failed to register them upon attaining the age of majority; introducing the

right to access government services such as updating voter registration information and social security details; introducing a voluntary savings scheme for Kenyans living abroad; and providing a framework for the voluntary establishment of associations of Kenyans living abroad.

Insurance

- The Insurance (Amendment) Bill, 2023, gazetted on 12 May 2023 seeks to enhance accountability within insurance companies and observance of fiduciary duties as well as professional responsibility by senior managers of insurance companies by amending the Insurance Act (Cap. 487) to provide for offences and penalties relating to the management of insurance companies. The Bill seeks to establish accountability for insurance companies in the case of financial collapse, given recent past events and the failure of several insurance companies. The Bill was tabled before the National Assembly for the First Reading on 25 July 2023.

Real estate

- The National Land Commission (Amendment) Bill, 2023 seeks to bestow the National Land Commission with the power to continue reviewing grants or dispositions of public land so as to establish their propriety or legality. This will enable the National Land Commission to continue admitting and processing historical land injustices. The following statutory timelines have been scrapped under the Bill:
  - The five-year time cap on review of all grants and dispositions of public land to establish their propriety or legality;
  - The prerequisite of petitioning Parliament to extend the five-year time cap of review of all grants and dispositions of public land to establish their propriety or legality;
  - The five-year time cap for instituting and processing historical land claims; and
  - The 10-year repeal period for provisions on historical land injustices.

The Bill is yet to be tabled for its First Reading in the National Assembly.

“THE POTENTIAL AS A POWERHOUSE FOR CLEAN, GREEN ENERGY SHOWCASED”

# LESOTHO



During 2023, legislation, particularly in the financial services industry, has been enacted to promote and encourage development and economic progression in Lesotho. These regulatory changes are in line with the implementation of the IMF 2022 Article IV consultation policy priorities which include:

- Strengthening monetary policy frameworks, financial sector supervision, and policy coordination to support credibility, investor confidence, macroeconomic stabilisation, and the exchange rate peg;
- Implementing a risk-based approach to financial sector AML/CFT supervision; and
- Rebalancing incentives within the economy by shifting from a government-centric focus to one with significantly more favourable conditions for private sector-led growth.

## REGULATORY DEVELOPMENTS

### Financial services

- The **Financial Institutions (Amendment) Act, 2023, effective from 27 January 2023**, was enacted to repeal the Money Lenders Act, 1989 in order to provide for the administration, supervision and regulation of traditional money lenders under the purview of the Financial Institutions Act, 2012 and the Financial Institutions (Credit Only and Deposit Taking Micro-Finance Institutions) Regulations, 2014. The Act was driven by

changes in the scope of operations by money lenders and the growth of the economy of Lesotho. The Money Lenders Act was found to be outdated, as it no longer addresses the prevailing development and challenges, particularly relating to the microfinance market. The Act further repeals and substitutes section 4(2)(a) of the Financial Institutions Act, as it provided that the Financial Institutions Act does not apply to institutions licensed under the Money Lenders Act. The Act also provides for transitional arrangements to allow for a smooth transition and regulation of traditional money lenders under the Financial Institutions Act.

- Effective from 10 February 2023, the **Money Laundering (Administrative Sanctions) Rules, 2023** provide for the administrative sanctions regime for breach of the provisions of the Money Laundering and Proceeds of Crime Act, 2008 and its implementing regulations by accountable institutions. The Rules apply to accountable institutions licensed and supervised by the Central Bank of Lesotho. Accountable institutions are also required to register with the Financial Intelligence Unit, which is housed at the Central Bank of Lesotho and mandated to coordinate AML/CFT activities in the country.
- Following the enactment of the Financial Consumer Protection Act, 2022 in June 2022, the **Financial Consumer Protection (Disclosure of Credit Information) Regulations, 2023**





were gazetted and became effective on 24 February 2023. The Regulations, which apply to consumer credit agreements issued by financial service institutions licensed by the Central Bank of Lesotho, aim at establishing a consistent disclosure regime for essential information on credit agreements on financial products and services.

- The **Financial Institutions (Computation of Capital Charge for Credit, Operational and Market Risks) Regulations, 2023** were published and became effective from 11 August 2023 with the aim of promoting public confidence, improving the quality of regulatory capital, and providing a common approach in which a bank shall compute the appropriate capital charge for Pillar I risks. A further objective of the Regulations is to ensure that a bank maintains an adequate level of capital to protect its depositors and creditors; maintains consistency and transparency of regulatory capital; and holds adequate capital to support credit, operational and market risks exposure.
- The **Money Laundering and Proceeds of Crime (Amendment of Schedule) Notice, 2023**, which is effective from 25 August 2023, amends the list of accountable institutions under Schedule 1 of the Money Laundering and Proceeds of Crime (Amendment of Schedule) Notice, 2019 by including insurance intermediaries to the list.
- The Central Bank of Lesotho published the following Regulations pursuant to monitoring and regulating the capital market and for the better carrying out of the purposes and provisions of the Central Bank of Lesotho Act, 2000:
  - The **Central Bank (Capital Markets) (Amendment) Regulations, 2023**, effective from 27 January 2023, amend the Central Bank (Capital Markets) Regulations, 2014 in relation to the application for and renewal of licences for a securities exchange; stock broker, broker dealer or dealer; investment adviser; and representative of a dealer, broker, investment adviser and broker dealer. The Regulations also insert a new regulation to provide for the combatting of money laundering and financing of terrorism by a licensee.
  - The **Central Bank (Collective Investment Schemes) (Amendment) Regulations, 2023**, effective from 14 July 2023, and the **Central Bank (Collective Investment Schemes) (Amendment) Regulations, Rectification of Errors Notice, 2023**, effective from 11 August 2023, were published to make various changes to the Central Bank (Collective Investment Schemes) Regulations, 2018, including in relation to the licensing of asset managers; the registration, form, and structure of, and liability and participation in a collective investment scheme; and the licensing of a collective investment scheme agent.





### Pharmaceutical

- The pharmaceutical industry is now being regulated with the introduction of the **Lesotho Medicines and Medical Devices Control Authority Act, 2023**, which was gazetted in August 2023. The purpose of the Act is to establish a Medicines and Medical Devices Control Authority tasked with regulating the manufacture, sale, distribution, storage, import, export and use of medicines and

medical devices; and ensuring that such products meet the required standards of safety, efficacy, and quality, thus protecting and promoting public health. This Act will redefine the pharmaceutical industry and promote ethical standards within the industry.

“INCENTIVES REBALANCED  
TOWARDS MORE PRIVATE  
SECTOR-LED GROWTH”



# MAURITIUS

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Following the 2023-2024 national budget, several measures were announced by the Finance minister to improve the doing business environment in Mauritius. This includes aspects such as the setting up of a committee to coordinate and ensure implementation of reforms in line with the recommendations of the World Bank, and encouraging the adoption of e-signatures and recognition of certifications including DocuSign and Adobe Sign by the Information and Communication Technologies Authority to facilitate business transactions. In addition, investors have started to capitalise on the use of new corporate vehicles, such as variable capital companies, introduced in legalisation.

Regulatory developments have been geared towards creating a more business friendly environment by reinforcing Mauritius's position as a reputable international financial centre, and adopting digitalised methods of improving business transactions, whilst also consolidating the AML/CFT framework by taking a "risk-averse" approach. In addition, investors will be testing new forms of consideration such as virtual assets and digital currencies.

The Governor of the Bank of Mauritius announced at the IMF/World Bank Community of Central Bank Technologists workshop on the theme of *The Future of Central Bank Money in a Digital World* that the Bank of Mauritius envisages

the rolling out of the Digital Rupee on a pilot phase and finalisation of design attributes of the Digital Rupee in November 2023. In light of this, the Bank of Mauritius in June 2023 issued a public consultation paper on the Central Bank Digital Currency ("CBDC"). The proposed CBDC in Mauritius will be integrated with existing payments systems to facilitate switching funds between the Digital Rupee and users' bank accounts. In September 2023, the Bank of Mauritius said plans to launch the digital currency were progressing well and it would begin a pilot project in the next couple of months.

## REGULATORY DEVELOPMENTS

Most of the business-related changes announced in the national budget 2023-2024 have already been implemented by the Finance (Miscellaneous Provisions) Act 2023, with the key developments outlined below.

- The **Companies Act 2001** was amended to provide that a public company must have a minimum of 25% of women on its board, effective from 1 January 2024. A new section 140(2) was also introduced to provide that a meeting of shareholders for considering the resignation of the last remaining director and the appointment of one or more new directors shall be held within one month of the intention to resign or from the date of the death of the last remaining director, or within one month of the appointment of



one or more new directors. In the event of non-compliance with this requirement, the Registrar may remove that company from the Register.

- The **Financial Services Act 2007** was amended to include definitions of “AML/CFT” and “AML/CFT legislation” which now includes the Financial Intelligence and Anti-Money Laundering Act, the United Nations (Financial Prohibitions Arms Embargo Travel Ban) Sanctions Act; or any regulations or guidelines issued under these Acts. The Financial Services Commission (the “FSC”) has also been empowered to conduct investigations and give directions to any licensees in order to ensure compliance with AML/CFT legislation.

A breach of any AML/CFT legislations will result in disciplinary proceedings before the Enforcement Committee of the FSC. The FSC is also able to assist foreign supervisory institutions in their regulatory functions. Other notable changes include the possibility for licensees to file documents electronically and the introduction of a requirement for licensees to submit independent compliance reports in accordance with the requirements set out by the FSC. Moreover, the chief executive of the FSC may now terminate a licensee’s licence after giving at least 90 days’ notice in case of non-payment of any administrative penalties.

- The **Securities Act 2005** was amended to provide that closed-end funds and collective investment funds may now invest in money market instruments or debt instruments including loans, debt obligations or similar instruments.
- The **Variable Capital Companies Act 2020** was amended to enable variable capital companies to operate family office activities and other activities as may be specified in FSC Rules. The FSC has also been empowered to issue rules which provide for the criteria, requirements, and obligations applicable to a variable capital company, sub-fund or special purpose vehicle; and the taking of fees and the levying of charges.
- The **Economic Development Board Act 2017** was amended to *inter alia*, extend the Premium Investor Scheme in order to facilitate the acquisition of non-strategic assets of the government and to make the applicable criteria for an occupation permit, and residence permit applicable to non-citizens and young professionals more attractive. For instance, the minimum wage for investors applying for an occupation permit has now been set at MUR30 000 per month in all sectors.
- The **Virtual Asset and Initial Token Offering Services Act 2021** was amended to enable virtual asset custodians to hold custody of securities tokens or such other instruments





as the FSC may approve; remove the requirement for an approval letter issued by a virtual asset exchange or an equivalent acceptable to the FSC to ease the process for applying for initial token offerings; and enable the FSC to make rules on the establishment of a register for virtual assets to record providers of virtual assets.

- **The Non-Citizens (Employment Restriction) Act 1973** was amended by adding a section on work permits which among others states that an application for a permit or for the renewal of a permit shall be made to the

minister responsible for employment, through the National Electronic Licensing System. Such application shall be deemed to have been granted if the application is not determined within 30 working days from the date of the complete application, unless the applicant has received, during that period, a notification from the ministry that the application is still under consideration. Once the application is granted, the applicant shall, within 30 days of the decision of the minister, pay such fee as the ministry may determine, failing which the application shall lapse.

“MAURITIUS’S POSITION  
AS A REPUTABLE  
INTERNATIONAL FINANCIAL  
CENTRE REINFORCED”



# NAMIBIA



Renewable energy in general, and green hydrogen in particular, has been identified as a modern source of energy that can substantially improve the socio-economic development of Namibia and the African continent, while also ensuring a clean environment and energy security. Green hydrogen production in Namibia is expected to contribute substantially to economic growth, create employment and foster environmental sustainability by reducing carbon usage. In this regard, ENS Namibia has been at the forefront of the local green hydrogen revolution in providing ongoing legal services to Hyphen Hydrogen Energy, the preferred bidder of a USD9.4-billion green hydrogen project to be developed in the Tsau//Khaeb National Park in southern Namibia.

## REGULATORY DEVELOPMENTS

### Corporate / Commercial

- The **Guidelines for Unsolicited Proposals for Public-Private Partnership Projects** under the Public Private Partnership Act, 2017 were gazetted on 17 May 2023 and *inter alia* provide for the submission, assessment and evaluation of unsolicited proposals, including the requirements for proposals to be considered as unsolicited proposals; and for a competitive bidding process.
- The **Promulgation of Companies Amendment Act, 2023** and the **Promulgation of Close Corporations Amendment Act,**

**2023** were gazetted on 21 July 2023 to, among others, require companies and close corporations respectively to keep and maintain registers of beneficial owners.

- The **Investment Promotion and Facilitation Bill** was tabled before the National Assembly by the Minister of Industrialisation and Trade on 25 November 2021. It was subsequently withdrawn following criticism by both members of the National Assembly and the public and, in early August 2023, the final consultative meeting on the Bill was held. The Bill seeks to provide for the promotion and facilitation of foreign and Namibian investment to enhance sustainable economic development and reduce unemployment; the designation of certain economic sectors and business activities as reserved for certain categories of investors; the approval of investments in designated economic sectors and business activities; the rights and obligations of investors; and dispute resolution mechanisms involving investments. The Bill is being reviewed, stakeholders are being consulted, and final consultations are being held.

### Data protection / Privacy

- The **Promulgation of Access to Information Act, 2022**, gazetted on 28 December 2022, provides for the appointment of an independent and impartial Information Commissioner and Deputy Information



Commissioners; the right of access to information held by public and private entities; and the promotion, creation, keeping, organisation and management of information in a form and manner that facilitates transparency, accountability, good governance and access to information. The Act shall come into effect on a date determined by the minister by notice in the Gazette.

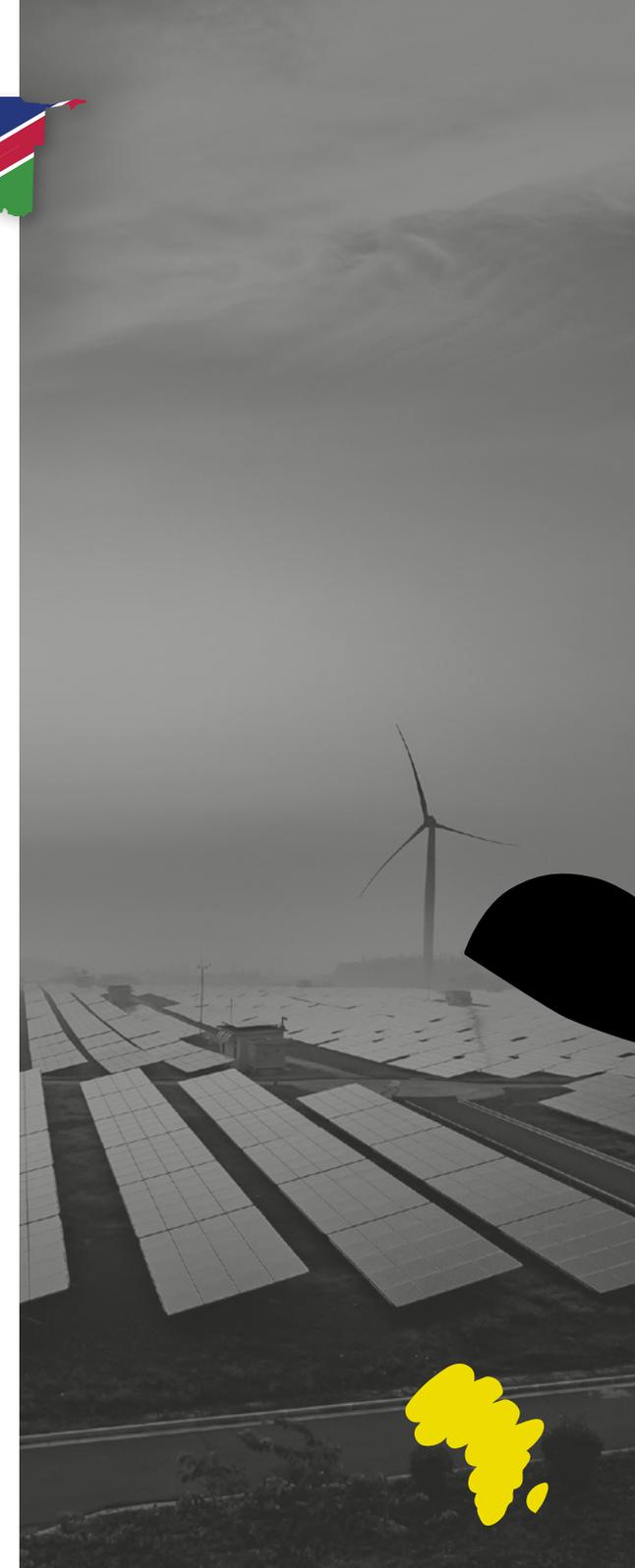
#### Energy

- The **Namibia Green Hydrogen and Derivatives Strategy** sets out the Namibian Government's action plan leading up to March 2025 to establish Namibia as a major global hydrogen producer. Chief among the goals of the strategy is the adoption of a fit-for-purpose legislative regime; a one-stop-shop implementation agency; and support mechanisms to ensure the low cost of production, local content manufacturing, skills development and project finance.
- The **Synthetic Fuels Act** is currently being developed and will define standards that conform to international guidelines to reduce operational uncertainty for developers and set quality levels to comply with international export market requirements. It is also understood that the proposed Act will define oversight activities, such as transparent access to land and permit processes for renewable and green hydrogen that guarantee fair treatment of investors

and local populations while protecting the environment and ensuring safety. The Act is also expected to introduce frameworks for pilot projects where regulation is not in place.

#### Financial service

- The **Financial Institutions and Markets Act, 2021** (the "FIM Act") was gazetted on 1 October 2021 to consolidate and harmonise the laws regulating financial institutions, financial intermediaries and financial markets in Namibia. On 28 April 2023, the Namibia Financial Institutions Supervisory Authority ("NAMFISA") issued **Circular No. FIM/04/2023** to inform the regulated industry of the developments on the envisaged implementation of the FIM Act. The Minister of Finance established a Technical Advisory Committee to *inter alia* conduct formal consultations with the broader public on the **Regulation RF.R.5.10 - Preservation of Retirement Benefits**. This process impacts the implementation date of the FIM Act as the intention is to obtain representations from all stakeholders and for the Technical Committee to objectively assess the representations and formulate advice on the above regulation and other ancillary provisions of Chapter 5 (Retirement Funds) of the FIM Act. The FIM Act itself also requires amendments in respect of some of its provisions which interact with or make references to the Financial Services Adjudicator Act, as it is anticipated that the latter legislation shall not be promulgated





soon. The purported amendments would be subjected to a normal parliamentary legislative process. Accordingly, the implementation date of the FIM Act shall remain in abeyance pending the finalisation of the aforementioned processes. NAMFISA implores the industry to leverage on this regrettable time delay to prepare itself for implementation of the FIM Act.

- The use of cheques as a method of payment in Namibia was abolished in terms of the **Promulgation of Abolition of Payment by Cheque Act, 2022**, effective from 15 March 2023 pursuant to the **Commencement of Abolition of Payment by Cheque Act, 2022**. The Act amends and repeals certain laws that refer to cheques as a method of payment or the requirement of opening or maintenance of a cheque account.
- The **Promulgation of Financial Intelligence Amendment Act, 2023**, gazetted on 21 July 2023, amends the Financial Intelligence Act, 2012 to provide for the operational independence and autonomy of the Financial Intelligence Centre (the “Centre”) and the establishment of the Board of the Centre. The Act also requires accountable institutions to identify and verify beneficiaries and beneficial owners of life insurance policies and other investment related policies, and those with foreign branches and majority owned subsidiaries to implement group-wide AML/CFT/CPF measures on the branches and subsidiaries.
- The **Promulgation of Trust Administration Act, 2023**, gazetted on 21 July 2023, regulates the control and administration of trusts and trustees and trust practitioners providing services relating to trusts.
- The **Promulgation of Virtual Assets Act, 2023**, effective from 25 July 2023, provides for the licensing and regulation of virtual asset service providers; and the designation, powers and function of a Regulatory Authority to regulate and supervise virtual asset service providers and related activities, for purposes of ensuring consumer protection, preventing market abuse and preventing or mitigating the risk of money laundering and financing of terrorism and proliferation activities posed by virtual assets markets. The Designation of Regulatory Authority in terms of section 5 of Virtual Assets Act, 2023 designates the Bank of Namibia as the regulatory authority for the purpose of the Virtual Assets Act, 2023.
- The **Promulgation of Prevention and Combating of Terrorist and Proliferation Activities Amendment Act, 2023**, effective from 25 July 2023, amends the Prevention and Combating of Terrorist and Proliferation Activities Act, 2014 by setting out offences, fines payable and terms of imprisonment for various offences.
- The **Promulgation of Prevention of Organised Crime Amendment Act, 2023**, effective from 28 July 2023, amends the Prevention of Organised Crime Act, 2004 to provide for the offences of smuggling of migrants,



illicit trafficking of stolen goods, piracy and related offences; the seizure of pirate ships or aircrafts; the forfeiture of intended instrumentalities of offences and unexplained assets; and to extend the investigation powers of the Inspector-General to the Director-General of the Anti-Corruption Commission and subject banking institutions to property tracking orders.

- **The Promulgation of Banking Institutions Act, 2023**, gazetted on 27 July 2023, repeals the Banking Institutions Act, 1998; consolidates and amends the laws relating to banking institutions, microfinance banking institutions and controlling companies; establishes an Appeal Board to hear and determine appeals against certain decisions of the Bank of Namibia; and provides for the authorisation of a person to conduct business as a banking institution or microfinance banking institution, and the registration of controlling companies

in respect of authorised banking institutions or microfinance banking institutions.

- **The Promulgation of Payment System Management Act, 2023**, gazetted on 28 July 2023, repeals the Payment System Management Act, 2003 and the Payment System Management Amendment Act, 2010 and provides for the establishment, management, administration, operation, regulation, oversight and supervision of payment, clearing and settlement systems in Namibia; the continuation of the Payment System Management Body as the Payments Association of Namibia; the powers and functions of the Bank of Namibia in relation to ensuring an accessible, safe, secure, efficient and effective national payment system; and the licensing and authorisation of payment instruments, payment service providers and payment system operators.



“GREEN HYDROGEN EXPECTED TO SUBSTANTIALLY IMPROVE SOCIO-ECONOMIC DEVELOPMENT”



# NIGERIA



During the course of 2023, Nigeria continued to promote the ease of doing business within the country. The Business Facilitation Act was enacted as part of the government's initiative to establish a more favourable business environment in Nigeria. The Act amends about 21 business-related laws to remove bureaucratic constraints to doing business in Nigeria and to foster flexibility, transparency, and collaboration in Nigeria's business environment. There have also been notable regulatory developments aimed at improving energy supply in Nigeria, strengthening data protection and increasing access to financial services.

## REGULATORY DEVELOPMENTS

### Corporate / Commercial

- The **Business Facilitation (Miscellaneous Provisions) Act, 2022**, which came into effect on 8 February 2023, was enacted to promote the ease of doing business in Nigeria and eliminate bottlenecks, as well as to amend relevant legislation to facilitate the ease of doing business in Nigeria and institutionalise all the reforms to ease implementation. In eliminating administrative bottlenecks, the Business Facilitation Act introduces mandatory transparency requirements for ministries, departments and agencies, as well as a regime for default approvals.
- On 17 March 2023, the **Copyright Act 2022** came into effect. The Act aims to

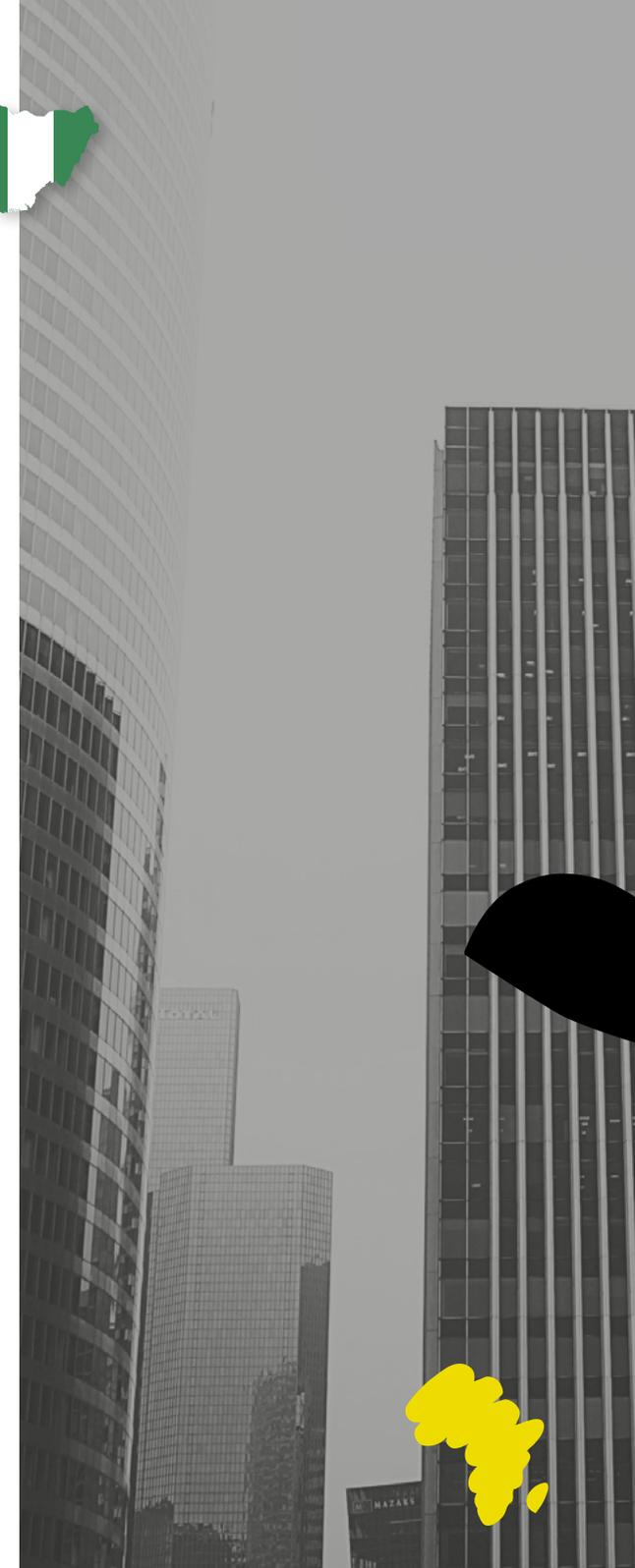
protect the rights of authors to ensure just rewards and recognition for their intellectual efforts; provide appropriate limitations and exceptions to guarantee access to creative works; facilitate Nigeria's compliance with obligations arising from relevant international copyright treaties and conventions; and enhance the capacity of the Nigerian Copyright Commission for effective regulation, administration, and enforcement of the provisions of the Act. In terms of the Act, literary works, musical works, artistic works, audiovisual works, sound recordings, and broadcasts shall be eligible for copyright.

### Data protection / Privacy

- On 12 June 2023, President Bola Ahmed Tinubu signed the **Nigeria Data Protection Bill, 2023** into law. The **Nigeria Data Protection Act, 2023** provides a legal framework for the regulation of personal information in Nigeria and establishes the Nigeria Data Protection Commission tasked with the regulation of the processing of personal information.

### Energy

- The **Customer Protection Regulations 2023** were issued on 29 March 2023 by the Nigerian Electricity Regulatory Commission with the objective of providing a regulatory framework pursuant to the Electric Power Sector Reform Act, the consolidation of existing regulatory instruments of the Commission on the protection of customers





in the Nigerian electric supply industry onto one instrument and protecting the rights of end-use customers of distribution licensees by specifying the minimum standards of service delivery.

- The **Electricity Act, 2023** was assented to on 5 June 2023 to consolidate the laws relating to the Nigerian electricity supply industry; provide a comprehensive legal and institutional framework for the power sector in Nigeria in the areas of electricity generation, transmission, system operation, distribution, supply, trading, enforcement of consumer rights and obligations; and provide for a holistic integrated resource plan and policy that recognises all sources for the generation, transmission and distribution of electricity, including the integration of renewable energy to Nigeria's energy mix and attract investments.
- The following **Regulations** were also issued in June 2023 and became effective from 10 May 2023:
  - Midstream and Downstream Petroleum Safety Regulations, 2023;
  - Midstream and Downstream Petroleum Environmental Regulations, 2023;
  - Midstream and Downstream Decommissioning and Abandonment Regulations, 2023; and
  - Midstream and Downstream Environmental Remediation Fund Regulations, 2023.

#### Financial services

- The Central Bank of Nigeria issued the **Operational Guidelines for Open Banking in Nigeria**, dated March 2023, to ensure consistency and security across the open banking system; set out safeguards for financial system stability under an open banking regime; and promote competition and enhance access to banking and other financial services.
- The **Guidelines for Changes of Operating Licence for Banks and Other Financial Institutions in Nigeria** seek to promote a sound financial system in Nigeria by standardising the requirements for change of operating licences for banks and other financial institutions.
- The Central Bank of Nigeria issued the **Guidelines for the Regulation of Agent Banking and Agent Banking Relationships in Nigeria** in furtherance of the drive for financial inclusion and the introduction of the agent banking initiative, aimed at increasing access to financial services. The Guidelines seek to provide minimum standards and requirements for the operations of agent banking in Nigeria.



# RWANDA



In recent years, Rwanda has been strategically positioning itself to be a foreign direct investment (“FDI”) and financial hub. To achieve this goal, Rwanda has passed laws and regulations in order to create an environment that is attractive to investors and business owners. The Ministry of Finance has announced a budget of RWF5 030.1-billion in the hope of advancing economic recovery, climate change mitigation, investment in education, healthcare, ICT, agriculture and investment, and to support private sector development to accommodate the expected FDI.

The amendments to the company law and law governing partnerships have introduced a higher level of financial transparency and accountability by providing for the legal requirement for companies and partnerships to register beneficial owners with the Rwandan Development Board. In addition, the financial services and insurance-related legislation discussed below has created a robust legal framework for most institutions to encourage compliance and security for local and international businesses and employees.

With the changes already in place, the expectation for 2024 is to maintain compliance with current laws and possibly to shift the focus of policymakers to agriculture and infrastructure.

## REGULATORY DEVELOPMENTS

### Financial services

- The National Bank of Rwanda published Regulation No. 55/2022 of 27/10/2022 relating to financial service consumer protection to implement the Law No. 017/2021 of 03/03/2021 relating to financial service consumer protection. This Regulation came into effect on 7 November 2022 and applies to financial service providers (“FSPs”) and their representatives who offer the following products and services: deposits and savings; loans and credit reporting; insurance, pension; payment services; financial leasing; foreign exchange; and any other activity approved by the National Bank of Rwanda.
- The National Bank of Rwanda issued a directive establishing conditions for non-licensed persons to obtain authorisation to transact in foreign currencies in Rwanda. Directive No. 0520/2023-00041[613.1.4] of 22/02/2023 was issued by the National Bank of Rwanda on 22 February 2023 and provides guidance on the implementation of the Central Bank Regulation on Foreign Exchange Operations, 2022. This requires non-licensed persons to obtain prior authorisation from the National Bank of Rwanda before transacting in foreign currencies.
- Notable changes from Law No. 019/2023 of 30/03/2023 amending Law No. 007/2021 of 05/02/2021 governing companies relate to the obligation to register a beneficial owner. This includes stating who qualifies as a beneficial owner; maintaining an internal and central register of beneficial owners. The Law prohibits allotting bearer shares and imposes a 30-day limit for companies that have ceased to exist to file their records with the Registrar General. All companies and other business entities/arrangements incorporated/registered in



Rwanda are required to submit their beneficial ownership information to the Office of the Registrar General. The deadline for compliance with this statutory requirement was initially set for 31 August 2023 but was extended by the Registrar General to 31 October 2023.

- **Regulation No. 64/2023 of 25/04/2023 on money remittance services**, effective from 28 April 2023, specifies operational requirements for persons who provide money remittance services; encourages the increased use of formal funds transfer systems through the facilitation of remittances that are timely, accessible, cost effective, reliable and transparent; and increases transparency of remittance and payment flows by ensuring that AML/CFT measures are observed in remittance services.
- **Law No. 028/2023 of 19/05/2023 on the prevention and punishment of money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction**, which is effective from 19 May 2023, repeals all its other provisions except Article 27 of Law No. 75/2019 of 29/01/2020 on prevention and punishment of money laundering, financing of terrorism and financing of proliferation of weapons of mass destruction, as amended; and aims at preventing and punishing money laundering, terrorist financing, and the financing of proliferation of weapons of mass destruction.
- **Regulation No. 002/FIC/2023 of 26/06/2023 relating to anti-money laundering, combating the terrorist financing and financing of**

**proliferation of weapons of mass destruction**, effective from 27 June 2023, repeals Regulations No. 001/FIC/2022 of 16/02/2022 relating to AML/CFT/CPF; and determines registration modalities for a reporting person; measures applied for customer due diligence; modalities for record keeping when a reporting person suspends his or her activities; the threshold and requirements relating to wire transfers; countermeasures proportionate to the risks emanating from high-risk jurisdictions; and modalities and time limits for submission of a report of suspicious transactions; and the threshold, modalities and time limits for the reporting of cash transactions or wire transfers.

- **Regulation No. 65/04/2023 of 25/04/2023 governing non-deposit taking financial services providers**, effective from 28 April 2023, establishes licensing requirements and other rules governing non-deposit-taking financial services providers.
- **The Guidelines No. 002/CMA\_G/2023 of 27/04/2023 governing the fintech regulatory sandbox for Capital Markets in Rwanda**, effective from 5 May 2023, repeal all prior regulatory provisions contrary to these Guidelines; aim to provide guidance on the operationalisation of Fintech Regulatory Sandbox innovations related to the capital markets business in Rwanda; and provide that the Fintech Regulatory Sandbox intends to assist start-ups, established Fintech firms and capital market players who seek to test their innovative products and services related to capital markets business.

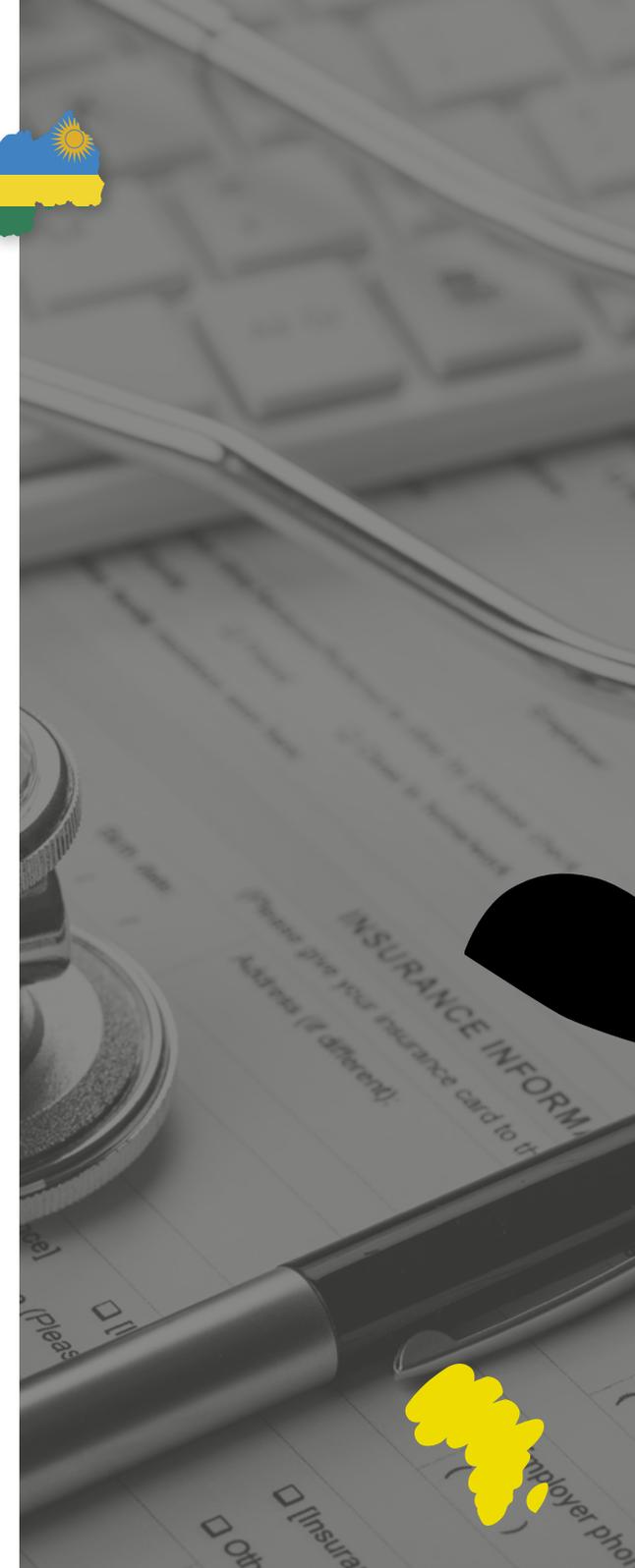




- **Regulation No. 57/2023 of 27/03/2023** establishing licensing requirements and other conditions for deposit-taking microfinance institutions, effective from 31 March 2023, establishes licensing requirements and other rules governing the functioning and services of deposit-taking microfinance institutions.

#### Insurance

- **Regulation No. 66/2023 of 25/04/2023** on licensing conditions for insurers and reinsurers, which is effective from 5 May 2023, repeals Regulation No. 2310/2018-00014 [614] of 27/12/2018 of the National Bank of Rwanda on licensing conditions for insurers and reinsurers and other provisions contrary to this Regulation; aims at establishing the requirements and procedures for licensing of private insurers, re-insurers, Health Maintenance Organization, captive insurers and mutual insurers; and establishes the procedure for the establishment of a reinsurer representative office of a foreign reinsurer.
- **Regulation No. 67/2023 of 14/06/2023** relating to underwriting of large risks and market capacity facilitation, effective from 29 June 2023, repeals Regulation No. 001/2010 of 28/01/2010 relating to market capacity facilitation for foreign insurers and Directive No. 4230/2020-00022 [613] of 15/07/2020 governing the underwriting of large risks; prohibits fronting; and sets the requirements for the underwriting of large risks and market capacity facilitation for foreign insurers.
- **Regulation No. 68/2023 of 14/06/2023** governing the investment of insurers and reinsurers, effective from 29 June 2023, repeals all provisions about the investment of insurers as contained in Regulation No. 05/2009 of 29/07/2009 on licensing requirements and other requirements for carrying out insurance business; sets guidelines and exposure limits for investments on each category of insurance business; and establishes regulatory investment requirements that must be fulfilled by each insurer in order to make sound and appropriate investments that protect policyholders' interests.
- **Regulation No. 69/2023 of 14/06/2023** on licensing requirements and other conditions for insurance intermediaries, effective from 29 June 2023, repeals Regulation No. 4230 /2019-00026 [614] of 26/06/2019 on licensing requirements and other conditions for insurance intermediaries and all previous provisions contrary to this regulation and establishes the licensing requirements and other conditions for insurance intermediaries.
- **Regulation No. 71/2023 of 14/06/2023** governing the organisation of micro-insurance business, effective from 29 June 2023, repeals Regulation No. 2100/2018-00012 [614] of 12/12/2018 of the National Bank of Rwanda governing the organisation of micro-insurance business and directive No. 3160 /2021-00026 [613] of 25/10/2021 on clarification of definition of micro-insurance; and aims to create a conducive environment for micro-insurance business, regulate micro-insurers, protect micro insurance policyholders, and promote and develop micro-insurance business in Rwanda.



# TANZANIA

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Tanzania has recently enacted several laws that may affect various sectors in the country. The regulatory developments may directly or indirectly impact investors and locals doing business in Tanzania, in sectors such as natural resources, insurance, competition law, and other related sectors.

The **Tanzania Investment Act, 2022**, enacted on 2 December 2022, aims to create a more conducive and attractive investment climate in Tanzania by providing various incentives, facilitation, protection, and dispute resolution mechanisms for investors.

The focus will remain on implementing the Tanzania Investment Act as the country seeks to attract more FDI leading up to 2024. The Tanzania Investment Centre's Monthly Investment Factsheet released in August 2023 has shown progress in this regard. It indicates that a total of 58 investment projects worth USD931.60-million were approved in August 2023 in the following sectors:

- 22 in manufacturing;
- 11 in transport;
- 10 in agriculture;
- 6 in tourism;
- 5 in commercial building;
- 3 in services, and
- 1 in economic infrastructure.

FDIs accounted for 38% of the investment projects, local investments, 34%, and joint ventures, 28%.

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## REGULATORY DEVELOPMENTS

### Corporate / Commercial

- The **Tanzania Investment Act, 2022**, effective from 13 June 2023, repeals the Tanzania Investment Act, 1997 and reduces the investment capital for Tanzanian investors from USD100 000 to a minimum of USD50 000; provides for the establishment by the Tanzania Investment Centre of an integrated electronic system for investment promotion and facilitation; provides for incentives; and sets fines for non-compliance with the Act.
- The **Public Private Partnership (Amendment) Act, 2023**, published on 14 July 2023, amends the Public Private Partnership Act (Cap. 103) in order to address the challenges encountered in the implementation of the Act which has been causing lower private sector participation in the implementation of development projects through partnerships.

### Data protection / Privacy

- Until the enactment of the **Personal Data Protection Act, 2022** and the **Personal Data Protection (Collection and Processing of Personal Data) Regulations, 2023**, Tanzania did not have specific data protection legislation in place. As a result the Act, read together with the Regulations, sets minimum requirements for the collection and processing of personal data in Tanzania and establishes a Commission for the Protection of Personal Data. The law intends to protect the privacy





and security of personal data in Tanzania and align the country's legal framework with international standards and best practices on data protection. The law applies to any person who processes personal data in Tanzania or outside of the country if the data relates to a data subject who is in Tanzania.

#### Financial services

- The AML/CFT Compliance Guide on Obligations of Designated Nonfinancial Businesses and Professions (“DNFBPs”) was issued in January 2023 to provide DNFBPs with a clear and simplified overview of their AML/CFT obligations under the Anti-Money Laundering Act (Cap. 423) and the Anti-Money Laundering and Proceeds of Crime Act, 2009 of Zanzibar, including the requirement to report any transaction or activity suspected to be related with money laundering and terrorist financing.
- The Anti-Money Laundering Regulations, 2023, published on 14 January 2023, aim to prevent and combat money laundering and terrorist financing in Tanzania. The regulations apply to all persons who are carrying out financial business in Tanzania, and among others:
  - Clarify the obligations of reporting entities to identify and verify the beneficial owners of their customers, and to take reasonable measures to understand the ownership and control structure of legal persons and arrangements;
  - Strengthen the requirements for reporting entities to implement internal policies, procedures, and controls to prevent and detect money laundering and terrorist financing;
  - Require reporting entities to conduct risk assessments of their customers, products, and services, and to apply a risk-based approach to customer due diligence, record-keeping, transaction monitoring, and reporting; and
  - Highlight the non-mandatory use of international practices on AML/CFT recommended by the FATF.
- The Anti Money Laundering Proceeds of Crime (Amendment) Regulations, 2023 (for Zanzibar), published on 24 January 2023, aim to improve the transparency and accountability of the financial sector in Zanzibar; align Zanzibar's AML framework with international standards and best practices; and set out similar provisions as those provided for under the Anti-Money Laundering Regulations, 2023 discussed above.
- The Prevention of Terrorism (General) (Amendments) Regulations, 2023, published on 17 February 2023, aim to enhance the effectiveness and efficiency of the AML/CFT regime in Tanzania. The Regulations provide that assets and funds of a designated person wholly or jointly owned can be seized if associated with terrorism.





- On 1 September 2023, the **Foreign Exchange (Amendment) Regulations, 2023** were issued to amend the Foreign Exchange Regulations, 2022 to ease some restrictions on dealing in foreign currency and review penalties and fines. These changes aim to facilitate trade and investment activities in Tanzania by reducing some of the barriers and costs associated with foreign exchange transactions. They also seek to enhance compliance with and enforcement of the foreign exchange laws and regulations. Some of the key changes introduced by the Regulations include:
  - The revision of penalties for failing to register a foreign credit accommodation with the Bank of Tanzania. Instead of imposing a fixed penalty of TZS1-million per day, the amendments now refer to the penalty provided for in the Foreign Exchange Act, which is not more than TZS4-million or imprisonment for not more than 14 years or both; and
  - Clarification of the conditions for registering a foreign credit accommodation. The Bank of Tanzania will not register a foreign credit accommodation that contains unfavourable terms and conditions, such as interest rates and charges that do not reflect the prevailing market conditions, or conditions that require the borrower to open a foreign currency account outside Tanzania.

### Mining

- The **Mining (Corporate Social Responsibility) Regulations, 2023**, published on 23 June 2023, aim to ensure the proper and timely implementation of corporate social responsibility (“CSR”) by mineral rights holders in Tanzania. According to the Regulations, mineral rights holders are required to:
  - Prepare a credible CSR plan that is jointly agreed upon with the relevant local government authority (“LGA”) of the host community, taking into account the environmental, social, economic, and cultural activities based on the LGA priorities;
  - Submit the CSR plan to the LGA for review and confirmation annually; and
  - Implement the CSR plan within the prescribed timeframe and budget, and report on the progress and outcomes to the LGA quarterly.
- The Regulations also establish a committee of experts at each LGA that will be responsible for reviewing, monitoring, and evaluating the CSR plans and activities of mineral rights holders. The committee will also track compliance and effectiveness of CSR policy and report any issues or challenges to the Mining Commission. The Regulations are expected to promote sustainable development and social welfare in the mining sector and enhance the relationship between mineral rights holders and host communities.



# UGANDA

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A number of laws and regulatory amendments in the areas of financial services, pensions and retirement benefits, competition, fisheries and aquaculture, and mineral resources among others have been passed in Uganda in 2023. These regulatory developments have been aimed at eliminating barriers to certain financial products and promoting financial inclusion, continued promotion of Uganda's agricultural and natural resources, as well as strengthening regulation by statutory authorities such as the Uganda Retirement Benefits Authority ("UBRA"), the Uganda Registration Services Bureau ("URSB"), the Capital Markets Authority ("CMA") and the Central Bank of Uganda.

In terms of the regulation of businesses in Uganda, the country was placed on the FATF grey list in 2020 for significant shortfalls in tackling money laundering activities. In a bid to remedy the money laundering regulatory shortfalls, the **Companies (Amendment) Act 2022** and the **Partnership (Amendment) Act 2022**, which require every company and limited liability partnership registered in Uganda to keep a register of its beneficial owners and provide for filings to the URSB were passed in 2022. In 2023 regulations were passed to implement the requirements under these Acts. The URSB has in 2023 vigorously enforced the beneficial ownership requirements on registered companies and partnerships under these laws.

Another key development was the passing of the **Competition Act, 2023** by the Parliament of

Uganda after several stalled attempts to enact this law since the first Bill was tabled in 2004. The law is targeted at controlling anti-competitive behaviour by private and public sector entities that is having a negative impact on Uganda's market. Although the Act is yet to be assented to by the President of Uganda, significant strides have been made to enact the law in 2023 and it is expected to come into force by the end of the year.

In 2024, it is expected that amendments may be made to Uganda's employment, local content and consumer protection laws as well as continued regulation in the AML/CFT space as the country remains on the FATF grey list.

## REGULATORY DEVELOPMENTS

### Agriculture

- The **Fisheries and Aquaculture Act, 2023**, which came into effect on 24 March 2023, was enacted to, among others, consolidate and reform the law relating to fisheries and fish products and to provide for private sector engagement in the fisheries subsector.

### Capital markets

- The **Capital Markets Authority (Accounting and Financial Requirements) Regulations, 2022** require an approved person, being a regulated person, including a person authorised by the Capital Markets Authority to carry out any activity under the Capital Markets Authority Act, Cap. 84 or any other Act for whose administration the





Capital Markets Authority is wholly or partly responsible, to maintain proper accounting records for the approved person's transactions, assets and liabilities. These Regulations implement the accounting and financial requirements for approved persons under the Capital Markets Authority Act.

- The **Capital Markets Authority (Prescription of Securities Instrument) Regulations, 2022** prescribe commercial papers; depository receipts; or exchange-traded funds to be securities. With the publication of these Regulations, the CMA expects to provide a facilitative regulatory environment for market intermediaries, issuers of securities and investors.

#### Corporate / Commercial

- The **Partnerships (Beneficial Owners) Regulations, 2023** and **Companies (Beneficial Owners) Regulations, 2023** respectively require a limited liability partnership and company with beneficial owners to keep a register of its beneficial owners and file notices on the beneficial owners and any changes thereto with the URSB.
- The **Competition Act, 2023**, was first passed by the Parliament of Uganda on 26 May 2023, however, the president declined to assent to it and returned it to Parliament for reconsideration of the Act's administrative mechanism. The government had recommended that the Act be administered by a technical committee

under the Ministry of Trade, Industry and Cooperatives. However, Uganda's Parliament rejected this recommendation and instead provided for an independent Competition and Consumer Protection Commission. In returning the Bill, President Yoweri Museveni queried the creation of a commission saying that the creation of new statutory authorities was contrary to the government's current rationalisation policy. On 31 August 2023, the Parliament of Uganda reconsidered and passed the Competition Act 2023 with the administrative mechanism reverting to the ministry, in the hope that there will be a quick amendment to the law which will allow for the creation of an independent competition authority. The Act awaits presidential assent.

#### Financial services

- Uganda has published rules to secure the enforceability of close-out netting under ISDA Master Agreement, Global Master Repurchase Agreement ("GMRA") and Global Master Securities Lending Agreement ("GMSLA") contracts with financial institutions. The **Financial Institutions (Preference and Appraised Book Value) Regulations, 2023** were published on 14 April 2023 under the Financial Institutions Act and apply to transactions under the ISDA Master Agreement (including its credit support documents), the GMRA and GMSLA (defined as specified financial contracts) entered into with financial institutions. The Regulations address the existing challenge of the enforceability of

the close-out netting provisions under the specified financial contracts in the event of the insolvency of a financial institution counterparty.

- The Micro Financing Deposit-Taking Institutions Act, 2003 was amended by the **Micro Financing Deposit-Taking Institutions (Amendment) Act, 2023** to provide for Islamic banking, bancassurance, agent banking, and special access to the Credit Reference Bureau by other accredited credit providers and service providers. The Act has not commenced as it is awaiting publication.
- The **Foreign Exchange (Amendment) Act, 2023** was passed to amend the Foreign Exchange Act, 2004 to provide for the enhancement of the minimum capital requirements to carry on foreign exchange business, the use of technology in operations, and the levying of administrative penalties; to strengthen the vetting requirements; and to harmonise the regulatory regime pertaining to foreign exchange bureaus and money remittance companies within the East African Community. The Act is awaiting publication in order to commence as law.

#### Labour / Employment

- In January 2023, Uganda published several **Regulations under the Uganda Retirement Benefits Regulatory Authority Act 2011** with the aim of enhancing the existing legal framework, including provision of remedial measures and administrative sanctions to be imposed by the Uganda Retirement

Benefits Regulatory Authority where required; requiring licensees to notify the public of their licensing and regulation status; and providing for financial reporting, disclosures and financial statements. These Regulations, which came into effect on 20 January 2023, include the:

- Uganda Retirement Benefits Regulatory Authority (Financial Reporting and Disclosure Requirements) (Amendment) Regulations, 2023;
- Uganda Retirement Benefits Regulatory Authority (Licensing of Fund Managers) (Amendment) Regulations, 2023;
- Uganda Retirement Benefits Regulatory Authority (Investment of Scheme Funds) (Amendment) Regulations, 2023;
- The Uganda Retirement Benefits Regulatory Authority (Licensing of Custodians) (Amendment) Regulations, 2023;
- Uganda Retirement Benefits Regulatory Authority (Licensing of Retirement Benefits Schemes) (Amendment) Regulations, 2023;
- Uganda Retirement Benefits Regulatory Authority (Licensing of Trustees) (Amendment) Regulations, 2023;
- Uganda Retirement Benefits Regulatory Authority (Management and Operation of Retirement Benefits Schemes) (Amendment) Regulations, 2023; and
- Uganda Retirement Benefits Regulatory Authority (Licensing of Administrators) (Amendment) Regulations, 2023.



# ZAMBIA



Several noteworthy business-related bills appeared on Zambia's legislative landscape in 2023. These bills address pivotal aspects of business operations and governance:

- The Trade Marks Bill of 2023 aims to refine intellectual property protection, align with international standards, and strengthen the regulatory framework for intellectual property-related businesses.
- The 2023 Competition and Consumer Protection (Amendment) Bill underscores Zambia's commitment to fostering fair competition and consumer protection, influencing how businesses interact with their customer base.
- Furthermore, the introduction of the 2023 Public-Private Partnership Bill represents a significant milestone. This Bill aims to regulate and promote the implementation of PPPs within Zambia, with objectives that encompass facilitating private sector engagement in infrastructure development and enhancing transparency in project selection. It also seeks to replace the existing Public-Private Partnership Act of 2009.

Collectively, these legislative initiatives reflect Zambia's proactive approach to improving its business environment, making it more conducive for both domestic and foreign investors. Although these bills are still undergoing the legislative process and have not yet become law, they provide valuable insights into Zambia's

commitment to ongoing regulatory reform and development. Looking ahead, it is anticipated that this trend of legal revision will continue in 2024 and beyond, ensuring that businesses receive the necessary support and regulation to thrive.

Notably on 1 June 2023, Mr Likando Luywa was appointed as Zambia's first Data Protection Commissioner, in preparation of the Office of the Data Protection Commissioner commencing its operations on 1 January 2024. These developments play a vital role in various aspects of commerce within Zambia and are poised to bring about profound changes in data protection and electronic communications.

## REGULATORY DEVELOPMENTS

### Financial services

- In terms of the **Bank of Zambia Act (Commencement) Order, 2023**, the Bank of Zambia Act, 2022 is effective from 11 August 2023. The Act repeals the Bank of Zambia Act, 1996; provides for the additional functions, operations and management of the Bank of Zambia; the composition and functions of the Board of Directors of the Bank of Zambia; and the establishment and functions of the Monetary Policy Committee and the Financial Stability Committee. The Bank of Zambia Act, 2022, signifies a comprehensive overhaul of Zambia's central banking and financial regulatory framework. It encompasses a more robust and modernised financial system, improved



mechanisms for monetary policy, and enhanced measures for maintaining financial stability.

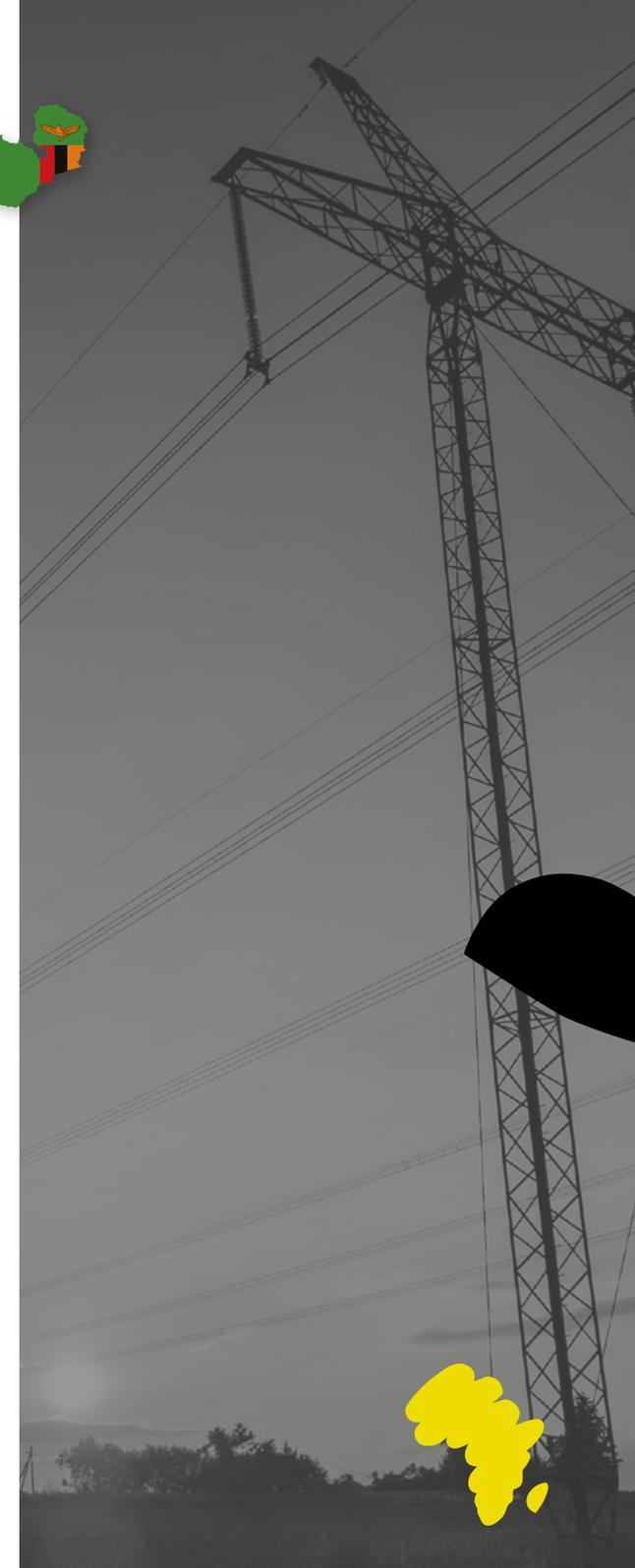
#### Corporate / Commercial

- The **Zambia Development Agency Act, 2022** came into effect on 13 January 2023. The Act repeals the Zambia Development Agency Act, 2006; provides for the continuation of the Zambia Development Agency (the “Agency”) and redefines its functions; reconstitutes the Board of the Agency and provide for its functions. The role of the Agency is to further the economic development of Zambia through the promotion and facilitation of investment, domestic and foreign trade, competitiveness in business development and the privatisation of state-owned enterprises. Overall, the Act is poised to positively influence Zambia’s economy by promoting investment, trade, competitiveness, and efficient state-owned resource utilisation.
- The forward-looking **Investment, Trade and Business Development Act, 2022**, which is effective from 13 January 2023, was enacted, among others, to foster economic growth and development by promoting trade, business development and investment in Zambia through an efficient, effective and coordinated private sector-led economic development strategy; promote economic diversification through the growth

of exports; promote, facilitate, protect and monitor domestic and foreign direct investment; and promote investment through joint ventures and partnerships between local and foreign investors.

#### Energy

- The **Energy Regulation (Appeals Tribunal) Rules, 2023**, which were gazetted on 24 February 2023, provide a formal avenue for individuals and entities dissatisfied with decisions of the Energy Regulation Board to appeal to the minister and seek redress. The Ministry of Energy has announced that it has operationalised the Rules and has begun accepting valid appeals against the Energy Regulation Board that are filed correctly, in accordance with the Rules.
- The **Rural Electrification Act, 2023**, assented to on 14 April 2023, repeals the Rural Electrification Act, 2003; promotes and enhances rural electrification; continues the existence of the Rural Electrification Authority and re-define its functions; constitutes the Board of the Authority and provides for its functions; and continues the existence of the Rural Electrification Fund. This Act reflects Zambia’s determination to bridge the urban-rural energy gap, contributing to improved living conditions and economic opportunities in rural communities while aligning with broader development and sustainability goals.

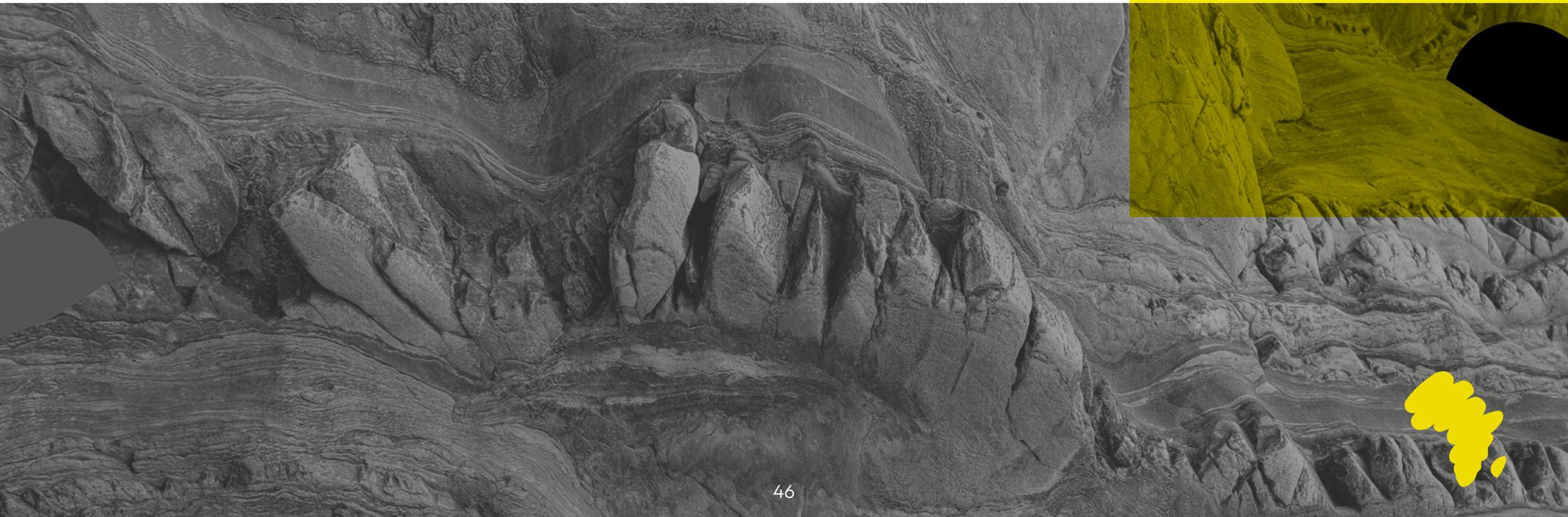




## Mining

- The Mines and Minerals Development (Amendment) Act, 2022, effective from 1 January 2023, amends the Mines and Minerals Development Act, 2015, to restructure the taxation of mineral royalties. The Act provides that where the base metal produced or recoverable under the licence is copper, the mineral royalty payable shall be applied at an incremental value in each price range at the rate of:
  - 4% of the norm value when the norm price of copper is less than USD4 000 per tonne;
  - 6.5% of the norm value when the norm price of copper is USD4 000 or higher per tonne but less than USD5 000 per tonne;
  - 8.5% of the norm value when the norm price of copper is USD5 000 or higher per tonne but less than USD7 000 per tonne; and
  - 10% of the norm value when the norm price of copper is USD7 000 or higher per tonne.
- This approach aims to balance the taxation of mining companies during varying copper price levels and, thereby, encourage mining activities while generating government revenue. Effective implementation and market conditions will influence the success of this taxation structure.

“PUBLIC-PRIVATE PARTNERSHIPS TO FACILITATE PRIVATE SECTOR ENGAGEMENT IN INFRASTRUCTURE DEVELOPMENT”



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