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REGULATORY CHANGES IN 2020 THAT IMPACT PRIVATE EQUITY BUSINESS IN KENYA

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By Samuel Mwendwa Kisuu, Director at Africa Law Partners.

Introduction

The first half of 2020 has been rife with change across the spectrum. The spread of the Corona Virus Disease has caused various operational glitches in many sectors and the ensuing economic recession has forced businesses and business leaders back to the drawing board to chance at recovery.

A 2020 survey by the Africa Private Equity and Venture Capital Association placed Kenya as the most attractive African country for private equity investment over the next three (3) years. As such, we at Africa Law Partners think it important to synthesize the myriad of notable regulatory changes that have occurred in the first half of 2020 which would directly impact private equity business.

Company Law

The first change to the company law regime in Kenya was the promulgation of the Companies (Beneficial Ownership Information) Regulations, 2020. These essence of the regulations is to create a framework for disclosure of beneficial owners of companies in Kenya in a bid to increase transparency of capital flow to and from Kenya. We have analysed these regulations here.

The Business Laws (Amendment Act), 2020 brought forth some notable amendments. Pursuant to its promulgation, electronic signatures are now conclusively valid and company seals have been abolished. As such, transactions may be completed virtually without signatories travelling to Kenya to sign completion documents.

Tax Laws

The tax laws of Kenya were amended by the Tax Laws (Amendment) Act, 2020 which was assented to by the President on 25 April 2020. The table below highlights the changes that would affect private equity business in Kenya.

<table>
<tr><th>Issue</th><th colspan="3">Amendment</th><th>New Rate</th><th>Impact</th></tr>
<tr><td>Turnover tax</td><td colspan="3">Threshold for businesses qualifying for turnover tax has been amended to those companies whose turnover is above KES 1 million to KES 50 million</td><td>1%</td><td>Businesses with a relatively lower turnover may enjoy an effectively lower tax rate</td></tr>
<tr><td>Corporation tax</td><td colspan="3">Resident companies to enjoy lower tax rate in Kenya</td><td>25%</td><td>Kenya becomes the country with the lowest corporate tax rate in the East Africa Community and below the average corporate tax rate in Africa</td></tr>
<tr><td rowspan="2">Investment deductions</td><td colspan="3">The Second Schedule to the Income Tax Act, cap. 470 of the Laws of Kenya was repealed and replaced as follows:</td><td rowspan="2"></td><td rowspan="2">These amendments reduce the overall investment deductions a business may claim and therefore lead to lower reported tax losses from businesses.</td></tr>
<tr><td>Item</td><td>Previous allowance</td><td>New allowance</td></tr>
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Issue	Amendment			New Rate	Impact
	Buildings (and machinery) used for manufacture and hotels	100%	50% in the 1st year and 25% on a reducing balance for subsequent years		
	Hospital buildings	N/A	50% in the 1st year and 25% on a reducing balance basis for subsequent years		
	Hospital equipment	N/A	50% in the 1st year and 25% on a reducing balance for subsequent years		
	Educational buildings	50% p.a	10% p.a on a reducing balance basis		
	Commercial buildings	25% p.a	10% p.a on a reducing balance basis		

Issue	Amendment			New Rate	Impact
	Motor vehicles and heavy earth moving equipment	Heavy earth moving equipment - 37.5% on a reducing balance basis Other motor vehicles - 25% on a reducing balance basis	25% p.a on a reducing balance basis		
	Telecommunication Equipment	20% p.a on a straight line basis	10% on a reducing balance basis		
	Farmworks	100% on the first year of use	50% in the 1st year and 25% on a reducing balance for subsequent years		
	Furniture and fittings	12.5% p.a on a reducing balance basis	10% on a reducing balance basis		

Issue	Amendment	New Rate	Impact
Withholding tax	Increases and introductions to the items subject to withholding tax in Kenya	Dividends to non-resident persons: 15% Introduction of withholding tax on sales promotion, marketing, advertising services and transportation of goods by non-residents: 20%	This is aimed to reduce the funds repatriated by non-resident persons, thereby increasing local revenue collection.
Value Added Tax (VAT)	• Reduction of standard VAT rate	14%	These amendments have struck a balance between consumer relief and revenue collection by the government.
	• Change of status of good from being exempt to having the stand rate applicable	14%	
	• Change of status of good from being taxable at the zero-rate (0%) to exempt	Exempt	

Miscellaneous Regulations

1. **Banking:** the introduction of the Banking (Credit Reference Bureau) Regulations, 2020 which provide the legal framework for the establishment, management and operation of credit reference bureaus, the management of credit information and the cross border conveyance of credit information.

2. **Insurance:** the insurance sector has had four (4) separate regulations promulgated touching on corporate group compliance for insurance group companies, micro-insurance, bancassurance as well as anti-money laundering. These regulations are key to players in the insurance sector and persons taking insurance who are likely high-risk individuals for the purposes of money laundering.

Second half of 2020

The second half of 2020 poses interesting times for the regulatory environment around private capital. The highlights that we envision include:

1. **The Finance Act, 2020** (the **Finance Act**)**:** the Finance Act was gazetted on 10 July 2020 and sees the introduction of a minimum tax of 1% based on turnover. The Finance Act also contains provisions that bring private equity funds within the regulatory purview of the Capital Markets Authority. A potential upside of the amendments introduced by the Finance Act is a less arduous dispute resolution procedure between taxpayers and the Kenya Revenue Authority through the proposed Voluntary Disclosure Program.

2. **Regional dynamics:** private equity funds operating in Sub-Saharan Africa are ordinarily domiciled in Mauritius or South Africa. The European Union (the **EU**) considers Mauritius as being a country that presents strategic deficiencies in the anti-money laundering regime. This may pose a concern for private equity funds with limited partners from the EU. In addition to global regulatory pressure, the economies of Mauritius and South Africa are projected to shrink (by between 5% and 15% for Mauritius and 4.5% for South Africa) in 2020. These shrinkages will require state intervention in the form of bailouts and possibly regulatory intervention to attract and retain capital within their economies. In addition to this, we are at the start of the East African election cycle with Tanzania's presidential election slated for October 2020.

Should you require any more information or assistance kindly contact ***Samuel Kisuu*** *or* ***Craig Douglas Oyugi***

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