

ENSafrica | Africa regulatory round-up 2022

An overview of regulatory developments across sub-Saharan Africa

With government functions and business operations slowly returning to normality in 2022 following the COVID-19 pandemic, legislators across sub-Saharan Africa have implemented various regulations aimed to boost their economies and strengthen operating environments.

In this first edition of our bi-annual regulatory round-up, we focus on recent developments in the **African Continental Free Trade Area (“AfCFTA”) Agreement**, as well as the **data protection**, **anti-money laundering** and other significant legislative spheres in the following key **Anglophone Africa jurisdictions**: Botswana, Ghana, Kenya, Namibia, Nigeria, Mauritius, Rwanda, Tanzania, Uganda and Zambia.

Following a slow trade uptake under the AfCFTA, which commenced on 1 January 2021, a pilot initiative involving eight participating countries and selected products was launched in October 2022 to encourage commercially meaningful trading, and to test the operational, institutional, legal and trade policy environment under the AfCFTA. The first shipments of Kenyan tea and Rwandan coffee under the initiative have already taken place and the AfCFTA Secretariat is optimistic that a significant increase in trading under the AfCFTA will follow.

With the rapid increase in digitisation in sub-Saharan Africa over the last few years, which has been accelerated by the pandemic, the broad implementation of data privacy and security laws to protect and secure personal information has become even more urgent.

Economic instability caused by the global pandemic has also increased financial crime, such as bribery, corruption, crypto-related crimes, and cybercrime in sub-Saharan Africa. This necessitated an increased focus on anti-money laundering efforts, and, as the region’s economy starts to recover following the impact of the pandemic, various jurisdictions have implemented regulatory changes in this space.

In addition to these developments, significant regulatory amendments have been made in the financial services sector across most of the countries under review. Many of these changes are aimed at increasing the regulation of the digital economy. Kenya and Mauritius have also been specifically focusing on the environmental, social and governance space, while Namibia is looking to regulate its booming green hydrogen sector.



PART ONE

African Continental Free Trade Area (AfCFTA):
facilitating free trade across the continent



AfCFTA and its objectives

In 2018, the African Union (“AU”) brokered the AfCFTA Agreement, one of its flagship projects under “Agenda 2063: The Africa We Want”. This is set to be the world’s largest free trade zone formed after the World Trade Organization, covering a market of over 1.2-billion people. It brings together the countries of the AU (except Eritrea, currently) and the eight African regional economic communities.

The main objectives of the AfCFTA are to create a single continental market for goods and services and to harmonise trade regimes and instruments across the continent to promote industrial development and intra-Africa trade.

The Agreement initially requires members to remove tariffs from 90% of goods, allowing free access to commodities, goods, and services across the continent. Ten percent of “sensitive items” will be phased in at a later stage. Future objectives aim at the free movement also of business persons and investments.

Current status of the AfCFTA

As of October 2022:

- the AfCFTA has been signed by all African countries, except Eritrea;
- it entered into force on 30 May 2019 when it was ratified by the required minimum of 22 member states;
- 44 of the 54 signatories (81.5%) have deposited their instruments of ratification of the AfCFTA Agreement; and
- trading under the AfCFTA commenced on 1 January 2021.

The architecture of the AfCFTA

The AfCFTA includes protocols on:

- trade in goods;
- trade in services;
- dispute settlement;
- investment;
- intellectual property rights; and
- competition policy.

Recently, digital trade and women and youth in trade have been added to the negotiating agenda.

- Phase 1 negotiations cover the Trade in Goods, Trade in Services and Dispute Settlement. Negotiations of the Protocol on Dispute Settlement have been concluded, while several issues (tariff concessions, rules of origin and schedules of specific commitments for services) are still being negotiated.
- Phase 2 negotiations covering Investment, Competition Policy and Intellectual Property Rights have recently started.
- Phase 3 negotiations will cover Digital Trade and Women and Youth in Trade.



AfCFTA implementation initiatives

Several initiatives aimed at accelerating the implementation of the Agreement have been unveiled, including:

The Pan-African Payment and Settlement System ("PAPSS")

Launched by the African Export-Import Bank ("Afreximbank"), this multilateral financial institution is mandated to finance and promote intra- and extra-African trade. PAPSS was adopted by the AU as the payment and settlement platform to underpin the implementation of the AfCFTA.

The AfCFTA Hub

The AfCFTA Hub, a digital platform launched by the AU at Boma of Africa 2022, aims at connecting national, regional and private digital applications to boost the ability of small and medium-sized enterprises to expand their business and/or export their products across Africa.

African Vaccine Passport and e-Health backbone

The African Vaccine Passport and e-Health backbone was also launched by the AU at Boma of Africa 2022 and provides cross-border travel solutions, vaccine record management, vaccine allocation and administration scheduling and post-vaccine administration and feedback management.

The AfCFTA Guided Trade Initiative

Even though the AfCFTA already commenced on 1 January 2021, to date commercially meaningful trade had not commenced under the AfCFTA. As a result of this slow uptake of trading under the AfCFTA, on 7 October 2022, the AfCFTA Secretariat officially launched its AfCFTA Guided Trade Initiative, in which a small group of AfCFTA state parties (Ghana, Kenya, Rwanda, Tanzania, Mauritius, Egypt, Cameroon and Tunisia) will initially participate.

These countries were selected to represent the five AU regions, namely: Western, Central, Eastern, Southern and Northern Africa. The objectives of the initiative are to:

- test the operational, institutional, legal and trade policy environment under the AfCFTA;
- allow commercially meaningful trading under the AfCFTA; and
- send a positive message to African economic operators about the AfCFTA.

Products that will be traded include ceramic tiles, batteries, horticulture products and flowers, avocados, palm oil, tea, rubber, components for air conditioners, steel and wooden products, pharmaceuticals, sugar, and aluminium kitchenware. Under the AfCFTA Guided Trade Initiative,

- Ghana issued its first certificate of full commercial trading to a ceramic tiles production company to export its products under the AfCFTA in September 2022;
- Kenya has also exported its first goods under the AfCFTA, Kenyan-made Exide batteries, to Ghana on 23 September 2022; and
- Rwanda exported its first coffee products to Ghana under the AfCFTA Guided Trade Initiative in October 2022.

"The fact that all member states of the AU, with the exception of Eritrea, have signed the Agreement, is a clear and very positive indication of the collective intent for regional cooperation on the continent. [While] the effective implementation is far more complex and subject to various conditions to be successful, several important milestones have been reached and more progress is anticipated in 2023 in attaining Agenda 2063's grand vision of inclusive and sustainable development."

- Celia Becker | ENSafrica Executive



AfCFTA Timeline

JAN 2012	At a session held in Ethiopia, heads of state and government decide to establish a Continental Free Trade Area in 2017. This deadline was not met.
JUN 2015	Negotiations for establishing the AfCFTA commence.
21 MAR 2018	Heads of state and government adopt the AfCFTA Agreement. 54 of the 55 AU member states sign the Agreement.
30 MAY 2019	The AfCFTA Agreement enters into force.
7 JUL 2019	The operational phase of the AfCFTA is launched in Niamey, Niger. Five key instruments are adopted: <ul style="list-style-type: none">• rules of origin;• tariff concessions;• online mechanism on monitoring;• pan-African payment and settlement system; and• African trade observatory.
7 JUL 2019	The Non-Tariff barriers (“ NTBs ”) reporting, monitoring and eliminating <u>mechanism</u> is launched by African heads of state at the 12th Extraordinary Session of the Assembly of the AU. It is a facility developed to enhance trade through the removal of NTBs.
19 MAR 2020	H.E. Wamkele Mene is sworn in as the first Secretary-General of the <u>AfCFTA Secretariat</u> , hosted by Ghana.
17 AUG 2020	Official handover and commissioning of the AfCFTA Secretariat building in Accra, Ghana.
5 DEC 2020	Extraordinary Summit of the AU Assembly on the AfCFTA, which took place virtually, approved the start of trading under the AfCFTA Agreement on 1 January 2021.



Timeline cont.

1 JAN 2021	Start of trading under the AfCFTA.
JAN 2022	The commercial launch of the PAPSS, developed by Afreximbank in collaboration with the AU and AfCFTA Secretariat.
9 FEB 2022	AfCFTA Secretariat and Afreximbank sign an agreement relating to the management of the Base Fund of the <u>AfCFTA Adjustment Fund</u> . The fund will support African countries and the private sector to effectively participate in the new liberalised and integrated trading environment established under the AfCFTA Agreement.
15 FEB 2022	AfCFTA Secretariat and the World Customs Organization (“WCO”) sign a memorandum of understanding aimed at operationalising the tariff schedules and ensuring additional free and efficient movement of goods in Africa.
18 FEB 2022	Afreximbank and the African Association of Automotive Manufacturers enter into a memorandum of understanding for the <u>financing</u> and promotion of the automotive industry in Africa.
25 JUN 2022	European Union-WCO-AfCFTA Secretariat partnership reaches a milestone with the launch of the AfCFTA <u>e-Tariff Book</u> and the Rules of Origin Manual.
JUL 2022	AU unveils the African Vaccine Passport and e-Health backbone and the AfCFTA Hub, as well as the supply chain component, ProPer.
12 – 14 SEP 2022	Inaugural AfCFTA Women and Youth in Trade Conference in Dar es Salaam, Tanzania. The objective of the conference is to promote the participation of women and youth in trade.
7 OCT 2022	The AfCFTA Secretariat launches the AfCFTA Guided Trade Initiative in Accra, Ghana, to mark the practical commencement of trade under the AfCFTA Agreement.



PART TWO

protecting personal information





BOTSWANA

Specific data protection and privacy ("DPP") legislation

Data Protection Act, 2018, effective from 15 OCT 2021.

The Data Protection (Transitional Period) Order, 2022 and the Data Protection (Amendment) Act, 2022, were gazetted in September 2022, amending the Data Protection Act, 2018. The Order provides a transitional period of 12 months, to any person required to comply with the provisions of the Data Protection (Amendment) Act, 2022 with regard to the processing of personal data under section 54 of the Act, with effect from 16 September 2022.

Aspects regulated under other legislation

- oath of secrecy;
- consumer protection;
- electronic communication and transactions; and
- cybersecurity.

GHANA

Specific DPP legislation

Data Protection Act, 2012, effective from 16 OCT 2012.

Aspects regulated under other legislation

- privacy;
- credit reporting;
- electronic communications and transactions;
- consumer protection; and
- public health.

KENYA

Specific DPP legislation

Data Protection Act, 2019, effective from 25 NOV 2019.

The Huduma Bill, 2021, which sought to consolidate the law on civil registration and legal identity management, and establish a digital national population database to be the primary source of foundational data for a resident individual, was gazetted on 3 December 2021 but has since lapsed. The lapsed Bill set out data protection safeguards and sought to ensure data privacy rights of enrolled persons. The Data Protection Act, 2019 will apply to the processing of personal data under the lapsed Bill.

Aspects regulated under other legislation

- civil registration;
- data protection compliance and enforcement;
- registration of data controllers and data processors;
- complaints handling and enforcement procedures;
- consumer protection;
- communications;
- cybercrime;
- finance; and
- competition.



MAURITIUS

Specific DPP legislation	Data Protection Act, 2017, effective from 15 JAN 2018.
Aspects regulated under other legislation	<ul style="list-style-type: none">• registration of data controllers and processors and COVID-19.

NAMIBIA

Specific DPP legislation	<p>Namibia does not currently have a specific data protection and privacy law, but privacy is governed by the Constitution, 1990 and electronic transactions by the Electronic Transactions Act, 2019.</p> <p>On 8 November 2022, the Ministry of Information and Communication Technology announced that it would hold regional consultations on Namibia's Data Protection Bill, 2021 which seeks, among others, to establish a Data Protection Supervisory Authority and obligations of data controllers and processors, and to provide for the regulation of the processing of information relating to individuals.</p>
Aspects regulated under other legislation	<ul style="list-style-type: none">• privacy and electronic transactions.

NIGERIA

Specific DPP legislation	<p>Nigeria Data Protection Regulation (NDPR) issued in 2019 by the National Information Technology Development Agency (NITDA).</p> <p>The Data Protection Bill, 2022 which was released by the Nigeria Data Protection Bureau (NDPB) on 6 October 2022, seeks to establish the Nigeria Data Protection Commission to regulate personal data processing, and promote data processing practices that protect the security of personal data and the privacy of data subjects.</p>
Aspects regulated under other legislation	<ul style="list-style-type: none">• management of personal data by public institutions;• privacy;• consumer protection;• competition;• cybercrime;• freedom of information;• credit reporting;• national health;• finance; and• communications.



RWANDA

Specific DPP legislation	<p><u>Law No. 058/2021 of 13/10/2021</u> relating to the protection of personal data and privacy (the “Data Protection Law”), effective from 15 OCT 2021.</p> <p>Following the entry into force of the Data Protection Law, organisations have until <u>15 October 2023</u> to comply with the provisions of the said law.</p>
Aspects regulated under other legislation	<ul style="list-style-type: none">• information and communication technologies, consumer protection, and cybercrime.

SOUTH AFRICA

Specific DPP legislation	<p>Protection of Personal Information Act, 2013, effective from 1 JUL 2021.</p> <p>South Africa has been one of the leading countries in the data protection and privacy regulatory space in the region.</p> <p>On 6 July 2022, the Financial Intelligence Centre published <u>guidance on information processing</u> in terms of the Financial Intelligence Centre Act, 2001 in relation to data protection, providing a framework on how the FICA regulations will be affected by the new privacy laws as a result of the Protection of Personal Information Act, 2013.</p>
Aspects regulated under other legislation	<ul style="list-style-type: none">• privacy, consumer protection, and electronic communications and transactions.

TANZANIA

Specific DPP legislation	<p>Tanzania does not currently have a specific data protection and privacy law. Relevant aspects are governed by, among others, the Electronic and Postal Communications Act, 2010 and its Regulations and the Bank of Tanzania (Financial Consumer Protection) Regulations, 2019.</p> <p>The Data Protection Bill, 2022 was unanimously passed by Parliament in November 2022. The Bill seeks to establish a Commission for the Protection of Personal Data and regulate the collection and processing of personal data.</p>
Aspects regulated under other legislation	<ul style="list-style-type: none">• privacy;• electronic and postal communications;• electronic transactions;• competitions;• consumer protection;• the national payment system; and• cybercrime.



UGANDA	
Specific DPP legislation	<p>Data Protection and Privacy Act, 2019, effective from 3 MAY 2019.</p> <p>In October 2022, President Yoweri Museveni signed into law the Computer Misuse (Amendment) Bill, 2022, which amends the Computer Misuse Act, 2011 to <i>inter alia</i> enhance the provisions on unauthorised access to information or data.</p>
Aspects regulated under other legislation	<ul style="list-style-type: none"> • privacy; • information technology; • access to information; • electronic transactions; • consumer protection; • communications; and • cybercrime.
ZAMBIA	
Specific DPP legislation	<p>Data Protection Act, 2021, effective from 1 APR 2021.</p>
Aspects regulated under other legislation	<ul style="list-style-type: none"> • electronic communications and transactions; • consumer protection; • competition; and • cybercrime.



PART THREE

combatting bribery, terrorist financing and
money laundering



Anti-bribery and corruption (“**ABC**”), anti-money laundering (“**AML**”) and countering the financing of terrorism (“**CFT**”) are mutually important measures in the fight against financial crime. The rapid advancement of ICT has created new avenues for bribery and corruption, money laundering (“**ML**”) and terrorist financing (“**TF**”). In recognising the link between these forms of financial crime, countries are making a concerted effort to put in place and implement ABC/AML/CFT laws and establish ABC/AML/CFT institutions nationally.

Corruption and ML remain an issue across Africa, although the levels vary significantly between individual countries, as illustrated in the table to follow. The Transparency International Corruption Perceptions Index 2021 found that sub-Saharan Africa was the lowest scoring region in terms of perceived levels of public sector corruption according to the business community, and that there was no significant improvement in the region’s score from previous years.

However, post-COVID-19, there is a general uptick in anti-corruption enforcement activity in Africa. The improvement can, in part, be attributed to additional enforcement action within various African jurisdictions (for example, South Africa and Namibia) as well as a greater focus on the continent by the Financial Action Task Force (“**FATF**”), United States, and other global enforcement authorities. The FATF also recognises that corruption and money laundering are linked and that effective implementation of AML/CFT measures restricts corruption from going undetected.

Ranking of African jurisdictions according to various indices

IHS Markit: Economics and Country Risk database

The IHS Markit Economics and Country Risk database scores country risks based on its analysts’ expert understanding of the security, political environment and business environment of a jurisdiction, using information from open sources and a wide network of in-country personnel.

The corruption aggregate category represents the risk that individuals or companies will face bribery or other corrupt practices (varying from cronyism/nepotism and influence peddling, to conflicts of interest and excessive lobbying/campaign donations) to carry out business.



Aggregate risk scores are calculated as equally weighted averages of their sub-categories on a scale of 0.1-10. This range is split into seven bands, ranging from low to extreme risk.

Transparency International: Corruption Perceptions Index, 2021

Transparency International publishes an annual Corruption Perceptions Index, which ranks 180 countries and territories by their perceived levels of public sector corruption according to the business community. It uses a scale of 0 to 100, where 0 is highly corrupt and 100 is very clean.

Basel Institute on Governance: Anti-Money Laundering Index, 2022

The Basel Anti-Money Laundering Index is an independent country ranking and risk assessment tool for money laundering and terrorist financing (“**ML/TF**”). The Index provides holistic ML/TF risk scores based on data from 18 publicly available sources such as the FATF, Transparency International, the World Bank and the World Economic Forum. Risk, as measured by the Index, is defined as a jurisdiction’s vulnerability to ML/TF and its capacities to counter it. It is not intended as a measure of the actual amount of ML/TF activity in a given jurisdiction. A min-max method is used in a 1-10 system, where 10 indicates the highest risk level.



Geography	IHS Markit Corruption score (2022)	Transparency International Corruption Perceptions Index score (2021)	Basel Institute on Governance Basel Anti-Money Laundering Index (2022)
	0 – 10	100 – 0	0 – 10
Angola	3.0	29	N/A
Benin	3.3	42	6.80
Botswana	1.4	55	5.07
Burkina Faso	2.9	42	6.63
Burundi	5.3	19	N/A
Cabo Verde	1.5	58	6.11
Cameroon	4.0	27	6.88
Central African Republic	6.0	24	N/A
Chad	5.1	20	N/A
Comoros	3.2	20	N/A
Côte d'Ivoire	2.1	36	N/A
Republic of the Congo	5.4	21	N/A
Democratic Rep.of the Congo	6.0	19	8.30
Djibouti	3.2	30	N/A
Equatorial Guinea	5.0	17	N/A
Eritrea	4.1	22	N/A
Eswatini	3.6	32	6.91
Ethiopia	2.9	39	6.63
Gabon	4.0	31	N/A
The Gambia	2.9	37	5.22
Ghana	3.0	43	5.70
Guinea	3.4	25	N/A
Guinea-Bissau	5.1	21	7.53
Kenya	4.0	30	N/A
Lesotho	1.9	38	N/A

Geography	IHS Markit Corruption score (2022)	Transparency International Corruption Perceptions Index score (2021)	Basel Institute on Governance Basel Anti-Money Laundering Index (2022)
	0 – 10	100 – 0	0 – 10
Liberia	4.8	29	N/A
Madagascar	3.5	26	7.59
Malawi	3.0	35	5.62
Mali	4.0	29	7.28
Mauritania	N/A	28	6.89
Mauritius	1.7	54	5.03
Mozambique	4.4	26	7.68
Namibia	1.7	49	N/A
Niger	3.9	31	6.60
Nigeria	4.7	24	6.77
Rwanda	1.9	53	N/A
São Tomé and Príncipe	2.5	45	N/A
Senegal	2.6	43	7.05
Seychelles	1.2	70	5.49
Sierra Leone	2.8	34	6.97
Somalia	6.4	13	N/A
South Africa	2.6	44	5.81
South Sudan	6.6	11	N/A
Sudan	5.1	20	N/A
Tanzania	3.5	39	6.33
Togo	3.8	30	N/A
Uganda	4.5	27	6.82
Zambia	3.0	33	5.99
Zimbabwe	4.6	23	6.70

Source: IHS Markit, Transparency International, Basel Institute on Governance, Tax Justice Network



FATF: Jurisdictions with strategic deficiencies in their AML/CFT regimes

As part of FATF membership, countries are subject to mutual evaluations. These are peer reviews that assess a country's level of compliance with the AML/CTF standards, as set out in the 40 FATF Recommendations. In addition to the 39 FATF members, the FATF relies on a strong global network of nine FATF-Style Regional Bodies ("FSRBs") to achieve global implementation of the FATF Recommendations. In respect of the 11 jurisdictions under review, Botswana, Kenya, Mauritius, Namibia, Rwanda, South Africa, Tanzania, Uganda and Zambia are members of the Eastern and Southern Africa Anti-Money Laundering Group ("ESAAMLG") FSRB, which aims to combat money laundering by implementing the FATF Recommendations. Ghana and Nigeria, on the other hand, are part of the Inter Governmental Action Group against Money Laundering in West Africa ("GIABA") FSRB, which is responsible for strengthening the capacity of member states towards the prevention and control of ML/TF in the region.

The FATF regularly publishes a list of "High-Risk Jurisdictions subject to a Call for Action" (previously called "Public Statement"), judged by the FATF to be jurisdictions that have significant strategic deficiencies in their regimes to counter money laundering, terrorist financing and financing of proliferation. The list is commonly referred to as the FATF "blacklist". As of October 2022, the list does not include any African jurisdictions.

"Jurisdictions under Increased Monitoring" (previously called "Improving Global AML/CFT Compliance: On-going process") are actively working with the FATF to address strategic deficiencies in their regimes to counter money laundering, terrorist financing, and proliferation financing. When a jurisdiction is placed under increased monitoring by the FATF, it means the country has committed to resolving the identified strategic deficiencies within agreed timeframes and is subject to increased monitoring. This list is often externally referred to as the "grey list". Additional jurisdictions are identified by the FATF on an ongoing basis.

The international economic impacts of being greylisted may include:

- an increase in the regulatory burden imposed on both an entity and its foreign counterparties;
- economic restrictions from and/or application of enhanced due diligence measures by international funders such as the International Monetary Fund or World Bank;
- restrictions imposed by individual banks and businesses in doing business with an entity. This would lead to transaction delays, an increase in the cost of doing business and a loss of trading and business partners as well as a loss of financial flows.

In the past five years, African countries on the list of jurisdictions under increased monitoring include those indicated in the table to follow. Most recently, the Democratic Republic of Congo, Mozambique and Tanzania were added to the grey list in October 2022. Burkina Faso, Mali, Senegal, South Sudan and Uganda have since not been removed from the list. In relation to the jurisdictions under review, Botswana, Ghana and Mauritius were removed from the grey list after, *inter alia*, making significant progress in improving their AML/CFT regimes and addressing related technical deficiencies. Ethiopia and Zimbabwe have also been removed from the list. Uganda remains on the list since being added in February 2020, while Tanzania was added in October 2022 when it made high-level political commitments to work with the FATF and ESAAMLG to strengthen the effectiveness of its AML/CFT regimes.



List of greylisted African jurisdictions since February 2018

	FEB-18	OCT-18	JUN-19	OCT-19	FEB-20	FEB-21	JUN-21	OCT-21	OCT-22
Botswana									
Burkina Faso									
Democratic Rep. of the Congo									
Ethiopia									
Ghana									
Mali									
Mauritius									
Mozambique									
Senegal									
South Sudan									
Tanzania									
Uganda									
Zimbabwe									

	Added to FATF list
	Removed from FATF list

Source: FATF

ABC/AML/CFT legislation and recent developments in selected sub-Saharan African jurisdictions

Sub-Saharan African countries have been introducing legislation to combat bribery, corruption and ML/TF. This consists of specific ABC/AML/CFT legislation and/or ABC/AML/CFT-related provisions incorporated in other legislation, including sector-specific legislation in the:

- financial;
- insurance;
- legal;
- natural resources;
- gambling; and
- telecommunications sectors.

In the table to follow, we highlight ABC/AML/CFT-specific legislation, as amended, in each of the countries under review.



ABC/AML/CFT-specific legislation

	ABC	AML/CFT	Progress and developments
Botswana	Corruption and Economic Crime Act, 1994	<ul style="list-style-type: none"> Financial Intelligence Act, 2009 Counter-Terrorism Act, 2014 Proceeds and Instruments of Crime Act, 2014 	Prior to being removed from the FATF list of jurisdictions under increased monitoring, the April 2021 5th Enhanced Follow-up Report (“ FUR ”) and Technical Compliance Re-Rating shows that Botswana made significant progress in strengthening the effectiveness of its AML/CFT regime and addressing related technical deficiencies, including by amending the Banking Act, 1995; the Financial Intelligence Act, 2019; Financial Intelligence Regulations, 2019; Trust Property Control Act, 2018, (currently replaced by the Trust Property Control Act, 2022); and the Electronic Payment Services Regulations, 2019.
Ghana	Ghana does not currently have a specific ABC law	<ul style="list-style-type: none"> Anti-Terrorism Act, 2008 Economic and Organised Crime Office Act, 2010 Anti-Money Laundering Act, 2020 	In terms of Ghana's efforts in strengthening measures to tackle ML/TF, it has made progress in addressing the technical compliance deficiencies identified in its 2nd round Mutual Evaluation Report (“ MER ”), and has been re-rated on Recommendation 8 (non-profit organisations) from Non-Compliant to Partially Compliant, Recommendation 33 (statistics) from Partially Compliant to Largely Compliant, and Recommendation 35 (sanctions) from Partially Compliant to Compliant. Ghana will remain in “enhanced follow-up” status and will report back to GIABA on progress achieved in improving the implementation of its AML/CFT measures. Ghana is now largely compliant with 22 of the 40 FATF recommendations and deemed compliant with 13 of the 40 FATF recommendations.
Kenya	Anti-Corruption and Economic Crimes Act, 2003 Bribery Act, 2016	<ul style="list-style-type: none"> Proceeds of Crime and Anti-Money Laundering Act, 2009 Prevention of Terrorism Act, 2012 	According to Kenya's recent MER, it has improved its legal and institutional frameworks on AML/CFT since the 2011 MER, including establishing the Asset Recovery Agency, enhancing the human and technical resources of the Financial Reporting Centre, conducting a national ML/TF risk assessment, and introducing beneficial ownership information requirements to comply with international standards on AML/CFT/proliferation financing.
Mauritius	Prevention of Corruption Act, 2002	<ul style="list-style-type: none"> Prevention of Corruption Act, 2002 Financial Intelligence and Anti-Money Laundering Act, 2002 Prevention of Terrorism Act, 2002 	Mauritius was initially greylisted by the FATF in February 2020 for several reasons, including a lack of effective risk-based supervision, limited access to beneficial ownership information, and insufficient oversight of non-profit organisations that may be subject to terrorist financing. There was also a perceived general ineffectiveness in conducting ML investigations. On 9 July 2020, the Government of Mauritius strengthened its framework against ML and TF by passing the <u>Anti-Money Laundering and Combatting the Financing of Terrorism (Miscellaneous Provisions) Act</u> , which amends 19 existing pieces of legislation. The Act aims to align Mauritius with the recommendations of the FATF and the European Union (“ EU ”) Commission. Mauritius was fortunate in being removed from the grey list relatively quickly in October 2021, as countries typically spend several years on the list tackling legal amendments. It is now largely or fully compliant with 39 of the 40 FATF recommendations.



	ABC	AML/CFT	Progress and developments
Namibia	<u>Anti-Corruption Act, 2003</u>	<ul style="list-style-type: none"> Prevention of Organised Crime Act, 2004 Financial Intelligence Act, 2012 Prevention and Combating of Terrorism and Proliferation Activities Act, 2014 	<p>According to Namibia's recent MER, Namibia has been addressing the legal and institutional deficiencies identified in the first MER from the time of its adoption in 2007. The enactment of the Prevention of Organised Crime Act, Financial Intelligence Act and Prevention and Combating of Terrorist and Proliferation Activities Act, among others, provided for identification and verification of beneficial ownership; improved the criminalisation of ML and TF offences; and broadened the scope of sanctions. Furthermore, Namibia's institutional arrangements have been strengthened through the creation of new institutions, including, in most cases, AML/CFT specialised divisions. The Financial Intelligence Act established and expanded the operations of the Financial Intelligence Centre ("FIC") and established a National AML/CFT Task Force.</p> <p>Earlier this year, the first criminal trial relating to the Fishrot corruption scandal kicked off. This large-scale corruption in the fishing industry was orchestrated by local and international organised criminal groups, including local politically exposed persons, resulting in the syphoning of large revenues from the country's fishing industry. The formation of the Integrated Investigations Task Force has been successful in coordinating the efforts of the law enforcement agencies and the FIC to proactively identify, investigate and prosecute complex ML cases such as this.</p>
Nigeria	<p>Economic and Financial Crimes Commission (Establishment) Act, 2004</p> <p>Corrupt Practices and other Related Offences Act, 2000</p> <p>Proceeds of Crime (Recovery and Management) Act, 2022</p>	<ul style="list-style-type: none"> Money Laundering (Prevention and Prohibition) Act, 2022 Terrorism (Prevention and Prohibition) Act, 2022 	<p>In Nigeria, the Central Bank of Nigeria ("CBN") announced its intention to redesign select currency notes to address among others, the increased ease and risk of counterfeiting.</p> <p>In line with its commitment to fighting corruption and illicit financing activities, the Economic and Financial Crimes Commission has arrested several unlicensed forex dealers across the country; urged Designated Non-Financial Businesses and Professions to conduct their dealings in line with the provisions of the newly enacted Money Laundering Prohibition and Prevention Act, 2022; and expressed its determination to combat ML/TF in the real estate sector.</p>
Rwanda	Law No. 54/2018 of 13/08/2018 on fighting against corruption	<ul style="list-style-type: none"> 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 Law No. 045/2021 of 18/08/2021 governing the Financial Intelligence Centre 	<p>In an effort to promote and develop Rwanda as a leading financial destination for international investment and cross-border transactions in Africa, the Government of Rwanda has recently embarked on ambitious legal, institutional and regulatory reform aimed at meeting international standards and best practices. As part of these reforms, Rwanda's ABC/AML/CFT legal and regulatory frameworks have undergone significant changes over the past five years to ensure that local and foreign investors operate in a compliant and transparent jurisdiction, which would among others, spur the appetite of foreign investors to invest in Rwanda.</p>

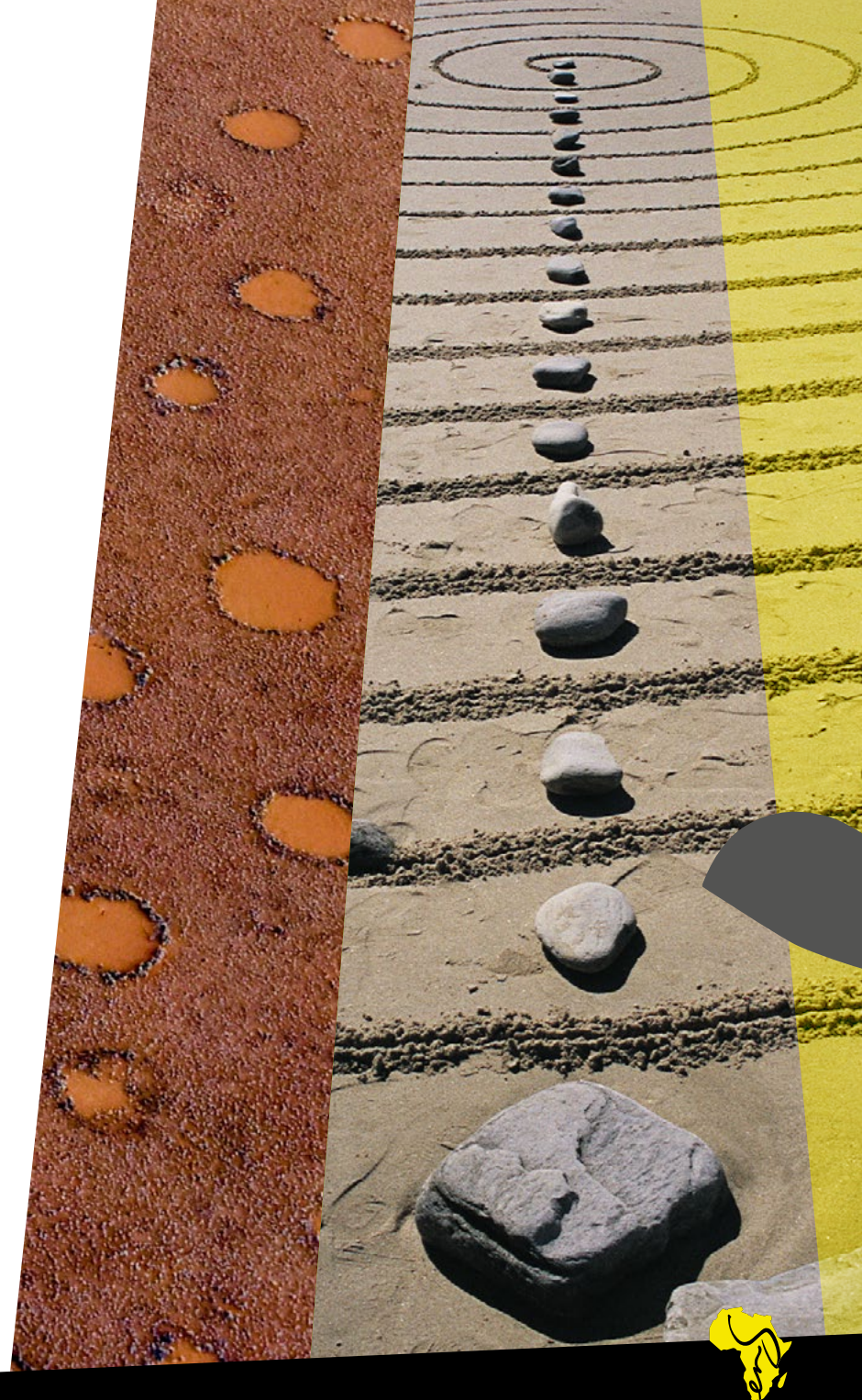
	ABC	AML/CFT	Progress and developments
South Africa	<u>Prevention and Combating of Corrupt Activities Act, 2004</u>	<ul style="list-style-type: none"> Prevention of Organised Crime Act, 1998 Financial Intelligence Centre Act, 2001 Protection of Constitutional Democracy Against Terrorist and Related Activities Act, 2004 	<p>A major current topic of interest in South Africa is its likely greylisting by the FATF. A FATF MER of South Africa in 2021 revealed acute weaknesses in the South African AML/CFT regime. In October 2021, the FATF published its MER of South Africa's AML measures, outlining various "weak spots" in the country's compliance landscape. South Africa's presentation to the FATF on the steps it has taken to address the shortcomings identified in the <u>MER</u> was scheduled for November 2022.</p> <p>In respect of corruption-related developments, former President Jacob Zuma's arms deal corruption trial has been postponed until 30 January 2023.</p>
Tanzania	<p>Proceeds of Crime Act, 1994</p> <p>Prevention and Combating of Corruption Act, 2007</p>	<ul style="list-style-type: none"> Anti-Money Laundering Act, 2006 Prevention of Terrorism Act, 2022 	<p>In October 2022, Tanzania was added to the FATF grey list and subsequently made a high-level political commitment to work with the FATF and ESAAMLG to strengthen the effectiveness of its AML/CFT regime. The country has made progress on some of the MER's recommended actions since the adoption of its MER in April 2021. This includes developing a legal framework for TF and targeted financial sanctions and disseminating Financial Intelligence Unit strategic analysis.</p>
Uganda	Anti-Corruption Act, 2009	<ul style="list-style-type: none"> Anti-Anti-Terrorism Act, 2002 Anti-Money Laundering Act, 2013 	<p>Since February 2020, when Uganda made a high-level political commitment to work with the FATF and ESAAMLG to strengthen the effectiveness of its AML/CFT regime, it has demonstrated progress, including completing the ML/TF risk assessment of legal persons and arrangements. The FATF has recommended that Uganda should continue to work to implement its action plan to address its strategic deficiencies.</p> <p>On 7 September 2022, the president assented to the amendment of the <u>Anti-Money Laundering (Amendment) Act, 2022</u> to empower the Financial Intelligence Authority and other supervisory authorities to levy administrative penalties for breach of the provisions of the Act and require accountable persons to take appropriate steps to identify, assess and monitor their ML/TF and proliferation financing risks. Accountable persons include financial institutions, lawyers and accountants, among others.</p>
Zambia	<p>Forfeiture of the Proceeds of Crime Act, 2010</p> <p>Anti-Corruption Act, 2012</p>	<ul style="list-style-type: none"> Prohibition and Prevention of Money Laundering Act, 2001 Financial Intelligence Centre Act, 2010 Anti-Terrorism and Non-Proliferation Act, 2018 	<p>The most recent assessment undertaken by the FATF relating to the implementation of AML and CFT financing standards in 2022 deemed Zambia as Compliant for 11, and Largely Compliant for 17 of the 40 FATF Recommendations.</p> <p>In terms of the first Enhanced FUR and Technical Compliance Re-Rating report, Zambia has made progress in addressing some of the technical compliance deficiencies identified in its MER and FUR. Zambia will remain in "enhanced follow-up" status given outstanding deficiencies in other Recommendations as well as in the Immediate Outcomes.</p>



Looking ahead

While sub-Saharan African countries continue to work on strengthening their ABC/AML/CFT regimes, much is anticipated in 2023 in this respect.

- It is likely that Mauritius could continue to strengthen its AML/CFT legal and regulatory frameworks to remain off the grey list to meet international standards.
- The trial of the Fishrot corruption scandal in Namibia will hopefully set an example for enforcement and accountability in the Southern African Development Community (“**SADC**”) ahead of the impending state capture criminal trials set to take place in South Africa.
- It is anticipated that Nigeria’s Economic and Financial Crimes Commission will continue to investigate forex dealers in the parallel market as Nigerians rush to convert their naira to foreign currency in order to beat the deadline of 31 January 2023 set by the CBN for the expiration of the old notes following the redesign of some notes. Given that new ABC/AML/CFT laws were enacted this year, it is not expected that there would be major regulatory changes in the foreseeable future.
- South Africa has until February 2023 to show improvements in financial crime prevention to avoid the FATF greylisting. Between now and February 2023, it is likely that there will be a number of AML measures to remedy many of the issues identified by the MER. Whether this will be enough to avoid greylisting will remain to be seen. The South African Government has recently been tabling a flurry of amendment bills in a bid to prove to global financial bodies that it is capable of fighting ML and other forms of corruption. In the event that South Africa is included in the FATF grey list, in addition to the enhanced follow-up reviews by the FATF, South Africa may also face restrictions imposed by other jurisdictions, leading to barriers to doing business or investing in the country. According to National Treasury, it would take a number of years for South Africa to be removed from the FATF grey list, which would mean that the international economic impact may have long-lasting effects on the South African economy.



PART FOUR

a closer look at regulatory developments in key
Anglophone Africa jurisdictions



Botswana

Two of the most important recent regulatory developments in Botswana have been the introduction of the **Citizen Inclusion Act** and the new **Tribal Land Act**. These laws have driven significant changes across public/private procurement and the property market.

An increasing number of public tenders have been reserved for entities wholly owned by citizens and this trend has spilled over into the private sector, where a number of private entities are either terminating existing supply contracts with non-citizen providers to appoint wholly-owned citizen entities or restricting new supply arrangements to citizen entities. Citizen empowerment is also increasingly at the centre of government policy and decision making since the coming into force of the Citizen Inclusion Act, and it is expected that empowerment targets will soon start making their appearance in licence conditions.

With respect to property, the new Tribal Land Act has introduced the requirement that title to tribal land must be registered with the Botswana Deeds Registry and that transfers of tribal land to non-citizens require the consent of the relevant land board following a prescribed publication and objection process. These amendments have resulted in the transfer of tribal land becoming more complex and the access thereto by non-citizens being restricted.

Regulatory developments

Financial services

- 25 February 2022, the **Virtual Assets Act** came into effect with the primary purpose of regulating and licensing trading in virtual assets in Botswana. On the same day, by Government Notice, the Non-Bank Financial Institutions Regulatory Authority declared virtual assets service providers and issuers of initial token offerings as non-bank financial institutions.
- A fundamental change in the taking of security over movables in Botswana has been introduced by the passing of the **Movable Property (Security Interests) Act, 2022** (the “**MP Act**”), together with the repeal of the Hypothecation Act by way of the **Hypothecation (Repeal) Bill**. Going forward, the taking of registerable security over movable assets will take place under the MP Act and it will no longer be possible to take a statutory pledge using the Hypothecation Act. Registration of security under the MP Act will be significantly simpler and more cost effective than the registration of a statutory pledge under the Hypothecation Act. Not only will a creditor no longer be required to apply for appointment as an authorised creditor under the Hypothecation Act, but there will be no need to appoint a conveyancer to register the statutory pledge at the Deeds Registry, as currently is the case under the Hypothecation Act.



Ghana

Regulatory developments with respect to businesses in Ghana saw some key implementation strides in 2022, mainly in the fields of financial services, financial technology (fintech) and electronic payment systems. **The Electronic Transfer Levy (“E-Levy”)** became effective in May 2022 and the Bank of Ghana (“BoG”) as regulator of banks, specialised deposit-taking institutions (“SDIs”), finance houses, fintech companies and electronic payment systems providers, published its **Payment Systems Strategy** earlier in the year to promote the development of Ghanaian payment and financial systems.

Going into 2023, all financial services will continue to require the Ghana Card as the identification document to enable business transactions. The BoG is also likely to publish final disclosure and transparency guidelines for banks and SDIs and to monitor compliance with disclosure and transparency requirements. It is expected that new fintech companies may implement business models not previously covered by regulation which may be operated within the BoG’s recently introduced Regulatory and Innovation Sandbox Framework.

Regulatory developments

Financial services

- On 12 January 2022, the BoG published the **Payment Systems Strategy**, which sets out the policy direction and guidelines aimed at promoting an enabling environment to develop the Ghanaian payment and financial systems.
- **Public Notice No. BG/GOV/SEC/01** issued by the BoG on 19 January 2022 provides that, with effect from 1 July 2022, the Ghana Card is the only identification card that will be used to undertake transactions at all BoG licensed and regulated financial institutions.
- The **Electronic Transfer Levy Act, 2022**, came into effect on 1 May 2022 and imposes a 1.5% levy on electronic transfers (including mobile money transfers, transfers between bank accounts and mobile money accounts, and bank transfers to instant pay digital platforms), which is to be deducted at the time of the transfer. Administrative guidelines, providing clarity and guidance on the application of the Act was issued by the Ghana Revenue Authority on 27 April.
- The **Regulatory and Innovation Sandbox Framework**, published by the BoG on 19 August 2022, enables small scale, live testing of innovative financial products, services and business models by eligible financial service providers and start-ups (operating under a special exemption, allowance, or other limited, time-bound exception) in a controlled environment under the supervision of the BoG.
- On 5 September 2022 the BoG published an exposure draft of the **Disclosure and Transparency Guidelines for Digital Financial Services and Products** for application by payment service providers, banks and SDIs.



Kenya

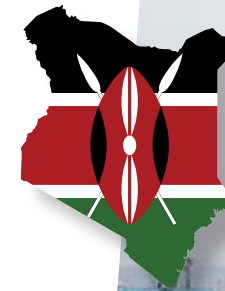
There have been several developments with regard to the regulation of the corporate commercial and financial services sectors in 2022. The **Start-up Bill** and **Sugar Bill**, which are in various stages of legislation, are expected to encourage entrepreneurship through start-up companies and promulgate new regulation in the sugar sector. There was also a call by the Central Bank of Kenya (“**CBK**”) for the public to comment on the potential use of Central Bank Digital Currency in Kenya. The Communications Authority of Kenya is in the process of hiring a consultant to study over-the-top, including online streaming services in Kenya, in order to examine the existing legislative framework and identify gaps in the regulation.

On 17 February 2022, the EU and Kenya agreed to strengthen their relationship by negotiating an interim **Economic Partnership Agreement** (iEPA). The agreement is expected to enhance trade and investment opportunities and boost sustainable economic growth and job creation in the two regions.

On 14 July 2022, the **United States-Kenya Strategic Trade and Investment Partnership** (“**STIP**”) was launched by the United States Trade representative and Kenya’s Ministry of Industrialization, Trade and Enterprise Development cabinet secretary. The United States – Kenya STIP is aimed at enhancing commitments between the two countries in a wide range of areas with a view to increasing investment, promoting sustainable and inclusive economic growth, benefiting workers, consumers, and businesses and supporting African regional economic integration.

The **election of a new president in Kenya**, H.E. President William Samoei Ruto, is expected to herald a raft of legal and regulatory changes to enable the incoming regime to fulfil its election promises. The president is keen to improve the ease of doing business in Kenya and has announced the proposed listing of an additional six to 10 state-owned enterprises at the Nairobi Securities Exchange (“**NSE**”) to increase the efficiency of the enterprises and boost activity in the stock exchange. He also ordered the review of the Privatization Act, 2005 with a view to amend or repeal it and replace it with a statute that will facilitate the listing of additional shares of the state corporations at the NSE through initial public offerings. This process is in its initial stages.

Whereas the regulatory developments of 2022 mainly focused on regulating players in the digital market, it is expected that the new regime’s focus will be on creating a favourable business environment in Kenya.



Regulatory developments

Financial services

The Central Bank of Kenya (Digital Credit Providers) Regulations, 2022 (the “**DCP Regulations**”) were published on 18 March 2022 for the licensing and oversight of the previously unregulated digital credit providers. The DCP Regulations operationalise the provisions of the **Central Bank of Kenya (Amendment) Act, 2021**, which became effective on 23 December 2021. Under the DCP Regulations, a person can only engage in digital credit business if they are licensed by the CBK in accordance with the DCP Regulations or whose digital credit business is regulated under any other written law. Following the dismissal of a court petition filed by the Association of Microfinance Institutions seeking to stop the application of the licensing requirement to non-deposit taking microfinance institutions, non-deposit taking microfinance institutions are now required to obtain a digital credit provider licence from the CBK.

The enforcement of the DCP Regulations also resulted in a clampdown by the Office of the Data Protection Commissioner on the digital credit providers who were not fully compliant with the data protection laws as required under the DCP Regulations.

Gazetted on 31 December 2021, the **Nairobi International Financial Centre (General) Regulations, 2021** (the “**NIFC Regulations**”) were published under the Nairobi International Financial Centre Act, 2017, which seeks to provide for a legal framework to facilitate and support the development of an efficient and globally competitive financial services sector in Kenya that generates high levels of national savings and investments. The NIFC Regulations were published in anticipation of the operationalisation of the NIFC, which was officially launched in July 2022.

It is expected that the NIFC will include a one-stop shop for incorporation and other services, make improvements to the overall legal and regulatory ecosystem for financial services and as a business centre and offer a more predictable business environment with a stable tax and operating framework. It also focuses on improving the framework for dispute resolution for financial sector disputes through the establishment of a “fast-stream” within the courts to adjudicate financial services disputes and, through the NIFC Steering Council, provide a critical mechanism to resolve cross-sectoral challenges facing the financial sector and investors.

Infrastructure

The **Public Private Partnerships (“PPP”) Act, 2021** came into force on 23 December 2021 and repealed the Public Private Partnerships Act, 2013. It provides for the participation of



the private sector in the financing, construction, development, operation or maintenance of infrastructure or development projects through PPPs and for streamlining the regulatory framework for PPPs in Kenya.

The PPP Act governs PPP procurement methods, PPP project identification procedures and selection criteria for private parties, types of PPP arrangements, the minimum contractual obligations that need to be specified in a PPP project agreement and the participation of county governments in PPP projects.

Corporate/commercial

In 2019, an **amendment to the Companies Act, 2015** introduced a requirement for every company to keep a register of its beneficial owners and submit a copy of this register to the Registrar of Companies within 30 days of preparation. In order to put the above statutory requirements into action, the Attorney-General published the **Companies (Beneficial Ownership Information) Regulations, 2020** with effect from 28 February 2020.

The **Companies (Beneficial Ownership Information) (Amendment) Regulations, 2022** were gazetted on 24 January 2022 and are targeted at fighting corruption and increasing transparency in reporting and publicising information on the beneficial owners of the companies that are doing business with the government.

A company is required to disclose its beneficial ownership information to a procuring entity, where the company participates in public procurement and assets disposal under the Public Procurement and Asset Disposal Act, 2015; or the contracting authority, where the company participates in a PPP arrangement under the Public Private Partnership Act, 2013.

The regulations also provide that the government may seek, publish and publicise any important information regarding a company if such information affects the country.

ESG

The CBK published the **Guidance on Climate-Related Risk Management in 2021** which requires financial institutions regulated by the CBK to i) develop and submit to the CBK a plan on how they intend to implement the Guidance by 30 June 2022 and ii) submit quarterly reports to the CBK on the progress of its implementation within 10 days after the end of every calendar quarter, from the quarter ending 30 September 2022.

The NSE in November 2021, launched the **ESG Disclosures Guidance Manual** aimed at improving and standardising the information that listed companies report on an annual basis. All NSE-listed businesses are required to publicly report their ESG performance annually, with mandatory reporting beginning November 2022.



Mauritius

Through the **Finance (Miscellaneous Provisions) Act 2018**, Mauritius has introduced substantial legislative reforms to its financial services sector, and more specifically, its global business regime. The aim of these changes has been to enhance the country's competitiveness and transparency as an international financial centre. This includes the abolition of the previous regimes of the Global Business Category 1 and Global Business Category 2 companies, which have been replaced by the Global Business Company and the Authorised Company, along with changes in the taxation regime of these newly-introduced entities.

Much of the recent regulatory developments in Mauritius have been trending towards the Fintech and ESG realms. To develop the ESG framework, the Government of Mauritius announced in the 2020/2021 budget that it intended to develop a **green finance framework** for the country. This includes a regulatory and supervisory framework for the issuance of sustainable bonds and green bonds. This has been part of efforts by the nation to meet its nationally determined contributions and achieve the Sustainable Development Goals set out by the United Nation's 2030 Agenda for Sustainable Development in 2015.

Regulatory developments

Financial services

Adopting regulatory innovations to promote the Fintech ecosystem, the **Virtual Asset and Initial Token Offering Services Act, 2021** came into force on 7 February 2022. This Act is promising in establishing Mauritius as an attractive location to invest in virtual assets and virtual tokens. It provides a regulatory framework, aligned with international standards and best practices, to promote business activities for service providers dealing with virtual assets and initial token offerings, within a safe, secure and regulated environment.

In addition to the Act, the following virtual assets-related rules, effective from 1 July 2022, were issued on 15 July by the Financial Services Commission:

- Virtual Asset and Initial Token Offerings Services (Capital and Other Financial Requirements) Rules 2022;
- Virtual Asset and Initial Token Offerings Services (Client Disclosure) Rules 2022;
- Virtual Asset and Initial Token Offerings Services (Custody of Client Assets) Rules 2022;
- Virtual Asset and Initial Token Offerings Services (Cybersecurity) Rules 2022;
- Virtual Asset and Initial Token Offerings Services (Publication of Advertisements) Rules 2022;
- Virtual Asset and Initial Token Offerings Services (Risk Management) Rules 2022; and
- Virtual Asset and Initial Token Offerings Services (Statutory Returns) Rules 2022.



AML/CFT Guidance Notes for Virtual Asset Service Providers & Issuers of Initial Token Offerings was published on 28 February 2022 and updated on 4 July 2022. These Guidance Notes provide an outlook on the significance of ML/TF risks associated with virtual asset activities and guidelines to virtual asset service providers (“**VASPs**”) and issuers of initial token offerings (“**IITOs**”) on their anti-money laundering and combatting the financing of terrorism compliance obligations under the Virtual Asset and Initial Token Offering Services Act, 2021.

The Guidance Notes are in line with the FATF Updated Guidance on Risk- Based Approach on Virtual Assets and Virtual Asset Service Providers published in October 2021. The Guidance Notes for VASPs and IITOs assist VASPs and IITOs to meet their obligations on targeted financial sanctions, including sanction screening and implementation of internal controls and other procedures to prohibit transactions with designated and listed parties.

Banking services

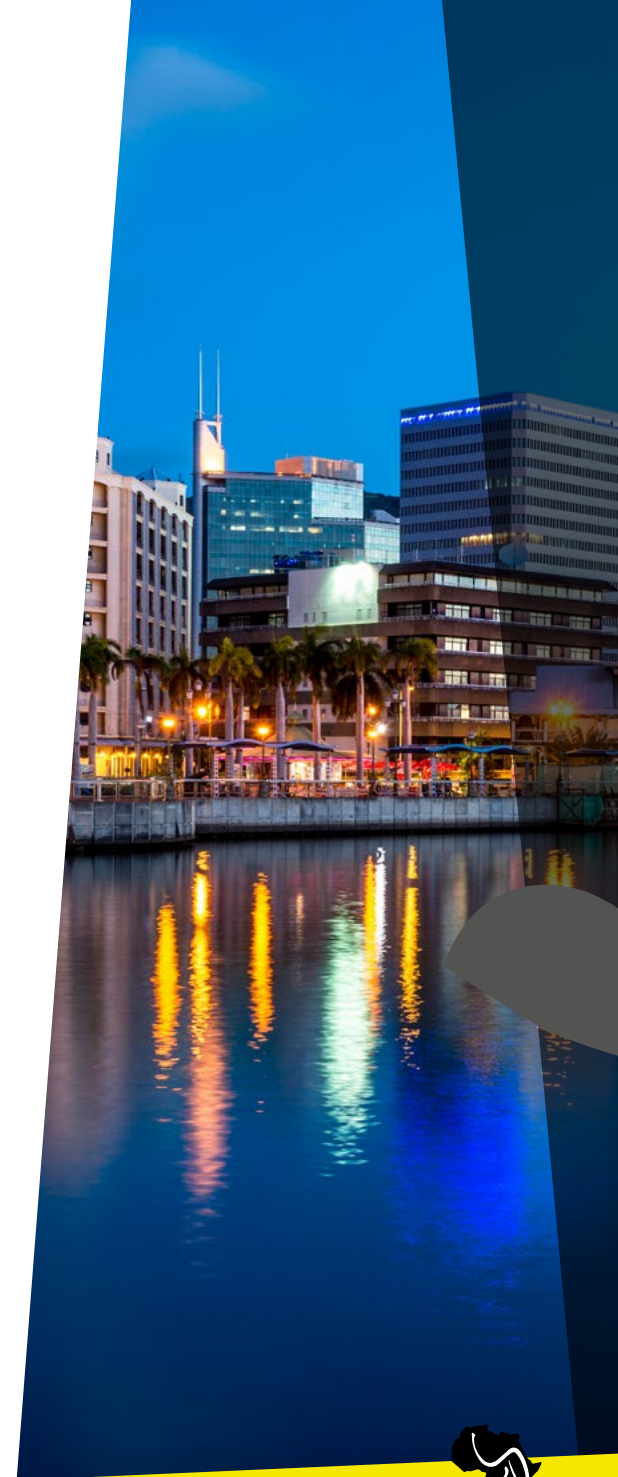
On 6 December 2021, the revised **Guideline on Private Banking** was issued by the Bank of Mauritius (“**BOM**”), which sets out the regulatory and supervisory framework applicable to banks conducting private banking business and specifies additional requirements to or exemptions from the rules applicable to conventional banking.

On 6 December 2021, new **Guidelines for Digital Banks** were issued by the BOM. The Guidelines set out the regulatory and supervisory framework for operating a digital bank, which is a bank carrying on banking business exclusively through digital means or electronically, and sets out the requirements to or exemptions from the legal, regulatory and supervisory framework applicable to traditional banks and the terms and conditions under which the BOM shall consider these exemptions under the Banking Act, 2004.

On 15 April 2022, the **Variable Capital Companies Act 2022** came into force. This act provides the legal framework for the setting up and operating of variable capital companies.

On June 2022, a new **Guideline on Stress Testing** was issued by the BOM. The Guideline sets out the high-level principles to be followed by banks for the implementation of a sound stress testing framework. Banks must ensure full compliance with this Guideline by 30 November 2022.

On April 2022 and June 2022, revised **Additional Macprudential Measures for the Banking Sector** were published by the BOM, which aim to mitigate potential systemic risks to the Mauritian banking sector as a whole.

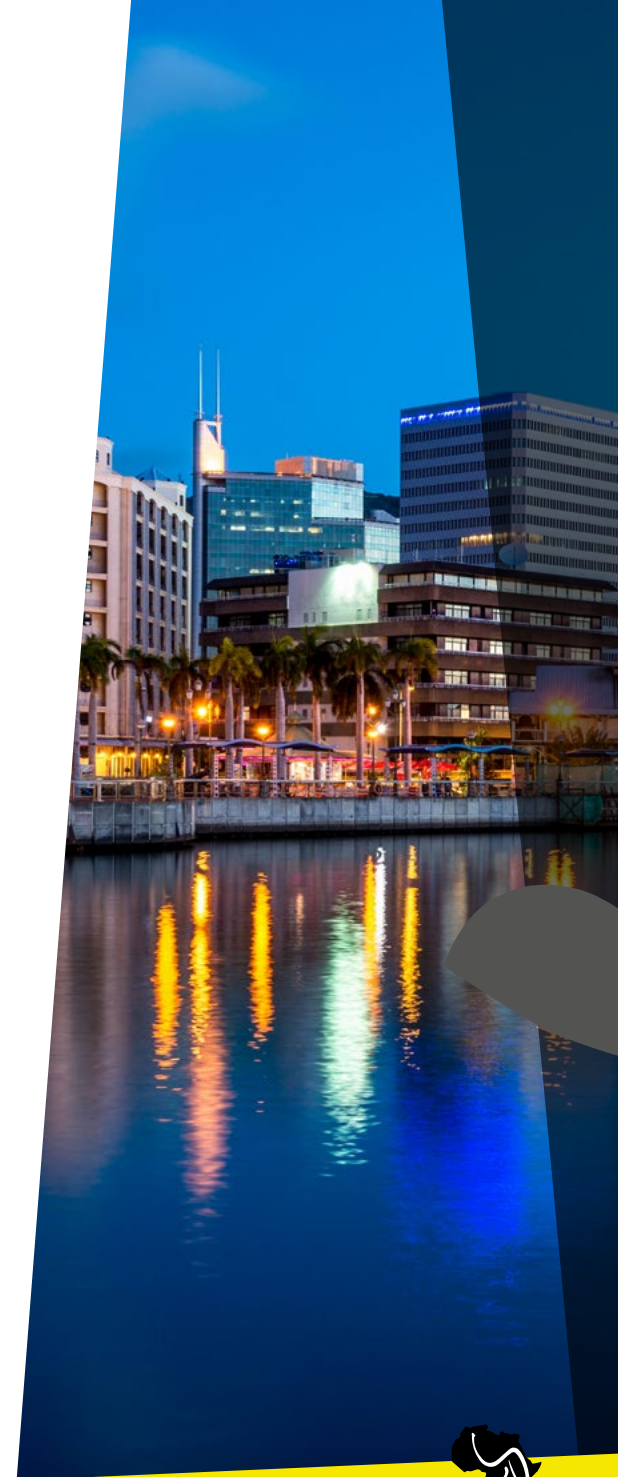


On 21 July 2022, the Financial Services Commission (“FSC”), in collaboration with the Economic Development Board (“EDB”) and the Corporate and Business Registration Department (“CBRD”), launched the **FSC Single Window** to enhance financial services in Mauritius. The FSC Single Window provides access to three institutions namely the FSC, the EDB and the CBRD. It contains information on investment matters and allows for the simplified and coordinated processing of investor requests.

ESG

In line with the ESG factors, FSC on 23 December 2021 published **Guidelines for Issue of Corporate and Green Bonds in Mauritius**. These Guidelines set out the expectations of the FSC on the issuance of corporate and green bonds in Mauritius, including the duties of the issuer, issuing and paying agent and the corporate finance adviser. They also serve to clarify the regulatory roles of the FSC in supervising such financial instruments and define the practices and procedures to be adopted by issuers of corporate and green bonds.

On 1 April 2022, **Guidelines on Climate-related and Environmental Financial Risk Management** were published by the BOM. These Guidelines set out the expectations of the BOM, which include adopting a prudent approach to climate-related and environmental financial risks to enhance the resilience of the banking sector against these risks. The Guidelines assist financial institutions in embedding sound governance and risk management frameworks for climate-related and environmental financial risks within their existing risk management frameworks. They also provide for a transitional period up to 31 December 2023 for the development and implementation of relevant frameworks. Financial institutions are required to submit their internal roadmaps within six months from the effective date of such Guidelines and progress reports on a half-yearly basis.



Namibia

With the current global energy crisis, Namibia is establishing itself as a green hydrogen investment destination. It recently hosted the **Namibia Green Hydrogen Conference**, co-sponsored by ENSafrica which, among other objectives, set out to discuss the legal and regulatory framework required to facilitate the successful development of a green hydrogen economy in the country, and the micro and macroeconomic opportunities, challenges and risks of large-scale investments in green hydrogen for a small, developing economy such as Namibia.

Current anticipated projects within Namibia include the vertically-integrated green hydrogen production project which is to be operated by Hyphen Hydrogen Energy. In 2021, Hyphen was selected as the preferred bidder for a USD9.4-billion green hydrogen project to be developed in the Tsau//Khaeb National Park, which includes the right to construct and operate the project for a period of 40 years. Further projects which were announced at the Namibia Green Hydrogen Conference include the award of the JCOI/PTX grant to Cleanergy Solutions Namibia for the establishment of a green hydrogen pilot plant and refuelling station on the coast of Namibia, which is anticipated to be operating at the end of 2023. HDF Energy has further announced the development of a hydrogen-to-power station in Swakopmund, consisting of an 85 MW solar park and a green hydrogen production unit, which is to be commercially operational by 2024.

Earlier this year, the government announced its intention to augment some pieces of legislation and develop a legal framework to regulate the new industry, as the current Petroleum Products and Energy Act, 1990 and the Minerals (Prospecting and Mining) Act, 1992 would not adequately regulate green hydrogen production and use. The recently launched **Namibia Green Hydrogen and Derivatives Strategy**, published in November 2022, envisages the preparation and promulgation of a fit-for-purpose legislative framework, being the **Synthetic Fuels Act**. As green hydrogen projects expand, it is anticipated that a regulatory framework will be at the top of the government's agenda in 2023. In addition to the anticipated Synthetic Fuels Act, a **Sovereign Wealth Fund of Namibia Act** is also anticipated to be promulgated, which will regulate the investment of resource revenues generated from the green hydrogen industry, and other natural resources within Namibia, into the Weltwitschia Fund.

In other developments, Namibia has recently joined a host of countries, such as South Africa, Mauritius, Germany and the Czech Republic, and launched a **digital nomad visa**, allowing a visitor to stay in a country and work remotely for a foreign-based employer. Namibia's financial services industry was also subject to several changes to foster the stability of the industry, reduce and deter financial crime, and protect consumers of financial services.



Regulatory developments

Financial services

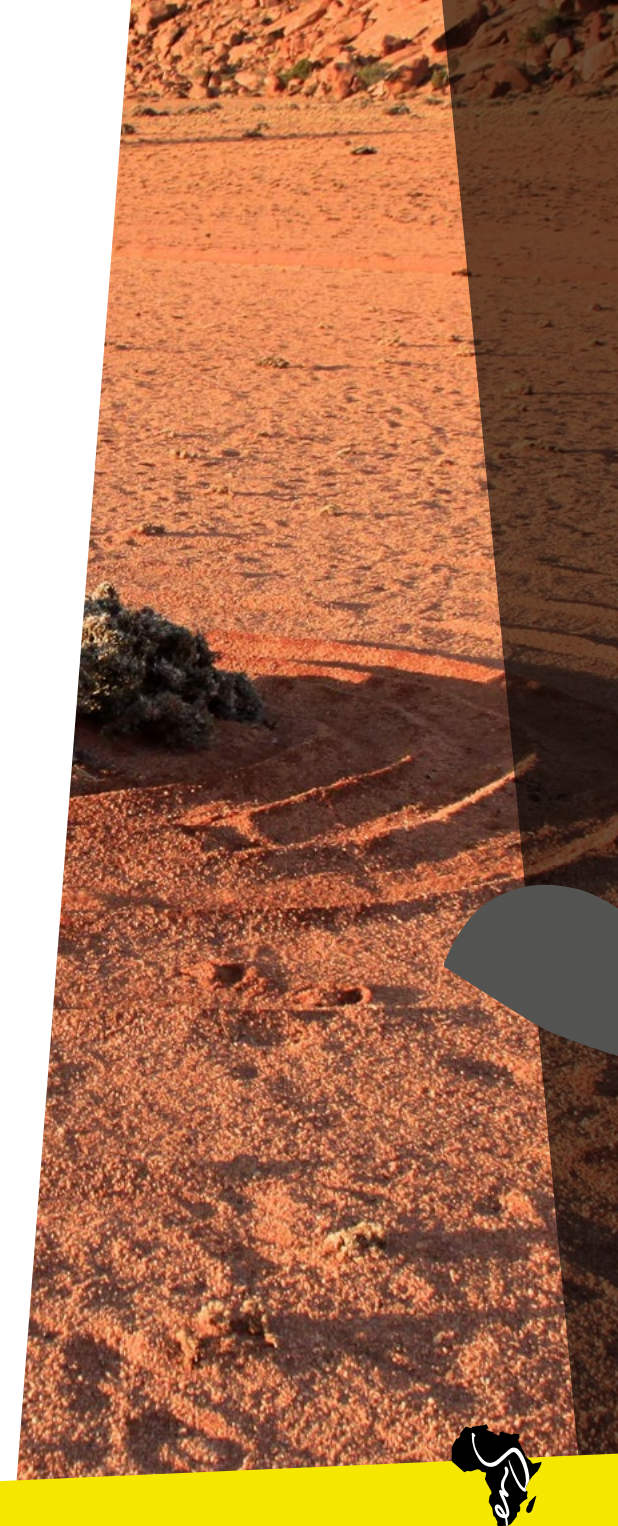
On 1 October 2021, the **Financial Institutions and Markets Act, 2021** (the “FIM Act”) and the **Namibia Financial Institutions Supervisory Authority Act, 2021** (the “NAMFISA Act”) were promulgated, with the FIM Act aiming to consolidate and harmonise the laws regulating financial institutions, financial intermediaries and financial markets in Namibia, and the NAMFISA Act providing for the continuation of NAMFISA to supervise compliance with financial services laws.

Due to practical implementation issues, the FIM Act did not come into operation on 1 October 2022 as previously envisaged. NAMFISA has indicated that the date on which the FIM Act will come into operation will be communicated to the public at the appropriate time.

A first draft of a **Sovereign Wealth Fund of Namibia Bill** is undergoing a round of public consultation. The Bill seeks to establish the Welwitschia Fund and to provide for its management, functions and powers in serving as a vehicle for the national saving for future generations (in the form of an intergenerational fund) as well as fiscal and official reserve stabilisation (in the form of a stabilisation fund). The Welwitschia Fund, which was already established as a reserve account in terms of the Bank of Namibia Act, 2020 in May 2022 without the Bill being in place, currently holds NAD300-million, which was direct seed capital from the government and a contribution from the dividends declared by the Bank of Namibia.

Investment

The **Investment Promotion and Facilitation Bill, 2021** was tabled before the National Assembly by the minister of Industrialisation and Trade on 25 November 2021 and seeks to provide for the promotion and facilitation of foreign and Namibian investment into Namibia. The Bill was subsequently withdrawn following criticism by both members of the National Assembly and the public. It is currently being reworked, and until such time that a new piece of investment legislation has been passed, the Foreign Investment Act, 1990 will remain in force and applicable to investments into Namibia.



Nigeria

In recent years, Nigeria has consistently been introducing new regulatory frameworks to promote and encourage the development and integration of its technology ecosystem. In October 2022, the presidency introduced the **Startup Act**, which provides for the development and growth of technology-related talent in the country.

Regulatory developments

Corporate/commercial

The **Startup Act**, which was signed into law on 19 October 2022, seeks to provide a legal and institutional framework, as well as an enabling environment for the development and operation of startups in Nigeria, and to position the country's startup ecosystem as the leading digital technology centre in Africa.

Financial services

Circular No. FPR/DIR/PUB/CIR/001/042: **Guidelines for Regulation and Supervision of Credit Guarantee Companies** in Nigeria was published by the CBN on 23 March 2022 and set out the minimum standards for the operations of credit guarantee companies in Nigeria.

The **Rules on Issuance Offering and Custody of Digital Assets** were published by the Securities and Exchange Commission, Nigeria on 11 May 2022 and consist of:

- Part A: Rules on Issuance of Digital Assets as Securities, which apply to all issuers seeking to raise capital through digital asset offerings;
- Part B: Rules on Registration Requirements for Digital Assets Offering Platforms ("**DAOPs**"), which set out the requirements that an applicant seeking to register as a DAOP must comply with in addition to the general requirements for VASPs;
- Part C: Rules on Registration Requirements for Digital Asset Custodians ("**DACs**"), which set out the requirements that an applicant seeking to register as a DAC must comply with in addition to the general requirements for VASPs;
- Part D: Rules on VASPs, which cover the requirements for issuance of digital assets and the registration of VASPs, a Digital Asset Exchange ("**DAX**"), a DAC and DAOP; and
- Part E: Rules on DAX, which set out the requirements that an applicant seeking to register as a DAX Operator must comply with in addition to the general requirements for VASPs.

The **Operational Guidelines for Open Banking in Nigeria** were published by the CBN on 13 May 2022 and set out the responsibilities and expectations of an Application Programming Interface ("**API**") provider, API customer and customer, as defined in the Guidelines.



Rwanda

In order to achieve its long-term goal of sustainable development and economic transformation, Rwanda aims to increase private sector investment and foreign exchange earnings to enhance the nation's balance of payment.

As a result, various far-reaching business-related laws and regulations have been enacted, most of which came into force in 2021, with supporting regulations entering into force in 2022. These include new laws on companies, partnerships, insolvency, negotiable instruments, foundations, trusts, collective investment schemes, insurance business, deposit taking microfinance institutions, payment systems, financial service consumer protection, and a law establishing the Capital Market Authority of Rwanda. Various ministerial orders and regulations, such as the **Regulation governing foreign exchange operations** and **Instructions of the Registrar General determining other requirements for a private company to request for conversion into a limited liability partnership and modalities for such a conversion**, came into force to contribute to the enforcement of the new laws.

With Rwanda's focus on becoming a regional headquarter jurisdiction and hub for various companies, 2023 is expected to bring further changes intended to accommodate alternative business structures. On 30 July 2022, Rwanda created a new Ministry of Public Investments Privatization which may lead to increased government investment and the privatization of some existing public companies.

Regulatory developments

Corporate/commercial

On 8 February 2021, the **new Companies Act (Law No. 007/2021 of 05/02/2021 governing companies)** was gazetted, repealing and replacing its predecessor (Law No. 17/2018 of 13/04/2018). The new Act introduces various new corporate forms (such as a protected cell company and community benefit company), and provides clarity on a company limited by guarantee. Compliance obligations have been extended to include a requirement for all companies to maintain a register containing beneficial ownership information, but decrease the majority of shareholders required to approve a written resolution from 100% to 75%.

Rwanda enacted its first **Law Governing Partnerships (Law No. 008/2021 of 16/02/2021)**, in February 2021. The Law is aimed at providing alternative vehicles for investors using Rwanda as a holding jurisdiction within the ambit of the larger Kigali International Financial Centre ("KIFC") project. For instance, it provides for the possibility of converting a private limited liability company into a limited liability partnership.

The **Instructions of the Registrar General No. 001/2022/RG of 23/05/2022**, effective from 30 May 2022, determine the requirements for a private company to request conversion into a limited liability partnership and provide the modalities for such a conversion.



Insolvency/bankruptcy

Regulation No. 52/2022 of 01/09/2022 governing trust and company service providers introduces the requirements for and process of applying for a license as a trust and company service provider. A transitional period of one year is granted to trust and company service providers to comply with its provisions.

Exchange control

Regulation No. 42/2022 of 13/04/2022 governing foreign exchange operations establishes rules for the management of foreign exchange transactions by licensed banks, foreign exchange bureaus and any other licensed intermediaries.

Investment

The **Investment Code (Law No. 006/2021 of 05/02/2021 on investment promotion and facilitation)**, became effective on 8 February 2021 and repeals law No. 06/2015 of 28/03/2015. It provides for new priority economic sectors, and a set of new investment incentives mainly geared at enhancing Rwanda's competitiveness, attracting cross-border investment, new businesses and financial institutions operating across the African continent and beyond through the newly established KIFC.

Special incentives are also available to strategic investment projects which are of national importance and have a strategic impact on the development of the country, subject to certain requirements set out under the code.

Financial services

Regulation No. 41/2022 of 13/04/2022 governing the regulatory sandbox, became effective on 18 April 2022 and aims at:

- enabling innovative financial products, services and solutions to be deployed and tested in a live environment prior to launch into the marketplace, within specified parameters and timeframes;
- fostering responsible financial innovations that benefit financial consumers by improving the quality of access to and usage of the financial products and services; and
- setting application eligibility requirements and appropriate safeguards to identify and manage potential risks.

Regulation No. 54/2022 of 01/09/2022 governing electronic money issuers, effective from 19 September 2022, sets out the rules governing activities of electronic money issuers and the safeguarding of electronic money.



Tanzania

Significant regulatory developments impacting on the Tanzanian business sector occurred in 2022. Following parliamentary approval of the 2022/2023 National Budget, the **Finance Act, 2022** was enacted by Parliament on 30 June 2022. The Finance Act introduced amendments to no less than 37 pieces of principal legislation, across a variety of sectors. Several pieces of subsidiary legislation in the trade, banking and mining sectors have also been published.

Several other new bills, which are set to introduce further regulatory changes once they become effective, have been passed by Parliament, but have not been gazetted yet. These include the **Written Laws (Miscellaneous Amendments) Bill of 2022** which amends the **Banking and Financial Institutions Act, Chapter 342 of the laws of Tanzania**, and the **Tanzania Investment Bill** that will repeal and replace the **Tanzania Investment Act of 1997**.

Regulatory developments

Financial services

In April 2022 the Bank of Tanzania published the **Stress Testing Guidelines for Banks and Financial Institutions, 2022** aimed at evaluating the potential vulnerability to unlikely but plausible events in the financial and macroeconomic environment, which have become an integral part of a bank's risk management system. Financial institutions in Tanzania are now obliged to have in place a stress testing framework and a flexible infrastructure capable of retrieving data and modifying methodologies for stress testing. Single or multi-period stress testing is to be conducted on a quarterly basis and stress testing reports must be submitted to the Bank of Tanzania within 45 days after the end of each quarter. Civil monetary penalties apply if a financial institution fails to comply with the relevant requirements or makes a misrepresentation of information on any of the stress testing reports submitted to the Bank of Tanzania.

The **Foreign Exchange Regulations, 2022**, which replace the Foreign Exchange Regulations, 1998 and the Foreign Exchange (Listed Securities) Regulations, 2003, were published by the Bank of Tanzania on 13 May 2022. The Regulations continue to:

- restrict residents from opening and maintaining foreign bank accounts without the approval of the Governor of the Bank of Tanzania (except accounts within prescribed territories for settlement of securities held within the East African Community ("EAC") and SADC countries);
- permit Tanzanian residents to receive payments from non-residents through local banks or financial institutions;



- require the registration of foreign loans with a tenure exceeding 365 days with the Bank of Tanzania and the assignment of a Debt Registration Number to such loan; and
- require the declaration of cash amounts exceeding USD10 000 (or its equivalent) by persons entering or leaving the country.

The Regulations:

- allow residents to obtain foreign loans, provided that such transactions are carried out through a local bank or financial institution;
- allow residents to purchase, transfer, issue or sell securities, coupons, or participatory rights in a collective investment scheme within the EAC and SADC; and
- require residents who intend to issue securities in any of the EAC or SADC member countries to seek approval and to notify the Bank of Tanzania and the Capital Markets and Securities Authority within seven days after obtaining such approval.

Mining

The Mining (Local Content) (Amendment) Regulations, 2022 were gazetted on 8 July 2022.

The Regulations aim to address regulatory and practical challenges concerning the Mining Local Content Regulations of 2018. The regulations, *inter alia*:

- clarify the modes of procurement of goods and services for mining operations;
- amend the definition of “mining activities” to include the provision of goods and services for purposes of mining operations; and
- define a “contractor” as a person who has entered into a contract with a licensee within or outside Tanzania for the provision of goods and services in mining operations.

It is noteworthy that, previously, a person became a contractor upon having a mining agreement with Tanzania to undertake mining exploration and production activities under the Mining Act. With these amendments, the scope of application of the Regulations is widened, to provide that all persons who are contractually obliged to provide services or goods to the mining sector are required to comply with the Regulations as contractors. As a result, service providers to the mining sector, such as law firms, telecommunications companies, financial institutions, and caterers, are now required to comply with reporting requirements under the Regulations, including the annual submission of local content plans and performance reports to the Mining Commission.

The **Mining (State Participation) Regulations, 2022**, were gazetted on 23 September 2022 to provide further clarity on matters concerning Non-Dilutable Free Carried Interest (“FCI”) in the capital of a mining company or persons holding mining licences or special mining licences.



Although the Mining Act, 2010 provided the Minister of Mining with the power to enter into a development agreement with the holder of a Special Mining Licence and Mining Licence and granted the government an FCI, no minimum FCI holding requirement was stipulated. Accordingly, the level of FCI and government participation had to be negotiated between the government and the mineral rights holder, depending on the type of minerals and the level of investment. The Regulations now require that:

- the government, through the Treasury Registrar, acquire not less than 16% of the non-dilutable FCI shares in the capital of a mining company or any Mining Licence or Special Mining Licence holder. Further, the government has an option of acquiring up to 50% of non-dilutable FCI shares in the capital of a mining company based on a special class of shares in which the holder of the shares shall be entitled to the payment of a dividend of a fixed amount in priority to another class; and shares shall not decrease in value or percentage of ownership of a shareholder or loss of a percentage of equity; and
- Mining Licence and Special Mining Licence holders initiate negotiations for a joint venture (“JV”) arrangement to enable the Government of Tanzania to acquire shareholding in the venture by 22 December 2022. The JV arrangement with the government must be governed by a framework agreement substantially in the form set out in the First Schedule of the Regulations.

Corporate/commercial

The **Companies (Beneficial Ownership) Regulations, 2021**, which came into effect on 14 May 2021, read with the **Companies (Forms) (Amendments) Rules 2021**, require companies incorporated or registered under the Companies Act to declare their beneficial owners using the prescribed Form No. 14b.

Companies were initially required to disclose beneficial ownership information by 31 December 2021, but the deadline was extended to 30 June 2022. A fine of between TZS5-million and TZS10-million is imposed for non-compliance with the relevant requirements.



Uganda

During 2022, Uganda made significant progress in strengthening its regulatory environment to improve the ease of doing business in the country and to comply with international requirements, specifically those by FATF. As part of this initiative, the Ugandan Parliament has passed key legislation to address existing gaps in the law on beneficial ownership and proliferation financing.

Regulatory developments

Environmental

The **National Climate Change Act, 2021** entered into force on 3 January 2022 and gives the force of law in Uganda to the United Nations Framework Convention on Climate Change, the Kyoto Protocol, and the Paris Agreement. It provides for the coordinated implementation of climate change response measures, the measuring of emissions, reporting and verification of information and financing for climate change.

Financial services

On 6 August 2022 the Ugandan Parliament passed the **Anti-Money Laundering (Amendment) Bill, 2022**, the **Trustees Incorporation (Amendment) Bill, 2022**, the **Cooperative Societies (Amendment) Bill, 2022**, and the **Anti-Terrorism (Amendment) Bill, 2022**.

Corporate/commercial

On 7 September 2022, the president assented to:

- the **Companies Act (Amendment) Act, 2022**, which provides *inter alia* for the requirement for all companies to keep a register of beneficial owners, a default code of corporate governance for every public company, notice of cessation of business by foreign companies, and the power of the registrar to strike off a company from the register in cases of voluntary winding up;
- the **Insolvency (Amendment) Act, 2022**, which repeals Part IX providing for cross-border insolvency and reciprocal arrangements to comply with the United Nations Commission on International Trade Law (UNCITRAL) Model Law on Cross-Border Insolvency and the World Bank recommendations on the ease of doing business, and provides for a reduction on the restrictions on discharged bankrupts from five to two years; and
- the **Partnership (Amendment) Act, 2022**, which requires limited liability partnerships with beneficial owners to keep a register of their beneficial owners, recording all necessary particulars.



Zambia

The need to achieve economic recovery and development has dominated 2022's business-related regulatory developments in Zambia. This led to the tabling of **The Zambia Development Agency Bill, 2022**, and **The Investment, Trade and Business Development Bill, 2022**, which seek to redefine the regulatory framework surrounding trade and investment in Zambia to promote economic recovery and development.

Regulatory developments

Financial services

The **Zambia Institute of Banking and Financial Services Bill, 2022** seeks to promote the banking and financial services profession by providing for the registration of banking and financial service practitioners and the regulation of their practice and professional conduct, as well as the continuing existence of the Zambia Institute of Banking and Financial Services and its functions.

Corporate/commercial

The **Zambia Development Agency Bill, 2022** provides for the continuing existence of the Zambia Development Agency, the redefining of its functions, and the reconstituting of the Board of the Zambia Development Agency. It repeals and replaces the Zambia Development Agency Act, 2006.

The **Investment, Trade and Business Development Bill, 2022** seeks 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;
- promoting economic diversification through the growth of exports;
- promoting, facilitating, protecting and monitoring domestic and foreign direct investment;
- promoting investment through JVs and partnerships between local and foreign investors;
- facilitating the development of industrial infrastructure and commercial services;
- promoting research on matters related to industrial development; and
- facilitating the protection of infant industries.

It is expected that the Bills will be passed by the Zambian Parliament in 2023 and that regulations will be issued once the Bills have come into force.



With appreciation for the contributions of ÆLEX, Kilindu Giattas & Partners, Akheel Jinabhai & Associates (in association with Mckee Commercial Law) and Mulenga Mundashi Legal Practitioners to this publication.

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For more information, please contact:



Celia Becker

Executive | Africa Regulatory and Business Intelligence
cbecker@ENSAfrica.com

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