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ESTABLISHING A BUSINESS ENTITY IN KENYA

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ESTABLISHING A BUSINESS ENTITY IN KENYA

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a) Types of business entities in Kenya

Kenya has 5 main types of business entities that is, sole proprietorships, partnerships, limited liability partnerships, companies, non-governmental organizations and trusts. A highlight of the main types of business associations is provided below

i) Sole proprietorship

A sole proprietorship is a business owned by a single person and is registered through the Business Names Act. Registration of a sole proprietorship does not confer on the owner a separate legal entity, nor does it confer a limited liability on the owner. The sole proprietor remains personally liable for debts and often enters into legally binding arrangements such as contracts or lawsuits in his/her own name. The registration of a sole proprietorship is commenced by undertaking a name search and name reservation after which a form is filed. If the name is available and the particulars correct then a business registration certificate is issued.

ii) Partnerships

A partnership is largely defined as a business between 2 or more persons who carry on business with the aim of making a profit. The cap for the number of partners is 20. The Partnerships Act No. 16 of 2012 governs partnerships in Kenya. Registration of partnerships in Kenya does not confer any separate legal identity or confer corporate identity on the partners. As such, partners remain personally liable for debt. Partnerships have the option of drafting their own partnership deeds or adopting the statutory partnership deed provided in the Act. In the event a registered partnership does not provide its own deed, then the statutory deed will be applied in default.

Companies, commission agents and joint tenancies are not construed as partnerships and therefore fall outside the ambit of the Act. Partnership registration is done in the same method as the registration of a sole proprietorship through a statutory registration form that contains information about the partners, the location of the business and other mandatory details. A certificate of registration will be granted after the registration process.

It is highly recommended for persons intending to form a partnership in Kenya, to draft and file a suitable partnership deed because doing so means that the statutory deed provided for in the Partnership Act will apply in default.

Partnerships are most suitable for short-term engagements, for example collaborations as they are easier to wind up than companies. Partnerships are also used for professional entities such as law firms

and accounting firms. This is because the law provides for this.

Partners are personally liable for debt however the liability begins from the date the partner joined the partnership and subsists until the date when one exits the partnership.

Governance of partnerships'

Governance of partnerships is provided in the partnership deed drafted by the partners. In the absence of a partnership deed drafted by the members then the provisions of the Partnership Act on governance will apply. The Partnership Act has provisions on governance such as:

a) Regulations on partnership property

b) Rights and duties of partners

c) Expulsion and admission of partners

d) Non-compete clause

e) Dissolution of partnerships

In Kenya dissolution of partnerships is either through expiration of term, death, bankruptcy, illegality or via court order.

The liability of partners is joint, and partners are jointly liable for the wrongs of their co-partners in the firm. Where a partner has a debt, creditors can charge his share in the partnership property.

iii) Limited liability partnerships

Limited liability partnerships (LLPS) are recognised in Kenya under the Limited Liability Partnership Act No. 42 of 2011 (LLP Act). LLPS are corporate bodies with perpetual succession and legal personality separate from its partners.

This means that it can sue\be sued and also hold property in its own name. Exit of partners does not affect the existence of an LLP unlike a partnership which can be dissolved by exit of partners.

LLPs can be formed either by natural persons or corporate entities. The Act is flexible in that it allows founders of LLPs to draft their own LLP deed or adopt the LLP deed as provided for in the LLP Act.

Corporate governance provisions LLPs

a) An LLP must be formed by 2 or more persons and the Act allows the persons to either be corporate or natural.

b) The LLP must nominate a manager whose role is set out in the Act

c) An LLP must keep proper books of accounts. The registrar of LLPs can ask to see the books of account and can hold the LLP liable for improperly kept books.

d) An LLP must have a registered office in Kenya.

e) The LLP Act also has provisions on winding up

An LLP has several advantages over both companies and partnerships:

a) An LLP has perpetual succession unlike a partnership. This means that LLPs remain unaffected by exits.

b) An LLP has corporate identity and legal personality unlike a partnership. This means that an LLP can sue and be sued in its own name. It can also hold property.

c) An LLP is easier to wind up than companies

d) An LLP's statutory compliances are not as rigorous was companies

LLPs are suitable for some professional trades and short-term businesses. An LLP provides a

stronger hedge of protection in terms of personal liability than partnerships.

iv) Companies

Companies are registered under the Companies Act 2015. There are two main types of companies in Kenya and that is companies limited by shares or companies limited by guarantee. Companies can also be classified as private or public companies.

A private company is one having 1-50 members while a public company has more than 50 members. A private company has restrictions in terms of transfer of shares while a public company does not have a similar prescription. Companies have very detailed governance and maintenance regulations. A brief listing is provided for below of the major governance provisions

b) Shareholder rights are covered under Part VIII of the Companies Act

c) Directors' regulations are covered under Part IX of the Act

d) Provision for company secretary-Part XII of the Act

e) Resolutions and company meetings-Part XIII of the Act

f) Provisions on share capital-Part XIV

g) Provisions on company accounting practices-Part XXV

h) Provision on auditing-Part XXVII

i) Provision on foreign companies-XXXVI

Foreign companies

The law as to the operation and opening of companies in Kenya is the **Companies Act of 2015.** A business seeking to expand into the Kenyan Market has the option of registering a branch of the foreign parent company or incorporating a subsidiary. A subsidiary is defined under section 2 of the Companies Act as a company of which another company is its holding company. A subsidiary undertaking/company is equally defined as an undertaking of which the other undertaking is its parent.

As per the Laws of Kenya, a company is considered a Holding Company if it:

(a) Controls the composition of that other company's board of directors;

(b) Controls more than half of the voting rights in that other company;

(c) Holds more than half of that other company's issued share capital;

Or

(d) Is a holding company of a company that is that other company's holding company. (Take for example a company named X which is the holding company of company U. Company X may also have a company (company Y) above it which is its holding company.

A parent undertaking on the other hand is an undertaking that:

(a) holds a majority of the voting rights in the other undertaking;

(b) is a member of the other undertaking and has the right to appoint or remove a majority of its board of directors;

(c) has the right to exercise a dominant influence over the other

undertaking—

(I) because of provisions contained in the other undertaking's

articles; or

(ii) because of a control contract;

(d) has the power to exercise, or actually exercises, dominant influence

or control over the other undertaking; or

(e) is a member of the other undertaking and controls alone, under an

agreement with other shareholders or members, a majority of the

voting rights in it;

These definitions are contained in **Section 2** of the Companies Act, 2015. Notably, the Act fails to provide for the definition of a Branch under its definitions section.

The difference between a holding company and a parent company is one that requires great consideration. Both a parent and a holding company exercise a great deal of influence on their subsidiaries owing to their ownership of a majority of shares hence a majority of voting rights. However, their *modus operandi* is distinct, and this is what differentiates them. A parent company is one that actively involves itself in trade i.e. The provision of goods and services and controls the operations of its subsidiaries. By control, it means that a parent company acquires a form of controlling interest in the subsidiary.

A holding company on the other hand does not engage in business operations on its own. As its name suggest it brings together businesses and control their business and investment interests. As such it does not engage in the provision of goods and services. In both cases, however, the subsidiary maintains its legal identity.

Many foreign companies are faced with the challenge of choosing whether to open up a branch or a subsidiary in other countries as they seek to expand their business interactions and relations. A Branch though not defined in the Kenyan Company Act is considered to be an extension of the parent company hence entirely depends on the parent company. The Parent company is equally faced with the risk of bearing the liabilities of its branch as the branch does not constitute a separate legal entity.

The legal status of a branch therefore is that it maintains the structure of the parent company hence is not considered as a separate legal entity. Any liability arising from the conduct and the running of the affairs of a branch is taken to be those of the parent company. In essence a branch in Kenya, is considered under the Companies Act, 2015 to be a foreign company and is required to comply with the provisions of the Act under Part XXXVII of the same. This is because such a company is deemed/said to be incorporated in another country such as in this case Rwanda.

A subsidiary on the other hand is considered to be a Kenyan company bound by the laws of the country. The registration of the company must equally be in line with the provisions of the Companies Act, 2015 under Part II on the registration of companies.

Registering and operating a branch in Kenya

There are a number of laws that regulate the registration and operations of a foreign company (branch) in Kenya. A foreign company must first be registered in Kenya in order to legally carry out its operations. Failure to register with a foreign company attracts a fine not exceeding **KSH 5,000,000**. This fine applies to both the company and its officer in this case being the local representative of the company. These conditions for operation are outlined under section 974 of the Companies Act, 2015.

The registration procedure for a branch of a foreign company in Kenya is provided for under Section 975. The foreign Company is required to make an application to the Registrar of

companies who shall then proceed to register the company by entering its name in the Foreign Companies Register upon the fulfilment of certain conditions i.e.

a. The supply of all information required by Section 975
b. Payment of all required fees and supply of required documents
c. Compliance with the requirements as to the name and appointment of a local representatives.

The documents required for the registration of a foreign company are these: (Section 975 (3))

(a) Current certificate of incorporation of the foreign company in its place of origin/ a document of similar effect

(b) Certified copy of its constitution.

(c) List of the directors and the shareholders with all personal details

(d) A memorandum executed by the foreign company stating the powers of directors where such directors reside in Kenya and are members of a local board of directors.

(e) Documents required under Part XXXII pertaining any charge that would be deemed as registrable by a company incorporated in Kenya. As such the company in this case will be required under Section 878 to file with the registrar the particulars of all charges created by it. Such charges will include:

   i. a charge on land or any interest in land (other than a charge for any rent or other periodical sum issuing out of land) owned by the company or in which it has a proprietorial interest;
   ii. a charge created or evidenced by a document that, if executed by a natural person, would require to be registered as a bill of sale;
   iii. a charge for the purposes of securing an issue of debentures by the company;
   iv. a charge on the company's uncalled share capital (if any);
   v. a charge on calls made by the company but not yet paid;
   vi. a charge on the company's book debts;
   vii. a floating charge on the company's property or undertaking;
   viii. a charge on a ship or aircraft, or a share in a ship or aircraft, owned by the company or in which it has a proprietorial interest;
   ix. a charge on the company's goodwill or intellectual property.

(f) A notice of its registered office in the place of origin or its principal office in its place of origin and a notice of the address of its registered office in Kenya.

Once these provisions are complied with and the required fees are paid the registrar is supposed to issue the company with a unique identifying number and a certificate of compliance. The effect of the certificate is that it recognizes the registration of the company as a foreign country operating in Kenya. It equally states the date of registration of the branch in Kenya and the date of the incorporation of the parent company in its place of origin. This certificate is conclusive evidence of compliance

with the requirements of registration of a foreign company and shall be signed by the Registrar of companies and authenticated by the Registrar's official seal.

i. **Branch must have a local representative**

ii. **Foreign company must have offices.**

The fees payable on registration of a company is prescribed under sections 975 and 19 of the Companies Act, 2015. The documents required are:

(a) Application for registration of a foreign company -FC2 (copy)

(b) Notice of place of business- Form FC4 (copy)

(c) Notice specifying opening hours of company -Form FC6 (copy)

(d) Certified certificate of incorporation (copy) -Dully certified by a notary public from county of origin

(e) Certified Memorandum and articles of association (copy) -Dully certified by a notary public from county of origin

(f) Passport (copy) -For each foreign director and the local representative if foreign

(g) Passport photo (copy) - For each foreign director and the authorized local representative

(h) Contact details

(i) Where the local representative is a Kenyan:

1. Appointment letter of local representative (copy)
2. Consent letter (copy)

Requirements for registering and operating a subsidiary undertaking in Kenya

Opening a subsidiary in Kenya is basically the setting up of a local company by foreign persons. The process is therefore the same as if the same were opened by a Kenyan. The provisions of the Companies Act, 2015 are still of great importance in this case as they outline the procedure and requirements for the incorporation of a company in Kenya.

A subsidiary undertaking in Kenya can be formed by one or more persons by subscribing their names to a Memorandum of Association and equally comply with the provisions of sections 13 to 16 of the Companies Act, 2015. Among the key documents that are essential in the formation of the company are the:

(a) Memorandum of Association

(b) Articles of Association- The law under section 13 (5) requires that the Articles of Association be contained in a single document; be printed; be divided into paragraphs numbered consecutively; be dated and be signed by each subscriber to the articles.

(c) A statement of capital and Initial shareholding in the case of a company limited by shares

(d) A statement of guarantee in the case of a company limited by guarantee

(e) A statement of the company's proposed officers

The Memorandum of Association basically communicates the intention to form a company under the Act and it should state that the said parties agree to be members of the company. This Memorandum must be authenticated by each of the parties that express their wish to form the company.

Section 13 of the Companies Act contains provisions as to the required registration documents where a person shall be required to

lodge with the Registrar an application for registration; a memorandum of association and Articles of Association. The Application for registration will be deemed to be sufficient if it states:

(a) The proposed name of the company- the provisions

(b) The proposed location of the registered office of the company.

(c) Whether the liability of the members of the company is to be limited and if so whether it is to be limited by shares or by guarantee. In the case of a company limited by shares one is required to file a statement of capital and initial shareholding whereas in the case of a company limited by guarantee, a statement of guarantee will be required.

(d) Whether the company is a private or public company.

In the case of a subsidiary undertaking that is to have a share capital the statement of capital and initial shareholdings shall be required to state the following:

(a) The total number of shares to be taken on formation by the subscribers to the memorandum of association.

(b) The aggregate nominal value of the shares

(c) The rights of each class of shares, their nominal value and the total number of such shares in each class

(d) The amount to be paid up and the amount to be unpaid on each share

In the case where the subsidiary undertaking is to have been limited by guarantee it will require a statement of guarantee that states that each member undertakes, if the company is liquidated while the person is a member or within twelve months after the person ceases to be a member, to contribute to the assets of the company such amounts as may be required for

(a) Paying the debt and liabilities of the company contracted before the person ceases to be a member,

(b) Paying the costs, charges and expenses of liquidation; and

(c) Adjusting the rights of the contributories themselves

The statement of proposed officers should contain the particulars of person(s) proposed to be directors, the secretary in the case of a public company and any other person authorized to be a signatory of the company. This should be accompanied by the consent of each of the persons proposed as officers.

Upon the fulfillment of the above and payment of the requisite fees the Registrar shall then register the company and issue them with a certificate of incorporation. The certificate of registration will state the date of incorporation; the company's unique identification number, the type of company and the extent of limitation of the company's liability. This certificate once acquired will be evidence of compliance with the regulations as to the registration of a company in Kenya.

The documents required for incorporation of a subsidiary in summary will be:

1. Signed notice of registered address-CR8 (copy) -Dully signed by the directors.
2. Signed company registration form -CR1 (copy) -Dully signed by the directors.
3. Signed memorandum of a company with share capital-CR2 (copy) -Dully signed by the directors.

4. Signed statement of nominal capital (copy) -Dully signed by the directors.
5. Signed register of beneficial owners – BOF1 (copy) -Dully signed by one director on behalf of the company
6. Passport (copy) -For each director showing the biodata page
7. Passport photo (copy) -For each director
8. Notarized certificate of incorporation (copy)

Tax Implications

Resident companies in Kenya are taxed on income derived from Kenya.

(a) Corporation tax- the Corporate Income Tax for resident companies is 30%.

(b) Withholding tax – the payments made to the parent company are subject to

Barriers to entry of an offshore party

In the Kenyan jurisdiction, foreign investments are obligated to adhere to the stipulations enshrined within the Investment Promotion Act No. 6 of 2004. The fundamental intent behind the enactment of this legislation is the facilitation and encouragement of investment by means of rendering assistance to prospective investors in securing licenses essential for investment purposes. Furthermore, the Act extends support and provides indispensable incentives to these potential investors.

At its core, the Act delineates the prerequisites that must be satisfied to obtain authorization for investment within Kenya. It thus serves as the authoritative repository of conditions and mandates that individuals or entities must successfully fulfil in order to garner the privilege of investing within the Kenyan jurisdiction.

The Act differentiates between a foreign investor and a local investor where a foreign investor is defined as:

i. A natural person who is not a citizen of Kenya
ii. A partnership in which the controlling interest is owned by a non-Kenyan
iii. A company incorporated under the laws of another country other than Kenya

A foreigner desiring to engage in investment activities within the territorial bounds of Kenya is obliged to submit an application for an Investment Certificate to the Kenya Investment Authority. The issuance of this certificate is contingent upon the foreign investor committing to invest a minimum sum of at least one hundred thousand United States Dollars (USD 100,000), or its equivalent in Kenyan Shillings or any other recognized currency. Additionally, it is incumbent that a local investor to injects a minimum of one million Kenyan Shillings (KSH 1,000,000), or its equivalent in another currency, into the proposed investment endeavor.

Furthermore, it is imperative that the envisaged investment complies with prevailing legal standards and is demonstrably advantageous to the Republic of Kenya. To substantiate the aforementioned "beneficial to Kenya" criterion, a confluence of prerequisites must be met, as expounded within Section 4 of the Investment Promotion Act. This includes, but is not limited to, the creation of gainful employment opportunities for Kenyan nationals, the infusion of revenue into the national exchequer through taxation, the utilization of locally sourced raw materials and services, the transfer of

technological knowledge to Kenya, and the augmentation of foreign exchange reserves, among other criteria.

Upon successful acquisition of a valid Investment Certificate, the investor shall be accorded the privilege of obtaining certain licenses requisite for the lawful operation of the business enterprise. The issuance of these licenses is expressly conditional upon the investor's prompt settlement of the prescribed fees within six months from the date of receipt of the investment certificate.

The licenses to which an investor shall be entitled upon receipt of the Investment Certificate include: (These are contained in the Second Schedule of the Investment Promotion Act)

1. Registration under the Industrial Registration Act (Cap. 118).

   Condition: That registrable particular be submitted within six months after the issue of the investment certificate.

2. License, including a conditional license, under the Trade Licensing Act (Cap. 497).
3. Import license or export license under the Imports, Exports and Essential Supplies Act (Cap. 502).
4. Registration of premises as a factory under the Factories Act (Cap. 514).
5. Approval of plans under section 69G of the Factories Act (Cap. 514).
6. Development permission under section 33 of the Physical Planning Act, 1996 (No. 6 of 1996) and a certificate of compliance referred to in section 30(7) of that Act.
7. Registration under an order under the Industrial Training Act (Cap. 237).

Pursuant to the provisions delineated within the **Land Control Act Cap 302**, it is expressly stipulated that consent for the disposition of land or shares, through means such as sale, transfer, lease, exchange, or partition, to a foreigner or a foreign company shall not be granted. Consequently, this statutory mandate engenders the legal consequence that foreign individuals and foreign corporate entities are precluded from entering into lease agreements or acquiring agricultural land within the sovereign territory of Kenya.

In the realm of taxation, it is imperative to note that the Republic of Kenya has entered into Double Taxation Treaties with several nations, including but not limited to the United Kingdom, Zambia, Germany, and Canada. In situations where such bilateral treaties are not in place, it is conceivable that subsidiaries of foreign entities operating within the jurisdiction of Kenya may find themselves subject to the imposition of corporate taxes at the rate of 30% in Kenya, while concurrently being obligated to meet their tax obligations in their respective countries. This dual taxation scenario inevitably amplifies the fiscal burdens borne by these entities.

Moreover, it is noteworthy that Double Taxation Treaties serve to delimit the permissible withholding rates applicable to income derived within the Kenyan jurisdiction. Nevertheless, it is imperative to emphasize that both contracting countries retain the authority to levy taxes on dividends, interest, and management fees arising from such income sources.

Capitalization obligations

In accordance with the Finance Act of 2023, significant modifications have been introduced to the thin capitalization rules, delineating a refined framework for the restriction of deductible interest expenses incurred on

foreign loans. These changes carry implications for tax planning strategies, particularly in regard to thinly capitalized entities. A key provision of these amendments is the limitation placed on the deductibility of realized foreign exchange losses, which is now confined to a 5-year window, thereby imposing a temporal constraint on tax planning considerations.

Under the revised regulations, the restriction pertaining to interest deduction will be expressly applicable to the gross interest disbursed or payable to non-resident individuals or entities. This delineation effectively retains the allowance for interest expenses incurred on locally sourced borrowings. Notably, the Finance Act constitutes an alteration to the previous interest restriction rule, which previously imposed a cap on deductible interest at 30% of earnings before interest, tax, depreciation, and amortization (EBITDA), regardless of the origin of the loan.

The resultant effect of these statutory changes manifests as a considerable alleviation for taxpayers who genuinely rely on borrowing as a means to facilitate and augment their business activities. The prior restrictions on interest deductions were perceived as onerous, and the latest amendments are poised to provide a measure of relief in this regard. Significantly, these revisions align substantively with the recommendations set forth by the Domestic Tax Base Erosion and Profit Shifting (BEPS) project.

It is pertinent to note that BEPS, denoting Base Erosion and Profit Shifting, encompasses a spectrum of tax planning strategies employed by multinational enterprises to capitalize on inconsistencies and disparities in tax regulations, thereby mitigating their tax liabilities. The essence of these amendments is to ensure that interest expenses arising from loans obtained from residents are less likely to be exploited as a means to erode the taxable base. This initiative underscores the ongoing commitment to fortifying the integrity of the taxation system in addressing the challenges posed by international tax planning strategies.

Special Business/ Investment Visa

The East African nations have taken significant strides towards obviating the necessity for their respective citizens to obtain work permits as a precondition for engaging in economic activities within the regional community. An exemplar of this collaborative endeavor is evident in the case of Rwanda and Kenya, where their nationals enjoy unencumbered access to employment opportunities within each other's sovereign territories, thereby negating the requirement for work permits.

In the Kenyan context, the process of securing work permits is generally characterized by its procedural simplicity and is delineated within the statutory framework articulated in the Kenya Citizenship and Immigration Act. The issuance of these permits is expressly regulated by Section 40 of the aforementioned Act. It is noteworthy that two principal categories of permits are dispensed, namely work permits and residence permits, both being subject to specified conditions. To elucidate this point, a Class K residence permit is exclusively conferred upon individuals who can substantiate a guaranteed annual income exceeding the threshold of twenty-four thousand United States Dollars (USD 24,000) or its equivalent in Kenyan Shillings.

Moreover, the statutory framework accommodates countries whose citizens are exempt from visa requirements when entering Kenya, as enshrined in the Kenya Citizenship and Immigration Regulations of 2012. In consonance with Section 13 of the Investment Promotion Act, holders of an Investment

Certificate are accorded certain entitlements, which encompass the allocation of three Class A entry permits designated for management or technical personnel and three Class H, I, or J entry permits earmarked for proprietors, shareholders, or partners. It is imperative to underscore that the validity period of these permits is limited to a duration of two years.

Work Permits issued under the Kenya Citizenship and Immigration Act vary depending on the profession/work of the investor: They are contained in the 7th Schedule and are:

i. Class A – Prospecting and mining

ii. Class B- Agriculture and Animal Husbandry

iii. Class C- Prescribed profession

iv. Class D- Employment

v. Class F- Specific manufacturing

vi. Class G- specific trade/business/consultancy

vii. Class I- Approved religious or charitable activities

viii. Class K- Ordinary residents

ix. Class M- Refugees

Those applying for the permits are required to pay a nonrefundable processing fee ad yearly issuance fee outlined in the 9th schedule. The investor must indicate that he has at his full and free disposition sufficient capital and other resources for the purpose.

Remitting of funds out of Kenya

The dispensation of investment funds within the jurisdiction of Kenya is characterized by a regime that facilitates the unfettered conversion and transfer of such financial resources, both into and out of the country. This pivotal aspect of the Kenyan financial landscape is emblematic of its commitment to fostering a conducive environment for investment activities.

Nonetheless, in alignment with the global imperatives of combating money laundering and the inadvertent funding of terrorist organizations, the legal framework in Kenya incorporates stringent provisions. In strengthening its fight against money laundering, Kenya has enacted the Proceeds of Crime and Anti Money Laundering Act No.9 of 2009 which under section 12 regulates the conveyance of monetary instruments in and out of Kenya. Specifically, individuals entering or departing the Kenyan territory while in possession of a cumulative sum exceeding the threshold of ten thousand United States Dollars (USD $10,000), or its approximate equivalent of one million, three hundred and twenty thousand Kenyan Shillings (KES 1,320,000), in physical currency are mandated by Kenyan law to declare such assets to the competent customs authorities

Kenya boasts a dynamic economic structure characterized by a controlled floating exchange rate regime, underpinned by a capital account that has been liberalized to promote economic openness and international trade. The Central Bank of Kenya (CBK) wields volatility control mechanisms judiciously to modulate short-term price fluctuations within the financial markets. These measures are instrumental in maintaining financial stability and fostering investor confidence by mitigating undue volatility and price swings that might otherwise disrupt the country's economic equilibrium.

In essence, Kenya's commitment to facilitating the free flow of investment funds while concurrently adhering to internationally recognized protocols for combating financial crimes is emblematic of its standing as an open and responsible participant in the global

economic arena. These legal and regulatory frameworks reflect the nation's ongoing dedication to creating an environment that fosters both economic growth and security.

Under the auspices of the Foreign Investments Protection Act, Cap 518, provision is made for the expeditious transfer of profits, as elucidated in Section 7 of the Act. An entity in possession of a valid certificate, issued in accordance with the statutory provisions, is afforded the prerogative to transfer monies out of the Kenyan jurisdiction in the approved foreign currency, in conformity with the prevailing exchange rates. The permissible transfers encompass the following categories:

(a) The profits, whether capitalized or not, following the imposition of applicable taxes, emanating from or attributed to the investments held in foreign assets.

(b) The capital quantum stipulated within the certificate.

(c) The principal sums and accrued interest relating to any loans specifically delineated in the certificate.

It is imperative to underscore that the tax liability associated with capital gains arising from financial derivatives transactions executed by foreign entities is subject to a withholding tax rate set at 15%. It is worth noting that in situations where a corporate entity attains certification status conferred by the Nairobi International Financial Centre Authority and further commits to a substantial investment amounting to five billion Kenyan Shillings within the Kenyan economic landscape, the rate applicable for the subsequent transfer of said investment, which is permissible after a minimum period of five years, shall be predicated upon the prevailing rate at the time of the initial investment's inception. This provision is indicative of the legal framework's responsiveness to incentivizing long-term investments of significant magnitude within the Kenyan financial sector.