



# FINANCIAL SERVICES SECTOR REPORT

Q2 2025



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## Accolades



### CHAMBERS AND PARTNERS

#### Firm Ranking

Banking and Finance - Band 3



### LEGAL 500

#### Firm Ranking

Banking and Finance - Tier 2



### IFLR 1000

#### Firm Ranking

Banking and Finance - Tier 4

## Testimonials

"The professionals are all uniformly efficient, quick, comprehensive, and thorough. On technology too, I consider the firm as using the most modern tools."

*Legal 500 2025 | Commercial, Corporate, and M&A*

"Very dedicated, thorough, and knowledgeable."

*Asset Finance | IFLR 1000 2024*

"She's a very good lawyer, very knowledgeable, and great to deal with."

*Suzanne Muthaura -Banking & Finance| IFLR 1000 2024*





## ABOUT US

MMAN Advocates is a leading Kenyan corporate law firm that aims to provide innovative and meaningful legal solutions for its clients.

Central to our culture is a commitment to deliver a superior experience for our clients by understanding their needs and exceeding their expectations.

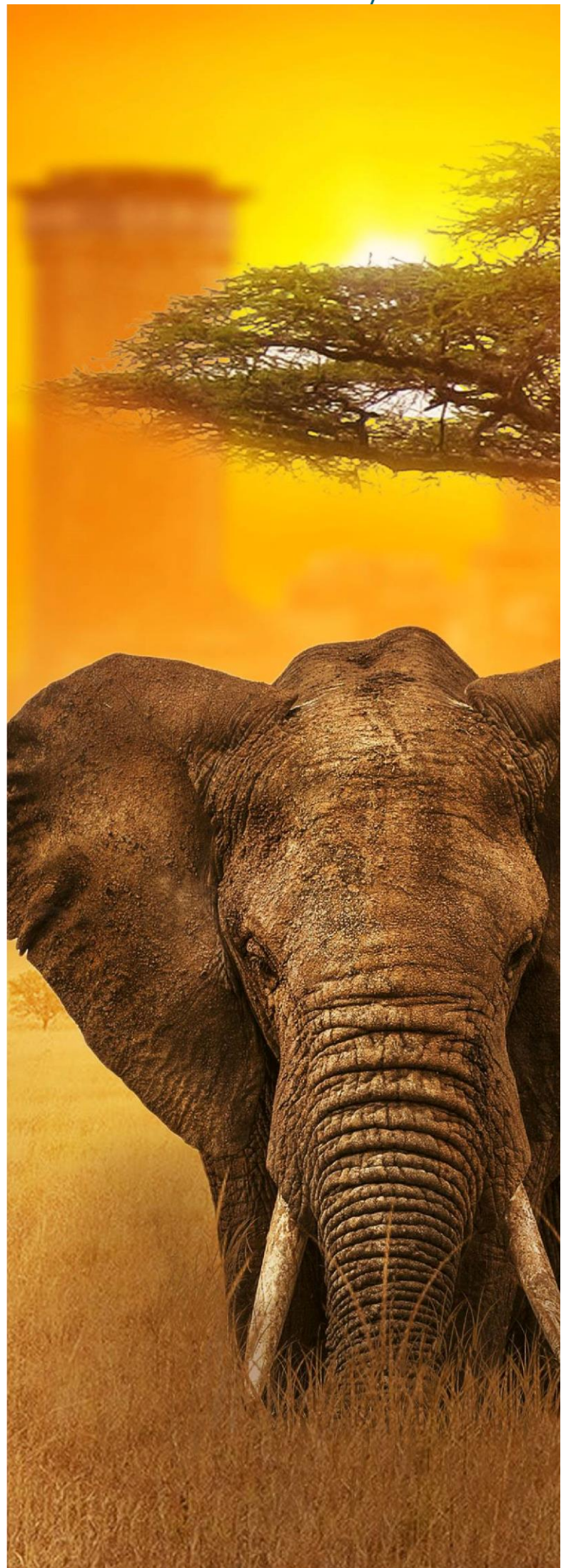
## OUR REPUTATION

We are proud to be consistently ranked by internationally recognized legal directories, Chambers Global, IFLR1000 and Legal 500 as one of the leading commercial law firms in Kenya.

## OUR GLOBAL PRESENCE

MMAN is the Kenyan member of the Eversheds Sutherland Africa Alliance, the largest legal network in Africa with firms in 37 countries. Eversheds Sutherland is a leading global legal services provider which has 66 offices across the world.

MMAN is also the Kenyan member of TerraLex, a leading international legal network with more than 155 independent law firms in 100 countries.



## BANKING

*The commentaries set out in this Report relate to the Finance Bill, 2025, which was assented to by the President on 26 June 2025 and has become the Finance Act, 2025 (the Act). As at the date of this Report, the official version of the Act as published in the Kenya Gazette is not yet available. This analysis is therefore based on the version of the Bill that was in general circulation prior to assent and may be subject to confirmation or adjustment once the gazetted version of the Act is released.*

### I. Guidelines, Circulars, Notices, and Public Participation.

#### a) Banking Circular No. 2 of 2025

On 8th April 2025, the Central Bank of Kenya (CBK) issued Banking Circular No.2 of 2025 which stipulated various changes to the CBK Discount (Overnight) Window Facility. These changes are designed to enhance monetary policy transmission. These changes include:

- i) The applicable interest rate on the facility has been reviewed from 300 basis points above the CBR to 75 basis points above the CBR.
- ii) The advances will continue to be secured by Government of Kenya Securities subject to haircut as outlined in Banking Circular No. 6 of 2023 dated August 29, 2023.
- iii) The existing terms for access to the Intra-day Liquidity Facility (ILF) remain unchanged.

#### b) Kenya Green Finance Taxonomy

The CBK released the Kenya Green Finance Taxonomy on 4th April 2025. As summarized by the CBK, “a green finance taxonomy is a classification system that provides clarity on how a minimum set of activities can be eligible

to be defined as “climate-aligned” and under which circumstances, in line with international best practices and national priorities. It can be used by investors, issuers, and other financial sector participants to measure, track, monitor, and demonstrate the degree of sustainability of their activities and the credentials of their climate-aligned activities transparently and efficiently. It can also be considered as a financial climate transition tool as it helps investors, issuers, and other financial sector participants to plan and report on the transition, by setting the objectives and the direction of travel for a minimum set of activities.”

The CBK explains in the executive summary that benefits of a taxonomy include:

- Helping to distinguish between real and financial assets with high and low-greenhouse gas emissions to drive capital allocation, evaluate investment strategies and manage climate-related risks.
- Acting as a fundamental building block of a robust climate information architecture.
- Helping the financial sector to select green investments in line with international best practice and Kenya’s national policies and priorities, through the standardization of requirements.
- Supporting regulators, banks and financial institutions to manage climate-related risks by tracking exposure to taxonomy-aligned and non-taxonomy aligned companies, projects, and assets, thus potentially reducing financial sector risks.
- Reducing the costs associated with labelling and issuing green financial instruments.
- Unlocking significant investment opportunities for Kenya in a broad range of green and climate friendly assets.
- Supporting regulatory and supervisory oversight of the financial sector by providing a basis or reference for green financial products.
- Strengthening of accountability and market transparency to avoid greenwashing practices.



The sectors and activities to which the taxonomy applies include manufacturing; agriculture, fishing and forestry; mining and quarrying; electricity, gas, steam, air conditioning supply; water supply, sewerage, waste management & remediation; transportation and storage; real estate activities; construction; information and communications; financial and insurance activities and wholesale and retail.

The taxonomy provides technical screening criteria which form the basis upon which the taxonomy alignment of an economic activity is considered. These include:

- i) Screening criteria for activities making a substantial contribution to climate change adaptation.
- ii) Criteria to ensure an activity does not negatively impact climate change adaptation by other assets or economic activities; criteria requiring sustainable use of water and marine resources; and criteria requiring protection and restoration of the ecosystem.
- iii) Minimum social safeguards, that is criteria requiring that companies and other organisations using the taxonomy are in compliance with labour laws and regulations.

**c) Climate Risk Disclosure Framework for the Banking Sector**

On 4th April 2025 the Central Bank released the Climate Risk Disclosure Framework. The CBK explains that the framework has been developed to assist commercial banks in identifying, classifying, and disclosing relevant, decision-useful climate related information consistently and comparably. It also aims to promote climate risk management and improve transparency and reporting.

The framework highlights the exposure of the banking sector's credit portfolios to inherent climate-related risks. These risks include physical risks and transition risks.

Physical risks are the impacts of climate change including air, water and land pollution, water scarcity, loss of biodiversity, and deforestation, potentially resulting in property damage or decreased productivity and indirect consequences such as supply chain disturbances. Transitional risks stem from the changes needed to align with environmental sustainability goals.

In order to assist the financial sector in assessing exposure to physical climate related risks, the CBK has provided indicative risk scoring by hazard and by county in the Framework Templates. The Template provides climate risk levels for all counties in Kenya, covering heat stress, droughts, extreme precipitation, flooding, wildfires, and landslides across different time periods (1980-2020, 2020-2040, and 2040-2060). Risk levels range from 1 to 5, with 5 being the highest risk.

The CBK also provides a Transition Risk Exposures Template which analyses transition risk by (a) disclosure of gross outstanding amounts by sector aligned to a given taxonomy or classification of green financing; (b) disclosure of financed emissions and (c) maturity profile of exposures by sector.

The voluntary reporting period will begin for the accounting periods beginning on or after January 1, 2025, for Tier 1 peer group. Voluntary reporting for Tier 2 and 3 peer groups will commence from accounting periods beginning on or after January 1, 2026, with mandatory reporting for all commercial banks coming into effect for accounting periods beginning on or after January 2027.

**d) Guidelines on Liquidity Coverage Ratio, Net Stable Funding Ratio and Leverage Ratio**

In April 2025, the CBK published Guidelines on the liquidity coverage ratio, net stable funding ratio, and leverage ratio to be adhered to by all regulated institutions.

**Liquidity Coverage Ratio (LCR) Guideline**





The stated objective of the LCR is to promote short-term resilience of the liquidity risk profile of banks by ensuring that banks have an adequate stock of unencumbered high-quality liquid assets (HQLA) that can be converted easily and immediately into cash to meet their liquidity needs for a 30-calendar day liquidity stress scenario.

The LCR is expressed as:

$$\frac{\text{Stock of HQLA}}{\text{Total net cash outflows over the next 30 calendar days}} \geq 100 \text{ percent}$$

with detailed particulars set out in the Guideline. The LCR Guideline will come into effect on 1st October 2025.

### Net Stable Funding Ratio (NSFR) Guideline

The NSFR will require that banks maintain a stable funding profile in relation to the composition of their assets and off-balance sheet activities, as detailed within the Guideline.

The NSFR is expressed as:

$$\frac{\text{Available amount of stable funding}}{\text{Required amount of stable funding}} \geq 100 \text{ percent}$$

The NSFR Guideline comes into effect on 1st October 2025.

### Leverage Ratio (LR) Guideline

The CBK states that the LR is meant to “act as a credible supplementary measure to the risk-based capital requirements and (a) constrain the build-up of leverage in the banking sector, helping avoid destabilizing deleveraging processes which can damage the broader financial system and the economy; and (b) reinforce the risk-based requirements with a simple, non-risk based “backstop” measure.”

The LR is expressed as a percentage with banks required to meet a 4 percent leverage ratio minimum at all times.

$$\text{Leverage Ratio} = \frac{\text{Capital Measure}}{\text{Exposure Measure}}$$

The calculation of the capital measure and the exposure measure is explained in detail within the Guideline. The Guideline comes into effect on 1st October 2025.

## II. Judicial Decisions

**CFC Stanbic Bank Limited v Kenya Haulage Agency Limited (Civil Appeal No. E041 of 2022) [2025] KECA 1034 (KLR) (5 June 2025) (Judgment) ([find link here](#))**

### INTRODUCTION

In a judgment with significant implications for banks and financial institutions, the Court of Appeal has held CFC Stanbic Bank Limited (“**the Bank**”) liable for issuing a defective bid bond that cost the Bank’s client a lucrative public tender. The decision is a wake-up call for banks, reinforcing that even a 1-day error in the validity of tender security can result in substantial legal and financial exposure.

The judgement reinforces that banks owe a duty of care when executing client instructions and can be held liable for **pure economic loss** resulting from negligent issuance of financial instruments, even when there is no physical damage. For institutions engaged in trade finance, bid bonds, and issuance of tender securities, the Court of Appeal’s message is that precision is not optional, rather it is a legal obligation.

### BACKGROUND:

Sometime in 2011, Kenya Haulage Agency Ltd (“**Kenya Haulage**”) participated in a Kenya Ports Authority (“**KPA**”) tender for the supply of ribbed type pneumatic rubber fenders. As part of the mandatory evaluation criteria, KPA required bidders to submit a tender security in the form of a bank bond of Kshs.250,000, valid for 120 days after the closing of the tender. Kenya Haulage instructed the Bank to issue the bid bond accordingly.

The Bank issued a guarantee valid for 119 days, one day short of the mandatory requirement in the tender document. KPA rejected Kenya Haulage's bid, citing the non-compliant tender security. Kenya Haulage sued the Bank for negligence and claimed special damages representing the lost profit margin it would have earned had its tender been successful.

### PROCEDURAL POSTURE:

The High Court found the Bank negligent and awarded Kenya Haulage US\$250,860 in special damages. Dissatisfied, the Bank lodged the appeal, challenging both liability and the quantum of damages.

### BANK'S CASE:

The Bank denied receiving precise instructions on the bond's validity period and argued that:

- (a) There was no contractual obligation, and hence, no breach.
- (b) The claim was premised on negligence, but no duty of care or foreseeability of loss was established.
- (c) The alleged loss was speculative and too remote to be compensable.

They Bank further contended that the High Court had improperly based its decision on breach of contract, an unpleaded cause of action, and erred in awarding damages based on a "legitimate expectation" that was neither pleaded nor proved.

### RESPONDENT'S CASE:

In opposing the Bank's appeal, Kenya Haulage submitted that:

- (a) It had given specific and express written instructions to the Bank to issue a bid bond valid for 120 days.
- (b) The Bank, being a professional entity, assumed a duty of care to ensure the bid bond met the required specifications.
- (c) The rejection of Kenya Haulage's bid, and consequently the profit margin, was a foreseeable result of the Bank's failure to comply with instructions.

- (d) Its claim against the Bank was grounded in both tort and contract and that the loss was quantifiable and not remote.

### ISSUES FOR DETERMINATION:

The Honourable Court framed the following as the issues for determination:

- 1 Whether the High Court erred in finding the Bank liable for breach of contract, even though the same was not pleaded.
- 2 Whether the Bank owed Kenya Haulage a duty of care in issuing the bid bond.
- 3 Whether the award of US\$250,860 was justified in law and fact.

### HELD:

#### 1. On breach of contract:

The High Court erred in grounding the Bank's liability on breach of contract, which was not pleaded by Kenya Haulage. What was pleaded was breach of duty of care and negligence. However, this mischaracterization of the cause of action by the High Court did not invalidate the result.

#### 2. On the Banks' Negligence:

The Bank owed a duty of care to Kenya Haulage in ensuring the guarantee was issued according to the specific express instructions, verifying that the amount claimed was within the guarantee's scope, and acting promptly to honour the guarantee upon a valid demand. This duty stemmed from the bank-customer relationship between the Bank and Kenya Haulage.

Further, the loss of the tender due to a defective bid bond was foreseeable and directly linked to the Bank's negligence.

#### 3. On quantum of damages payable:

The Appellate Court affirmed the award of US\$250,860 as recoverable **pure economic loss**, supported by evidence and within the





bounds of reasonable foreseeability. The award represented the loss of profits Kenya Haulage Respondent would have made from the subject tender.

#### **RATIO OF THE CASE:**

A bank, when acting upon a client's instructions to issue a tender security or similar financial instrument, assumes a professional duty of care. Thus, a failure to comply with express terms, especially where the bank has actual knowledge of the purpose and specifications, will attract liability for foreseeable losses, including pure economic loss, even absent physical damage or breach of contract.

This case underscores the convergence of tort and contract in financial services and the increasingly expansive scope of recoverable pure economic losses under Kenyan jurisprudence.

#### **CONCLUSION & IMPLICATION:**

The decision is pivotal for banks and financial institutions issuing guarantees, bonds, or similar instruments. It elevates the legal standard required when acting on client instructions.

It affirms that Kenyan courts will not hesitate to impose liability for pure economic loss where the financial institution's conduct is professionally negligent, and the loss is foreseeable. Moreover, the case affirms that negligence-based claims do not necessarily require physical or proprietary damage to attract recovery.

In allowing recovery of pure economic losses, the decision marks a rare and significant departure from the restrictive approach to damages in negligence. This opens the door to claims based solely on loss of commercial opportunity, even where no tangible damage has occurred. In banking terms, this means liability exposure no longer depends on default or physical loss but can arise from documentation errors or omissions alone.

#### **RECOMMENDED ACTION:**

To minimize legal and financial exposure, we recommend that banks and financial institutions:

1. Review their internal protocols for issuing guarantees, bid bonds, and other forms of security to ensure compliance with client instructions and tender requirements.
2. Conduct staff training on duty of care and legal implications of non-compliance in security issuance.
3. Establish robust validation procedures to detect and correct discrepancies before instruments are released.

### **III. Parliamentary Bills**

The Finance Bill, 2025 ([find the link here](#)) proposes to amend several acts as follows:

- a) The Excise Duty Act, CAP 472

#### **Definition of "Digital Lender"**

Under the Excise Duty Act, a digital lender is defined as a person holding a valid digital credit providers licence issued by the Central Bank of Kenya. The Bill seeks to amend this definition to mean a person extending credit through an electronic medium and doesn't include a licensed bank, sacco or microfinance institution.

The amended definition will cover those digital lenders who are not licensed by the Central Bank of Kenya and will broaden the scope of digital lenders liable to excise duty to include persons who offer loans through electronic mediums.

This amendment also aims to separate the provisions on applicability of excise duty on the above listed licensed financial institutions vis-à-vis digital lenders.

- b) The Income Tax Act, CAP 470

#### **Definition of "Debenture"**



The Bill proposes to amend the definition of the term debenture by deleting the expression which has the effect of including any loan or loan stock, whether secured or unsecured. This proposed change in definition of debenture is a clean-up in the existing legislation as the relevant paragraphs referring to “loan” or “loan stock” were already previously repealed.

## INVESTMENTS

### I. Guidelines, Circulars, Notices, and Public Participation.

#### **Request For Stakeholder and Public Feedback on the Draft Capital Markets (Corporate Governance) (Market Intermediaries) Regulations, 2025**

On 22nd April 2025, the Capital Markets Authority invited stakeholders and the public to submit comments on the Draft Capital Markets (Corporate Governance) (Market Intermediaries) Regulations, 2025. The 2025 draft regulations were developed after the review of the Capital Markets (Corporate Governance) (Market Intermediaries) Regulations 2011 in order to respond to market needs and address new and emerging issues.

Some of the proposals in the 2025 draft regulations include:

- i) The Board of Directors of a market intermediary shall include at least one director with three years' experience in capital markets or finance.
- ii) Extension of the functions of the Board to include:
  - a) ensuring the integrity of a market intermediary's accounting and financial reporting system;
  - b) maintaining control and monitoring the management of a market intermediary in implementing its plans and strategies; and
  - c) ensuring market intermediaries comply with the Act and other relevant legislation.
- iii) The chairperson of the Board audit committee established is required to be an independent director.
- iv) At least one of the members of the Board audit committee is required to be a certified auditor in accounting, risk or

systems and a member of the relevant professional body.

- v) The corporate governance framework of a market intermediary has been expanded to include continuous improvements that align with local and international governance and sector specific best practices.
- vi) The risk assessment process has been extended to address liquidity risks; money laundering, terrorism financing & proliferation financing risks; sustainability risks and reputational risks

The deadline for submission of comments was 22nd May 2025.

### II. Subsidiary Legislation

#### **ENERGY (INTEGRATED NATIONAL ENERGY PLAN) REGULATIONS, 2025**

This Legal Notice was enacted on 7 May 2025, issued as Legal Notice 83 of 2025 under the Energy Act No. 1 of 2019. ([find the link here](#))

These Regulations shall apply to the National Government and its agencies, county governments and their entities, development partners, private sector organizations, public benefit organizations, and any other relevant stakeholders involved in the identification, planning, implementation, and financing of energy projects, including the provision of energy services.

#### **PURPOSE AND OBJECTIVES**

The purpose of these Regulations is to establish guidelines for the preparation, content, timelines, publication, and monitoring of energy plans and the integrated national energy plan.

Without limiting the generality of the foregoing, the Regulations shall—



- Provide a clear and coordinated approach to energy planning within the country;
- Provide guidance in identifying energy objectives, visions, and deliverables, as well as the reporting framework;
- Establish guidelines and timelines for the preparation and execution of individual energy plans and the integrated national energy plan;
- Outline the criteria and standards for the content of energy plans and the integrated national energy plan;
- Offer guidance on stakeholder engagement during the development, publication, and review of energy plans and the integrated national energy plan;
- Create a framework for consolidating individual energy plans into the comprehensive national energy plan;
- Define procedures for monitoring, evaluating, and reporting on the implementation of energy plans and the integrated national energy plan;
- Establish mechanisms ensuring alignment of energy planning with overarching national development strategies; and
- Clarify the roles and responsibilities of various stakeholders in the energy planning process and the implementation of energy plans and the integrated national energy plan.

#### **HOW THIS REGULATION IS MEANT TO BENEFIT INVESTORS**

The Regulations are designed to strengthen investor confidence by enhancing predictability and reducing risk across the energy sector. Regularized planning cycles, combined with clear national policy direction, reduce uncertainty for investors and safeguard long-term capital commitments. Reliable energy demand forecasts — a key feature of the integrated approach — provide clear market signals, enabling developers and financiers to identify and pursue bankable opportunities, particularly in independent power projects, solar, and mini-grid developments.

Crucially, the Regulations improve regulatory coordination between national and county governments, streamlining licensing, permitting, and ESG compliance. This harmonization helps reduce project delays and regulatory overlap, which are common sources of cost and legal risk. Additionally, by aligning energy planning with broader national development priorities, the framework facilitates cross-sector investments such as those in industrial parks, green hydrogen, and value-added manufacturing, where dependable energy supply is essential.

The Regulations also align with green financing imperatives, opening up access to international capital and climate finance. By standardizing approaches to renewable energy, energy efficiency, and improved energy access, the framework helps meet the eligibility criteria of global financiers. This alignment would position Kenya as an attractive destination for climate-aligned funding, while also promoting public-private partnerships under a unified national energy strategy that encourages long-term, stable investment.

For financial sector stakeholders, these developments have direct and measurable implications. Banking institutions can leverage validated energy demand projections to improve loan underwriting, manage sector-specific risks, and unlock financing for last-mile electrification and grid expansion. Institutional investors and ESG-focused funds benefit from a planning framework that supports the growth of green bonds, sustainability-linked instruments, and low-emission transition strategies. Insurance providers gain from improved demand and risk forecasting, enhancing their ability to price coverage for energy-related weather and operational risks.

#### **CONCLUSION**

The Regulations provide a one-year transition period within which the Cabinet Secretary is required to integrate existing





national and county energy plans into the Integrated National Energy Plan, ensuring alignment and continuity across all levels of government. Consequently, future public and private energy projects must align with the Integrated National Energy Plan to receive approvals, licenses, or funding.

#### DIGITAL HEALTH (DATA EXCHANGE COMPONENT) REGULATIONS, 2025

This Legal Notice 77 of 2025 was published in the Gazette on 11 April 2025, pursuant to the authority granted by the Digital Health Act 2023. ([find the link here](#))

The Regulations establish a Secure Data Exchange Framework and at the heart of the framework is the Enterprise Service Bus (ESB) — a secure digital infrastructure that facilitates interoperability between certified digital health solutions. All health data controllers (including hospitals, insurers, and system providers) are required to onboard onto the ESB within six months of the Regulations' commencement. The onboarding process includes proof of registration with the Data Protection Commissioner, submission of a data protection impact assessment, and certification of the health solution in use.

Once onboarded, users are issued enterprise licences and granted access credentials, including API endpoints and authentication protocols. The ESB provides essential services such as message routing, event handling, data mapping, and protocol conversion. This unified integration infrastructure supports efficient claims processing, care coordination, and real-time access to health data — creating opportunities for financial service providers to optimize operations and pricing.

#### NATIONAL DIGITAL REGISTRIES

**The Regulations establish and operationalize multiple national digital registries, including:**

- **Client Registry:** A single source of truth for patient identification, supporting verification during claims processing.
- **Facility Registry:** Details geolocation, services, and infrastructure of healthcare providers.
- **Health Worker Registry:** Centralizes credentials and licensing of practitioners.
- **Product Catalogue and Logistics Platform:** Tracks health products and technologies, including origin, quality, expiry, and distribution.
- **Shared Health Record (SHR):** A longitudinal digital record of every patient encounter — accessible to health providers and clients via a secure portal.

Under the Regulation, these shared resources are designated as critical national infrastructure, requiring strict compliance with the Data Protection Act and the Computer Misuse and Cybercrimes Act. Collectively, they will form the backbone of Kenya's Health Information Exchange and serve as foundational tools for financial stakeholders seeking accurate, timely, and secure health data. This data will be useful for product development, fraud detection, and cost modelling. Furthermore, it will support the growth of digital health products innovation and financing.

### III. Parliamentary Bills

The Finance Bill, 2025 ([find the link here](#)) proposes to amend several acts as follows:

#### **The Income Tax Act, CAP 470**

##### **a) Introduction of Advance Pricing Agreement Provisions**

The Bill proposes to introduce Advanced Pricing Agreements (APA) between the Commissioner and persons involved with related party transactions with non-residents for the determination of an arm's length price. The



APAs will be valid for a period of five years. The Bill also proposes to empower the Commissioner to declare the APA null and void in the event the Commissioner establishes misrepresentation of facts in the APA by the taxpayer.

The proposed advance pricing agreements provisions provide an avenue for taxpayers to enter into formal agreements with the tax authority that determines the appropriate transfer pricing arrangement for specific cross border transactions over a specified period. This move offers multinational enterprises tax certainty, reduce transfer pricing audit risks, and helps to avoid double taxation. It also fosters cooperative relationships with Kenyan tax authorities, streamline compliance, and enhances financial planning and investments by Multi-National Enterprises.

**b) Tax exemptions and incentives for companies certified by the Nairobi International Financial Centre**

The Bill proposes to amend the First Schedule of the Income Tax Act to exempt from tax any dividends paid by a company certified by the Nairobi International Financial Centre Authority (NIFCA), provided that the company reinvests at least **KShs. 250 million** in Kenya within the same year of income.

Additionally, under the Bill, a preferential corporate income tax regime is proposed for companies certified by the NIFC that meet specific investment and operational thresholds as follows:

- 15% corporate tax rate for the first 10 years of operation.
- 20% corporate tax rate for the subsequent 10 years.

To qualify, companies must:

- Invest a minimum of KShs. 3 billion within the first three years of commencing operations in Kenya.
- Operate as a holding company.
- Ensure that at least 75% of senior management personnel are Kenyan citizens.
- Establish their regional headquarters in Kenya, with at least 60% of senior management positions held by Kenyan citizens

The Bill also introduces a concessional tax structure for startup enterprises certified under the Nairobi International Finance Centre framework as follows:

- 15% corporate tax rate for the first 3 years.
- 20% corporate tax rate for the following 4 years



## RETIREMENT BENEFITS

### I. Guidelines, Circulars, Notices, and Public Participation.

#### **Notice to Retirement Benefit Schemes regarding the 2025 Consumer Protection Survey**

On 22nd May 2025, the Retirement Benefits Authority issued a Notice to Retirement Benefit Schemes regarding the 2025 Consumer Protection Survey. The survey will focus on key areas such as transparency, quality of customer service, appropriateness of pension products, fairness and respectful treatment of consumers, consumer education and awareness, accessibility of pension services, data protection and privacy, effectiveness of redress and dispute resolution mechanisms, and the treatment of vulnerable consumers. Data collection from randomly sampled schemes registered with RBA will be conducted during the months of May and June 2025.

### II. Parliamentary Bills

The Finance Bill, 2025 ([find the link here](#)) proposes to amend the below act as follows:

#### **The Income Tax Act, CAP 470**

The Bill proposes amending the Act by repealing the provisions that currently govern the tax treatment of pension and retirement benefits within the Act. This would be in line with the tax exemptions on pension withdrawals that were introduced by the Tax Laws (Amendment) Act which rendered the repealed provisions invalid. This streamlines the tax framework on retirement benefits.

## FINTECH

### I. Parliamentary Bills

The Finance Bill, 2025 ([find the link here](#)) proposes to amend several acts as follows:

#### **The Excise Duty Act, CAP 472**

##### **a) Definition and taxation of digital marketplaces**

The Bill proposes to introduce a formal definition of a digital marketplace, which will have direct implications for the application of excise duty on services offered through such platforms. The Bill provides the definition of a digital marketplace to mean an online platform which enables users to sell goods or provide services to other users. This amendment provides clarity on the applicability of excise duty on excisable services offered through a digital marketplace.

Under Section 5 of the Excise Duty Act, excise duty is chargeable on excisable services offered by a non-resident through a digital platform. With the amendments proposed under the Bill, this scope will be expanded to include services offered over the internet, an electronic network or through a digital marketplace.

This clarifies the scope of excise duty on digital services.

#### **The Income Tax Act, CAP 470**

##### **b) Expansion of the scope of application of significant economic presence tax**

The Bill proposes broadening the scope of application of the significant economic presence tax. Previously, this tax applied only to income earned through digital marketplaces. The proposed amendment extends this tax to cover all services provided via the internet or

any electronic network, regardless of whether a digital marketplace is involved. This would mean that any business activity conducted online, even outside a formal marketplace, will now be subject to this tax.

The Bill also proposes to eliminate the de minimis exemption. Previously, non-resident entities were exempt from this tax if their annual turnover was below KES 5 million. With this exemption removed, all non-resident service providers—regardless of revenue size—will now be liable for the tax if they operate over the internet or electronic networks.

##### **c) Reduction of rate of digital asset tax**

Currently, a digital asset tax is payable on income derived from the transfer or exchange of digital assets which includes anything of value that is not tangible, cryptocurrencies and non-fungible tokens. This tax is calculated at 3% of the transfer or exchange value of the digital asset. The Bill proposes reducing the digital asset tax rate to 1.5% of the transfer or exchange value of the digital asset.

#### **The Value Added Tax Act, CAP 476**

##### **d) Place of supply of services**

Under the Act, electronic services provided by a non-resident person to a person in Kenya are deemed to be supplied in Kenya and therefore attract value added tax. The Bill proposes to include internet services under the definition of electronic services.

If the Bill is passed, non-resident persons providing internet services to users in Kenya will be required to register and account for VAT accordingly.







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