



Kiptinness & Odhiambo Associates LLP

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CLIENT ALERTS

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HIGHLIGHTS

In April 2025, the following were the major Legal and Policy developments we tracked:

- ⇒ CBK released a consultative paper reviewing the Risk-Based Credit Pricing Model (RBCPM) introduced in 2019.
- ⇒ **Unregistered foreign lenders lack legal standing to enforce debt in Kenya. In a recent court case, the High Court interpreted the Companies Act, Cap. 486, to mean that unregistered foreign lenders cannot enforce debt claims against Kenyan borrowers in Kenyan courts.**
- ⇒ Kenya Lifts Moratorium on Licensing New Commercial Banks. This change is effective from July 1, 2025.
- ⇒ Court of Appeal extends the scope of due diligence required of buyers on land transactions: *Mas Construction Limited v Sheikh & 6 others* [2025] KECA 349 (KLR)
- ⇒ Kenya is actively appealing the tariffs and pursuing a direct free-trade agreement (FTA) with the US.
- ⇒ Government of Kenya Launches National Energy Policy 2025 – 2034
- ⇒ The Supreme Court of Kenya: **Harcharan Singh Sehmi & Another v Tarabana Company Limited & 5 Others** rules that a Lessee has protected legitimate expectation for renewal of lease if they apply before expiry and the government neither communicates with reason refusal to renew.
- ⇒ The **Energy (Energy Management) Regulations, 2025** are published which provides for mandatory energy audits and authorizes licensing of Energy Service Companies (ESCOs)
- ⇒ Kenya Launches National Artificial Intelligence Strategy 2025–2030

1. CBK Releases a consultative paper reviewing the Risk-Based Credit Pricing Model

The Central Bank of Kenya is reviewing the Risk-Based Credit Pricing Model introduced in 2019. CBK proposes using the Central Bank Rate as the common base rate plus a premium, with components published for transparency.

Key Highlights

The Risk-Based Credit Pricing Model (RBCPM) was introduced in 2019 by the Central Bank of Kenya (CBK) and the banking sector as a market-driven framework to address challenges like high lending rates and opaque pricing. This followed earlier phases of interest rate policy, including liberalization in 1991, the Kenya Bankers Reference Rate (KBRR) from 2014, and interest rate capping from 2016 to 2019.

The introduction of RBCPM occurred during a period of critical reforms, including a transition towards a forward-looking monetary policy framework. A review of the RBCPM is deemed necessary after five years to assess its effectiveness and determine if it still complements ongoing banking sector reforms.

There are lingering concerns about the availability, quality, and fairness of credit scoring data and the consistency of RBCPM application across commercial banks. These issues impact the model's integrity and alignment with global best practices.

The CBK states that assessment of banks' implementation based on inspections revealed that some banks have not implemented their RBCPM in pricing customer credit as envisioned.

Key observations from inspections include models yielding outputs that force banks to discount rates, some facilities (like mobile loans, cash-backed, funded schemes) not using the RBCPM, lack of regular updates for model variables, imposition of additional charges outside the model, pricing based on customer segments rather than individual risk,

and insufficient board oversight and documented governance of the model.

Banks with high concentrations of term deposits face a high cost of funds, leading to increased base lending rates. Many use historical deposit costs (6 – 12-month average), keeping credit prices high despite declines in the Central Bank Rate (CBR).

Assessment of credit pricing models in other jurisdictions showed that most use a common lending base rate tied to the policy rate.

The banking industry, through the Kenya Bankers Association, proposed a unified base rate called the Kenya Base Rate (KBR), anchored on the interbank rate. They proposed banks competitively determine the premium ("K") above KBR without CBK approval.

CBK notes that Kenya Bankers Association's proposal for banks determining "K" without reference to CBK is similar to the KBRR regime, which led to wide variations in "K" and was a key challenge for KBRR.

CBK analysed the pros and cons of using either the Policy Rate (CBR) or the Interbank Rate as the common reference rate. Pros for CBR include reflecting monetary policy stance and risk-free funding cost, while cons include being less understood by some and not accounting for operating costs. Cons for the Interbank Rate include volatility, limited participation, and not directly reflecting the cost of funding for lending.

Key Implications

- Based on its analysis, CBK recommends using the Policy Rate (Central Bank Rate - CBR) as the common reference rate for determining lending rates in Kenya. CBR is seen as reflecting the cost of funding.
- Under CBK's proposal, the total lending rate will be determined by adding a premium ("K") to the CBR. The premium ("K") will specifically consist of the bank's operating costs related to lending, a return to shareholders, and the individual borrower's risk premium.

The borrower's risk premium requires a detailed, customer-specific credit-scoring model.

- Banks whose cost of funding differs significantly from the CBR will need to factor this difference into their premium ("K") for review and noting by CBK.
- Banks will be required to submit their proposed premium ("K") to CBK for review and noting prior to rolling it out.
- The new model will apply to all types of loans. For new loans, it will apply immediately from the effective date, and for existing loans, banks must transition them within 3 months.
- To ensure transparency, CBK will publish the components of each bank's lending rate premium ("K") on its website, the Total Cost of Credit (TCC) website, and in two newspapers of nationwide circulation.
- CBK is seeking comments on the proposed common reference rate and computation of lending rates from commercial banks and the public by Friday, May 2, 2025.

2. Kenya Lifts Moratorium on Licensing New Commercial Banks.

The Central Bank of Kenya will lift the moratorium on licensing new commercial banks effective July 1, 2025. The moratorium, in place since 2015, aimed to strengthen the sector. New entrants must meet the enhanced minimum core capital of Ksh.10 billion. This aims for stronger banks capable of navigating risks and supporting development.

Key Highlights

The Central Bank of Kenya (CBK) has announced the lifting of the moratorium on licensing new commercial banks. The reason for imposing the moratorium was to address governance, risk management, and operational challenges within the banking sector and provide time for strengthening it.

Since 2015, significant progress has been made in enhancing the legal and regulatory framework for the banking sector. There have also been notable mergers and acquisitions among existing banks, as well as the entry of new domestic and foreign strategic investors.

A recent change in the Business Laws (Amendment) Act, 2024, increased the minimum core capital requirement for commercial banks to Ksh.10 billion. This increase is intended to further reinforce the sector's strength.

Following the lifting of the moratorium, any new banks entering the market will be required to demonstrate their ability to meet this enhanced minimum capital requirement of Ksh.10 billion.

Key Implications

- Foreign or domestic entities aspiring to establish a new commercial bank in Kenya will be eligible to apply for a license from July 1, 2025, subject to meeting the required criteria
- Any prospective new bank will need to have or demonstrate access to a minimum core capital of Ksh.10 billion. This represents a significant financial threshold for entry.
- The CBK anticipates that the enhanced capital requirements and the entry of potentially strong players will result in stronger and more resilient banks.
- These stronger banks are expected to be better equipped to handle growing global, regional, and domestic risks.
- Furthermore, the lifting of the moratorium and the expected strengthening of the sector are intended to enable banks to

support large-scale financing needs aligned with Kenya's development goals.

- The decision signals the CBK's view that the sector has been sufficiently strengthened following the challenges that led to the initial moratorium.

3. Kenya Eyes Opportunity Amid U.S. Tariffs, but Global Recession Threatens Gains.

Kenya views new US tariffs as a potential trade advantage compared to rivals facing higher rates, despite domestic cost challenges and global recession risks. Success in leveraging these differential hinges on securing better terms through direct negotiations with Washington amidst the grim outlook for AGOA.

Key Highlights

Kenya sees a potential trade advantage in the new US tariffs because its goods face a significantly lower 10% rate compared to key textile rivals like Vietnam (46%), Sri Lanka (44%), and Bangladesh (37%). Mr. Lee Kinyanjui, CS Trade, believes this disparity could help position the country as an alternative sourcing hub for buyers.

However, economists caution that any gains may be offset by global economic damage from the tariffs, including an increased risk of global recession, and deep-seated weaknesses in Kenya's domestic business environment.

Kenyan manufacturers face operational costs roughly 20% higher than competitors, which some argue largely cancels out the advantage gained from the tariff differential. Manufacturers also question if brands will shift based on a temporary tariff difference that doesn't create "real competitiveness."

Adding to the challenges is the grim outlook for the African Growth and Opportunity Act (AGOA), which currently allows duty-free exports to the US.

Experts suggest the tariffs are likely to signal the end of AGOA, set to expire in September. While direct trade with the US (\$737 million last year) is smaller than with the EU (\$1.35 billion) and China (\$228 million), the indirect impact of potential growth slowdowns in these major trading partners due to the US tariffs could also weigh on Kenya's economy.

Success in leveraging the situation heavily depends on Kenya's ability to secure better terms through direct negotiations with Washington. Kenya has previously engaged in trade talks with both the Trump (2020) and Biden administrations, though neither concluded before the recent tariff changes. The situation highlights varying perspectives among Kenyan manufacturers, with some optimistic about increased comparative advantage, while others note added costs and reduced market competitiveness post-AGOA.

Key Implications

- The tariff disparity presents a potential window of opportunity for Kenya's textile and apparel sector to attract buyers seeking alternatives to countries facing much higher US tariffs.
- However, realizing this opportunity is an uphill struggle due to Kenya's higher domestic operational costs, which diminish the competitive edge gained from lower US tariffs.
- The imposition of tariffs and the grim outlook for AGOA create significant uncertainty regarding future duty-free access to the critical US market for Kenyan exporters.
- There is a critical need for Kenya to actively pursue direct trade negotiations with the US to secure a favourable framework for trade access post-AGOA.
- Kenyan firms face the challenge of navigating increased direct costs from US tariffs while also potentially dealing with reduced demand from other major markets (EU, China) if the global economy slows down due to trade tensions.

- The situation highlights the need for resilience and adaptability within Kenyan manufacturing, as the impact varies between firms based on factors like existing cost structures and market diversification.

4. Kenya is actively appealing the tariffs and pursuing a direct free-trade agreement (FTA) with the US

Kenya is negotiating with the US after President Trump imposed a 10% export tariff, seeking to appeal it and pursue a Free-Trade Agreement. This move is critical given the tariff threat and AGOA's pending September expiry, aiming to secure vital market access.

Key Highlights

Kenya is currently brokering a trade agreement with the United States. This action follows President Donald Trump's recent imposition of a 10 percent tariff on Nairobi's exports. Trump's administration announced sweeping 'reciprocal tariffs' based on claims that Kenya charges the US a 10 percent tariff, alongside currency manipulation and trade barriers.

While Trump has since paused the tariffs on all countries except China, Kenya views this period as an opportunity for nations "to put their case" before the U.S. government. Kenya will be appealing this 10 percent trade tariff and has drafted the rationale for this appeal. The reciprocal impositions would impact Kenya's total goods trade with the US. Kenya's exports to the US were valued at \$737.3 million (Ksh.95.3 billion) in 2024. The major Kenyan exports to the US include apparel, coffee, and tea.

Recently, Kenya sent a delegation to Washington to address the matter. Additionally, Kenya is also seeking a free-trade agreement (FTA) with the U.S. This pursuit of an FTA is linked to the African Growth and Opportunity Act (AGOA) nearing its expiry in September. Our previous conversation noted the outlook for AGOA was grim.

Since May 2000, Kenya's exports to the U.S. have been exempted from tariffs under AGOA.

Kenya aims to become the second country to have a direct FTA with the U.S. after Morocco. Further, Kenya is seeking more markets for its goods to avoid overdependence on the U.S.

Key Implications

- The sudden imposition of a 10% tariff by the US signals a significant shift away from the previously tariff-exempt access Kenya enjoyed under AGOA, creating immediate uncertainty for Kenyan exporters.
- Kenya's response, involving an appeal of the tariff and the active pursuit of a bilateral FTA, demonstrates a strategic pivot towards establishing a more permanent trade framework with the US in anticipation of AGOA's expiration in September.
- The justification for the tariff, citing claims of reciprocal rates, currency manipulation, and trade barriers, suggests that future trade negotiations could involve broader and potentially complex issues beyond simple tariff reductions.
- Seeking an FTA positions Kenya to potentially secure long-term, favourable market access similar to Morocco, but success is not guaranteed and depends on the outcome of ongoing negotiations. Kenya previously engaged in trade deal negotiations with both the Trump and Biden administrations, neither of which was completed before the recent developments.
- The intention to diversify into more markets highlights a recognition of the risks associated with reliance on a single major trading partner like the US, especially in a period of global trade volatility.
- The significant value of Kenya's exports to the US (\$737.3 million in 2024), particularly in key sectors like apparel, coffee, and tea, means that the outcome of these tariff appeals, and FTA negotiations will have a direct and substantial impact on specific industries within the Kenyan economy.

1. PAKSONS ENTERPRISES LIMITED vs KIPKOECH T/A PAKSONS AGROVETERINARY SOLUTIONS & ANOTHER (CIVIL CASE 4 OF 2018)

This case highlights the complexities and loopholes in the frameworks governing trademark and business name registration in Kenya. The case underscores the urgent need for reform to prevent public confusion and disputes over trademark infringement.

Nature of the Case

- The plaintiff, Paksons Enterprises Limited, is the registered proprietor of the trademark "Paksons Enterprises Limited", registered as Number 933083. The trademark registration was effective from July 29, 2016, and grants the plaintiff the exclusive right to use the name "Paksons".
- The plaintiff discovered around 2018 that the 1st Defendant, Paksons Agroveterinary Solutions, was trading under the name Paksons Agroveterinary Solutions.
- The plaintiff averred that this name is identical to theirs and applies to identical products covered by their trademark thus infringing on its registered trademark.
- The plaintiff contended that the word "Paksons" is well known and distinctive of their goods and services. They argued that the 1st Defendant's use of the name is a deceptive imitation, causing the public to believe the 1st Defendant's products and services originate from the plaintiff, constituting "passing off".

Defendant's case

- The 1st Defendant argued that he applied for registration of his business name, PAKSONS AGROVETERINARY SOLUTIONS, in 2016, and was issued a certificate of registration on May 31, 2016. He contended that this registration gave him the right to use the name to the exclusion of others, including the plaintiff.
- He further asserted that the plaintiff applied for their trademark on July 29, 2016, after

the 1st Defendant's business name had already been registered on May 31, 2016. The 1st Defendant denied operating as the plaintiff, stating their names are distinct.

- He clarified that his business, Paksons Agro Veterinary Solutions, does not manufacture goods but sells already manufactured goods from suppliers.

Courts determinations

- ✓ The court noted that the 1st Defendant sells veterinary and agrochemical products, which are covered by the plaintiff's trademark registration, and that the use of the name "Paksons" by the 1st Defendant is likely to confuse the relevant market.
- ✓ The court highlighted that the 1st Defendant presented a "formidable defence" arguing that he was operating under his company name at the time the plaintiff registered his trademark.

The court noted it must consider the defence of prior use, codified in section 10 of the Trademarks Act.

- ✓ On the issue of passing off, the court's finding was that, given the fact that the 1st defendant does not manufacture, he is not capable of passing off products as those belonging to the plaintiff.
- ✓ Consequently, the court found that the plaintiff's case was without merit and dismissed the suit.

Key Implications

- ⇒ The ruling sheds light on a **larger systemic issue**, the lack of coordination between the Kenya Industrial Property Institute (KIPI) and the Business Names Registry. These bodies operate independently when registering business names and trademarks, resulting in potential overlaps and legal conflicts.
- ⇒ **Priority of Rights** - the decision underscores the potential importance of prior use over later registration dates,

particularly in the context of conflicts between business names and trademarks.

⇒ **Risk of Overlapping Rights** - The case serves as a cautionary tale about the risk of overlapping and conflicting rights arising from different intellectual property and business registration systems. Businesses should ideally conduct comprehensive searches across both the Companies Registry and KIPI before adopting a name or mark to mitigate the risk of future litigation.

5. Unregistered foreign lenders lack legal standing to enforce debt in Kenya

Recent court cases in Kenya have interpreted the Companies Act to mean that unregistered foreign companies lending money to Kenyan borrowers are barred from enforcing their debt claims in Kenyan courts. This applies even if the foreign lender has no physical presence in Kenya, making registration essential for enforceability.

Key Highlights

In the case of **Stichting Rabo Bank Foundation v Ava Chem Limited**, a Dutch bank sued a Kenyan borrower for default, but the case was dismissed because Rabo Bank was not registered as a foreign company in Kenya.

Similarly, in **Root Capital Inc. v Tekangu Farmers' Co-operative**, a U.S. lender with security over Kenyan assets attempted enforcement upon default, but their case was also dismissed for the same reason of not being registered.

Section 974(1) of the Companies Act, Cap. 486, states that a foreign company shall not carry on business in Kenya unless registered or has applied for registration. In Section 2, a "foreign company" is defined as one incorporated outside Kenya. Section 974(2) lists activities that constitute "carrying on

business," such as offering debentures or establishing a place of business.

However, the High Court has adopted a broader interpretation of "carrying on business". The act of lending money to a Kenyan borrower, even when done from abroad, is now considered by the High Court to fall within the scope of "carrying on business". The consequence of this interpretation is that a foreign lender without registration cannot sue in Kenya to enforce their rights, regardless of the legitimacy or security of their claim.

Key Implications

- Any foreign company that extends credit to a Kenyan borrower must register under the Companies Act in Kenya. Failure to register could result in the foreign lender being unable to enforce their rights in a Kenyan court, even if the loan is secured or undisputed.
- This requirement and restriction apply even if the lender has no branch, staff, or physical operations within Kenya.
- These court decisions establish a new compliance requirement for offshore lenders dealing with Kenyan entities.
- From the perspective of managing risk and ensuring enforceability, registration has become crucial; it is now "the difference between enforceable rights and a courtroom lockout" in Kenya.

purpose is to enhance climate risk management, transparency, and reporting within the financial sector.

The Framework aligns with global standards, notably IFRS S2, which is becoming the benchmark for climate-related financial disclosure. IFRS S2, which specifically focuses on climate-related disclosures, is noted as quickly becoming the global benchmark for climate-related financial disclosure.

Key Highlights

The Framework outlines comprehensive requirements for Kenyan banks regarding climate risk disclosure, structured around the four pillars of Governance, Strategy, Risk Management, and Metrics & Targets.

In addition, the Framework provides mandatory disclosure requirements utilizing specific Templates for reporting exposures to both physical and transition risks. Banks must disclose gross outstanding amounts to high-emitting sectors based on Kenyan Standard Industrial Classification (KeSIC) codes, alongside "green" allocations within these sectors.

A critical requirement is the disclosure of Scope 3 emissions (financed emissions), which represent the largest portion of a bank's carbon footprint, along with data quality scores, although mandatory reporting for Scope 3 is deferred.

The Framework mandates robust governance structures with clear board and senior management oversight. For strategy, banks are expected to integrate climate impacts and opportunities into their business models, using scenario analysis to assess resilience.

6. Climate Risk Disclosure Framework for the Banking Sector

The CBK has issued a Climate Risk Disclosure Framework for the Banking Sector which is an update to Kenya's existing guidance on climate risk management for banks. Its primary

On the other hand, risk management requires documented policies and procedures for identifying, assessing, and monitoring climate risks, integrating these into core risk processes, and utilizing tools like climate-adjusted due diligence and scenario

analysis/stress testing (potentially using NGFS models).

Banks should also engage with clients on climate transition plans. For metrics and targets, disclosure of GHG emissions (Scope 1, 2, and 3) is required, with financed emissions being a priority metric. Banks are expected to set quantitative and qualitative targets, potentially linked to Kenya's Long-term Low Emission Development Strategy (LT-LEDS).

Implementation follows a phased timeline, with voluntary reporting starting in 2025 for Tier 1 banks and 2026 for Tiers 2 and 3, and mandatory reporting for all commercial banks beginning in 2027. Mandatory Scope 3 reporting starts later, from 2028. Data assurance for sustainability disclosures, including climate information, becomes mandatory from 2028, progressing from limited to reasonable assurance by 2030.

Key Implications

- **Improved Risk Management and Resilience:** By requiring banks to identify, assess, and manage climate risks, the Framework aims to enhance their ability to make informed lending and investment decisions, ultimately improving their resilience to climate-related shocks.
- **Enhanced Transparency and Accountability:** The mandated disclosures will provide greater visibility into banks' exposure to climate risks and their efforts to manage them, fostering accountability within the sector.
- **Attracting Sustainable Investments:** Transparent disclosures are expected to attract investors who are increasingly seeking sustainable investment

opportunities, potentially channelling capital towards climate-aligned activities.

- **Strategic Alignment with National Goals:** The Framework encourages banks to align their strategies and portfolios with national climate goals, such as the LT-LEDS, contributing to Kenya's transition to a low-carbon, climate-resilient economy.
- **Development of Green Finance:** The focus on identifying opportunities and disclosing green allocations is expected to foster the development and uptake of green financial products and services.
- **Need for Capacity Building:** Implementing the Framework will require significant capacity building within banks to develop the necessary skills, data collection capabilities, and technical expertise for climate risk assessment and reporting.
- **Data Management Challenges:** Banks will need to address challenges related to data accuracy, completeness, and consistency to ensure reliable reporting, particularly for complex metrics like financed emissions.
- **Integration with Existing Processes:** The Framework necessitates integrating climate risk considerations into core banking processes, including governance structures, strategic planning, risk appetite, lending policies, and internal control frameworks.



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