

2026 LEGAL FORECAST

*Legal Trends from 2025 Shaping
the New Year*

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INTRODUCTION

- 2025 marked major legal and policy developments across many industries in Kenya.
- Global events also impacted policy direction significantly.
- Businesses and other institutions can start aligning early in the year for best outcomes.





THEMATIC AREAS

We have tracked key 2025 legal and policy developments across the following strategic areas:

1. Real Estate Securitization - The Land Title Question

2. AML/CFT/CPF Compliance

3. Trade & Market Access Dynamics

4. Taxation of Foreign Entities & the Digital Economy

5. Green Finance & Investments

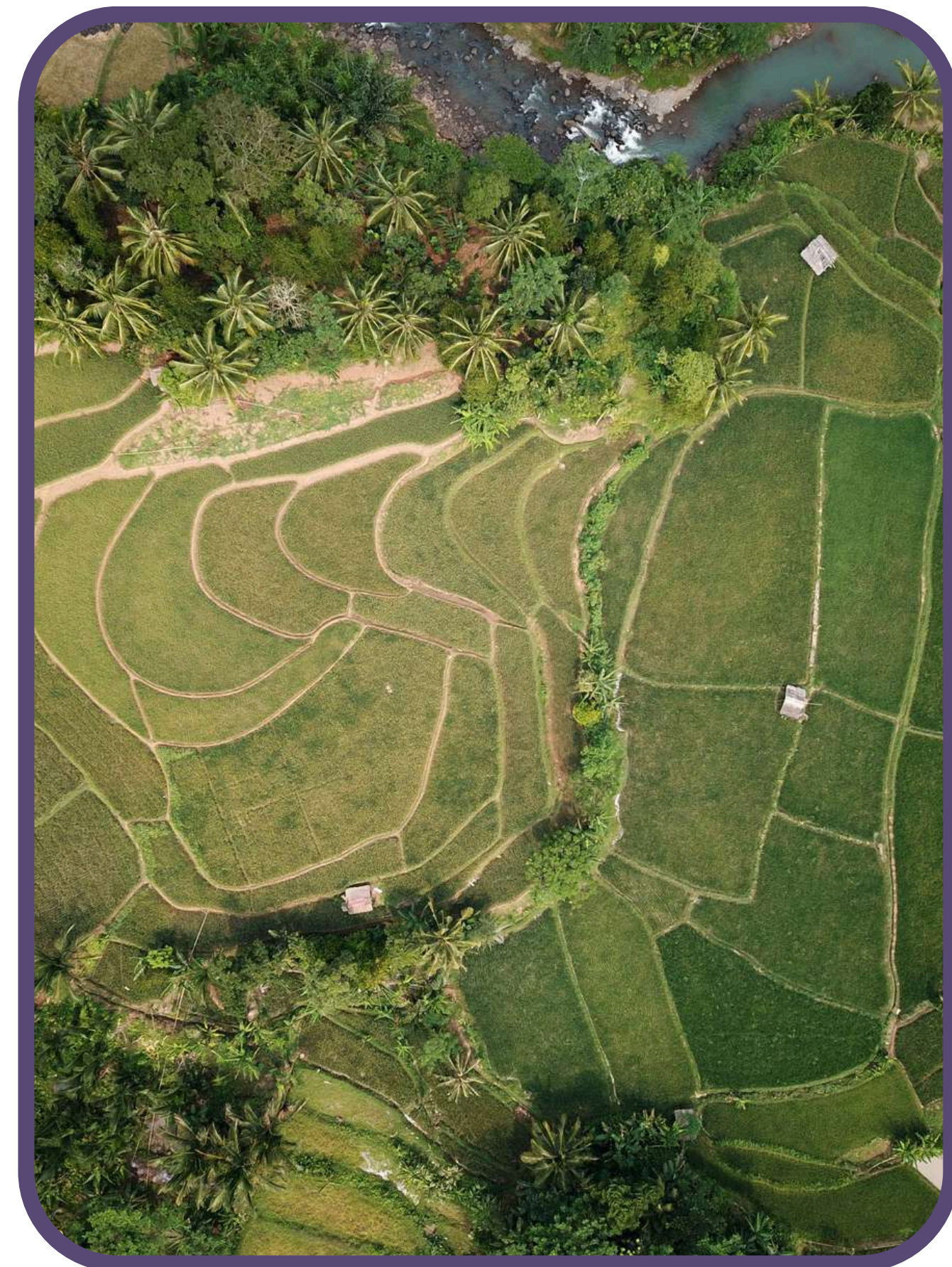
6. Regulating Innovation- AI, Cybersecurity & more





1. REAL ESTATE & SECURITIZATION

- In 2025, Kenyan courts pronounced themselves severally on the issue of verifying the root of title, intensifying scrutiny into the sanctity of land titles.
- Courts cemented the fact that when land is unlawfully obtained, such title becomes tainted, making it impeachable even for successive purchasers of bad title.
- Title documents are therefore not indisputable proof of ownership.
- This has dire consequences for third parties who later acquire such properties, and for those who utilize the property in transactions such as securitization.



SAMPLE 2025 CASE LAW

KENYA ANTI-CORRUPTION COMMISSION V GIGIRI COURT LIMITED & 3 OTHERS (2025)

FACTS The Plaintiff claimed that the 2nd Defendant had acquired several tracts of land belonging to public institutions with the collusion of the 3rd & 4th Defendants who were at the time, land commissioners. The 2nd Defendant had later sold part of the property to the 1st Defendant for Kes 16 million.

EVIDENCE Evidence tendered showed that the suit property had indeed belonged to public institutions, and that the procedures necessary for the alienation of such land had not been followed.

FINDING & EFFECT The root of the title was tainted by illegality, making the 1st Defendant's title null and void. The court therefore ordered, amongst others, for the land register to be rectified by cancelling the certificate of lease issued to the 1st Defendant.

FRANK LOGISTICS LIMITED V GOLDEN LION REAL ESTATE COMPANY & OTHERS (2025)

FACTS The Appellant and 1st Respondent both laid claim to the same piece of land. Each had a title document in their name. Further, the Appellant had utilized the suit property to secure a loan of Kes 90 million from Credit Bank Limited, the 6th Respondent who charged the property.

KEY FINDINGS

In investigating the root of the Appellant's title, the Court noted the following irregularities:

- no evidence of proper conversion from GLA to RTA regimes.
- Mismatched IR numbers in the appellant's title documents.
- Irregular sequence of events, such as the appellant's 2016 change-of-user application, despite registration occurring in 2017.
- Charge by the bank violated the **Lis Pendens**.

Our 2026 Land Title Forecast



Lessons learnt

- Stakeholders including investors, financial institutions, land owners must sharpen due diligence processes when deal to ensure that investigations go to the root of title.



Expected Developments

- We foresee an increase in the number of litigations on this subject, with aggrieved parties challenging the validity of disputed land titles on the basis of root of title; impacting investor confidence, security of title and lending processes.



Recommended Strategies

- Proactive audits of existing charges, leases and titles as applicable.
- Professional confirmation of physical boundaries against deed plans.
- Thorough investigation & monitoring of any litigations pertaining relevant property before transacting.
- Follow proper procedures that can withstand future scrutiny.



2. AML/CFT COMPLIANCE

- In 2024, the Financial Action Task Force (FATF) grey-listed Kenya citing challenges such as:
 - Lack of demonstrable success in prosecuting money laundering crimes.
 - Large presence of non-profit organizations with minimal regulation.
 - Low of transparency in handling beneficial ownership disclosures.
 - Failure to adequately monitor Designated Non-Financial Businesses and Professions (DNFBPs).
- In 2025, the European Commission also added Kenya to its list of high-risk third countries with strategic anti-money laundering and counter terrorism deficiencies.



Key Reforms to AML/CFT- 2025

In June 2025, the president signed into law the *Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Act* amending multiple related laws.

Key measure introduced include:

- Enhanced regulatory oversight over designated non-financial businesses and professionals through the Financial Reporting Center. These include: accountants, lawyers, real estate agents, SACCOs, Retirement schemes.
- Entities dealing in gold, gemstones, and other precious metals & stones are now under the AML/CFT regime.
- Enhanced regulatory oversight over designated non-financial businesses and professionals through the Financial Reporting Center.
- Public Benefit Organizations (PBOs) are now also covered.

Our 2026 AML/CFT Compliance Forecast



Expected Developments

- We foresee key regulatory focus on Designated Non-Financial Businesses and Professions (DNFBPs), PBOs and the precious stones industry with possible sanctions being metted out.
- With the passing of the Virtual Assets Service Providers (VASP) Act in late 2025, 2026 will also entail unprecedented oversight of virtual assets in the country, a previous concern in the AML/CFT discourse.



Recommended Strategies

- Review panel of service providers in the DNFBPs list to verify compliance.
- Entities within these sectors will be expected to swiftly integrate AML/CFT practices.
- Implement early staff capacity building to support your internal compliance frameworks.



3. TAXATION OF FOREIGN ENTITIES

- Globally, governments in 2025 grappled with the issue of efficient taxation of multinational organizations (MNOs) and digital platforms.
- Kenya ratified the OECD's Multilateral Convention to Implement Tax Treaty Related Measures to Prevent Base Erosion and Profit Shifting (**BEPS MLI**) in January 2025 with effect from 1st May 2025.
- Diplomatic relations played a defining role in shaping tax policy, with players such as the United States of America seeking exceptions for their nationals.



Changes to tax laws applicable to foreign entities & digital platforms in 2025

A number of BEPS-aligned reforms were introduced through the Tax Laws (Amendment) Act, Tax Procedures (Amendment) (No.2) Act, and Finance Act 2025.

Tax

- Minimum top-up tax: requires entities in Kenya that are part of a multinational group with a consolidated turnover exceeding 750 million Euros to pay an additional amount of tax where their effective tax rate falls below the global minimum rate of 15%
- Significant Economic Presence Tax: Requires digital platforms that are not resident in Kenya but have substantial economic activity in Kenya to pay tax on income derived from Kenya.

Rationale & Impact

Intended to minimize the extent to which multinational enterprises can shift profits to low-tax jurisdictions to the detriment of local jurisdictions.

Was intended to replace Digital Service Tax & traditional tax rules that rely on physical presence, which allow digital and remote businesses to generate substantial revenue from Kenya without being taxed locally.

Our 2026 Tax Forecast



Expected Developments

- Implemenation of the Significant Economic Presence Tax and Top-Up Tax, with their respective guiding regulations expected to be passed and to come into effect.
- With the exception granted to American entities by Kenya and other related diplomatic and geo-political developments, we expect to see further negotiations on a bilateral, regional and international level that may prompt further changes to the regime and a revision of established frameworks.



Recommended Strategies

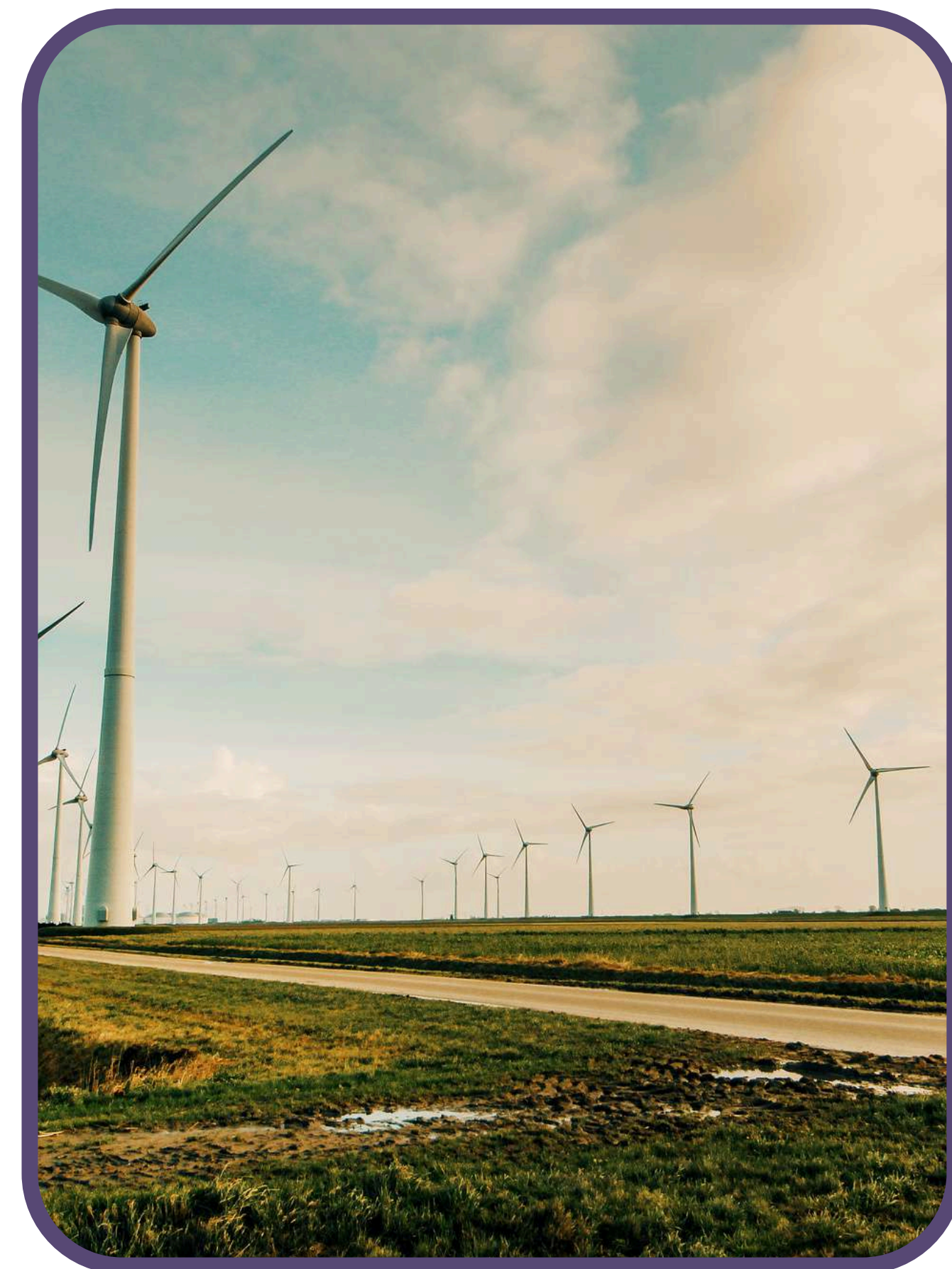
- Conduct a digital tax exposure analysis to help identify significant economic presence tax triggers & cross-border risks.
- Review Group Structures for considerations such as profit allocation & intercompany pricing.



4. GREEN FINANCE & INVESTMENTS

Kenya is emerging as a strategic gateway for green finance and investment, with an enabling sustainable finance framework including:

- National Policy on Climate Finance:
 - Sets the policy objectives and strategies for climate finance in Kenya, identifying priority sectors, necessary interventions, and sets out frameworks for the implementation of low carbon and climate resilient initiatives and to attract and promote flow of climate finance in Kenya.
- Climate Change (Carbon Markets) Regulations, 2024
- Kenya Green Bond Guidelines: Provide a framework for Kenya's green bond market to stimulate access to finance towards green transition.
- Green Fiscal Incentives Framework



Major Developments in Green Finance & Investments- 2025

Issuance of the Green Finance Taxonomy (GFT)

- The GFT is a classification tool for determining which economic activities qualify as environmentally sustainable for purposes of green financing & investment.
- Its introduction to the Kenyan finance sector marks a monumental milestone in green financing by setting standardized benchmarks for:
 - Green bonds and green loans issuance
 - ESG-linked investments
 - Climate-focused development finance
 - Bank sustainability reporting

Passing of the Green Fiscal Incentives Framework:

- This is a strategic policy designed to transition the economy toward a low-carbon, climate-resilient path by leveraging fiscal mechanisms that will amongst others, stimulate private investment in green technologies. Mechanisms include tax breaks, subsidies, carbon taxes, and green bonds .
- Seeks to implement a green investment bank and credit guarantee schemes and instruments to enhance access to finance.
- Calls for the development of a priority list for national green investments.

Our 2026 Green Finance & Investments Forecast



Expected Developments

- Stricter application by financial institutions of the GFT upon lapsing of the 18-month transitional voluntary phase
- Growth in climate risk disclosures and reporting practices in financing.
- Increased green investment opportunities following issuance of the GFT and the Green Fiscal Investments Frameworks, which are poised to elevate investor confidence.



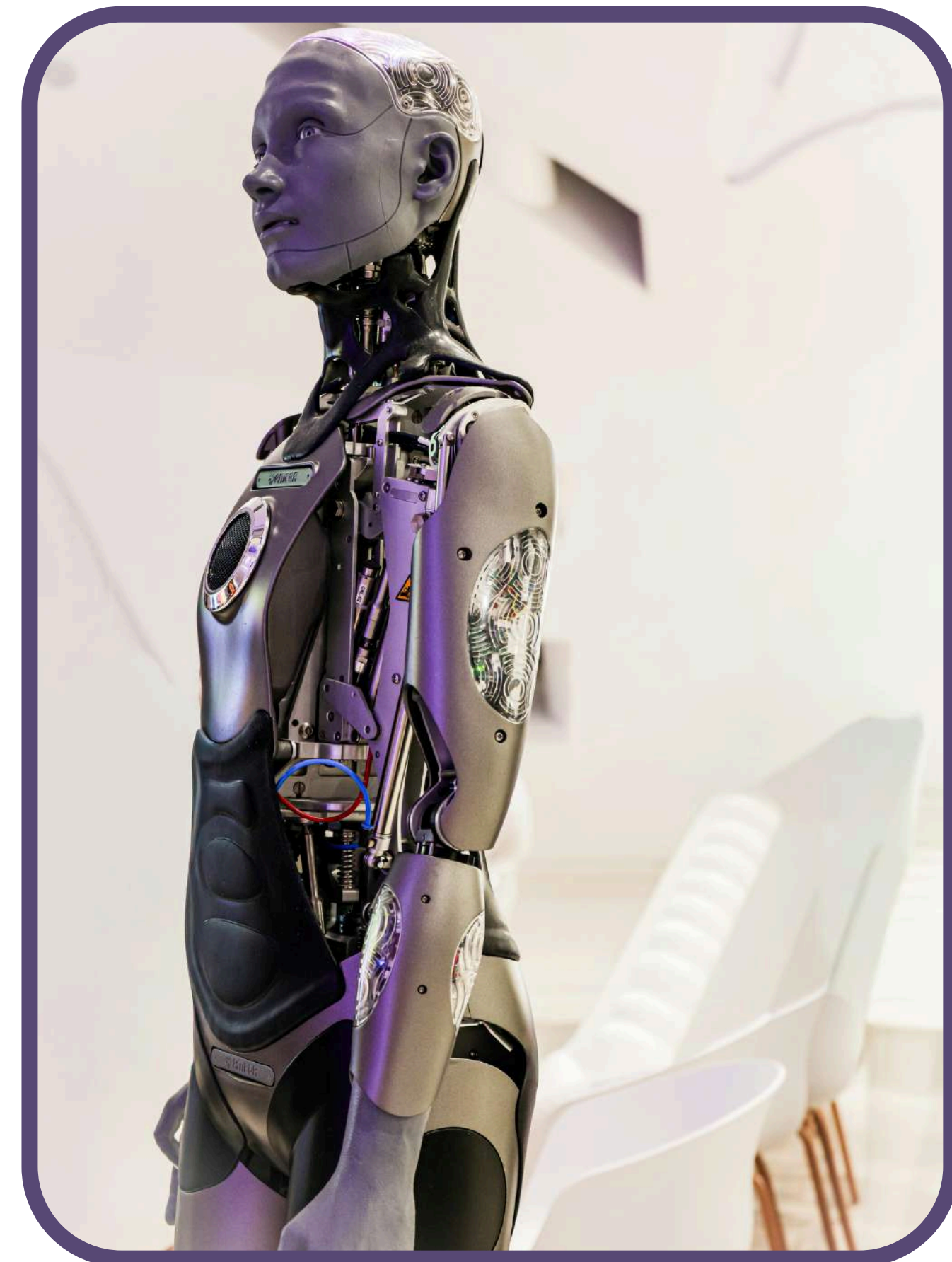
Recommended Strategies

- Capacity building on newly introduced frameworks to stimulate efficient application.
- Review existing investment portfolios against the GFT to identify necessary improvements for compliance.
- Engage experts to explore and elevate engagements in green financing given the unique emergent opportunities.



5. REGULATION OF INNOVATION

- 2025 marked a monumental shift in AI policy and regulation, with several jurisdictions introducing AI-specific governing laws, guidelines and policies such as :
 - European Union- General-Purpose AI Code of Practice
 - United Kingdom- AI Opportunities Action Plan
 - Kenya- National AI Strategy
- Data protection remained a top compliance consideration, with the ODPC in Kenya rendering numerous decisions in support of data subject rights.
- Cybersecurity attacks increased, with a reported estimated Kes 29 billion cumulatively lost in the Kenyan economy to cyber attacks. Cyber attacks are becoming more complex due to rapid technological advancements.



Key Developments to Innovation Regulation in 2025

Launch of the Kenya Artificial Intelligence Strategy 2025-2030

- The strategy aims to position Kenya as a leading AI player by fostering an impactful ecosystem that can drive socioeconomic growth.
- It addresses matters such as AI readiness, data governance, development of AI talent, AI governance frameworks, AI investment options and ethical considerations.

Amendment of the Computer Misuse and Cybercrimes Act

- Section 6 of the Principal Act has been amended to grant NC4 the authority to direct for any website or application to be made inaccessible where it is proved that such website/application promotes unlawful activities, inappropriate sexual content of a minor, terrorism.

Enactment of the The Virtual Asset Service Providers Act

- This marks formal recognition of virtual assets in Kenya, providing a unified legal and regulatory framework for the regulation of Virtual Asset Service Providers.
- Brings on board multiple entities for purposes of regulation- CBK, CMA and any other additional authorities as may be designated by the Cabinet Secretary or the National Treasury.
- Key provisions include:
 - Mandatory licensing for service providers to operate in Kenya.
 - Prior regulatory approval before any new digital assets are offered to the public.
 - Minimum eligibility requirements.

Our 2026 Technology Forecast



Expected Developments

- Licensing of the first virtual asset providers in Kenya.
- Prioritization of the following focus areas towards implementing the National AI Strategy:
 - data governance (beyond data protection)
 - Data center regulation & incentives
- Increased cyber incidences with the continued adoption of technologies (not if but when).



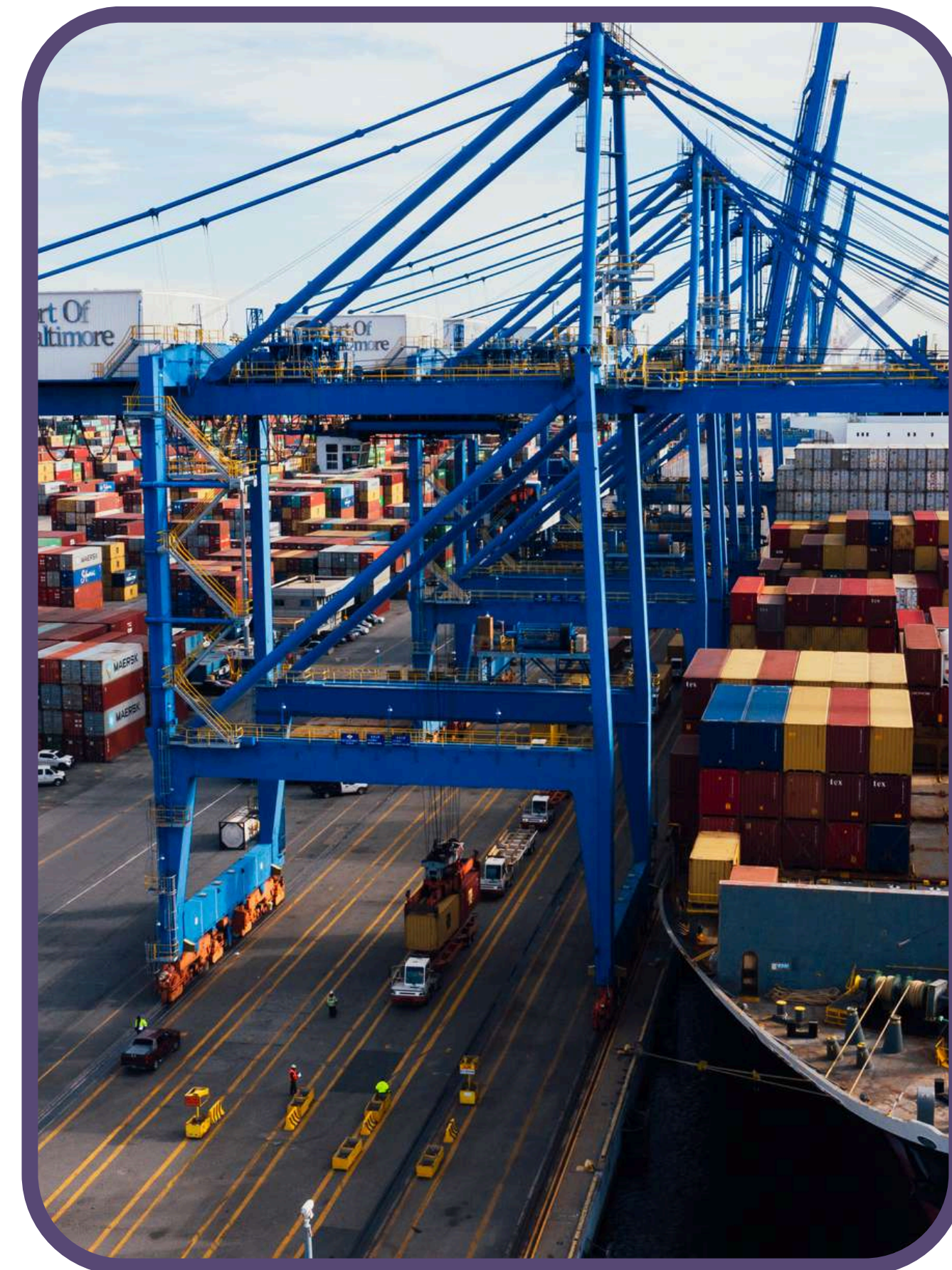
Recommended Strategies

- Strengthen data breach response processes.
- Review AI policies in line with the National AI Policy priority areas.
- Review data flows within your organization, particularly cross-border data flows.



6. TRADE & MARKET ACCESS

- Geopolitical tensions and other market dynamics precipitated a distinct shift to regional trade.
- With multiple national policy and regional/international cooperation documents in place, it became clear that full implementation of existing trade cooperation frameworks was lacking.
- Digitization and manufacturing identified as key areas of focus for market growth.



Key Developments impacting Trade & Market Access in 2025

International

- Lapse of AGOA: The impending lapse of AGOA (30 September 2025) created uncertainty & brought to the fore discussions around Kenya's export readiness & maturity beyond preferential treatment arrangements.
- Major bilateral trade partnerships with China, United Kingdom, United Arab Emirates, Malaysia.

Regional

- Party states pursued the implementation of the AfCFTA as a priority area in achieving self-sufficiency amidst uncertainties with traditional development partners
- Regional integration within the East Africa Community gained traction:
 - Operationalization of the EAC merger notification framework
 - Launch of the EAC Cross-border Payment System Masterplan, whose implementation is expected to significantly reduce the cost and time of cross-border payments.
 - Cross-border data flows: Plans for a unified legal framework for data flows within the EAC gained momentum.

Local Laws & Policies

- Publication of the Local Content Bill (2025): Proposes a framework for mandatory sourcing, staffing, and local capacity building obligations on foreign companies in a bid to promote local industry.

Our 2025 Trade & Market Dynamics Forecast



Expected Developments

- Regional trade within Africa is expected to continue gaining momentum with:
 - Implementation of AfCFTA Protocols and guidelines at the national level
 - Promotion of digital trade across states, including financial technology to ease payments.
- Competition policy streamlining to harmonize merger notification frameworks, therefore boosting investments.
- Passing of the Local Content Bill will necessitate strict compliance requirements & internal strategic policies.
- Manufacturing industries to receive increased policy and investment support in line with strategic goals.



Recommended Strategies

- With the 3-year AGOA extension, exporters should assess their market entry positioning, examining their compliance and supply chain efficiencies to fully benefit, as well as prepare post-expiration strategies given the short window.
- Assess ways in which digitization can be leveraged across the business for regional competitiveness- from cross border data flow compliance to practical digital readiness.
- Explore diversified trade opportunities within Africa given expected growth in regional cooperation opening up new markets.





Thank
you





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