
CHAMBERS GLOBAL PRACTICE GUIDES

Doing Business In... 2023

Definitive global law guides offering comparative analysis from top-ranked lawyers

Rwanda: Law & Practice

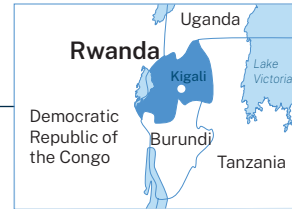
Julien Kavaruganda, Eric N Cyaga, Yves Sangano, Emmanuel Muragijimana, David Ngirinshuti, Kwizera M Grace, Nkundineza M Bruce Henri Bruce and Zackiah Nandugwa
K-Solutions & Partners

Rwanda: Trends & Developments

Eric N Cyaga, Emmanuel Muragijimana, Patrick K Okello and Zackiah Nandugwa
K-Solutions & Partners



RWANDA



Law and Practice

Contributed by:

Julien Kavaruganda, Eric N Cyaga, Yves Sangano, Emmanuel Muragijimana, David Ngirinshuti, Kwizera M Grace, Nkundineza M Bruce Henri Bruce and Zackiah Nandugwa

K-Solutions & Partners

Contents

1. Legal System p.7

1.1 Legal System and Judicial Order p.7

2. Restrictions on Foreign Investments p.8

- 2.1 Approval of Foreign Investments p.8
- 2.2 Procedure and Sanctions in the Event of Non-compliance p.8
- 2.3 Commitments Required From Foreign Investors p.8
- 2.4 Right to Appeal p.8

3. Corporate Vehicles p.8

- 3.1 Most Common Forms of Legal Entity p.8
- 3.2 Incorporation Process p.8
- 3.3 Ongoing Reporting and Disclosure Obligations p.9
- 3.4 Management Structures p.9
- 3.5 Directors', Officers' and Shareholders' Liability p.9

4. Employment Law p.10

- 4.1 Nature of Applicable Regulations p.10
- 4.2 Characteristics of Employment Contracts p.10
- 4.3 Working Time p.11
- 4.4 Termination of Employment Contracts p.11
- 4.5 Employee Representations p.12

5. Tax Law p.12

- 5.1 Taxes Applicable to Employees/Employers p.12
- 5.2 Taxes Applicable to Businesses p.12
- 5.3 Available Tax Credits/Incentives p.15
- 5.4 Tax Consolidation p.17
- 5.5 Thin Capitalisation Rules and Other Limitations p.17
- 5.6 Transfer Pricing p.17
- 5.7 Anti-evasion Rules p.17

6. Competition Law p.18

- 6.1 Merger Control Notification p.18
- 6.2 Merger Control Procedure p.18
- 6.3 Cartels p.18
- 6.4 Abuse of Dominant Position p.18

7. Intellectual Property p.19

- 7.1 Patents p.19
- 7.2 Trade Marks p.19
- 7.3 Industrial Design p.20
- 7.4 Copyright p.21
- 7.5 Others p.22

8. Data Protection p.23

- 8.1 Applicable Regulations p.23
- 8.2 Geographical Scope p.23
- 8.3 Role and Authority of the Data Protection Agency p.23

9. Looking Forward p.23

- 9.1 Upcoming Legal Reforms p.23

Contributed by: Julien Kavaruganda, Eric N Cyaga, Yves Sangano, Emmanuel Muragijimana, David Nginshuti, Kwizera M Grace, Nkundineza M Bruce Henri Bruce and Zackiah Nandugwa, **K-Solutions & Partners**

K-Solutions & Partners was established in 2007 and currently has a vast number of both domestic and international clients. The firm employs 15 permanent staff, including nine advocates, as well as external legal consultants. K-Solutions & Partners is a prominent law firm in Rwanda, exceptionally well positioned to offer clients practical insights on the legal issues arising in Rwanda's dynamic economic environment. The firm has a reputation for delivering in-depth knowledge of both local and international business practice. The firm's regional footprint

as part of Africa Legal Network allows the team to advise domestic and regional clients as they expand their business and commercial interests throughout the continent. The firm's practice includes banking and finance, tax, capital markets, corporate, corporate governance and compliance, employment and labour, energy, environment, natural resources and infrastructure, intellectual property, litigation, arbitration and dispute resolution, project financing and real estate.

Authors



Julien Kavaruganda is the founder of and senior partner at K-Solutions & Partners. He practised at the Brussels Bar Association before joining the Rwanda Bar Association in

2005. Julien is the outgoing president of the Rwanda Bar Association (2015–21). He has over 18 years of experience in real estate and infrastructure, international taxation, and banking and finance. He is also vice-chairman of the Kigali International Arbitration Centre; a board member of MTN Rwanda, the East African Law Society and the Bank of Kigali; a resident director of New Bugarama Mining Company Ltd; and was recently appointed board member of Rwanda Finance Ltd.



Eric N Cyaga is the managing partner at K-Solutions & Partners. His role is to ensure the legality of commercial transactions, advising companies on their legal rights

and duties. He has an in-depth understanding of aspects of contract law, securities law, insolvency, business organisation and employment law. Eric has over 13 years of experience with the Office of the Registrar General (ORG) operations and has worked extensively in the field of insolvency administration and liquidation proceedings. He has a keen interest in mortgage administration and receivership, and has acted as legal advisor to the ORG new business laws monitoring sub-committee. Eric is the current honorary consul for Côte d'Ivoire in Rwanda.

RWANDA LAW AND PRACTICE

Contributed by: Julien Kavaruganda, Eric N Cyaga, Yves Sangano, Emmanuel Muragijimana, David Nginshuti, Kwizera M Grace, Nkundineza M Bruce Henri Bruce and Zackiah Nandugwa, **K-Solutions & Partners**



Yves Sangano is a chief principal associate at K-Solutions & Partners with vast experience of more than 15 years in business law practice. He focuses mainly on IP,

corporate, commercial, tax, management, PPP, public procurement and investment transactions. He is a member of the Rwanda Bar Association, the East African Law Society, and the National Independent Review Panel of Public Procurement. He is also a certified arbitrator and certified insolvency practitioner. Before joining the law firm, he served in various positions, such as state attorney/strategic investment legal analyst, deputy registrar general of companies, and legal advisor to the cabinet secretariat of the Prime Minister's office.



David Nginshuti is a principal associate at K-Solutions & Partners. He is a business law practitioner with specialisation in corporate, tax and commercial law. He is a member of the

Rwanda Bar Association, the East African Law Society, the East Africa Law Society (EALS) Young Lawyers Organising Committee and the Association of Young Arbitrators. His experience includes assisting local and international clients in M&A, taxation and transactions. He is involved in conducting legal due diligence and legal audits as well as advising on investment deals, private equity and other investment vehicles or structures, corporate and projects financing through syndicated loans or other financing arrangements.



Emmanuel Muragijimana is a chief associate at K-Solutions & Partners with over 20 years of experience in the provision of legal advice and supporting organisations in their

compliance with legal requirements. He is a member of the Rwanda Bar Association and the East African Law Society. He has been involved in the exercise of legal due diligence for acquisitions and other business combinations, facilitating clients in their relationships with local banks, taxation, corporate governance, organisation registration, legal compliance, organisation restructuring and litigation. He is highly skilled in offering both legal advisory and drafting services. Emmanuel has an in-depth understanding of the financial and banking sector.



Kwizera M Grace is an associate at K-Solutions & Partners with legal experience of both the Rwandan and Kenyan jurisdictions having studied and worked in both jurisdictions. Her

legal practice involves assisting clients with regulatory compliance, contract drafting and review, company incorporations and restructuring, due diligence, drafting legal opinions, data protection law and cyber security. She also has a strong passion for alternative dispute resolution, specifically arbitration. She is a member of the Rwanda Bar Association and the East African Law Society.

RWANDA LAW AND PRACTICE

Contributed by: Julien Kavaruganda, Eric N Cyaga, Yves Sangano, Emmanuel Muragijimana, David Nginshuti, Kwizera M Grace, Nkundineza M Bruce Henri Bruce and Zackiah Nandugwa, **K-Solutions & Partners**



Nkundineza M Bruce Henri Bruce is an associate at K-Solutions & Partners with experience in Rwandan law, advising clients including business start-ups and well-established companies. He specialises in corporate and commercial law, data privacy and intellectual property law. He has acted mainly for tech companies and his experience includes assisting clients (local and international) on matters concerning employment law, company registration, intellectual property registration and licensing, drafting and review of contracts, regulatory compliance mainly based on company law and corporate governance.



Zackiah Nandugwa is an associate at K-Solutions & Partners who is an adaptable, resourceful and enthusiastic young lawyer with extensive experience and knowledge of different legal fields. She is experienced in resolving, analysing and investigating various legal discrepancies, including those related to corporate law, banking law, insurance law, procurement law, employment law, regulatory compliance and legal drafting, taxation law and data protection.

K-Solutions & Partners

KG 501 ST 8 Kabare
Kamatamu
Kacyiru
Gasabo
Kigali
Rwanda

Tel: +250 788 300 973
Email: info@ksolutions-law.com
Web: www.ksolutions-law.com



Contributed by: Julien Kavaruganda, Eric N Cyaga, Yves Sangano, Emmanuel Muragijimana, David Nginshuti, Kwizera M Grace, Nkundineza M Bruce Henri Bruce and Zackiah Nandugwa, **K-Solutions & Partners**

1. Legal System

1.1 Legal System and Judicial Order

Rwanda currently follows a civil law system, although it is gradually moving from purely civil law towards a dual legal system that embraces aspects of both civil and common law systems.

Organisation and Competence of Courts

The Rwandan Constitution of 2003, as revised in 2015, provides that courts consist of Ordinary and Specialised Courts.

Ordinary Courts are comprised of:

- the Supreme Court;
- the Court of Appeal;
- the High Court;
- Intermediate Courts; and
- Primary Courts.

Specialised Courts are comprised of Commercial Court and Military Courts.

The courts have two levels of appeal in the following hierarchy from the lowest to the highest court.

Primary Courts

There are 41 Primary Courts and they rule over original civil and criminal matters as defined in the law that determines the organisation, functioning and competence of courts.

Intermediate Courts

There are 12 Intermediate Courts in the country. The Intermediate Courts have both original and appellate jurisdictions in civil, criminal and administrative matters.

The High Court

Rwanda has one High Court. The High Court is based in the Kigali and has five chambers located in Musanze, Nyanza, Rwamagana and Rusizi, which have both original and appellate jurisdictions in civil, criminal and administrative matters. The fifth chamber is the specialised chamber dealing with international crimes.

The Commercial Court

Commercial Court has original jurisdiction over commercial cases.

The Commercial High Court has appellate jurisdiction over commercial cases.

Military Courts

The Military Tribunal has original jurisdiction in civil, criminal and administrative matters that involve military personnel.

The Military High Court has both original and appellate jurisdictions in civil, criminal and administrative matters that involve military personnel.

The Court of Appeal

The Court of Appeal adjudicates on appeal level cases handled by the High court, the Commercial High Court and the Military High Court.

The Supreme Court

The Supreme Court is the highest court in the country. Its territorial jurisdiction covers the entire territory of the Republic of Rwanda. It has original and appellate jurisdiction in civil, criminal, commercial and administrative matters.

The judiciary is under the authority of the High Council of Judiciary, which is chaired by the honourable chief justice who is also the president of the Supreme Court and appointed by the

President of the Republic in accordance with the Constitution of the Republic of Rwanda.

2. Restrictions on Foreign Investments

2.1 Approval of Foreign Investments

There is no legal obligation for foreign investors to solicit and procure special approvals from authorities. A foreign investor is given equal treatment with Rwandan investors with regard to investment incentives and investment facilitation.

However, a foreign investor, similarly to a local investor wishing to register an investment, files an application thereof with the Rwanda Development Board (RDB). This investment registration enables an investor to enjoy investment incentives and investment facilitation in accordance with Law No 006/2021 of 5 February 2021 on Investment Promotion and Facilitation.

2.2 Procedure and Sanctions in the Event of Non-compliance

As described at 2.1 Approval of Foreign Investments, there is no mandatory investment registration for foreign investors. Thus, there are no applicable sanctions in relation to such registration.

2.3 Commitments Required From Foreign Investors

See 2.1 Approval of Foreign Investments.

2.4 Right to Appeal

See 2.1 Approval of Foreign Investments.

3. Corporate Vehicles

3.1 Most Common Forms of Legal Entity

The most common types of corporate vehicles are private companies limited by shares and public companies limited by shares. Their main characteristics are as follows.

- For a company limited by shares, the liability of its shareholders is limited to the amount of the shares held by them.
- There is no minimum share capital requirement for private or public companies.
- A private company is characterised by the ability of restricting the right to transfer its shares or debentures; shareholding of a private company is limited to 100. Further, private companies are prohibited from inviting the public to subscribe to any shares or debentures of the company. A private company must have one or more directors, of whom at least one must be ordinarily resident in Rwanda.
- A company is considered to be a public company if its incorporation documents allow its members the right to freely transfer their shares in the company; its incorporation documents do not prohibit invitations to the public to subscribe to its shares or debentures.

3.2 Incorporation Process

The RDB, which acts as a one-stop centre for investors, has simplified the steps required to formalise a business in Rwanda.

Any business should be registered no matter the size of its operation. Before setting up a business, it is important to consider the following steps:

- decide on the type of business;

Contributed by: Julien Kavaruganda, Eric N Cyaga, Yves Sangano, Emmanuel Muragijimana, David Nginshuti, Kwizera M Grace, Nkundineza M Bruce Henri Bruce and Zackiah Nandugwa, **K-Solutions & Partners**

- identify a company name;
- register with the RDB; and
- obtain the necessary secondary licences from line ministries and government agencies (only for regulated sectors like mining sector, health sector, financial sector, transport sector, etc).

The incorporation of the company requires a maximum of six hours. The company code which is issued upon incorporation also serves as the company registration number and tax identification number (TIN), which can be converted into VAT registration number immediately or at a later date.

The registration process has also been further simplified with the services currently being available for free online.

3.3 Ongoing Reporting and Disclosure Obligations

The documents to be delivered and disclosed to the Registrar General (RG) by a private company are:

- the company's incorporation documents;
- the notice of adoption, alteration or revocation of incorporation documents;
- the change of status to public or private company;
- the annual accounts;
- the annual returns on company's information;
- documents relating to amalgamation;
- the application for a solvent company to be removed from the register; and
- the notice declaring the company as dormant or ceasing to be dormant.

Documents required under the Company Law may be written in any of the official languages (Kinyarwanda, English or French). Upon approval by the board of directors, documents written in

Kinyarwanda may also be translated into another official language.

3.4 Management Structures

In Rwanda, a one-tier board structure is the most popular and is recognised by the law. Under this structure, board members are appointed by the AGM to govern and oversee a company's operations. The limits of their power are laid out in a set of company by-laws and the Company Law. As deemed necessary, a board may call for the formation of separate advisory committees to serve in a more focused capacity. In this case, the board of directors may delegate any of its powers to those committees.

3.5 Directors', Officers' and Shareholders' Liability

Usually, the liability of shareholders depends on the type of entity they choose to invest in. For a company limited by shares, the shareholders are required to fully pay the shares that they own. Once those shares have been fully paid for, no further monetary responsibility is typically owed by the shareholders for company debts and liabilities.

Directors, however, are required to act in the best interests of company/shareholders.

Directors' liability is limited to their duties towards the company and shareholders. Generally, duties of directors in Rwanda are specifically wrapped up under the following duties.

- **Duty of care:** boards have a duty of care to act in the best interest of the shareholders.
- **Duty of loyalty:** boards have a duty to avoid potential and actual conflicts of interest.
- **Personal versus corporate assets:** boards have a duty to avoid commingling corporate and personal assets.

Contributed by: Julien Kavaruganda, Eric N Cyaga, Yves Sangano, Emmanuel Muragijimana, David Nginshuti, Kwizera M Grace, Nkundineza M Bruce Henri Bruce and Zackiah Nandugwa, **K-Solutions & Partners**

Accordingly, any breach of these duties may attract a director's personal liability to compensate the company for any loss it suffers as a result of the breach as well as account to the company for any profit made as a result of such a breach. This liability for the damage caused maybe extended to cover third parties.

Nevertheless, the liability of either a director or shareholder is often limited through piercing the corporate veil; courts sometimes put aside the limited liability nature of a company and hold a company's shareholders or directors personally liable for the corporation's actions or debts. The liability can be both civil and criminal depending on the act.

4. Employment Law

4.1 Nature of Applicable Regulations

In Rwanda, the employment relationship refers to an agreement between an employer and an employee whereby an employee undertakes to work under the authority of the employer in return for remuneration.

This relationship is governed mainly by the Law No 66/2018 of 30 August 2018 regulating labour in Rwanda (the "Labour Law"), together with its implementing ministerial orders and regulations, which provide the minimum conditions which the employer must meet in the employment relationship and the basic rights and obligations of the parties to this relationship. The employer can provide more than what is provided for in the law.

Further, a contract of employment that stipulates the terms and conditions of employment plays a vital role in governing the employment relation-

ship, especially as to the rights and obligations of the parties.

Furthermore, collective bargaining agreements are also very helpful in governing the employment relationship.

According to the Labour Law, the collective bargaining agreement should at least entail:

- the conditions of recruitment of an employee and termination of contract;
- the employee's right to join trade unions and right to freedom of opinion;
- professional categories;
- the salary applicable to each professional category, overtime and compensation rate;
- the duration of the probation and notice periods;
- the paid leave, seniority allowance and transport allowance;
- the conditions of revision and modification of all or part of the agreement;
- the modalities of dispute settlement arising during the implementation of the agreement; and
- the date of commencement of the collective agreement.

4.2 Characteristics of Employment Contracts

An employment contract can be for a fixed term or indefinite.

The employment contract can be written or oral. However, the duration of an unwritten employment contract cannot exceed 90 consecutive days.

Considerably, a written employment contract must contain the following core elements:

Contributed by: Julien Kavaruganda, Eric N Cyaga, Yves Sangano, Emmanuel Muragijimana, David Nginshuti, Kwizera M Grace, Nkundineza M Bruce Henri Bruce and Zackiah Nandugwa, **K-Solutions & Partners**

- names of the employee and employer;
- purpose of the contract;
- obligations of contracting parties;
- duration of the contract;
- nature of the employment;
- category or level of employment;
- place of work;
- probation period;
- working hours;
- salary and fringe benefits for an employee;
- deductions on salary of an employee;
- date and place of payment of the salary;
- overtime remuneration;
- procedure of transfer of an employee;
- dispute settlement procedure;
- procedures for termination of the employment contract; and
- date of commencement of the employment contract.

An employment contract may include other clauses favourable to the contracting parties.

4.3 Working Time

The maximum working hours are 45 hours a week.

The daily timetable for working hours and breaks for an employee is determined by the employer. The daily rest time granted by the employer to the employee is not counted as working hours. An employee can work extra hours (overtime) upon the agreement with their employer. An employee who works overtime is entitled to a rest period equal to the extra hours performed within a period not exceeding 30 days from the date they worked the overtime.

4.4 Termination of Employment Contracts

In Rwanda, the employment relationship can only be terminated for legitimate reasons.

A contract of employment for a determined or a non-determined duration can always be terminated at the will of either of the parties for justifiable reasons.

The termination of an employment contract is subject to a prior notice given by the party taking initiative of termination save for in cases of termination of an employment contract for gross misconduct.

Unless provided otherwise in favour of the employee by the agreement, rules of procedure or employment contract, the period of notice given by the employer or employee must be as follows: at least 15 days if an employee has served for less than one year and at least 30 days if an employee has served for more than one year.

The list of acts constituting gross misconduct is provided for by the Ministerial Order No 002/19.20 of 17 March 2020.

The employer, may, after informing employees' representatives in the enterprise, effect individual or collective dismissal due to the enterprise's internal reorganisation or restructuring for economic reasons or technological transfer with the aim of preserving the enterprise's competitiveness; the employer should inform the competent labour inspector in writing.

If there has been an unlawful termination of an employment, the contract gives rise to the payment of damages. Damages paid to the employee who has been a victim of unfair dismissal cannot go below their three-month salary, nor exceed their six-month salary. However, if the employee has more than ten years of experience with the same employer, damages cannot exceed their nine-month net salary.

Contributed by: Julien Kavaruganda, Eric N Cyaga, Yves Sangano, Emmanuel Muragijimana, David Nginshuti, Kwizera M Grace, Nkundineza M Bruce Henri Bruce and Zackiah Nandugwa, **K-Solutions & Partners**

4.5 Employee Representations

It is mandatory that an enterprise with at least ten employees must organise elections for employees' representatives and their substitutes.

Employees' representatives have the following responsibilities:

- to represent the employees in all matters related to work;
- to submit to the labour inspection any complaint or any issue relating to application of the laws;
- to ensure that laws relating to employee's health and safety are complied with and provide advice on ensure compliance;
- to provide opinions on measures and conditions of reducing employees due to lack of employment or the employer's decision to restructure the enterprise; and
- to inform the employer of what can be done for the smooth running of the work and the improvement of production in the enterprise.

5. Tax Law

5.1 Taxes Applicable to Employees/ Employers

Rwanda published the new Law No 027/2022 of 20 October 2022 establishing taxes on income on 28 October 2022 (the "New Income Tax Law"), thus repealing the previous Law No 016/2018 of 13 April 2018.

PAYE is composed of wages, salaries, leave pay, sick pay, medical allowances, pension payment, etc. All kinds of allowances including any cost of living, subsistence, rent and entertainment or travel allowances.

The New Income Tax Law has new rates with regard to personal income tax.

In the first year following its commencement, the tax rate applicable to monthly taxable income shall be as follows: RWF0-720,000 – 0%;

- RWF720,001-1,200,000 – 20%; and
- RWF1,200,000 and above – 30%.

From the second year following commencement of the New Income Tax Law, the tax rate applicable shall be as follows:

- RWF0-720,000 – 0%;
- RWF720,001-1,200,000 – 10%;
- RWF1,200,000-2,400,000 – 20%; and
- RWF2,400,000 and above – 30%.

Social Security Contributions

Both employees and employers must make monthly social security contributions to the RSSB.

Mandatory contributions are composed of the following:

- occupational hazards – 2%;
- pension scheme – 6% (3% from the employee and 3% from the employer); and
- maternity leave benefits – 0.6% (0.3% from the employee and 0.3% from the employer).

All employers are obliged to contribute 0.5% of their net salaries to the Community-based Health Insurance Scheme on a monthly basis.

5.2 Taxes Applicable to Businesses

Every company incorporated in Rwanda has the following tax obligations.

Contributed by: Julien Kavaruganda, Eric N Cyaga, Yves Sangano, Emmanuel Muragijimana, David Nginrshuti, Kwizera M Grace, Nkundineza M Bruce Henri Bruce and Zackiah Nandugwa, **K-Solutions & Partners**

Corporate Income Tax (CIT)

Every company must pay income tax at the rate of 30%. The law also states that newly listed companies on the capital market shall be taxed for a period of five years at the rates of:

- 20% if those companies sell at least 40% of their shares to the public;
- 25% if they sell at least 30% of their shares to the public; and
- 28% if they sell at least 20% of their shares to the public.

It should be noted that the Ministry of Finance issued a statement stating that the cabinet approved comprehensive tax reforms following directives issued by the Rwandan President in January 2023, and in line with the revised Medium Term Revenue Strategy (MTRS) passed in May 2022. The CIT rate was thus reduced from 30% to 28% with an eventual target of 20% in the medium term. This is to improve Rwanda's competitiveness and position the country as a preferred African investment destination.

Value Added Tax (VAT)

A company carrying out business in Rwanda that deals in taxable turnover of more than RWF20 million in any tax year, or RWF5 million in a calendar quarter, must register for VAT in accordance with the Law on Tax Procedure.

Withholding Tax

A company must pay withholding tax on employment income at the following rates in the first year following the date of commencement of the New Income Tax Law:

- RWF0-60,000 at a tax rate of 0%;
- RWF60,001-100,000 at a tax rate of 20%; and
- RWF100,001 and above at 30%.

From the second year after the commencement of this law, the rates applicable shall be as follows:

- RWF0–60,000 at a tax rate of 0%;
- RWF60,001–100,000 at a tax rate of 10%;
- RWF100,001–200,000 at 20%.
- RWF 200,001 and above at 30%.

Income from a casual labourer is subject to tax at the special rate of 15%. However, in computing a casual labourer's tax, an income not exceeding RWF60,000 per month is taxed at 0%.

The sitting allowance allocated to the members of the board of directors is taxable at a rate of 30%.

A withholding tax of 15% of the total amount, excluding VAT where applicable, is levied on payments or other methods of extinguishing an obligation made by resident individuals, including tax exempt entities, when such payments or other methods of extinguishing an obligation are made to a person not registered in the Rwandan tax administration or to a registered person who does not have recent income tax declaration.

Payments or other methods of extinguishing an obligation subject to the withholding tax of 15% are related to the following:

- dividends except those paid between resident companies and unrealised foreign exchange gains on outstanding loan and income distributed to the holders of shares or units in collective investment schemes (5% for dividends distributed by listed companies to East African Community (EAC) resident beneficiaries or beneficiaries not resident in the EAC where the paying listed company is registered as an investor);

Contributed by: Julien Kavaruganda, Eric N Cyaga, Yves Sangano, Emmanuel Muragijimana, David Nginrshuti, Kwizera M Grace, Nkundineza M Bruce Henri Bruce and Zackiah Nandugwa, **K-Solutions & Partners**

- financial interests (5% on listed security paid to EAC resident beneficiaries and treasury bonds with a maturity of three years and more) except:
 - (a) interests on deposits in financial institutions for at least a period of one year;
 - (b) interests on loans granted by a foreign development financial institution exempted from income tax under applicable law in the country of origin;
 - (c) interests paid by banks operating in Rwanda to banks or other foreign financial institutions;
- royalties;
- service fees including management and technical service fees except transport services;
- performance payments made to a crafts person, a musician, an artist, a player, sports, cultural and leisure activities irrespective of whether paid directly or indirectly;
- gambling activities;
- goods sold in Rwanda;
- profit after tax or retained earnings that are converted into shares, except for financial institution with paid-up capital below the minimum requirement set by the National bank of Rwanda;
- profits repatriated from Rwanda;
- payments made in cash or in kind by a resident person in Rwanda on behalf of a non-resident in Rwanda contracted person provided for under the contract in addition to contractual remuneration; and
- re-insurance premiums paid to a non-resident insurers except premiums paid to insurers that have signed agreements with the government of Rwanda.

A withholding tax of 5% of the value of goods imported for commercial use shall be paid at customs on the cost insurance and freight (CIF) value before the goods are released by customs.

A withholding tax on public tenders of 3% of the sum of invoice, excluding VAT, is retained when public tenders are paid. However, a tax of 15% shall be withheld on public tenders if the recipient is not registered with the tax administration or they are registered but do not have their previous income tax declaration.

The taxpayer is required to file a tax declaration and make payment in accordance with the procedures prescribed by the tax administration within a period of 15 days after the month in which the taxes were withheld.

The following taxpayers are exempted from withholding taxes relating to a sitting allowance, payments or other methods of extinguishing an obligation and public tenders:

- those whose business profit is exempted from taxation;
- those who have tax clearance certificate issued by the tax administration; and
- those who are newly registered during the concerned annual tax period.

Capital Gains Tax (CGT)

Capital gains arising on the sale of business assets are included in ordinary taxable income and subject to tax at the standard rate of 30%.

Capital gains realised on the sale or transfer of shares is subject to CGT at the rate of 5%. The capital gain on the sale or transfer of shares is the difference between the acquisition value of shares and their selling or transfer price.

Trading Licence Tax

The trading licence tax is paid by any person for each place in which they open a business activity within a district in Rwanda.

Contributed by: Julien Kavaruganda, Eric N Cyaga, Yves Sangano, Emmanuel Muragijimana, David Nginshuti, Kwizera M Grace, Nkundineza M Bruce Henri Bruce and Zackiah Nandugwa, **K-Solutions & Partners**

According to the Law determining the sources of revenue and property of decentralised entities, taxpayers who sell goods or services exempted from VAT but whose turnover is equal or greater than RWF20 million pay the trading licence tax in the same manner as taxpayers registered for VAT.

The basis for the calculation of trading licence tax as indicated in the law is the turnover of the previous year as follows:

- for a turnover of RWF1–40 million the due tax is RWF60,000;
- for a turnover of RWF40,000,001–60 million the due tax is RWF90,000;
- for a turnover of RWF60,000,001–150 million the due tax is RWF150,000; and
- for a turnover of RWF150 million and above the due tax is RWF250,000.

5.3 Available Tax Credits/Incentives

Private Company or Public Company Registered as a Pure Holding Company

Economic substance required:

- total net assets consolidated in Rwanda not less USD1 million;
- annual expenditure in Rwanda of at least USD15,000;
- a physical office in Rwanda;
- at least 30% of the professional staff are Rwandan.

Tax incentives:

- 3% preferential CIT rate; and
- 0% preferential WHT on dividends, interest and royalty payments.

A Special Purpose Vehicle Registered for Investment Purposes

Economic substance required:

- registered for investment purpose in projects, which are meant to last for more than two years;
- total net assets consolidated in Rwanda not less USD1 million;
- annual expenditure in Rwanda of at least USD15,000;
- a physical office in Rwanda; and
- at least 30% of the professional staff are Rwandan.

Tax incentives:

- 3% preferential CIT rate; and
- 0% preferential WHT on dividends, interest and royalty payments.

Collective Investment Scheme

A collective investment scheme is defined as a type of scheme where there is an arrangement for collecting and pooling funds from investors or participants for the purpose of investment in the interest of each participant or investor represented by their proportional ownership in the pool.

Economic substance required:

- minimum fund size not less than USD1 million within the first three years;
- minimum expenditure in Rwanda of USD50,000 per year;
- Collective Investment Scheme manager, custodian and operator established in Rwanda; and
- at least 30% of the professional staff are Rwandan.

Tax incentives:

- 3% preferential CIT rate; and
- 0% preferential WHT on dividends, interest and royalty payments.

Contributed by: Julien Kavaruganda, Eric N Cyaga, Yves Sangano, Emmanuel Muragijimana, David Nginshuti, Kwizera M Grace, Nkundineza M Bruce Henri Bruce and Zackiah Nandugwa, **K-Solutions & Partners**

Global Trading or Paper Trading

This is defined as a commercial entity making deposits in financial entities in Rwanda to finance its trading activities outside Rwanda and not authorised to import or export goods in Rwanda.

Economic substance required:

- an annual turnover or trade volume of not less than USD10 million;
- an annual expenditure in Rwanda of at least USD50,000;
- at least 30% of the professional staff are Rwandan; and
- a physical office of the company in Rwanda.

Tax incentives:

- 3% preferential CIT rate; and
- 0% preferential WHT on dividends, interest and royalty payments

Intellectual Property Company

An intellectual property company is defined as a commercial entity that is established for the sole purpose of owning intellectual property rights.

Economic substance required:

- annual expenditure in Rwanda of at least USD10,000;
- a physical office in Rwanda;
- to have a bank account in a bank operating in Rwanda;
- 30% or 3 of the staff are Rwandan residents, whichever is higher.

Tax incentives:

- 3% preferential CIT rate; and
- 0% preferential WHT on dividends, interest and royalty payments.

A Registered Investor

A registered investor licensed to operate as a:

- fund management entity;
- collective investment scheme;
- wealth management service provider;
- financial advisory commercial entity;
- family office services entity;
- fund administrator;
- financial technology commercial entity;
- captive insurance scheme entity;
- private bank;
- mortgage finance institution;
- finance lease commercial entity;
- asset backed Securities entity;
- reinsurance company, trust; and
- corporate service providers.

Economic substance required:

- no economic substance requirements provided.

Tax incentives:

- 15% preferential CIT rate; and
- 0% preferential WHT on dividends, interest and royalty payments.

In addition to the above, the following tax incentives also exist:

- reduced corporate income tax rates applying for a period of five years to newly listed companies;
- tax exemption available to an international company which has its headquarters or regional office in Rwanda;
- a seven-year tax holiday and reduced corporate income tax rate of 15% available to registered investors in priority sectors;
- a five-year tax holiday available to microfinance institutions and specialised industrial and innovation park developers; and
- customs duties exemption for a registered investor investing in products used in export processing zones (EPZs).

Contributed by: Julien Kavaruganda, Eric N Cyaga, Yves Sangano, Emmanuel Muragijimana, David Nginshuti, Kwizera M Grace, Nkundineza M Bruce Henri Bruce and Zackiah Nandugwa, **K-Solutions & Partners**

5.4 Tax Consolidation

There is no provision for consolidated tax in Rwanda. However, in practice each individual corporate group member is required to submit their own tax return on a standalone basis.

5.5 Thin Capitalisation Rules and Other Limitations

Under Rwanda's thin capitalisation rules, the maximum accepted debt-to-equity ratio is 4:1 for related party loans. This also applies to realised foreign exchange losses arising from loans and advances taken from related entities. Notably, this restriction does not apply to commercial banks, financial institutions and insurance companies.

5.6 Transfer Pricing

Under Rwanda's transfer pricing rules, transactions between related parties must be entered into on an arm's length basis.

Related parties are defined as any persons who act or are likely to act in accordance with directives, opinions or wishes that are communicated or not communicated.

The following persons are, in particular, regarded as related:

- one of the persons participates directly or indirectly in the management, control or capital of the other; or
- a third person participates directly or indirectly in the management, control or capital, or in both the control and capital, of another person.

5.7 Anti-evasion Rules

The New Income Tax Law gives the power to the tax administration to adjust transaction prices or profits in accordance with general rules on

transfer pricing issued by a ministerial order in the event a related person involved in controlled transactions do not provide required documents or the documents do not justify compliance with the arm's length principle to avoid tax evasion. Rwanda is a signatory to different bilateral anti-evasion agreements to ensure that tax evasion activity is minimised.

The New Income Tax Law has introduced anti-abuse rules on avoidance arrangements.

It lists acts that constitute avoidance arrangements between persons to include:

- an arrangement whose principle purpose is to obtain a tax benefit;
- an arrangement that, in whole or in part, lacks commercial substance; an arrangement that creates rights or obligations that would not normally be created between persons dealing at arm's length; and
- an arrangement that may result, directly or indirectly, in the abuse of the provisions of tax laws in Rwanda.

Where there is avoidance arrangement between persons, the Tax Administration determines tax after taking at least one of the following actions:

- treating the avoidance arrangement as if it had not been carried out;
- recharacterising the nature of any income, payment, expenditure or any other transaction;
- disallowing or reallocating any income, loss, deduction, allowance, relief, credit, exemption or exclusion in whole or in part; and
- deeming any two or more persons to be related persons or to be the same person.

Contributed by: Julien Kavaruganda, Eric N Cyaga, Yves Sangano, Emmanuel Muragijimana, David Nginshuti, Kwizera M Grace, Nkundineza M Bruce Henri Bruce and Zackiah Nandugwa, **K-Solutions & Partners**

6. Competition Law

6.1 Merger Control Notification

Law No 36/2012 of 21 September 2012 relating to competition and consumer protection (the “Competition Law”) regulates merger control in Rwanda. It defines a merger as occurring when (i) two or more enterprises join together to form a new enterprise; and (ii) one or more enterprises join together and directly or indirectly merge their assets through the purchase of equity shares or part of the assets of another company.

The Rwandan competition authority, the Rwanda Inspectorate, Competition and Consumer Protection Authority (RICA), would take into account public interest considerations in making a determination on the merger.

Rwanda is a pre-implementation regime, therefore approval must be sought from the Rwandan competition authorities prior to the implementation of the proposed transaction.

Rwanda is a member of the regional competition bodies, the Common Market for Eastern and Southern Africa (COMESA) and the EAC. While the EAC is operational, it is not yet accepting merger filings. COMESA does have merger control.

6.2 Merger Control Procedure

For the notification of a merger to be made to the regulatory body, such merger or the proposed merger must be based on a threshold of combined annual turnover determined by the regulatory body.

However, the regulatory body may require parties to a non-notifiable merger to notify it of such merger if there is evidence that such merger may prevent or undermine competition or public

interest. In this case, conditions for a notifiable merger shall apply.

An interested party to a notifiable merger shall notify the regulatory body of that merger within 30 days from the parties’ decision to merge.

The regulatory body shall prescribe the form and content of the notification and the required fees.

Any merger notified in a manner contrary to the provisions of the Competition Law and the Company Law shall be legally null and void and rights or obligations arising from any agreement pertaining to such a merger shall not be respected.

6.3 Cartels

The Competition Law prohibits horizontal and vertical agreements, decisions and concerted practices between undertakings that have, as their object, the undermining, prevention, restriction or distortion of competition, unless they are exempt or form part of a single economic entity.

Cartel conduct (such as price fixing, market division and collusive tendering) and minimum resale price maintenance are prohibited by the Competition Law.

6.4 Abuse of Dominant Position

The Competition Law prohibits abuses of dominance.

A firm engaging in a restrictive horizontal or vertical agreement, or abusing its dominant position, commits an offence and may face sanctions, including administrative fines ranging from 5% to 10% of the enterprise’s annual turnover for the fiscal year preceding the year in which the offence occurred.

Contributed by: Julien Kavaruganda, Eric N Cyaga, Yves Sangano, Emmanuel Muragijimana, David Nginshuti, Kwizera M Grace, Nkundineza M Bruce Henri Bruce and Zackiah Nandugwa, **K-Solutions & Partners**

The EAC and COMESA regulate prohibited practices in the EAC and COMESA areas respectively and activities in Rwanda should be conducted with these regional competition bodies in mind.

7. Intellectual Property

7.1 Patents

A patent is a type of intellectual property that gives its owner the legal right to exclude others from making, using or selling an invention for a limited period of time in exchange for publishing an enabling disclosure of the invention.

The patent shall lapse 20 years after the filing date of the patent application.

Patent application shall be filed with the empowered authority. The application shall contain:

- a request for the grant of a patent;
- a description of the invention;
- one or more claims of novelty in the invention;
- one or more drawings where necessary;
- an abstract; and
- the filing of the application shall be subject to payment of the prescribed fee.

The applicant may, until such time as it is observed that the application meets the requirements for the grant of the patent, withdraw the application at any time during its pendency. Where the application has been withdrawn, a subsequent application can be filed in respect of the same invention.

The request for patent shall contain:

- an application letter requesting for the grant of a patent;

- the name, address and other information relating to the applicant and to the inventor;
- the information relating to the representative, where appropriate; and
- the title of the invention.

Where the applicant is not the inventor, the request shall be accompanied by a declaration providing proof of the applicant's right to the patent.

The patent owner shall be entitled, in addition to any other rights, to undertake court proceedings against any person who infringes the invention without their authorisation or against any person who commits any of the acts referred to in paragraph 2 of Article 38 of Law No 31/2009 of 26 October 2009 on the protection of intellectual property (the "Intellectual Property Law"), or who commits acts which facilitate the commission of the act of imitation.

7.2 Trade Marks

A trademark is a type of intellectual property consisting of a recognisable sign, design or expression that identifies products or services from a particular source and distinguishes them from others.

The duration of validity of the registration of a mark shall be ten years from the filing date of the application for registration.

The application for registration of a mark shall be filed with the empowered authority. It shall contain the following:

- a request for registration of the mark;
- a reproduction of the mark; and
- a list of products or services for which registration of the mark is requested, listed in the

Contributed by: Julien Kavaruganda, Eric N Cyaga, Yves Sangano, Emmanuel Muragijimana, David Nginrshuti, Kwizera M Grace, Nkundineza M Bruce Henri Bruce and Zackiah Nandugwa, **K-Solutions & Partners**

order of the relevant class or classes of the International Classification.

Filing of the application shall be subject to payment of the prescribed fee.

The application may contain a declaration in which the right of priority is claimed by the mark owner in accordance with the Paris Convention or a bilateral, regional or multilateral convention to which the Republic of Rwanda is party, priority for one or more previous national, regional or international applications, filed by the applicant or by the rightful owner in any state party to the Paris Convention or which is a member of World Trade Organization or a party to the applicable convention.

The filing in Rwanda of the application before the expiration of the period of the right of priority shall not be invalidated by reason of any acts accomplished in the interval, in particular, another filing, publication or effective use of the mark, and such acts cannot give rise to any third-party rights or any rights of personal possession of the mark.

The period of priority referred to above is of six months to any state party to the Paris Convention or member of the World Trade Organization.

The empowered authority shall assign the application the date of issue, in so far as the application contains the following, on the date of receipt:

- an explicit or implicit indication that registration of the mark is requested;
- information allowing the applicant's identity to be established;
- a reproduction of the mark; and

- the list of products or services for which registration of the mark is requested.

Where the empowered authority finds that, at the time of receipt of the application, the requirements of paragraph one of Article 112 of the Intellectual Property Law have not been satisfied, it shall invite the applicant to file the required corrections within a period of seven days.

The owner of the registration of a mark shall be entitled, in addition to all other available rights, appeals or actions, to undertake judicial proceedings against any person who forges the mark by using it, without the owner's consent, in the above manner or who performs acts which make it likely that infringement will occur. The right shall extend to the use of a sign similar to the registered mark and to use in relation to products and services similar to those for which the mark is registered, when this may lead to confusion in the minds of the public.

7.3 Industrial Design

Industrial design is a type of intellectual property consisting of a process of design applied to physical products that are to be manufactured by mass production. It is the creative act of determining and defining a product's form and features, which takes place in advance of the manufacture or production of the product.

The duration of validity of the certificate of registration of an industrial design or model shall be 15 years from the filing date.

The empowered authority shall assign, as the filing date, the date of receipt of the application. The application shall contain the following:

Contributed by: Julien Kavaruganda, Eric N Cyaga, Yves Sangano, Emmanuel Muragijimana, David Nginshuti, Kwizera M Grace, Nkundineza M Bruce Henri Bruce and Zackiah Nandugwa, **K-Solutions & Partners**

- an explicit or implicit indication that the subject is the registration of the industrial design or model;
- information that can establish the identity of the applicant; and
- a copy of the subject incorporating the industrial design or model, or a required graphic representation embodying the industrial design.

Where the empowered authority finds that, at the time of receipt of the application, the requirements of paragraph one of Article 12 of the Intellectual Property Law have not been satisfied, they shall invite the applicant to file the required correction within a period of seven days.

Where the empowered authority finds that the requirements have been met, it shall:

- register the industrial design or model;
- publish a reference thereto; and
- issue to the applicant a registration certificate for the industrial design or model.

The owner of the registration of an industrial design or model shall be entitled, in addition to all other available rights, notably appeals or actions, to undertake court proceedings against any person who forges an industrial design or model by carrying out, without their consent.

7.4 Copyright

A copyright is a type of intellectual property that gives its owner the exclusive right to copy and distribute a creative work, usually for a limited time. The creative work may be in a literary, artistic, educational or musical form.

Duration of Moral Rights Protection

The moral rights have no limitation in time. They are not subject to extinction, inalienability except

that they are transmissible to the author's heirs after their death or conferred to third persons by testamentary disposition.

Duration of Economic Rights Protection

The economic rights shall be protected during the life of the author and for 50 years after their death.

Duration of Protection of a Work of Joint Authorship

In the case of a work of joint authorship, the economic rights shall be protected during the life of the last surviving author and for 50 years after their death.

Duration of Protection of Anonymous Work or a Pseudonymous Work

Economic rights on a work published anonymously or published under false names shall be protected:

- for a period of 50 years from the end of the year in which the work was first lawfully published;
- for a period 50 years from the date on which the work was made; and
- for a period of 50 years from the end of the year in which the work was lawfully communicated to the public.

Duration of Protection of Collective Work, Audio-visual Work or Posthumous Work

The rights on collective work, audio-visual work or posthumous work shall be protected:

- for a period of 50 years from the end of the year in which the work was first lawfully published;
- for a period 50 years from the date on which the work was made; and

Contributed by: Julien Kavaruganda, Eric N Cyaga, Yves Sangano, Emmanuel Muragijimana, David Nginshuti, Kwizera M Grace, Nkundineza M Bruce Henri Bruce and Zackiah Nandugwa, **K-Solutions & Partners**

- for a period of 50 years from the end of the year in which the work was lawfully communicated to the public.

Duration of Protection of a Work of Applied Art

In the case of a work of applied art, the economic rights shall be protected for a period of 25 years from the end of the year in which the work was made.

Literary and artistic works that are original intellectual creations in the literary and artistic domain are subject to protection granted by this Law, including:

- works expressed by writing (books, pamphlets and other writings) including computer programmes;
- conferences, speeches, lectures, addresses, sermons and other oral works;
- musical works accompanied with or without text;
- dramatic, dramatic-musical works;
- choreographic works and pantomimes;
- audio-visual works;
- works of drawing, painting, sculpture, engraving, lithography, tapestry and other works of fine art;
- works of architecture;
- photographic works, including works made by means similar to photographic process; and
- works of applied art like as handicraft works or works produced by industrial process.

The protection of industrial designs and models is granted by the provisions of the Intellectual Property Law relating to industrial designs, including:

- illustrations, maps, plans, sketches and three-dimensional works relating to geography, topography, architecture or science; and
- works deriving from Rwanda national folklore.

The use and management of copyrights, rights of performing artists, of phonogram producers and of broadcasting organisations shall be entrusted to one or more private companies of collective management of copyrights and related rights.

One or more private companies of collective management of copy rights and related rights apply the Law on the organisation of commercial companies in Rwanda.

The activities of one or more private companies of collective management of copyrights and related rights shall include the management of copyrights and related rights, representation and management of the licence granting scheme, collection, calculation and distribution of remuneration arising from the use of the rights as provided for by this Law.

However, the provisions of this article shall not prohibit any author of work or their legal successors, or any related right owners for exercising directly their rights as granted by this Law.

7.5 Others

The current Intellectual Property Law does not provide for any specific provisions regarding the protection of software and databases. Software and databases are classified among literary and artistic works that are original intellectual creations in the literary and artistic domain protected as copyrights.

Contributed by: Julien Kavaruganda, Eric N Cyaga, Yves Sangano, Emmanuel Muragijimana, David Nginshuti, Kwizera M Grace, Nkundineza M Bruce Henri Bruce and Zackiah Nandugwa, **K-Solutions & Partners**

8. Data Protection

8.1 Applicable Regulations

Rwanda's Law No 058/2021 of 13 October 2021 (the "Data Protection Law") relating to the protection of personal data and privacy aims at the protection of personal data and privacy and determines their processing.

This Law applies to:

- individuals and institutions established or residing in Rwanda that process the personal data of individuals in Rwanda (not just citizens); and
- individuals and institutions established or residing outside of Rwanda that process the personal data of individuals in Rwanda.

8.2 Geographical Scope

The Data Protection Law is extended to govern individuals and institutions established in or residing outside of Rwanda that process the personal data of individuals in Rwanda.

8.3 Role and Authority of the Data Protection Agency

The National Cyber Security Authority (NCSA) is tasked with enforcing data protection rules in Rwanda.

The NCSA's data protection office oversees:

- the registration of data controllers and data processors in Rwanda;
- investigations of complaints;
- conduct data compliance audits;
- the promotion of the law on personal data protection and privacy;
- research on data processing and computer technology; and
- the control of all personal data protection issues.

9. Looking Forward

9.1 Upcoming Legal Reforms

Some of the notable legislative reforms that are anticipated include amendments to the New Income Tax Law, the Law establishing taxes in excise duty, the Law establishing value added tax and the Law determining the sources of revenue and property of decentralised entities.

Trends and Developments

Contributed by:

Eric N Cyaga, Emmanuel Muragijimana, Patrick K Okello and Zackiah Nandugwa

K-Solutions & Partners

K-Solutions & Partners was established in 2007 and currently has a vast number of both domestic and international clients. The firm employs 15 permanent staff, including nine advocates, as well as external legal consultants. K-Solutions & Partners is a prominent law firm in Rwanda, exceptionally well positioned to offer clients practical insights on the legal issues arising in Rwanda's dynamic economic environment. The firm has a reputation for delivering in-depth knowledge of both local and international business practice. The firm's regional footprint

as part of Africa Legal Network allows the team to advise domestic and regional clients as they expand their business and commercial interests throughout the continent. The firm's practice includes banking and finance, tax, capital markets, corporate, corporate governance and compliance, employment and labour, energy, environment, natural resources and infrastructure, intellectual property, litigation, arbitration and dispute resolution, project financing and real estate.

Authors



Eric N Cyaga is the managing partner at K-Solutions & Partners. His role is to ensure the legality of commercial transactions, advising companies on their legal rights

and duties. He has an in-depth understanding of aspects of contract law, securities law, insolvency, business organisation and employment law. Eric has over 13 years of experience with the Office of the Registrar General (ORG) operations and has worked extensively in the field of insolvency administration and liquidation proceedings. He has a keen interest in mortgage administration and receivership, and has acted as legal advisor to the ORG new business laws monitoring sub-committee. Eric is the current honorary consul for Côte d'Ivoire in Rwanda.



Emmanuel Muragijimana is a chief associate at K-Solutions & Partners with over 20 years of experience in the provision of legal advice and supporting organisations in their

compliance with legal requirements. He is a member of the Rwanda Bar Association and the East African Law Society. He has been involved in the exercise of legal due diligence for acquisitions and other business combinations, facilitating clients in their relationships with local banks, taxation, corporate governance, organisation registration, legal compliance, organisation restructuring and litigation. He is highly skilled in offering both legal advisory and drafting services. Emmanuel has an in-depth understanding of the financial and banking sector.

RWANDA TRENDS AND DEVELOPMENTS

Contributed by: Eric N Cyaga, Emmanuel Muragijimana, Patrick K Okello and Zackiah Nandugwa, K-Solutions & Partners



Patrick K Okello is an associate at K-Solutions & Partners. He is a highly motivated lawyer with experience of Rwandan and Kenyan laws, having had the opportunity to work in both jurisdictions. His experience includes both NGOs and law firms. His legal practice covers several areas, such as corporate and commercial law, and involves due diligence exercises, drafting and review of contracts, drafting legal opinions, regulatory compliance based on company law and the law governing NGOs and INGOs, employment law, intellectual property and data protection and privacy. He is a member of the Rwanda Bar Association and the East African Law Society.



Zackiah Nandugwa is an associate at K-Solutions & Partners who is an adaptable, resourceful and enthusiastic young lawyer with extensive experience and knowledge of different legal fields. She is experienced in resolving, analysing and investigating various legal discrepancies, including those related to corporate law, banking law, insurance law, procurement law, employment law, regulatory compliance and legal drafting, taxation law and data protection.

K-Solutions & Partners

KG 501 ST 8 Kabare
Kamatamu
Kacyiru
Gasabo
Kigali
Rwanda

Tel: +250 788 300 973
Email: info@ksolutions-law.com
Web: www.ksolutions-law.com



Contributed by: Eric N Cyaga, Emmanuel Muragijimana, Patrick K Okello and Zackiah Nandugwa, K-Solutions & Partners

An Overview of Doing Business in Rwanda

All businesses intending to operate in Rwanda have to be first registered with the Office of the Registrar General at the Rwanda Development Centre. The country has been on the path to transform itself into an international financial destination that is attractive to investors seeking opportunities across the region and the African continent. It has thus put in place laws, policies and incentives that will help to realise this aim.

Rwanda generally offers a favourable environment for investment, with supportive regulatory regimes and innovative solutions, in a market that is quick to adopt new products, services, technologies and distribution channels, which are key for investors.

Businesses in Rwanda are governed by:

- Law No 007/2021 of 5 February 2021 governing companies (the “Company Law”);
- Law No 008/2021 of 16 February 2021 governing partnerships;
- Law No 14/2016 of 2 May 2016 governing public private partnerships;
- Law No 006/2021 of 5 February 2021 on investment promotion and facilitation;
- Law No 027/2022 of 20 October 2022 establishing taxes on income (the “New Income Tax Law”);
- Law No 37/2012 of 9 November 2012 establishing value added tax;
- Law No 020/2023 of 31 March 2023 governing tax procedures;
- Law No 66/2018 of 30 August 2018 regulating labour in Rwanda; and
- other relevant regulations depending on the sector in which the business operates.

This article seeks to discuss the most notable trends and developments in doing business in Rwanda.

Company Registration

The Rwandan Company Law of 2021 provides that registration of a company in the Office of the Registrar General is compulsory. Business registration operates as a single-point integrated service. Upon completion of the business registration, one has to also complete tax registration with the Rwanda Revenue Authority and employer registration with the Social Security Fund of Rwanda.

This integrated registration is achieved through the filing of a consolidated application form covering all the information required for registration and notification with the relevant agencies. Business registration is concluded by the issuance of a business registration certificate which has a unique enterprise code that acts as a unique identifier of the business in relation to any public agency. The enterprise/company code is also the tax identification number (TIN).

The company can either register as a foreign company or a subsidiary of the foreign company. It can also register as a public or private company. Article 247 of the Company Law provides that a foreign company can establish a place of business in Rwanda as a branch or through a country representative and is obliged to apply for registration within ten working days of establishing a place of business. Even though the law gives different definitions for a foreign company and a subsidiary, in practice, both types of companies operate in a similar way since they can both be wholly owned and controlled by a holding company registered in a foreign country. Application for company registration is done through an online portal, and once all the rel-

Contributed by: Eric N Cyaga, Emmanuel Muragijimana, Patrick K Okello and Zackiah Nandugwa, K-Solutions & Partners

event documents are submitted, a company is registered with six working hours.

Applicable Legal Regime

Rwanda is currently a hybrid system dominated by the two major systems, civil law and common law. The country has recently borrowed a number of concepts from the common law system to deal with its current circumstances making it a dual legal system that embraces aspects of both civil and common law.

Land Acquisition

The acquisition of land and its use is governed by Law No 27/2021 of 10 June 2021 governing land. This law provides that foreigners are entitled to an emphyteutic lease or land concession for a maximum period of 99 years or 49 years if the situation is limited to investment purposes only. There is a presidential order that may grant foreigners free hold titles under exceptional circumstances.

Dispute Resolution

Disputes that occur among companies may be settled amicably or out of court via conciliation or arbitration. This can be done under an ad hoc or institutional arbitration with the help of the Kigali International Arbitration Centre that serves as an arbitration platform. Alternative options based outside Rwanda are also possible. Alternatively, disputes may also be resolved through the ordinary court system.

Rwandan courts recognise arbitral awards granted in countries that reciprocate by enforcing a Rwandan arbitral award. While this sounds like a significant restriction, the fact that Rwanda is a signatory to the New York Convention means that there are over 140 other co-signatory jurisdictions that share in this reciprocity.

When a dispute arises between a foreign investor and the Rwanda Development Board (RDB) or the government in respect of a registered investor, all efforts are made to settle the dispute through negotiations towards an amicable settlement. If the dispute is not settled, it may be submitted for arbitration within the framework of bilateral or multilateral agreement on investment protection to which the government and the country of which the investor is a national are parties or in accordance with any other international procedure for the settlement of investment disputes.

Employment

Local employment and secondment

Rwandan legislation provides that an employee may be seconded to Rwanda as it is not a legal requirement for employees to be employed by a local entity in Rwanda when performing services in Rwanda. Employment by a local entity may be a prerequisite in applying for a work permit for foreigners or a H2 permit as provided by the Rwandan immigration legislation.

Immigration

An enterprise that invests at least USD250,000 and is registered as an investor in Rwanda is automatically granted the right to appoint three expatriates without necessarily demonstrating that their skills are lacking or insufficient on the labour market in Rwanda.

Expatriates may work in Rwanda, provided they have a work permit issued by the Directorate General of Immigration and Emigration. Foreign enterprises approved to operate in Rwanda are usually granted work permits if the applicants are key personnel. However, any enterprise may recruit any category of expatriate skilled labour if Rwandans are not available.

Contributed by: Eric N Cyaga, Emmanuel Muragijimana, Patrick K Okello and Zackiah Nandugwa, K-Solutions & Partners

The enterprise will be required to prove that it has conducted a labour market test and failed to get local candidates who meet the requirements. If a foreigner has a contract of employment of more than 90 days, they must apply for a work permit within 15 working days from the day of entry in Rwanda. A foreign employee may also be allowed to change employers and renew their work permit by informing the Directorate General of Immigration and Emigration in writing.

Fixed-term contracts and temporary employment services

Fixed-term contracts are allowed, specifying a fixed period of employment, at the end of which the contractual relationship is automatically terminated. Rwanda provides room for labour brokering. Subject to the labour broker being registered as a private employment agency with the Minister of Labour under Law No 66/2018 of 30 August 2018 regulating labour in Rwanda.

Competition

Prohibited practices

The Competition Law prohibits horizontal and vertical agreements, decisions and concerted practices between undertakings that have, as their object, the undermining, prevention, restriction or distortion of competition, unless they are exempt or form part of a single economic entity.

Cartel conduct, ie, price fixing, market division and collusive tendering and also minimum resale price maintenance are prohibited by the Competition Law. The same law prohibits abuse of dominance.

A firm engaging in a restrictive horizontal or vertical agreement, or abusing its dominant position, commits an offence and may face sanctions including administrative fines ranging from 5%–10% of the enterprise's annual turnover for

the fiscal year preceding the year in which the offence occurred. The East African Community (EAC) and the Common Market for Eastern and Southern Africa (COMESA) regulate prohibited practices in the EAC and COMESA areas respectively, and activities in Rwanda should be conducted with these regional competition bodies in mind.

Merger control

Merger control in Rwanda is regulated by the Rwandan Competition and Consumer Protection Law No 36/2012 of 21 September 2012. The law governing competition in Rwanda defines a merger as occurring when: (i) two or more enterprises join together to form a new enterprise; and (ii) one or more enterprises join together and directly or indirectly merge their assets through the purchase of equity shares or part of the assets of another company.

The Rwandan competition authority considers public interest considerations in making a determination on the merger. Rwanda is a pre-implementation regime, therefore approval must be sought from the Rwandan competition authorities prior to implementation of the proposed transaction.

Being a member of a member of the regional competition bodies, ie, COMESA and the EAC, Rwanda has to conduct merger activities with the COMESA merger control regime in mind. The EAC does not accept merger filings as yet.

Social Security Contributions

Pension scheme

The employer is required to register with the public institution in charge of pension schemes within seven working days from employment of the first employee. The Rwanda Social Security Board (RSSB) is the public entity in charge. The

Contributed by: Eric N Cyaga, Emmanuel Muragijimana, Patrick K Okello and Zackiah Nandugwa, K-Solutions & Partners

employer must have a newly hired employee registered within seven working days from the date of employment.

The contribution due to the mandatory pension scheme is based on gross salary composed of base salary, allowances, bonuses and other fringe benefits as well as the cash value of the benefits in kind. Contributions are set at 3% for employees and 3% for employers in respect of the employees' monthly income.

Maternity leave contributions

An employer applies for registration with the Social Security Administration within seven working days following the date of employment of the first employee, using a prescribed form. The contribution for maternity leave benefits is equal to 0.6% of the salary to which the contribution is subscribed.

The employer and the employee each contribute 0.3% of the salary to which the contribution is subscribed. For both social security and maternity leave contributions, the employer is responsible for collecting the total contributions made of the employer's contribution and the part to be withheld from the employee's salary during the payment period.

Health insurance scheme

Any employer, whether public or private, is also required to contribute to the payment of their employees' health insurance contributions in a recognised insurance scheme satisfying the conditions required by law. Each employer has to furnish proof of having subscribed to insurance for their employees. Subscription to the RSSB medical scheme is not mandatory. This can be made in any other recognised medical insurance scheme. Contributions shall be shared between the employer and the employee.

Contributions to the Community-based Health Insurance Scheme

According to the Article 2 of the Prime Minister's Order No 034/01 of 13 January 2020 related to the Community-based Health Insurance Scheme subsidies, the contribution to Community-based Health Insurance Scheme is fixed at 0.5% of the net salary of the employee, paid by the employer.

Taxes

The taxpayers must register with the Rwanda Revenue Authority. As already mentioned in this article, a company is automatically registered with the Rwanda Revenue Authority upon incorporation and its company code serves as its TIN. Every company must register for a trading licence at the tax administration where the company is located for the purpose of paying a trading licence tax.

Corporate income tax (CIT)

Resident companies and permanent establishments of foreign companies are subject to corporate income tax at a rate of 30% as the standard. It should be noted that the Ministry of Finance issued a statement stating that the cabinet approved comprehensive tax reforms following directives issued by the Rwandan President in January 2023, and in line with the revised Medium Term Revenue Strategy (MTRS) passed in May 2022. The CIT rate was thus reduced from 30% to 28% with an eventual target of 20% in the medium term. This is to improve Rwanda's competitiveness and position the country as a preferred African investment destination.

However, micro-enterprise companies (with turnover of less than RWF12 million in a tax period) pay flat tax amounts, and small businesses (whose turnover is between RWF12 million and RWF20 million in a tax period) pay a lump sum tax at the rate of 3% of turnover.

Contributed by: Eric N Cyaga, Emmanuel Muragijimana, Patrick K Okello and Zackiah Nandugwa, K-Solutions & Partners

Preferential rates apply to qualifying investors, including newly listed companies, venture capital companies, international companies and micro-finance companies.

Capital gains tax (CGT)

Capital gains tax is charged on the direct or indirect sale or transfer of shares or debentures. The capital gains tax is charged at the rate of 5% of the capital gain. Capital gains arising on the sale of business assets are included in ordinary taxable income and subject to tax at the standard rate of 30%.

Withholding taxes (WHT)

A withholding tax of 15% is levied on:

- dividends, except those governed by paragraph 2 of Article 47 of the New Income Tax Law;
- interests;
- royalties;
- service fees including management and technical service fee;
- performance payments made to a crafts person, a musician, an artist, or a sports player irrespective of whether they are paid directly or indirectly;
- goods sold in Rwanda;
- profit after tax or retained earnings that are converted into shares, except for financial institution with paid-up capital below the minimum requirement set by the National Bank of Rwanda;
- profits repatriated from Rwanda; and
- payments made in cash or in kind by a resident person in Rwanda on behalf of a non-resident in Rwanda contracted person provided for under the contract in addition to contractual remuneration, and on a company that carries out gaming activities on the dif-

ference between winnings of the player and amount invested by the player.

The New Income Tax Law under its Article 65 has introduced a provision providing for the exemption from paying the withholding tax of 15% stipulated in Articles 60, 62 and 63 for newly registered tax payers during the concerned annual tax period. These exemptions concern taxpayers who are subject to withholding tax on payments, withholding tax on goods imported for commercial use and withholding tax on public tenders.

The withholding tax rate may be reduced in terms of a relevant double tax agreement.

Value added tax (VAT)

VAT is levied on the supply of goods and services in Rwanda and on the importation of goods and services at a rate of 18%. Any person whose annual turnover exceeds RWF20 million in the previous fiscal year or RWF5 million in the preceding calendar quarter, or is likely to exceed such thresholds in the coming year, must register for VAT purposes.

Resident companies are required to account output VAT in respect of imported services rendered by non-resident companies in terms of the VAT reverse charge mechanism. When the same or similar services are not available in Rwanda, such VAT may be claimed as an input credit by the recipient of the services.

Investment in Rwanda Investment certificates

An investor seeking to commence operations in Rwanda is required to first acquire an investment certificate from Rwanda Development Board. As mentioned at the beginning of this article, the government of Rwanda has provided incen-

Contributed by: Eric N Cyaga, Emmanuel Muragijimana, Patrick K Okello and Zackiah Nandugwa, K-Solutions & Partners

tives for registered investors in Rwanda. Once the investor fulfils the given requirements, they are entitled to certain privileges as provided for under Law No 006/2021 of 5 February 2021 on investment promotion and facilitation. Some of the investment incentives include:

- a preferential corporate income tax rate of 0%;
- a preferential corporate income tax rate of 3%;
- exemption from customs taxes and duties for products used in export processing zones;
- a corporate income tax holiday of up to seven years; and
- a corporate income tax holiday of up to five years.

Kigali International Financial Centre (KIFC)

The Rwandan government rolled out a visionary and ambitious reform programme of its financial services sector under the name of the Kigali International Financial Centre (KIFC).

The KIFC acts an avenue to investors and financial actors who want to effectively manage their assets and structure their investments across Africa. It offers a pro-business environment and is in full compliance with international standards and regulatory requirements. It also enables the structuring and domiciliation of investment funds, including alternative investment vehicles, such as private equity funds, in order to ultimately catalyse the economic growth of Rwanda and Africa.

The general rule is that a resident taxpayer is liable to personal income tax from all domestic and foreign sources during each tax period. Under the New Income Tax Law, a resident taxpayer who was not resident in Rwanda in the five years immediately prior to becoming resident

and who works as an expert or a professional directly for an entity carrying out KIFC-licensed activities, is exempted from personal income tax on foreign sourced income during the first five years following the date of becoming resident. A non-resident taxpayer is only liable to personal income tax which has a source in Rwanda.

Other Notable Regulatory Reforms

Rwanda has been on a regulatory transformation path. The following are some of the recently enacted laws to note.

Data protection

Law No 058/2021 of 13 October 2021 relating to the protection of personal data and privacy was published on 15 October 2021 and applies to the processing of personal data by electronic or other means using personal data through an automated or non-automated platform and the data controller, the data processor or a third party who: (i) is established or resides in Rwanda and processes personal data while in Rwanda; (ii) is neither established nor resides in Rwanda, but processes personal data of data subjects located in Rwanda.

Data controllers or processors already in operation have up to the 15 October 2022 to conform their operations to the provisions of this law. This entails registering with the National Cyber Security Authority among other compliance requirements.

New anti-money laundering law

Rwanda recently promulgated Law No 028/2023 of 19 May 2023 on the prevention and punishment of money laundering, terrorist financing and the financing of proliferation of weapons of mass destruction to replace the 2020 law.

Contributed by: Eric N Cyaga, Emmanuel Muragijimana, Patrick K Okello and Zackiah Nandugwa, K-Solutions & Partners

This new law seeks to ensure Rwanda's sufficient level of compliance with the international standards by entrenching several changes such as making offences of money laundering, terrorist financing and financing of proliferation of weapons of mass destruction imprescriptible and introducing tougher penalties for different offences under this law.

Partnerships

The legal framework of the recently enacted Law No 008/2021 of 16 February 2021 governing partnerships sets out three forms of partnerships in Rwanda: general partnerships; limited partnerships; and limited liability partnerships.

The New Income Tax Law excludes partnerships from paying CIT. Its Article 52 provides that income generated from a general partnership, limited partnership and limited liability partnership is taxable at the level of each partner. The partnership prepares its financial accounts, determines and declares the taxable share in profit of each partner, withholds and remits corresponding tax to the tax administration in accordance with the procedure prescribed by the tax administration. The partnership and the partners are jointly liable in case of a failure to meet these obligations.

In the determination of tax liability, corporate partners are subject to CIT while individual partners are subject to personal income tax.

Public-private partnerships

Public-private partnerships (PPPs) refer to arrangements where the private investors co-invest with the government in the public sector for the efficient provision of goods and services to the public.

The establishment of a clear PPP framework through Law No 14/2016 of 2 May 2016 governing public private partnerships (the "PPP Law") and the Public Private Partnership Guidelines has ensured the attraction of private sector investment.

The PPP Law introduced a new institutional framework to ensure its enforcement and compliance. The institutional framework comprises a steering committee, a contracting authority, and the Rwanda Development Board (RDB), which each play different roles.

CHAMBERS GLOBAL PRACTICE GUIDES

Chambers Global Practice Guides bring you up-to-date, expert legal commentary on the main practice areas from around the globe. Focusing on the practical legal issues affecting businesses, the guides enable readers to compare legislation and procedure and read trend forecasts from legal experts from across key jurisdictions.

To find out more information about how we select contributors, email Katie.Burrington@chambers.com