BOWMANS

THE VALUE OF KNOWING

AFRICA GUIDE – LOCAL OWNERSHIP AND EMPOWERMENT

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Introduction

Recent forecasts suggest that Africa will be one of the world's fastest-growing regions by 2030. Among the contributing factors is its youthful population which will result in one of the largest labour pools by 2050.

This presents an opportunity for investors – foreign, intra-African and local – as does the continent's significant infrastructure gap compared to global benchmarks. Closing this gap is the first step in supporting the forecasted growth.

Current data suggests that foreign direct investment in Africa is still small relative to other developing regions in Asia and Latin America. However, against the backdrop of growth forecasts, it is likely foreign direct investment will increase in the medium to long term.

These investments will need to be made with careful consideration of local ownership and empowerment requirements, which differ from country to country having been informed by differing political histories and socioeconomic environments.

Many of these requirements seek to regulate sectors of strategic national importance, such as aviation, financial services, logistics, mining/oil and gas, private security and telecommunications. Others are aimed at redressing historic economic imbalances among certain local population groups, or protecting indigenous populations and increasing their participation in economies. Some are designed to ensure diversification while providing support for agriculture and food security, or to improve transport infrastructure, or to drive industrialisation by focusing on small local business.

In a few of the countries covered in this guide, such as Namibia, South Africa and Zambia, local ownership and empowerment regulations apply to both private companies and state institutions and across all sectors of the economy.

In some jurisdictions, there are significant penalties for non-compliance or misrepresentation regarding empowerment status (otherwise known as 'fronting practices'). These jurisdictions include among others Ghana, Namibia, South Africa, Zambia and Zimbabwe. In most other jurisdictions, non-compliance may result in the withdrawal of an investment licence.

We have prepared this guide to support our clients who are considering investing in the region. It deals with frequently asked questions relating to local ownership, local management and local content requirements, empowerment of indigenous populations and foreign land ownership.

It provides a snapshot of the relevant regulations in 14 countries and has been prepared in collaboration with our alliance firms in Ethiopia and Nigeria and our relationship firms in Botswana, Namibia, Ghana, Rwanda and Zimbabwe.

The information is correct as at August 2022.

Please do not hesitate to contact us if you would like to discuss the content of this guide in more detail.

Ashleigh Hale
Co-Head of Corporate/M&A

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The contents of this publication are for reference purposes only. It is not a substitute for detailed legal advice. If you require further information, please contact one of the key contacts listed overleaf.

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Our Firm

We help our clients manage legal complexity and unlock opportunity in Africa.

We have an enviable track record of providing legal services to the highest professional standards in Africa. We work for clients across numerous African jurisdictions on corporate, finance, competition, taxation, employment, technology and dispute resolution matters.

With eight offices in six African countries and over 400 specialist lawyers, we draw on our unique knowledge of the business and socio-political environment to advise clients on a wide range of legal issues.

Everywhere we work, we offer clients a service that uniquely blends expertise in the law, knowledge of the local market, and an understanding of their businesses. Our aim is to assist clients to achieve their objectives as smoothly and efficiently as possible while minimising the legal and regulatory risks.

Our clients include domestic and foreign corporates, multinationals, funds and financial institutions, across almost all sectors of the economy, as well as state-owned enterprises and governments.

Our expertise is frequently recognised by independent research organisations. Most recently, our Kenyan practice won the 2022 Chambers Africa Award for Law Firm of the Year in Kenya. In 2022, Bowmans won six IFLR Africa Awards including overall M&A Team of The Year; Jurisdictional Firm of the Year: South Africa; Loans Firm of the Year: South Africa; M&A Firm of the Year: South Africa; and Project Finance Firm of the Year: South Africa. We also advised on the deal named M&A Deal of the Year. At the 2022 Africa Legal Awards, we won four practice awards including Banking and Finance Team of the Year; Capital Markets Team of the Year; Tax Team of the Year and Transportation and Infrastructure Team of the Year.

In the 2021 DealMakers Africa Awards we ranked first in East Africa for both deal value and deal flow and also advised on the deals named East Africa Deal of the Year and East Africa Private Equity Deal of the Year. In the 2021 DealMakers Awards we placed first by deal flow and second by deal value in the Unlisted M&A Transactions category; first by deal flow and third by deal value in the BEE Deals category; third and fourth by value and flow respectively, in the Listed Company M&A Transactions category; and fourth by deal value and deal flow in the General Corporate Finance category.

Our Presence in Africa

Recognising the size and enormous diversity of Africa, our approach to providing legal services across the continent is intended to offer on-the-ground advice in the countries that matter for our clients. Our presence in Africa is always evolving to meet the changes that are shaping the future of this vast continent.

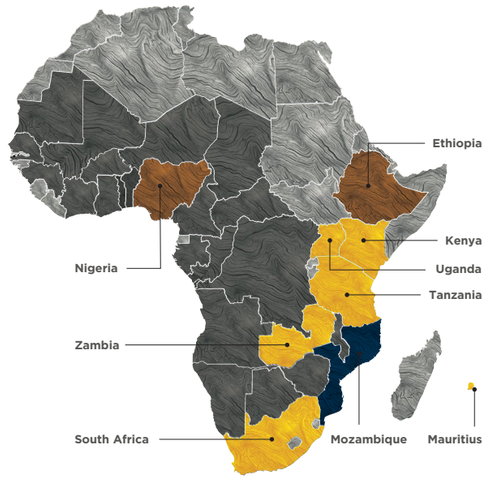
Currently, we have our own offices in six African countries: Kenya (Nairobi), Mauritius (Moka), South Africa (Cape Town, Durban, Johannesburg), Tanzania (Dar es Salaam), Uganda (Kampala) and Zambia (Lusaka).

We work closely with our Bowmans Alliance firms in Ethiopia (Aman & Partners LLP) and Nigeria (Udo Udoma & Belo-Osagie). These are two of the leading corporate and commercial law firms in their jurisdictions.

We have a special relationship with a competent practitioner in Mozambique. We also have a non-exclusive co-operation agreement with French international law firm Gide Loyrette Nouel that provides our clients access to assistance in francophone west and north Africa. The arrangement provides complementary access for Gide's clients and lawyers to markets in central, southern and eastern Africa.

We ensure that, whenever our clients need legal advice in other parts of Africa, we can assist them by tapping into our comprehensive database of contacts of the best firms and practitioners across the continent.

On the global front, Bowmans has long-standing and excellent relationships with a range of international law firms with whom we often work on Africa-focused client mandates. We are also a member firm of Lex Mundi, a global association of more than 160 independent law firms in all the major centres across the globe. Lex Mundi gives us the ability to connect our clients with the best law firms in each of the countries represented.



- Bowmans offices
- Alliance firms
- Special relationship
- Significant transaction or advisory experience

Botswana

BOOKBINDER BUSINESS LAW

BOTSWANA

1. Local empowerment obligations

On 20 April 2022, the Economic Inclusion Act 2021 (26 of 2021) (**Economic Inclusion Act**) came into force. The Economic Inclusion Act has been enacted to promote effective participation of targeted citizens (being citizens whose access to economic resources has been constrained by various factors as may be prescribed by the Minister of Entrepreneurship from time to time) in the economic growth and development of the economy, and to facilitate enforcement of the economic empowerment initiatives across the public and private sectors.

The Economic Inclusion Act establishes the Economic Empowerment Office, which shall be responsible for, among others:

- promoting the economic empowerment of targeted citizens;
- overseeing and coordinating the implementation of existing economic empowerment laws, policies, initiatives and programmes;
- strengthening the ability of targeted citizens to own, manage and control private sector enterprises and productive assets;
- ensuring funding for economic empowerment laws, policies, initiatives and programmes;
- facilitating the enforcement of economic empowerment laws, policies, initiatives and programmes; and
- ensuring compliance, fostering accountability and ensuring ease of monitoring and evaluation of economic empowerment laws, policies, initiatives and programmes.

2. Local ownership targets or restrictions

The Minister of Trade and Industry has made regulations reserving certain trades and businesses for citizens of Botswana and/or companies that are wholly owned by citizens of Botswana only. However, the Minister may exercise a discretion to award a licence in a reserved business or trade to a joint venture comprising a medium-sized or large business enterprise between a citizen and a non-citizen. This is conditional on the citizen partner having at least a 51% share in the joint venture, or where the citizen partner has written to the Minister confirming that he or she has accepted participation in the joint venture with less than a 51% share in the joint venture.

Reserved trades and businesses under the Trade Act, 2019 (CAP 43:02) (**Trade Act**) include agent, auctioneer, car wash, cell phone shop, cleaning service, curio shop, dry-cleaning depot, florist, general dealer, general hire service, imported pre-owned motor dealer, internet café or copy shop, laundromat, fresh produce business, funeral parlour, hair or beauty parlour and take-away food business. In addition, certain small-scale manufacturing enterprises are reserved for Botswana citizens or companies wholly owned by Botswana citizens.

Furthermore, reserved enterprises under the Industrial Development Act 2019 (CAP43:01) (**Industrial Development Act**) include bread and confectionary manufacturing, ice making, meat processing, peanut butter manufacturing, purification and bottling of water, traditional sour milk manufacturing and sorghum manufacturing, as well as enterprises manufacturing bricks, burglar bars, gates and windows, candles, fencing materials (excluding gum poles), floor polish, packaging, protective clothing, roof trusses, school furniture, school uniforms, screen printing and embroidery, signage (including electronic signage), traditional crafts and traditional leather products.

3. Local management targets or restrictions

In terms of the Economic Inclusion Act, all public sector bodies shall implement laws, policies, initiatives and programmes to ensure that where qualified targeted citizens are available, such citizens are equitably represented at board and management levels in the workforce.

4. Other factors such as skills development, enterprise development, employee-related targets or procurement-related targets or restrictions

PROCUREMENT

On 14 April 2022, a new Public Procurement Act 2021 (CAP 42:08) (**PPD**) came into force, repealing the Public Procurement and Asset Disposal Act (CAP42:08) (**PPAD**). The PPD gives preferential treatment, in respect of state procurement, to Botswana citizens or companies wholly owned by Botswana citizens. The Minister of Finance may from time to time reserve certain contracts only for Botswana citizens or Botswana-owned companies or may implement preferential procurement schemes that favour Botswana citizens and Botswana-owned contractors over those of non-citizens. The Minister of Finance may also prescribe any applicable procurement reservation and preference schemes to be applied by any procuring entity (i.e., any public body entity). Contracts awarded to non-citizen contractors and/or foreign contractors may contain requirements for such contractors to subcontract to Botswana contractors. In addition, the Minister of Finance may also direct that a procuring entity unbundle a tender to promote the participation of a Botswana contractor.

The level of preference in preferential schemes is in the following order:

- joint ventures between citizen contractors;
- sole citizen contractors;
- joint ventures between citizen contractors and local contractors, with citizen contractors holding the majority shares. A 'local contractor' means any contractor whose operation is based in Botswana, irrespective of the contractor's nationality or domicile; and
- association agreements between citizen sub-contractors and foreign contractors.

All regulations issued under the PPAD shall, in so far as it is not inconsistent with the PPD, remain in force. On 28 February 2020, regulations were issued under the PPAD reserving all works, supplies and services procurement contracts up to the sum of BWP 10 million for 100% citizen-owned small, medium and micro enterprises with annual turnovers not exceeding BWP 10 million. An exemption to this reservation may apply where the Public Procurement and Regulatory Authority is satisfied that no 100% citizen-owned enterprise that is suitable and qualifies for the contract is available.

Local procurement requirements are imposed on all companies.

All public sector bodies responsible for finance and economic development are required by the Economic Inclusion Act to provide, among others:

- more flexibility in procurement to give equal opportunities across the board and to ensure increased procurement and share of government business for enterprises owned by targeted citizens;
- for procurement reservation and preference schemes for enterprises owned by targeted citizens in the tender evaluation processes of all government entities, in line with relevant laws and empowerment schemes;
- guidelines with qualification and accreditation criteria for preferential treatment for procurement purposes and other economic activities by the public sector body;
- for subcontracting of services, material and equipment from enterprises owned by targeted citizens in line with relevant procurement laws;
- for greater preference to be given to goods manufactured using local materials over imported materials and that local capacity be exhausted before any other procurement method is employed.

The Economic Inclusion Act further requires private sector bodies to, among others, procure goods and services from enterprises owned by targeted citizens within the private sector, including from small and medium enterprises.

EMPLOYMENT

The Citizen Economic Empowerment Policy 2012 (**CEE Policy**) is a state-driven policy that aims to encourage businesses operating in Botswana, especially foreign-owned companies, to employ citizens rather than non-citizens of the same or similar qualifications and experience. Where a company has employed more than five non-citizen employees it must prepare a five-year plan for the training and development of Botswana citizens for capacity to replace the non-citizen employees. This five-year plan must be submitted to the Ministry of Employment, Labour Productivity and Skills Development.

The Economic Inclusion Act provides that all public bodies must implement economic empowerment laws, policies, initiatives and programmes to enable the representation of targeted citizens in the workforce through:

- ensuring that where a targeted citizen qualifies and is available, such citizen is equitably represented at board and management level; and
- entrenching the assumption of a leadership position for a targeted citizen where there is a partnership with a foreign investor.

The Economic Inclusion Act provides that all private sector entities that are non-citizen/non-targeted citizen owned must effect inclusive ownership of the business through training, coaching and mentoring of employees. The Economic Inclusion Act also requires public sector bodies responsible for investment, trade and industry to:

- exploit the transfer of skills, knowledge and quality assurance by established and sustainable businesses, for the purposes of promoting and supporting franchising to targeted citizens; and
- ensure the weaning off of targeted citizen enterprises from dependence on preferences, in order to capacitate targeted citizens by developing their skills and knowledge to enable their participation in public procurement and a graduation model.

The Economic Inclusion Act further provides that all professional bodies in Botswana must ensure a minimum representation of citizens in their executive, as the Minister of Entrepreneurship may prescribe from time to time.

FUNDING

The Citizen Entrepreneurial Development Agency (**CEDA**) provides subsidised loans, structured financing, training and mentoring to businesses. The Citizen Entrepreneur Mortgage Assistance Equity Fund provides equity finance to distressed businesses of Botswana citizens that face foreclosure from commercial banks. The Credit Guarantee Scheme provides guarantees to loans extended by commercial banks to citizen-owned small, medium and micro enterprises (**SMMEs**) and pays a certain percentage in case of default.

The CEDA Guidelines mandate that CEDA services and products must be open only to citizens. A citizen entrepreneur may, however, apply for funding or assistance for joint venture programmes involving a non-citizen. The Credit Guarantee Scheme is a CEDA product offered only to citizen-owned companies.

The Local Enterprise Authority provides development support and entrepreneurship training to citizen-owned SMMEs and to joint ventures involving a citizen or a citizen-owned company.

The Economic Inclusion Act provides that banks, funding agencies and/or financiers that loan or grant Government money must:

- design and adopt subsidy, reservation and preference schemes that will increase productivity and output for targeted citizens;
- ensure the empowerment of targeted citizens through leveraging finance to enable targeted citizens to take strategic stakes in major projects; and
- create investments for floating on the Botswana Stock Exchange to enable targeted citizens to have a share in the benefits of domestic and global investments.

5. Foreign land ownership restrictions

Although foreign individuals and entities can purchase land rights in Botswana, in terms of the Land Control Act (CAP32:11), the approval of the Ministry of Agricultural Development and Food Security must be obtained to purchase agricultural land.

The Transfer Duty Act (CAP 53:01) has been amended so that the rate of transfer duty payable on property transfers is 5% for citizens (including majority or wholly owned Botswana companies), while it has been increased to 30% for non-citizens. In addition, citizens are now exempted from paying transfer duty on the first BWP 1 million of the purchase price of the property concerned.

The Economic Inclusion Act requires all public sector bodies to, among others, reserve a quota of business plots for targeted citizens.

6. Regulatory oversight and reporting obligations

The Economic Empowerment Office, established under the Economic Inclusion Act, shall set targets and measure the compliance with the Act of public and private sector bodies. The Economic Empowerment Office measures compliance using a number of different measures.

All reporting under the Economic Inclusion Act shall be made in the prescribed form, as determined by the Economic Empowerment Office from time to time.

7. Penalties for non-compliance

In terms of the PPD, any juristic person who contravenes its provisions will be guilty of an offence and subject to a fine (of not more than BWP 1 500 000) and, in the case of an individual, a fine (of not more than BWP 500 000) or imprisonment (for a term not exceeding three years) or both.

In terms of the Trade Act 2019, any person who contravenes the provisions of the Act shall be liable to a fine not exceeding BWP 50 000 and, in the case of an individual, a fine or imprisonment (for a term not exceeding five years) or both.

In terms of the Industrial Development Act, any person who contravenes the provisions of the Act shall be liable to a fine not exceeding BWP 50 000 for a first offence and, in the case of an individual committing a second offence, a fine not exceeding BWP 20 000 or imprisonment (for a term not exceeding two years) or both.

In terms of the Economic Inclusion Act, any person who fails to comply with the provisions of the Act commits an offence and is liable to a fine (of not less than BWP 5 000 but not more than BWP 1 million) and, in the case of an individual, imprisonment (for a term of not less than six months but not more than 10 years). Furthermore, the Economic Empowerment Office may blacklist a person from bidding for government tenders.

8. Proposed or contemplated changes to regulations

Limited relevance.

Ethiopia

AMAN & PARTNERS LLP

ETHIOPIA

1. Local ownership targets or restrictions

Participation by foreign investors in the Ethiopian economy may take different forms such as direct investment, procurement or other schemes such as international bids.

DIRECT INVESTMENT

With regards to direct investment, the Ethiopian Investment Proclamation (**Investment Proclamation**) imposes a minimum capital investment requirement on foreign investors. Accordingly, a foreign investor is obliged to make an initial minimum capital injection of USD 200 000 for a sole investment and USD 150 000 for an investment to be carried out in joint venture with an Ethiopian national. However, the minimum threshold is lowered to USD 50 000 for a joint investment and USD 100 000 (for a sole foreign investment for investments in the engineering and architectural or related technical consultancy services, or in the fields of technical testing and analysis or publishing works).

Foreign investors are not permitted to invest in some sectors as these are off-limits to non-Ethiopians. The recently enacted Investment Regulation, 2020 (**Regulation**) specifies that foreign investors may invest in any area except for: (i) areas reserved for domestic investors; (ii) areas for joint investment with Government; and (iii) areas for joint investment with domestic investors.

The following areas are reserved for domestic investors only, and thus not available for foreign investors:

- financial services such as banking, insurance and micro-credit and saving services;
- translation and secretarial services;
- media services;
- construction and drilling services below Grade 1;
- attorney and legal consultancy services;
- preparation of indigenous traditional medicines;
- tour operation;
- wholesale and import trade (with the exception of wholesale of own products, wholesale of petroleum and petroleum products, electronic commerce and the import of liquefied petroleum gas and bitumen);
- export trade of specified raw agriculture, forestry, poultry and livestock products;
- retail trade (with the exception of own products and electronic commerce);
- primary and middle-level health services;
- hospitality businesses (excluding star-designated services);
- equipment leasing;
- machinery and vehicles (except for industry-specific heavy equipment, machinery and specialised vehicles);
- private employment agency services (excluding services for employing seafarers and similar professionals of higher and international expertise and networks);
- maintenance and repair services, including aircraft maintenance, repair and overhaul, as well as aircraft ground handling and related services, and excluding repairs and maintenance of heavy industrial machinery and medical equipment;
- grinding mills, bakery, barber shop and beauty salon services;
- customs clearance;
- saw milling, timber manufacturing and assembling of semi-finished wood products, brick and block manufacturing and quarrying;
- non-industrial-scale laundry services;
- lottery and sports betting;
- security and brokerage services;
- transmission and distribution of electrical energy through the integrated national grid system; and
- transport services including freight transport services with a capacity of less than 25 tonnes. (However, railway, cable-car, cold-chain transport services and other transport services subject to joint investment with domestic investors are exempted from the list of transport services reserved for domestic investors – see overleaf).

The Regulation has identified five investment areas for investors (foreign or domestic) to engage in joint investment with Government. These areas are:

- the manufacturing of weapons, ammunition and explosives;
- the import and export of electrical energy;
- international air transport services;
- bus rapid transit; and
- postal services (excluding courier services).

The Regulation has also listed some activities which may only be carried out in partnership with domestic investors. These are:

- advertising and promotion services;
- domestic air transport services;
- freight forwarding and shipping services;
- urban passenger mass transport services with large carrying capacity;
- audio-visual services; and
- cross-country transport services with a seating capacity of more than 45 passengers.

It must be noted that the Regulation has limited the joint investment in each of the areas in this section to a maximum of a 49% equity contribution by the foreign investor in the enterprise. In addition, the new media law, the Media Proclamation 1238/2021, has permitted the participation of foreigners in periodicals, online media and broadcasting services, with a foreign ownership of up to 25%.

These restrictions do not prevent foreign companies and persons from providing specific and time-bound services to their Ethiopian clientele. Therefore, if an Ethiopian client chooses to purchase a particular service from a foreign company, it may do so even if the type of service is among those restricted to Ethiopians and thus off-limits to foreigners. In this case, the foreign service provider needs to register as a 'Project Office' if the provision of the service takes more than six months. This is also aligned with the period of time to establish a permanent establishment in the Tax Code.

PROCUREMENT

With respect to procurement, the Federal Government Procurement and Property Administration Proclamation prohibits discrimination against bid candidates on the basis of nationality, race or other criteria. However, a special reservation is made for goods produced and services rendered by Ethiopian nationals. In accordance with the Procurement Proclamation, preference and a margin in the evaluation of bids issued by public bodies is given to locally produced goods, small and micro enterprises and local construction and consultancy companies.

2. Local management targets or restrictions

Limited relevance.

3. Other factors such as skills development, enterprise development, employee-related targets or procurement-related targets or restrictions

EMPLOYMENT

The Investment Proclamation seeks to create employment opportunities for Ethiopians to advance knowledge, skill and technology transfer, among others. It restricts employment of foreign nationals and imposes several requirements.

Generally, foreign nationals will be employed only if it can be ascertained that there are no Ethiopians possessing similar qualifications or experience in the relevant sector. An exception is where foreign nationals are assigned to management positions (including Chief Executive Officer, Chief Operating Officer and Chief Finance Officer). An investor may employ foreign nationals in these positions without restrictions.

Furthermore, an investor employing any non-managerial foreign nationals is obligated to replace such workers with Ethiopians within a certain period of time, after undertaking the necessary facilitation and on-the-job training. In line with this, an investor is obligated to submit a detailed statement of the type and schedule of training, together with a quarterly report on its implementation.

Additionally, all expatriate employees are required to enter the country on a work visa. Upon entry, such employees are required to secure work permits and residence identity documents to lawfully be employed and reside in Ethiopia. Currently, work permits and residence IDs are issued for a one-year period and are renewable annually upon payment of fees.

Whenever it is ascertained that a worker is no longer required for a position, the Ethiopian Investment Commission (**EIC**) has the option of cancelling or refusing to renew an expatriate employee's work permit.

4. Foreign land ownership restrictions

Land may not be private property under Ethiopian law – the Ethiopian Constitution prescribes that the right to own both urban and rural land is vested with the State and the people of Ethiopia. It dictates that as common property of the nations, nationalities and peoples of Ethiopia, land shall not be subject to sale or to other means of exchange.

The right persons may exercise over land is a lease right (lesser than ownership) known as 'use right'. Therefore, businesses, whether foreign or locally owned, as well as private persons, may only have use rights over land which is granted by the land administration authorities at the level of the regions.

Notwithstanding the restrictions on foreigners owning immovable property under the Civil Code, the Investment Proclamation recognises the right of foreign investors to own immovable property necessary for their investments. However, the Investment Proclamation has excluded land from being considered immovable property.

Apart from the land ownership aspect, the allocation of and access to land is to be handled by regional government-level bodies. Thus, foreign investors are expected to direct any land allocation requests, as well as requests concerning access and use of land for their investments, to the respective regional investment body.

In addition to land, the Investment Proclamation recognises a foreign investor's entitlement to own a dwelling, subject to the foreign investor's minimum investment of USD 10 million.

5. Regulatory oversight and reporting obligations

During the investment implementation phase, and before an operational licence to trade is secured, all investors are obligated to submit a quarterly progress report on the implementation of their investment projects to the EIC. If an investor fails to submit such report on time, the EIC has the option to suspend its investment permit.

Furthermore, an investor employing foreign nationals is obligated to regularly submit reports and statements of the type and schedule of training it provides to replace its expatriate employees with local talent, together with reports on the implementation of the training.

The EIC is the main regulatory body responsible for oversight of the local ownership/empowerment regulations.

6. Penalties for non-compliance

The EIC is mandated to revoke an investor's investment permit if the investor misuses or illegally transfers its investment incentives to a third party; fails to commence its investment project implementation; or uses the investment permit for a different objective than it was issued for, among others.

The penalty for preparing or using a false commercial registration or business licence is a fine and imprisonment from seven to 15 years.

7. Proposed or contemplated changes to regulations

Limited relevance.

Ghana

N DOWUONA & COMPANY

GHANA

1. Local empowerment obligations

The Ghana Investment Promotion Centre Act 2013 (Act 865) outlines a list of activities that are reserved for Ghanaian citizens or 100% Ghanaian-owned enterprises, including:

- the sale of goods or provision of services in a market, petty trading or hawking or selling of goods in a stall at any place;
- operating taxis or a car hire service in an enterprise with a fleet of fewer than 25 vehicles;
- operating a beauty salon or a barber shop;
- printing recharge scratch cards for use by subscribers of telecommunication services;
- producing exercise books and other basic stationery;
- retailing finished pharmaceutical products;
- the production, supply and retail of sachet water; and
- all aspects of pool betting business and lotteries, except football pool.

Before commencing operations, all businesses in Ghana that are wholly or partly foreign owned are required to register with the Ghana Investment Promotion Centre (**GIPC**) and satisfy certain minimum capital requirements.

For wholly foreign-owned enterprises, a minimum equity investment of USD 500 000 in cash and/or capital goods is required. For enterprises in which there is both foreign and a minimum of 10% Ghanaian participation, the foreign investor must make a minimum equity investment of USD 200 000 in cash and/or capital goods. Where the enterprise is to undertake trading activities, a minimum equity investment of USD 1 million in cash or capital goods is required. These minimum capital requirements do not apply to portfolio investments (investments in companies listed on the Ghana Stock Exchange), nor to enterprises set up solely for export trading and manufacturing.

There are additional requirements in certain sectors, including the following:

- **Fintech**

  Fintech payment companies that operate in Ghana must be partly locally owned. A company must be at least 30% Ghanaian owned in order to operate a payment service platform or offer services as a dedicated electronic money issuer (i.e., a company that engages in electronic money business).

- **Insurance**

  Insurance brokers are required to be at least 75% Ghanaian owned. There are currently no local ownership requirements for insurance providers themselves and the law also allows foreign reinsurers (not licensed to operate in Ghana) to open contact offices in Ghana with the approval of the National Insurance Commission (**NIC**). However, Ghanaian persons are prohibited from entering into most insurance contracts with foreign insurers unless the contract is approved by the NIC. In approving a foreign insurance contract, the NIC must satisfy itself that no local insurer has the capacity to insure the risk covered under the insurance contract, or that there is no licensed insurer in Ghana who is willing to insure the risk covered under the insurance contract. Before reinsuring any business overseas, Ghanaian insurers are required to ensure that local capacity is exhausted.

- **Information, communications technology and telecommunications (including broadcasting)**

  All mobile network operators that provide 4G network services are required to have at least 30% local ownership as a condition for the granting of a 4G licence by the National Communications Authority. Value Added Services providers (i.e., providers of services that combine applications with telecommunications services, such as email, videotext and data processing) are also required to have 30% local ownership as a condition for registration as a Value Added Services provider.

- **Mining**

  There are no local ownership targets or restrictions for companies seeking to conduct large- to medium-scale mining operations in Ghana. However, only Ghanaian citizens are permitted to engage in small-scale mining operations. In addition, a foreign national may only apply for industrial mineral rights if the proposed investment is valued at USD 10 million or more. Industrial minerals are defined as basalt, clay, granite, gravel, gypsum, laterite, limestone, marble, rock, sand, sandstone, slate talc, salt and other minerals that the Minister responsible for mining may from time to time declare to be industrial minerals. Licensees in the industry are required by the Minerals and Mining Act 2006 to give preference to materials and products made in Ghana and to Ghanaian-owned service agencies. This operates as an indirect restriction on foreign ownership of companies that provide services to such licensees

- **Oil and gas**

  Upstream petroleum industry

  In the upstream industry, a petroleum agreement may only be granted to a locally incorporated entity. In addition, as well as the mandatory carried participating interest held by the Ghana National Petroleum Corporation (**GNPC**), an indigenous Ghanaian company must hold at least 5% of the participating interest in any petroleum agreement (subject to variation by the Minister of Energy).

  Indigenous Ghanaian companies enjoy first preference in the granting of petroleum agreements and licences. The interest of an indigenous Ghanaian company in a petroleum agreement or a petroleum licence is not transferable to a non-indigenous Ghanaian company. Any assignment of an interest under a petroleum agreement that has no indigenous Ghanaian participation as required, must include an assignment of at least 5% of the interest to an indigenous Ghanaian company, where the total interest being assigned represents a participating interest of 5% or more.

  Foreign entities that wish to provide goods and services to upstream contractors in the petroleum industry are required to incorporate a joint venture with an indigenous Ghanaian company, in which the indigenous Ghanaian company holds at least 10% of the equity. Alternatively, with the approval of the Petroleum Commission, foreign entities may enter into a 'channel partnership' or 'strategic alliance' arrangement with an indigenous Ghanaian company. The Petroleum Commission may only approve a channel partnership or strategic alliance arrangement where it considers that such arrangement will deepen local content and local participation and maximise technology transfer to the indigenous Ghanaian company.

  In addition, the supply of certain specified goods and services in the upstream industry is reserved for indigenous Ghanaian companies and specific local content requirements apply to certain other goods or services, which range from 10% to 100% and, in some instances, vary over time.

  Downstream petroleum industry

  A licence to operate in the downstream petroleum industry may only be granted by the National Petroleum Authority (**NPA**) to a citizen of Ghana, a company incorporated in Ghana, a partnership registered in Ghana or to a foreign individual or foreign company in a registered joint venture with a citizen of Ghana or an indigenous Ghanaian company. There is no minimum ownership requirement stated in the relevant legislation, but the NPA Board may grant licences to operate in the downstream petroleum industry on such conditions as it considers fit and these may include some level of local ownership.

  In 2020, the Ministry of Energy published the Draft Petroleum (Ghanaian Content and Ghanaian Participation) Regulations 2020 (**Draft Petroleum Regulations**). These draft regulations are not yet in force but, if adopted, would introduce significant local ownership requirements in the downstream industry. In particular, these draft regulations would reserve trading, bunkering, oil distribution, oil marketing and retailing of petroleum products at retail outlets in the downstream industry for indigenous Ghanaian companies, subject to limited exceptions, and would require the procurement of goods and services for the downstream petroleum industry from indigenous Ghanaian companies, again subject to limited exceptions.

- **Power (electricity supply)**

  Local ownership requirements exist across various sectors in the electricity supply industry. Companies that engage in the following areas are required to comply with initial and time-based targets for local ownership:

  - wholesale power supply;
  - renewable energy projects;
  - electricity distribution;
  - investment in transmission infrastructure;
  - electricity sales; and
  - electricity brokerage.

  Initial equity requirements for the different sectors in the energy chain range from 15% to 80% upon establishment, while ultimate equity targets range from 51% in 10 years to 100% in five years.

  Manufacturers of electrical equipment, electrical appliances and renewable energy equipment must be at least 40% Ghanaian-owned. A foreign entity must form a partnership with an indigenous Ghanaian company to provide goods and services to companies that operate in the industry. The interest (for example, rights under a contract or subcontract) of a Ghanaian citizen in the electricity supply industry is not transferable to a non-Ghanaian citizen. An equity shareholding can only be offloaded to a Ghanaian citizen.

2. Local management targets or restrictions

Limited relevance generally, but please see sector-specific details below and above.

3. Other factors such as skills development, enterprise development, employee-related or procurement-related targets or restrictions

PROCUREMENT

In determining a successful tender, public institutions that conduct public procurement are required to consider the effect that a tender will have on the extent of local content in a manufacturer and on labour and materials, goods, works or services offered by suppliers or contractors.

Under Ghana's public procurement law, a procurement entity may decide that only domestic suppliers, contractors or consultants may submit tenders in a procurement proceeding, provided that the procurement entity uses national competitive tendering procedures. Furthermore, a procurement entity may grant a margin of preference for tenders for work by domestic contractors, domestically produced goods, domestic supply of services or any other preference authorised by the Public Procurement Board. The margin of preference must be authorised and approved by the Public Procurement Board and included in the criteria for the evaluation of tenders.

In the context of public-private partnerships, a contracting authority may grant a margin of preference to companies that are incorporated in Ghana with majority Ghanaian ownership. Any project participant granted such a margin of preference is then prohibited from altering the majority stake held by Ghanaians within the first 10 years of the relevant arrangement.

EMPLOYMENT

As noted earlier, partly foreign-owned companies must register with the GIPC and satisfy certain minimum capital requirements. An enterprise is then entitled to apply for an expatriate quota based on the amount of its paid-up capital.

- Enterprises with between USD 50 000 and USD 250 000 are entitled to an automatic expatriate quota of one person.
- Enterprises with between USD 250 000 and USD 500 000 are entitled to an automatic expatriate quota of two persons.
- Enterprises with between USD 500 000 and USD 700 000 are entitled to an automatic expatriate quota of three persons.
- Enterprises with more than USD 700 000 are entitled to an automatic expatriate quota of four persons.

An entity may only employ foreign nationals in Ghana upon the issue of work permits granted by the Immigration Quota Committee of the Ministry for the Interior. These work permits must specify the number and description of persons authorised to be employed. The approval to fill an immigration quota may specify the period for which the foreigner may occupy the post while a Ghanaian understudies him or her in order to replace him or her when the period expires. A trading enterprise that is wholly or partly foreign owned is required to employ at least 20 skilled Ghanaians.

SECTOR-SPECIFIC REQUIREMENTS

- **Mining**

  Licensees within the mining industry must give preference to locally sourced or manufactured materials and products, as well as locally owned service agencies in the purchase, construction and installation of facilities, to the maximum extent possible and consistent with safety, efficiency and economy. Furthermore, licensees within the mining industry must submit a procurement plan, including details of prospects for local procurement, to the Minerals Commission for approval.

  This procurement plan must be for an initial period of five years and subsequently for every five-year period. In addition, licensees must submit reports on the implementation of the procurement plan semi-annually.

  Licensees are also required to employ Ghanaian citizens to the maximum extent possible. Applications for mineral rights and applications for licences to export or deal in minerals or to provide mine support services must be accompanied by details of the applicant's proposals with respect to the recruitment of expatriates and the employment and training of Ghanaians in the mining industry. After the application has been granted, these proposals must be re-submitted every three years.

  All non-technical and non-engineering roles are reserved for Ghanaian citizens, irrespective of the level or grade. The positions of Mine Manager and, after three years from commencement of operations, the General Manager, are also reserved for Ghanaian citizens. Reconnaissance licence holders or prospecting licence holders are required to submit a localisation programme for the recruitment and training of Ghanaians to the Minerals Commission for approval, providing details of ongoing and planned recruitment and training of Ghanaians to replace expatriates. An annual report must be submitted to the Minerals Commission each year showing the level of compliance with the approved localisation programme.

  A proposed immigration permit for expatriate recruits is only approved where the Minerals Commission is satisfied that no Ghanaian has the requisite qualifications and experience to occupy the position for which the expatriate is to be recruited. Employment details submitted along with the application must specify timelines within which Ghanaian employees will be trained to replace expatriates. The Minerals Commission may request a company to advertise for the particular job for which no Ghanaian is deemed qualified or to recruit from the personnel database established by the Minerals Commission. Professional services such as legal, financial, accounting, technical and engineering services are generally required to be sourced from Ghanaian providers.

  Insurance services may only be procured through Ghanaian insurance and reinsurance firms with a minimum of 20% Ghanaian directors and shareholders. Where there is a need for a licensee within the mining industry to engage the services of an offshore insurance or reinsurance company, the licensee must first obtain the approval of the NIC.

  Certain other mining support services are reserved exclusively for Ghanaian citizens. Mining support services for small-scale mining operations must also be provided exclusively by Ghanaian companies.

  In assessing tenders for goods and services on the local procurement list, licensees within the mining industry are required to select the bid containing the highest level of Ghanaian participation in terms of ownership and management by Ghanaians and employment of Ghanaians, with the margin of preference depending on the value of the bid.

- **Oil and gas**

  Upstream petroleum industry

  All entities conducting petroleum activities in Ghana are required to ensure that local content is a component of such activities. Companies operating in the oil and gas industry must comply with local content obligations in the areas of employment and training, research and development and technology transfer.

  Businesses operating within the industry are required to submit local content plans to the Petroleum Commission for approval to guide their compliance with local content requirements at the commencement of their operations and annually thereafter. The local content plans must include five different subplans: on employment and training, technology transfer, legal services, financial services and research and development.

  Industry participants are also required to submit regular reports to the Petroleum Commission on their local content activities, including employment and training and technology transfer activities, and a broad local content performance report.

  When acquiring goods and services, upstream contractors in the petroleum industry are required to implement bidding processes that give preference to indigenous Ghanaian companies.

  As noted earlier, the supply of certain specified goods and services in the upstream industry is reserved for indigenous Ghanaian companies. These include communication equipment, cooling, heating and ventilation services, computers and accessories, drinking and industrial water, electrical equipment, personal protective equipment, security equipment, warehousing and waste management.

  The supply of commodity chemicals in the upstream petroleum sector has also been reserved for indigenous Ghanaian companies only. In addition, specific local content requirements apply to certain other goods or services. These requirements range from 10% to 100% and, in some instances, vary over time.

  Similar to the position for the mining industry described above, legal and financial services may only be procured from Ghanaian providers and insurable risks relating to activities conducted in the country may only be insured by Ghanaian insurance or reinsurance firms.

  Downstream petroleum industry

  The Draft Petroleum Regulations would introduce additional local content requirements for the downstream industry. These would include a requirement that all petroleum service providers (**PSPs**) in the downstream industry have at least 80% of managerial and executive positions, as well as 100% of non-managerial

and other positions, held by Ghanaian citizens, subject to limited exceptions. The National Petroleum Authority would be empowered to monitor and ensure compliance with the Ghanaian content and Ghanaian participation policies, procedures and obligations in the activities of each entity in the industry. For such purpose, entities in the downstream petroleum sector would be required to submit a Ghanaian Content and Ghanaian Participation Performance Report each year.

- **Power (electricity supply)**

  The electricity supply industry has a comprehensive local content framework, which includes employment and training, technology transfer, research and development and the provision of engineering, technical, maintenance and professional services.

  The Energy Commission is responsible for public education of service providers, the general public and other industry stakeholders on policy to enhance implementation of the local content rules in the industry. Before carrying out any activities, companies are required to submit a local content and local participation plan to the Energy Commission, demonstrating compliance with the local content requirements. For example, a local content and local participation plan submitted by a service provider in the electricity supply industry must contain detailed provisions that ensure that first consideration is given to services provided within the country and goods manufactured in the country. Reports covering local content activities must be submitted annually.

  Participants in the industry must meet specific local content targets for the employment of management and non-management staff. Companies are also required to train Ghanaians where employment targets cannot be met due to a lack of skills or expertise. Service providers are required to submit a succession plan for each employment position not occupied by Ghanaians. The plan must make provision for Ghanaians to understudy each incumbent expatriate for a maximum period of five years, after which the Ghanaian will assume the position concerned. However, service providers are permitted to retain a maximum of three management positions as expatriate positions for purposes of investor interests.

  Industry participants are required to source specified levels of locally manufactured equipment. Companies that establish manufacturing plants for electrical equipment, appliances or renewable energy equipment may enjoy tax incentives. Procurement procedures that incorporate local content as criteria for evaluating bids are also mandated. Where bids are equally adjudged, a bid with the highest level of local content prevails, and where the total value of the bid of an indigenous Ghanaian company exceeds the lowest evaluated bid by not more than 10%, the service provider is obligated to award the contract to the indigenous Ghanaian company.

  Professional services such as legal, financial and banking, engineering, technical consultancy and maintenance services must be sourced from Ghanaian providers. These services may also be provided in partnership with foreign service providers if the Ghanaian partner delivers at least 51% of the value of the service. Insurance services may only be procured through Ghanaian brokerage firms or reinsurance brokers. Transport, vehicle hire, vehicle maintenance, catering and janitorial services must also be sourced from Ghanaian companies unless the Energy Commission determines that it is impractical to do so.

4. Foreign land ownership restrictions

A foreign citizen cannot hold a freehold interest in Ghanaian land and may only obtain a leasehold interest in land for a term of 50 years or less at any one time. A company or corporate body that is more than 40% foreign owned is subject to the same restriction.

5. Regulatory oversight and reporting obligations

The GIPC has oversight of the requirements of the Ghana Investment Promotion Centre Act, as discussed earlier. Please see page 22 for further information on the regulatory oversight and reporting requirements for specific industries.

6. Penalties for non-compliance

A company that engages in any of the activities that are reserved for Ghanaians under the Ghana Investment Promotion Centre Act will be liable, on conviction, to pay a fine of between GHS 6 000 and GHS 12 000 and an additional fine of between GHS 300 and GHS 600 for each day that the offence continues.

A failure to register with the GIPC when required is punishable through a fine of between GHS 6 000 and GHS 12 000 and an additional fine of between GHS 300 and GHS 600 for each day that the offence continues. The GIPC may also order the payment of the fees, taxes, duties and other charges in respect of which benefits were granted to the company and advise the Bank of Ghana to suspend any remittance, including the transfer of capital, profits and dividends from or by the company. The employment of foreign nationals without an immigration permit is an offence punishable by a fine of GHS 1 000 or imprisonment for a term not exceeding two years or both.

In relation to the sector-specific requirements, each industry's regulations stipulate penalties for breaches of the applicable local ownership and empowerment provisions. These range from the loss or withholding of licences to fines and, in some cases, imprisonment. Penalties are often also permitted to be levied against Ghanaians who assist foreign nationals in contravening the provisions for local ownership and empowerment.

7. Proposed or contemplated changes to regulations

The various industry regulators regularly review the local content requirements applicable to their industry and changes to increase or broaden local content requirements are increasingly common. For example, the Petroleum (Local Content and Local Participation) (Amendment) Regulations 2021 (L.I. 2435), which came into force in February 2022, have amended certain provisions of the Petroleum (Local Content and Local Participation) (Amendment) Regulations 2013 (L.I 2204), and we understand the Petroleum Commission is considering further amendments to these regulations. The Minerals and Mining (Local Content and Local Participation) Regulations 2020 came into force in October 2020 and significantly expanded the local content regime applicable to the mining industry. Please also see the comments on the Draft Petroleum Regulations in the oil and gas section on page 23.

Kenya

BOWMANS

KENYA

1. Local empowerment obligations

Investors seeking to invest in Kenya can opt to obtain an investment certificate under section 3 of the Investments Promotions Act 2004. The issuance of the investment certificate depends on a number of factors, including the extent to which the investment will contribute to the:

- creation of employment for Kenyans;
- acquisition of new skills or technology for Kenyans;
- contribution to tax revenues or other government revenues;
- transfer of technology to Kenya;
- increase in foreign exchange, either through export or import substitution;
- utilisation of domestic raw materials, supplies and services;
- adoption of value addition in the processing of local, natural and agricultural resources; or
- utilisation, promotion, development and implementation of information and communications technology.

The holder of an investment certificate is entitled to the initial issuance of any additional licences required for his or her venture or operation. The licences will be mentioned on the certificate and, until the licences are actually issued by their issuing authorities, and for a maximum period of 12 months after the issuance of the certificate, the licences are deemed to have been issued by virtue of the investment certificate. This is subject to the submission of appropriate applications and fees. The holder of an investment certificate is also entitled to certain entry visas for management, technical staff or shareholders for a two-year period.

While there are currently no restrictions on the proportion of foreign ownership of shares in a listed company or to be issued in a public offer, the Capital Markets (Foreign Investors) Regulations 2002 (as amended in 2015) allow for the Cabinet Secretary for the National Treasury to prescribe a maximum foreign shareholding in respect of a privatisation of a state-owned enterprise, instances where local ownership in a strategic industry or sector is desirable, or where it is in the national interest to maintain a certain level of local ownership.

SECTOR-SPECIFIC REQUIREMENTS

- **Aviation**

  Regulations 5 and 12 of the Civil Aviation (Licensing of Air Services) Regulations 2018 provide that the applicant for a licence under the regulations is required to be a citizen of Kenya or, if a body corporate or a partnership, have 51% of its voting rights ultimately held by the Kenyan Government, a Kenyan citizen, or both.

  The Kenyan Civil Aviation Authority (**KCAA**) may exempt a person from this requirement having regard to the special nature of the air service provided or proposed to be provided by such person. In addition, the KCAA may accept any person eligible under a criterion set out in any multilateral agreement or arrangement to which Kenya is a signatory.

  Regulation 4(2)(b) of the Civil Aviation (Aircraft Nationality and Registration Marks) Regulations 2018 provides that legal or beneficial owners in an aircraft registered in Kenya should be a citizen of Kenya, bona fide resident in Kenya or a body corporate established in Kenya. Non-citizens and non-resident persons would have to obtain approval of the KCAA.

  Furthermore, Regulation 6 of the Civil Aviation (Unmanned Aircraft Systems) Regulations 2020 requires that an owner of an unmanned aircraft system, if not a body corporate, must be an adult Kenyan citizen or resident.

- **Information, communications technology and telecommunications (including broadcasting**

  The National ICT Policy issued on 7 August 2020 by the Cabinet Secretary of Information, Communication and Technology (**ICT**) provides that 30% of the ownership of each prospective

licensee wanting to provide ICT services must be held by Kenyans or a company that is majority owned by Kenyans. Licensees have three years to comply with this requirement but may seek a one-year extension from the Cabinet Secretary.

The Kenya Information and Communications (Broadcasting) Regulations 2009 allow the Communications Authority to prescribe the minimum amount of time for the broadcast of local content or a quota for local content for foreign broadcasters broadcasting in Kenya.

In assessing adherence to any local content requirements by licensees, one criterion that can be applied to qualify content as local is that the company producing the content is at least 20% owned by Kenyan citizens.

Furthermore, providers of subscription management services, defined under the Kenya Information and Communications (Broadcasting) Regulations as a service which involves the provision of support services to a subscription broadcasting service, should have a minimum of 20% local equity participation.

- **Engineering**

  Engineering consulting firms operating in Kenya must be registered or incorporated in Kenya and have a minimum of 51% of their shareholding held by Kenyan citizens. They must also be registered with the Engineers Board of Kenya under the Engineers Act 2011.

- **Insurance**

  The Insurance Act (CAP 487) provides that not less than one third of the paid-up share capital of an insurance company must be owned by citizens of the states forming the East African Community, a partnership whose partners are all citizens of those states, or that is wholly owned by the Kenyan Government.

  The Insurance Act further provides that at least 60% of the ownership of an insurance broker must be held by Kenyan citizens or by a company or partnership that is wholly owned by Kenyan citizens. It also requires that a minimum of one third of the members of the board of directors or managing board of an insurer must be Kenyan citizens.

- **Mining**

  The Mining (Local Equity Participation) Regulations 2012, issued under the previous Mining Act make the granting of every mining licence conditional on local equity participation amounting to at least 35% in respect of the mineral right.

  Furthermore, the current Mining Act 2016 provides for the Cabinet Secretary to prescribe limits on capital expenditure. A holder of a mining licence whose planned capital expenditure exceeds the prescribed amount is required to list at least 20% of its equity on a local stock exchange within three years of commencing production. However, the holder of a mining licence may apply in writing to the Cabinet Secretary to execute an equitable alternative mechanism that will allow the company to meet this requirement.

  An artisanal prospecting or mineral dealer's permit can only be held by Kenyan citizens or by bodies corporate with at least 60% shareholding by Kenyan citizens. A mining licence shall include an approved plan to employ and retain citizens of Kenya.

- **Pension funds/schemes**

  In terms of the Retirement Benefits Act 1997, at least 60% of the paid-up share capital of a scheme administrator must be held by Kenyan citizens, unless the administrator is a bank or an insurance company.

- **Private security**

  Corporate private security providers operating in Kenya must be licensed by the Private Security Regulatory Authority established by the Private Security Regulation Act 2016. A condition of licensing is that the prospective licensee must have a minimum 25% local shareholding.

- **Shipping**

  The Merchant Shipping (Maritime Service Providers) Regulations 2011, issued under the Merchant Shipping Act 2009, stipulate that the granting of every maritime service provider licence is conditional on the licensee being a Kenyan citizen or, in the case of a company, the company being incorporated under the local Companies Act with not less than 51% of its share capital held by Kenyan citizens.

- **Professional services**

  In Kenya, some professional services require a person seeking to be registered to be a citizen of Kenya. Examples are sections 15(1)(a) and 17(1)(a) of the Veterinary Surgeons and Veterinary Para-Professionals Act 29 of 2011. Section 16(1) of the same Act provides that a foreign veterinary surgeon can be temporarily registered if providing services through a volunteer non-profit organisation to underserved areas in Kenya.

2. Local management targets or restrictions

Generally speaking, there is no minimum requirement for participation of Kenyan citizens in management positions. However, there is one notable exception in section 27 of the Insurance Act, which requires that at least one-third of members of the board of directors or management board of an insurance company must be Kenyan citizens.

3. Other factors such as skills development, enterprise development, employee-related or procurement-related targets or restrictions

Under the Mining (Use of Local Goods and Services) Regulations 2017, holders of mining licences are required to give priority to goods and materials produced in Kenya and services provided by Kenyans or by entities incorporated and operating in Kenya or controlled by Kenyans, subject to quality, quantity and price considerations, vis-à-vis goods and services from foreign suppliers. To this end, as part of the licence application process, the licensees are required to submit procurement plans indicating how goods and services will be sourced from local producers to the Cabinet Secretary.

Moreover, the Mining (Employment and Training) Regulations 2017 require that prospective licensees provide, as part of the mining licence application process, plans outlining proposals for the employment and training of Kenyans. The plans should include, among other things: specification of the skills needed, the number of Kenyans the applicant plans to employ, recruitment of any expatriates required and their eventual replacement by Kenyans, particulars of the employment of marginalised groups and persons from communities inhabiting the area of the mining operations, and the proposed expenditure to be incurred under the plan.

4. Foreign land ownership restrictions

The Constitution of Kenya 2010 introduced a prohibition on ownership of freehold land by foreigners by providing that non-citizens are not permitted to own an interest in land longer than a leasehold term of 99 years.

Section 9 of the Land Control Act 2012 also provides that the Land Control Board can refuse consent if land or a share in the land is to be disposed of by way of sale, transfer, lease, exchange or partition to a person who is not a citizen of Kenya. A private limited liability company incorporated in Kenya cannot, in terms of the Land Control Act, own agricultural land unless all of its shareholders are Kenyan citizens.

In 2016, an amendment was introduced by the Land Laws (Amendment) Act 2016, which barred non-citizens from conducting any dealings in land meeting the following criteria without the prior written approval of the Cabinet Secretary in charge of the Ministry of Lands and Physical Planning:

- first- and second-row beachfront property; and
- land within 25 kilometres from the inland national boundary of Kenya.

This amendment was however found to be unconstitutional in *Malindi Law Society v Attorney General & Another (2021) eKLR* and it was determined that the status quo prior to the passing of the above Amendment Act should persist.

This means that non-citizens can own property in Kenya and enjoy all legal rights and protections that Kenyan citizens enjoy, subject to the Constitutional restriction that non-citizens can only own leasehold land for a term of not more than 99 years and to the statutory restriction in the Land Control Act which bars non-citizens from owning or dealing in agricultural land.

5. Regulatory oversight and reporting obligations

There is no regulatory authority with an overarching responsibility for oversight on local ownership requirements in Kenya. Regulatory oversight is conducted by each sector-specific regulator in accordance with the provisions of the enabling legislation highlighted in paragraph 1 under 'Sector-specific requirements'.

These regulators in the various sectors may conduct inspections that, among other things, seek to establish the extent of compliance with the local ownership rules.

6. Penalties for non-compliance

The regulators in the various sectors may refuse to grant a licence or suspend or withdraw a licence issued under the applicable legislation in the event of non-compliance with the local ownership rules.

Penalties for a general failure to comply with the relevant legislation may also be levied.

7. Proposed or contemplated changes to regulations

Limited relevance.

Malawi

BOWMANS

MALAWI

1. Local empowerment obligations

The Public Procurement and Disposal of Public Assets Act (Cap. 37:03) requires every ministry, department or agency (**MDA**) of Government, in all competitive bidding or public procurement, to give a 60% preference to indigenous black Malawians and 40% to non-indigenous Malawians and other nationals. Enforcement remains a challenge.

The Business Licensing Act (25 of 2012) requires every non-Malawian investor to show actual or potential foreign investment of at least USD 250 000 into Malawi before being issued with a business licence.

The Business Licensing Regulations (G.N. 45/2014) issued under the Business Licensing Act restrict the carrying on of retail business by non-Malawians to only the six urban areas (central business districts) of Blantyre, Kasungu, Lilongwe, Luchenza (Thyolo), Mzuzu and Zomba. Conduct of retail business by non-Malawians in the rural areas of Blantyre, Kasungu, Lilongwe, Thyolo, Mzuzu and Zomba, as well as in the other 22 districts of Malawi, is prohibited.

2. Local ownership targets or restrictions

SECTOR-SPECIFIC REQUIREMENTS

- **Information, communications technology and telecommunications (including broadcasting)**

  The Communications Act (Cap. 68:01) requires every electronic communications licensee, be it for network services or application services, to maintain a local shareholding of at least 20% at all times. Furthermore, the Communications Act limits foreign ownership in any business providing content services to 20%.

- **Mining**

  The Mines and Minerals Act (Cap. 61:01) restricts the issuance of certain types of prospecting and mining licences to Malawians, either natural persons or entities owned wholly by Malawians. The following licences are issued only to Malawians: non-exclusive prospecting licence; and small-scale mining licence and artisanal mining permit.

3. Local management targets or restrictions

The Companies Act (Cap. 46:03) requires every private company limited by shares to have at least one director and every public company limited by shares to have at least three directors. Only public companies are required to have company secretaries. Both private and public companies are required to have at least one director resident in Malawi. The resident director does not have to be Malawian. There is no minimum requirement for Malawian directors or management representatives.

Inasmuch as private companies are required to have one director and have discretion to appoint a company secretary, there are certain sectoral laws in regulated sectors, such as financial services laws, which require private companies to appoint and maintain a company secretary and more than one director resident in Malawi.

4. Other factors such as skills development, enterprise development, employee-related or procurement-related targets or restrictions

In terms of the Immigration Act (Cap. 15:03), all companies in Malawi, foreign or locally owned, can employ expatriates. That said, for key personnel representing foreign investors' interests, employment permits to expatriates are usually granted or renewed on condition that there is a local person or employee understudying the expatriate.

5. Foreign land ownership restrictions

A new law, the Land (Amendment) Act 2022, provides, among other things, that a person who is not a citizen of Malawi shall acquire land for investment purposes only.

The Land Act (Cap. 57:01) provides that land can no longer be issued as freehold to anyone in Malawi. The Land (Amendment) Act 2022 has just amended the Land Act to clarify the status of freehold land by requiring all holders of freehold land to develop their land within two years of the commencement of the 2022 Act, failing which the land shall revert to public land.

Unless justification is made for applying land for a longer lease than 50 years, the Land Act provides for a maximum term of 50 years for the lease of land to non-Malawians. The Land Act also requires all land sold to non-Malawian citizens to be advertised to Malawians first by publication in a local daily newspaper not less than 21 days before the sale of the land to a non-Malawian.

In accordance with the provisions of the Land (Amendment) Act, including the requirement to grant land leases to non-citizens of Malawi for investment purposes only, the Physical Planning (Amendment) Act 2022, among other things, sets out the process for granting approvals for land development permission. The Registered Land (Amendment) Act 2022 has amended the Registered Land Act (Cap. 58:01) to provide, among other things, for matters relating to situations in which title to land or a lease may be forfeited or lost by reason of fraud, corrupt practices or prescription.

6. Regulatory oversight and reporting obligations

The Directorate of Public Procurement and Disposal of Public Assets Authority is responsible for enforcing compliance with the regulatory requirement granting 60% preference of public procurement to indigenous black Malawians.

7. Penalties for non-compliance

There are various offences which can be committed when acting in contravention of most of the provisions of the above laws. For instance, it is a criminal offence punishable by a fine and/or imprisonment to operate a business in Malawi without a business licence issued under the Business Licensing Act.

8. Proposed or contemplated changes to regulations

New land amendment laws, which propose major land reforms (some of which have been covered in paragraph 5 above), have been passed by Parliament, received presidential assent in 2022 and await commencement dates.

Mauritius

BOWMANS

MAURITIUS

1. Local empowerment obligations

Generally, there are no restrictions on ownership of companies in Mauritius. A foreign citizen or legal person can own 100% of the shares in a Mauritian company, save in the following circumstances where conditions apply:

- a foreigner can only hold shares in a Mauritian company which holds immovable property in Mauritius with the prior approval of the Prime Minister's Office, except under the scheme set out under paragraph 4 below;
- in companies holding radio broadcasting or television broadcasting licences, only 20% of the shares can be held by foreigners; and
- in sugar companies listed on the stock exchange, no foreign investor is allowed to make an investment which is more than 15% of the voting capital of a Mauritian sugar company without the written authorisation of the Mauritius Financial Services Commission.

2. Local management targets or restrictions

Limited relevance.

3. Other factors such as skills development, enterprise development, employee-related or procurement-related targets or restrictions

Limited relevance.

4. Foreign land ownership restrictions

Investments made by foreign investors in immovable property (whether freehold or leasehold), or in a company holding freehold or leasehold immovable property in Mauritius, require approval from the Prime Minister's Office under the Non-Citizens (Property Restriction) Act 1975.

Such prior approval needs to be coupled with an authorisation from the Mauritius Economic Development Board (**EDB**) where a non-citizen not resident in Mauritius disposes of, purchases or otherwise acquires:

- an immovable property or part of a building for business purposes; or
- an apartment used, or available for use, as residence in a building of at least two levels above ground (G+2) provided the purchase price is not less than MUR 6 million (approximately USD 150 000) or its equivalent in any other hard convertible foreign currency.

However, the Prime Minister's approval is not required in the following instances:

A: A non-citizen holds property through:

- a non-renewable lease agreement for industrial or for commercial purposes under a lease agreement not exceeding 20 years;
- a deed of concession under the Fisheries and Marine Resources Act 2007; or
- a tenancy agreement for a term not exceeding four years.

B: A non-citizen purchases or otherwise acquires or holds any property:

- in accordance with other relevant legislations or any conventions to which Mauritius is a party;
- while he/she is legally married to a citizen under the Régime légal de communauté;
- By inheritance or by the effect of marriage.

C: A non-citizen or a person not resident in Mauritius holds, disposes of, purchases or otherwise acquires:

- shares or other securities of a company wishing to be admitted for quotation on the Official List of the Stock Exchange through public issue, offer for sale of shares and private placement of shares established under the Stock Exchange Act;
- any luxury villa, apartment or penthouse available for use as residence with or without attending services or amenities under the Invest Hotel Scheme, Property Development Scheme or Smart City Scheme under the Economic Development Board Act, 2017;
- an investment/s in a unit trust scheme and any other collective vehicle;
- a plot of serviced land for the purpose of constructing a residence from a company holding a Smart City Certificate or Property Development Scheme (PDS); or
- a residential property from a company which holds an Integrated Resort Scheme (IRS) or a Real Estate Scheme (RES) certificate.

5. Reporting obligations

Limited relevance.

6. Penalties for non-compliance

The acquisition of immovable property by a foreigner in breach of the Non-Citizens (Property Restriction) Act is void and of no effect. The property is taken into the possession of the Curator of Vacant Estates who has the obligation to sell it. The proceeds of sale, after deducting all charges, are paid to the non-citizen. A non-citizen who does not comply with the requirements as set out under section 3 of the Act will be liable to a fine not exceeding MUR 10 000 and imprisonment not exceeding one year.

7. Proposed or contemplated changes to regulations

Limited relevance.

Namibia

HD BOSSAU & CO.

NAMIBIA

1. Local ownership targets or restrictions

The Foreign Investment Act 1990 currently applies in Namibia. It provides that, subject to compliance with any formalities or requirements prescribed by any law in relation to the relevant business activity, a foreign national (which includes a company incorporated under the laws of any country other than Namibia) may invest and engage in any business activity that any Namibian citizen may undertake in Namibia.

Foreign nationals engaged in business activities or intending to commence activities in Namibia are not required to have local equity participation, subject to certain exceptions, nor transfer their businesses or any part thereof to the Government or to any Namibian. Under the Act, a 'Namibian' may either be a citizen of the Republic of Namibia or a Namibian-incorporated company with a majority shareholding by Namibians.

There is, however, a provision in the case of a foreigner applying for a licence or authorisation of an agreement for rights over natural resources where the Government is entitled to acquire an interest in any enterprise to be formed for the exploitation of such rights. The Act enables the Minister to prohibit foreign nationals from engaging in identified areas of service or production of goods or services if the Minister is of the view that Namibians have the ability to adequately supply and produce for such sectors.

SECTOR-SPECIFIC REQUIREMENTS

- **Information, communications technology and telecommunications (including broadcasting)**

  In terms of the Communications Act 2009, the Communications Regulatory Authority of Namibia will not issue a licence to any person that is not a Namibian citizen or a Namibian company. Furthermore, no more than 49% of the share capital of any such company may be owned by persons who are not Namibian citizens or Namibian companies that are not controlled by Namibian citizens.

- **Microlending**

  In terms of the Microlending Act 2018, a person may not be registered as a microlender or hold a certificate of registration as a microlender if such person is not a Namibian citizen or is not lawfully admitted to Namibia for permanent residence, and, being a corporate entity, is not registered in Namibia and the majority of the member's interest or shareholding is not owned by a Namibian citizen or a person lawfully admitted to Namibia for permanent residence.

- **Mining**

  In February 2016, the Minister of Mines and Energy issued new standard licence conditions applicable to exclusive prospecting licences and mining licences in terms of which a minimum of 5% of the share capital of the relevant mining company must be held by Namibian citizens or companies wholly owned by Namibian citizens. Further licence conditions provide that there must be a minimum of 20% representation of previously disadvantaged nationals (**PDNs**) in the management structure of a mining company.

  Mining claims are only granted to Namibian citizens or to companies owned only by Namibian citizens. However, a mining claim holder may choose to contract a foreigner, or a company owned by foreigners, to prospect and mine. Such a contract should be placed on record with the Ministry.

  The Diamond Act 1999 provides that the Minister of Mines and Energy may not grant a licence unless the applicant is a Namibian citizen or is permanently resident in Namibia. The Act also gives preference to Namibian citizens with regard to products and services, which includes making use of Namibian contractors, subcontractors, suppliers and training programmes.

In terms of the Petroleum Products and Energy Act 1990, downstream petroleum licences will not be issued to an applicant if such an applicant is not a Namibian citizen, or is not lawfully resident in Namibia, or loses Namibian citizenship or the right to be lawfully resident in Namibia. If the applicant is a body corporate, such a licence will also not be issued to it if the applicant is not registered in Namibia or if its registration in Namibia has been cancelled.

In terms of the Minerals (Prospecting and Mining) Act 1992, holders of mineral licences are required, when employing employees, to give preference to Namibian citizens who possess appropriate qualifications, expertise and experience for purposes of the operations to be carried on in terms of such mineral licence. Furthermore, with due regard to the need to ensure technical and economic efficiency, holders of mineral licences are required to make use of products or equipment manufactured or produced, and services available, within Namibia.

A new mining empowerment law has been proposed by the Minister of Mines and Energy in terms of which mining firms will be compelled to have a minimum 20% ownership stake reserved for PDNs.

2. Local management targets or restrictions

Limited relevance.

3. Other factors such as skills development, enterprise development, employee-related or procurement-related targets or restrictions

NEW EQUITABLE ECONOMIC EMPOWERMENT FRAMEWORK BILL

In terms of section 23(1) of the New Equitable Economic Empowerment Framework Bill 2016 (**NEEEF Bill**), which has not yet come into effect, any private sector enterprise is required, within a prescribed period, to sell at least 25% ownership, or a percentage as determined by the Minister of Industrialization, Trade and SME Development, to PDNs. However, at the Namibia Economic Growth Summit in August 2019, President Hage Geingob explained that the tabling of the NEEEF Bill was not a means to take ownership away from advantaged Namibians and the 25% ownership pillar would likely be done away with because it would not translate into broad-based empowerment.

The NEEEF Bill also makes provision for other empowerment pillars such as management control and employment equity, human resources and skills development, entrepreneurship development and marketing, corporate social responsibilities and value addition, technology and innovation.

The NEEEF Bill contains certain local management targets. The current management target is set at 50%.

The NEEEF Bill also contains mandatory human resources and skills development requirements in terms of which businesses will be required to spend an amount of 0.5% of their gross wages on training costs. Training costs are calculated as the total training cost minus the Vocational Education and Training (**VET**) levy contribution.

ELECTRICITY ACT

In terms of the Electricity Act 2007, the Minister of Mines and Energy may grant licences subject to terms and conditions recommended by the Electricity Control Board. Generation licences often include, as a licence condition, that a stipulated percentage of the shareholding of the relevant project company (which varies between 23% and 30%) should be held by PDNs and there must be a minimum of 20% representation of PDNs in the management structure of the project company.

COMPETITION ACT

The Competition Act 2003 empowers the Namibian Competition Commission (**Commission**) to impose certain conditions when considering a merger that is regulated by it. The Commission has imposed local empowerment conditions in the past such as in the Walmart/Massmart merger (2011) where, as a condition of the approval of the merger, Walmart was obliged to include local ownership participation, as well as that of PDNs.

MARINE RESOURCES ACT

In terms of the Marine Resources Act 2000, an application for a right of exploitation or a quota, whether the applicant is a Namibian citizen or an entity held by Namibian citizens, may be considered. If the applicant is not a Namibian citizen or an entity held by Namibian citizens, then the applicant must show the advancement of persons in Namibia who have been socially or educationally disadvantaged by discriminatory laws or practices prior to Namibian independence.

In addition, the Minister of Fisheries and Marine Resources may, in his or her discretion, impose conditions on fishing licences or quotas.

PUBLIC PRIVATE PARTNERSHIP ACT

In terms of the Public Private Partnership Act 2017, all public private partnership projects must be procured through a competitive bidding process comprising a pre-qualification and final selection stage. The final selection stage involves a request for qualification and a request for proposal. The evaluation criteria under the request for proposal must include preference for the protection and advancement of previously disadvantaged persons, small and medium enterprises, nationally owned organisations or other such persons or organisations in compliance with the applicable legislation.

INSURANCE

In terms of the Namibia Special Risks Insurance Association Act 2017, a person is not eligible for appointment as a director if he or she is not a Namibian citizen or the holder of a permanent residence permit in Namibia.

Furthermore, both the Short-Term Insurance Act 1998 and the Long-Term Insurance Act 1998 require that half of the members of the board of directors of an insurance or re-insurance company must be Namibian citizens resident in Namibia. This is also the case for the managing director, although permission may be sought for this position to be held by a resident non-Namibian citizen.

AFFIRMATIVE ACTION (EMPLOYMENT) ACT

The Affirmative Action (Employment) Act 1998 provides for the establishment of the framework of an obligatory Employment Equity Programme (**EEP**) by employers, to be administered by an independent government agency, the Employment Equity Commission.

An EEP is a set of measures designed to ensure that persons in designated groups enjoy equal employment opportunities and are equitably represented in the various positions of employment. In the private sector, employers who employ 25 or more employees will be required to develop and implement EEPs. It is proposed that EEPs will benefit previously disadvantaged groups, including people of colour, women and handicapped persons. Preferential treatment must be given to Namibian citizens when filling employment positions or providing training. Registered employers must compile an affirmative action report, which must include the names of every non-Namibian citizen employed.

PUBLIC PROCUREMENT ACT

The Public Procurement Act 2015 includes preferential procurement provisions that seek to benefit local products, PDNs, women and youths, small and medium enterprises and Namibian enterprises in general.

In terms of the Public Procurement Act, a public entity may limit participation in open advertised bidding proceedings to the citizens of Namibia or entities incorporated in Namibia, with no less than 51% equity owned by Namibian citizens, of which no less than 30% is owned by previously disadvantaged persons. A Namibian public entity that contemplates a partnership between a bidder or supplier and foreign entities must consider and give more weight to entities where 60% of key employees are Namibians. A public entity means any office, ministry or agency of the Namibian Government, and includes a local authority, a regional council and a public enterprise as referred to in the Public Enterprise Governance Act 2006.

NAMIBIAN INVESTMENT PROMOTION ACT

In terms of the Namibian Investment Promotion Act 2016 (**NIPA**), which has not yet come into force, investment in the natural resources sector, or in any other sector which is above a certain threshold (which is still to be determined), requires the prior approval of the relevant line Minister. Any change of control of such investment, or transfer of any licences, also requires prior approval. This will be applicable to any form of merger, acquisition, direct or indirect sale or transfer. This Act has been passed by Parliament but is yet to be brought into force. NIPA will come into force on a date set by the Minister responsible for investment, in the Namibian Government Gazette.

4. Foreign land ownership restrictions

A foreign person who obtains a legal right to remain in Namibia is generally accorded the same treatment as Namibian citizens in respect of land ownership. However, the Agricultural Land Reform Act 1995, prohibits foreign nationals from entering into any agreement regarding the right to occupy or possess agricultural land without the written permission and consent of the Minister of Lands.

Ownership of agricultural land by foreign nationals is also only permissible with Ministerial approval. The Regional Councils Amendment Bill 2015 empowers the Minister (responsible for regional government affairs) to determine the methods of sale or letting of real estate that regional councils apply. The aim is to prohibit the acquisition of this property by foreign nationals in 'settlement areas' and, therefore, obliging the owners of such property to deal exclusively with Namibian citizens (the settlement areas are designated by regional councils and are areas outside existing local authorities).

In terms of the Local Authorities Amendment Bill 2015, certain areas must be designated by a local authority as reserved for the acquisition of property by Namibian citizens. According to this Bill, foreign nationals will require written consent from the Minister (responsible for local government affairs) to lease such property. Such lease may not exceed 30 years (but must be for a period greater than one year).

The Land Bill 2016 proposes barring foreigners from owning agricultural, commercial and communal lands.

5. Regulatory oversight and reporting obligations

Limited relevance at this time.

Currently, the NEEEF Bill is not in effect but when enacted, it will establish the Economic Empowerment Advisory Council. This Council will consist of a chairperson and members of the Cabinet and will be appointed by the President. The President further has the power to appoint alternate members. They will be responsible for various functions, including reporting to the President on the implementation of the empowerment framework, exercising supervision, maintaining a database, ensuring consistency in the implementation of economic empowerment and providing direction to the Economic Empowerment Commission on the implementation of the Economic Empowerment Framework. Some functions of the Commission include overseeing, supervising and promoting adherence to the Act. The Commission will further be responsible for the implementation of the empowerment framework, fostering collaboration between the public and private sector, and receiving and investigating complaints regarding the Act.

The Affirmative Action (Employment) Act established the Employment Equity Commission to enquire whether employers have adopted and established an affirmative action plan, to provide advice on the Act, issue guidelines and facilitate training programmes. There are certain identified employers that must comply with the Act and must submit an action report not later than 18 months from the date when identified as a relevant employer. This report must be submitted to the Commission every 12 months unless an extension is granted.

The Namibian Investment Promotion Act has been passed but is yet to be brought into force. The regulatory oversight is entrusted to the line minister and the Namibian Investment Centre. The Investment Centre will function as a part of the department of the Ministry and will assist in the implementation of the Act. This Act will require that all foreign investors must apply for the approval of any investment.

6. Penalties for non-compliance

The NEEEF Bill (which is not yet in effect) contains penalty provisions for non-compliance with its provisions including:

- a fine or imprisonment for a period not exceeding 12 months; and
- a fine or imprisonment for a period not exceeding 10 years or both.

Broadly, a person commits an offence if he or she knowingly mispresents or provides false information in respect of the compliance of a private sector enterprise, or to gain a benefit associated with a compliance status, or where he or she engages in 'fronting practices' (indicating that PDNs are receiving benefits which are not actually flowing to them).

If such person is convicted of any of the above offences, that person will be liable to a fine (determined by the courts) or to imprisonment for a period not exceeding 10 years or to both a fine and such imprisonment or, if the convicted person is not a natural person, to a fine not exceeding 10% of its annual turnover.

7. Proposed or contemplated changes to regulations

Limited relevance.

Nigeria

UDO UDOMA & BELO-OSAGIE

NIGERIA

1. Local empowerment obligations

The Nigerian Investment Promotion Commission (**NIPC**) Act (Cap N117 of the Laws of the Federation of Nigeria (**LFN**), 2004) (**NIPC Act**), promotes investment and participation in the operation of any enterprise in the Nigerian economy. Under the NIPC Act and the Nigerian Immigration Act Cap 171, LFN 2004, (**Immigration Act**), companies with foreign shareholding must be registered with the NIPC and obtain a Business Permit from the Federal Ministry of Interior before commencing operations in Nigeria.

Foreign ownership of 100% is permitted in all industries, other than those on the negative list. The negative list prohibits investment by both Nigerian and foreign investors in the production of arms and ammunition, and the production of and dealing in narcotic drugs and psychotropic substances. However, certain sector-specific regulations and laws either limit or prohibit foreign ownership.

SECTOR-SPECIFIC REQUIREMENTS

Certain sectors in the Nigerian economy require local participation including, among others, the shipping and oil and gas sectors, while in certain sectors, foreign participation is not possible, such as in the advertising sector. The relevant sectors are summarised below:

- **Advertising**

  The Advertising Practitioners Council of Nigeria (established under the Advertising Practitioners (Registration, etc.) (Act 55 of 1988, CAP A7, LFN, 2004) introduced the Proclamation on Registration and Licensing Regime in the Advertising Industry, 2013 (**Proclamation**), which is a set of licensing guidelines and requirements that govern advertising practices in Nigeria.

  The Proclamation stipulates that only a national agency, being a locally incorporated company with at least 74.9% Nigerian shareholding, may advertise to the Nigerian market. The implication of this is that a foreign agency (whether or not locally incorporated) cannot practise advertising that is targeted at the Nigerian market.

- **Architecture**

  The Architect (Registration, etc.) Act (CAP A19, LFN, 2004) provides for the registration of non-Nigerian citizens only if the applicant's country of nationality grants reciprocal registration facilities to Nigerian citizens and if the applicant has been resident in Nigeria for at least five years preceding the date of his or her application for registration.

- **Aviation**

  The Civil Aviation Act 2006 provides that in order for an aircraft to be used by any person in Nigeria for any flying undertakings, an aviation licence, permit or other authorisation of the Nigerian Civil Aviation Authority (**NCAA**) must be obtained. In order to qualify for the granting of an aviation licence or other related aviation permits, the NCAA must be satisfied that the applicant is a Nigerian citizen or, in the case of a corporate body, that the applicant is a company registered in Nigeria with a majority of its shares held by Nigerian citizens.

- **Engineering**

  In terms of the Engineering (Registration, etc.) Amendment Act 2018, any company engaging in a service that is considered as the practice of engineering, must be registered with the Council for the Regulation of Engineering (**COREN**). A company applying for registration with the COREN must show that it has Nigerian directors who are registered with the COREN holding at least 55% of the shares in the company.

- **Information, communications technology and telecommunications (including broadcasting)**

  The National Broadcasting Commission Act (CAP N11, LFN, 2004) requires that a company applying for a Nigerian Broadcasting Commission (**NBC**) licence must demonstrate that it is not representing any foreign interests and that it is substantially owned and operated by Nigerians.

  Furthermore, the Nigerian Broadcasting Code 2019 (**Code**) provides that the NBC in the regulation of broadcasting shall ensure that broadcasting services are at least 70% owned and operated by Nigerians.

  In terms of the National Office for Technology Acquisition and Promotion Act (CAP N62, LFN, 2004) (**NOTAP**), every agreement or contract in which a foreign national or foreign entity is to provide foreign technology, management, consultancy or assistance to a Nigerian company, is required to be registered (with the issue of a registration certificate) by the Nigerian company with the NOTAP. This registration must take place no later than 60 days from the date of execution or conclusion of the contract.

- **Oil and gas**

  The Nigerian Oil and Gas Industry Content Development Act, 2010 (**Local Content Act**) prescribes various levels of compliance in relation to different activities that may be conducted in operations and transactions in the industry. In the oil and gas sector, indigenous companies (i.e., companies with 51% or more Nigerian shareholding) are given preference under the Local Content Act in relation to the award of contracts in the industry.

- **Pharmaceutical**

  The provisions of the Pharmacist Council of Nigeria Act, 2004, provide for the registration of non-Nigerian citizens only if the applicant's country of nationality grants reciprocal registration facilities to Nigerian citizens and if the applicant has been resident in Nigeria for at least 12 months immediately preceding the date of his or her application for registration.

- **Private security**

  In terms of the Private Guard Companies Act (CAP P30, LFN, 2004), a foreign investor cannot acquire an interest in, or sit on the board of, a Nigerian private security guard company.

- **Shipping**

  The Coastal and Inland (Cabotage) Shipping Act 2004 (**Cabotage Act**) restricts the use of foreign-owned and/or manned vessels for coastal trade in Nigeria and promotes the development of indigenous or Nigerian ownership of vessels.

2. Local management targets or restrictions

SECTOR-SPECIFIC REQUIREMENTS

- **Architecture**

  The Qualifications for Registration of Architects and Architectural Firms Regulation states that the directors of architectural firms must be fully registered architects with Nigerian citizenship.

- **Information, communications technology and telecommunications (including broadcasting)**

  The Nigerian Broadcasting Code 2019, provides that the NBC, in the regulation of broadcasting, shall ensure broadcasting services are at least 70% owned and operated by Nigerians.

- **Private security**

  Private security companies must be completely owned and managed by Nigerian citizens.

- **Shipping**

  All vessels used for cabotage, or coastal transportation of goods and services must be managed by Nigerian citizens.

3. Other factors such as skills development, enterprise development, employee-related or procurement-related targets or restrictions

GENERAL REQUIREMENTS

Pursuant to section 8 of the Immigration Act, where a company intends to employ expatriates, it must apply for expatriate quota positions for the relevant number of expatriate personnel it intends to employ. An expatriate quota is the authorisation that establishes the maximum number of expatriates that a Nigerian company may employ. The Immigration Desk of the Federal Ministry of Interior has the discretion to determine the number of quota approvals to grant to any applicant and they are granted on a temporary basis. The Nigerian Government has a policy of encouraging the employment and training of Nigerians and, therefore, the renewal of a quota position is usually dependent on an applicant providing evidence that at least two Nigerian employees have been appointed to understudy the expatriate.

In terms of public procurement, the Public Procurement Act 2007 reserves the right to bid on certain projects to domestic contractors and suppliers registered or incorporated to carry on business in Nigeria. A procuring entity may also grant a margin of preference when evaluating tenders from domestic bidders compared with tenders from foreign bidders, or when comparing tenders from domestic suppliers offering goods manufactured locally with those offering goods manufactured abroad. Where a procuring entity intends to allow domestic preferences, the bidding documents must clearly indicate any preference to be granted to domestic suppliers and contractors.

SECTOR-SPECIFIC REQUIREMENTS

- **Advertising**

  The Nigerian Code of Advertising Practice, Sales Promotion and Other Rights/Restrictions on Practice (5th Edition) (**Advertising Code**) stipulates that advertising positions in advertising and media agencies may be occupied by non-Nigerians only where there are no qualified Nigerians available for such positions. The Code further states that non-Nigerians shall be employed only in situations where such employment promotes the development of local manpower.

  In addition, the Advertising Code requires that the majority of the content of advertisements, such as equipment, footage and production input, shall as much as possible be Nigerian. The Advertising Code also stipulates that Nigerian advertising practitioners, artists of equal or similar qualification and/ or experience be given first consideration in any advertising project, contract and/ or deal.

- **Engineering**

  The Regulation on the Construction Industry (**COREN Regulation**) made by the COREN stipulates that the design of facilities for major engineering contracts shall be carried out in Nigeria. It also requires that the award of contracts for engineering works and services up to NGN 2.5 billion be exclusively reserved for indigenous engineering firms, and that where, in the opinion of the owner of the contract, the expertise required is beyond the engineering capability of Nigerian firms, a foreign firm be required to partner with a Nigerian firm acceptable to the owner in the execution of the project. Furthermore, all major engineering contracts are required to have a training component for the training of engineering personnel.

- **Oil and gas**

  In terms of the Local Content Act, indigenous service companies are given exclusive consideration in bids for contracts and services that are to be executed on land or in swamp operating areas of the Nigerian oil and gas industry.

- **Information, communications technology and telecommunications**

  The NITDA issued the Guidelines for Nigerian Content Development in Information and Communications Technology 2019 (**NITDA Guidelines**), consisting of six sub-guidelines for the regulation of the information and communications technology (**ICT**) industry. The guidelines include provisions that state that telecommunication companies shall provide a local content development plan for the creation of jobs, recruitment of Nigerians, human capital development and use of indigenous ICT products and services for value creation. It also mandates telecommunication companies to use indigenous companies for the provision of at least 80% of all value-added services and network services on their networks, etc.

  In addition, the Guidelines for Human Capital Development in ICT also provide that all information technology, online service provisioning and internet content multinational companies in Nigeria shall demonstrate evidence of operations and projects of research and development (R&D) departments or divisions that carry out value-added services in-country, employing Nigerians in R&D to contribute to job creation and empowerment of Nigerians.

- **Shipping**

  The Cabotage Act established a fund known as the Cabotage Vessel Financing Fund to promote the development of indigenous ship acquisition capacity by providing financial assistance to Nigerian operators in the domestic coastal shipping industry. The beneficiaries of the fund are Nigerian citizens and shipping companies wholly owned by Nigerians.

4. Foreign land ownership restrictions

Foreign ownership of land is prohibited in Nigeria following the Supreme Court of Nigeria's decision in the case of *Ogunola & Ors v. Eiyekole & Ors. (1990)* in which section 1 of the Land Use Act (CAP 5 LFN, 2004) was considered. Foreign nationals may however own property through the incorporation of a corporate body in Nigeria to acquire land.

5. Regulatory oversight and reporting obligations

REGULATORY OVERSIGHT

- **Oil and gas**

  The Nigerian Content Development and Monitoring Board (**NCDMB**) ensures compliance with the local content requirements in the oil and gas industry, while the Midstream and Downstream Petroleum Regulatory Authority and the Nigerian Upstream Regulatory Commission were established under the Petroleum Industry Act 2021, to regulate midstream and downstream operations and upstream operations respectively in the Nigerian petroleum industry.

- **Advertising**

  The Advertising Practitioners Council of Nigeria (**APCON**) regulates the advertising industry.

- **Shipping**

  The Nigerian Maritime Administration and Safety Agency (**NIMASA**) regulates maritime operators in the shipping/maritime industry.

- **Aviation**

  The Nigerian Civil Aviation Authority (**NCAA**) is the primary regulator of the aviation industry.

- **Mining**

  The Ministry of Mines and Steel Development regulates the mining industry.

- **ICT**

  The National Information Technology Development Agency regulates the ICT industry.

REGULATORY OBLIGATIONS

Under the Local Content Act, each oil and gas operator must, within 60 days of the beginning of each year, submit to the Nigerian Content Development and Monitoring Board (**NCDMB**) its annual Nigerian Content Performance Report covering all its projects and activities for the year under review by the NCDMB. This report must include employment and procurement achievements.

6. Penalties for non-compliance

The penalty for failing to obtain a business permit due to 'the instigation, connivance of or neglect of a director, manager, secretary of the company, or any person purporting to act in any such capacity', is imprisonment of the officer or person upon conviction for a term of three years or a fine of NGN 2 million, or both. In addition, the company could be liable to a fine of NGN 5 million upon conviction. The court may also issue an order to wind up the company.

SECTOR-SPECIFIC PENALTIES

- **Advertising**

  APCON is empowered to impose any of the following sanctions for non-compliance: reprimand, warning, light or heavy fine, reduction of the scope of licence (or scope of practice for individuals and sole practitioners), temporary suspension of registration or licence, removal from the register of practice, revocation of licence and a recommencement or reactivation fine in cases of suspension or revocation of licences, and removal from the register of practice.

- **Aviation**

  The NCAA is empowered to revoke, suspend or vary a licence, permit, certificate or authorisation if it is no longer satisfied that the holder of such licence, permit, certificate or other authorisation is a Nigerian citizen, or in the case of a corporate body, that the applicant is a company registered in Nigeria with a majority of its shares held by Nigerian citizens.

- **Information, communications technology and telecommunications (including broadcasting)**

  The National Information Technology Development Agency (NITDA) Act 2007 provides that anybody, corporate or person, that fails to comply with the guidelines and standards formulated by the NITDA commits an offence and is liable on conviction to a fine of NGN 200 000 or imprisonment for a term of one year, or to both such fine and imprisonment, for a first offence; and for a second and subsequent offence, to a fine of NGN 500 000, or imprisonment for a term of three years, or both .

  The initial penalty for non-compliance with the local content requirements, stipulated under Class B in the Nigeria Broadcasting Code, is a warning to remedy the breach within a certain timeframe. Failure to comply with the warning attracts a reduction of the daily broadcast hours, which may result in the suspension of the broadcast licence for a period of 30 days if the breach persists. Recommencement of full broadcast hours or full broadcast attracts a fee, which varies depending on the severity of the breach.

- **Engineering**

  Any project owner that contravenes the COREN Regulation is guilty of an offence and is liable to be prosecuted. The engineer or engineering personnel, if found culpable, will be tried separately, by the Registered Engineers Disciplinary Tribunal.

- **Oil and gas**

  An oil and gas operator, contractor or subcontractor who carries out any project contrary to the provisions of the Local Content Act, commits an offence and is liable upon conviction to a fine of 5% of the project sum for each project in which the offence is committed, or cancellation of the project by the NCDMB.

- **Private security**

  Where a person commits an offence under the Private Guard Companies Act, he or she is liable on conviction in the case of an individual to a fine of NGN 400 or imprisonment for 12 months or to both fine and imprisonment. In the case of a body corporate or incorporate, every officer is liable on conviction to a fine of not less than NGN 5 000.

  The Private Guard Companies Regulations 2018 (**2018 Regulations**), made pursuant to the Private Guard Companies Act, however, provide for stiffer penalties for the contravention of the provisions of the Regulations. Any company that contravenes the provisions of the 2018 Regulations is liable to a fine of NGN 500 000, while any guard or person contravening the regulations is liable to a fine of NGN 100 000. Furthermore, the licensing authority may seal an office or revoke the licence of a company for contravening the provisions of the 2018 Regulations.

- **Shipping**

  Any vessel that does not comply with the requirements contained in the Coastal and Inland (Cabotage) Shipping Act 2004 is liable, on conviction, to a fine of not less than NGN 10 million and/or forfeiture of the vessel involved in the offence or such higher sum as a court may deem fit.

7. Proposed or contemplated changes to regulations

Limited relevance.

Rwanda

TRUSTLAW CHAMBERS

RWANDA

1. Local ownership targets or restrictions

There are generally no restrictions in place for foreign ownership of companies in Rwanda. Companies can be 100% foreign owned and this ownership may be held by either legal or natural foreign persons. However, there is a requirement to have a resident director for all companies. The resident director does not have to be a Rwandan citizen but must be a legal resident of Rwanda.

2. Local management targets or restrictions

Limited relevance.

3. Other factors such as skills development, enterprise development, employee-related or procurement-related targets or restrictions

SKILLS DEVELOPMENT

Generally, there are no skills development requirements save for companies that apply for investment certificates and the resultant incentives. Usually, training of local people will form part of the requirements for the investment certificates.

An investment certificate should be differentiated from a company registration certificate. An investment certificate is issued to an investor who applies for it and provides incentives based on the amount of investment. This certificate is issued by the Investment Office of the Rwanda Development Board after a company has been registered by the Office of the Registrar General, also a department at the Rwanda Development Board.

There are no adverse implications of not having an investment certificate, as it is simply an optional document to attract the incentives that an investor may want. Without it, an investor will simply be bound to the general laws on taxation and immigration.

The conditions in investment certificates differ for each investor but are usually around preferential tax rates and increased foreign employment without the need for the labour market test (see the section on Employment). In exchange, the investor is given targets, usually around the amount of money to invest in the economy and the number of locals to employ during the period of the investment.

Other regulated sectors such as electricity, mining and telecommunications usually include training of locals as a condition to renew licences. However, in our experience, no application for the renewal of a licence has been rejected solely based on the fact that the applicant has not demonstrated skills transfer.

EMPLOYMENT

Law 57 of 2018 on Immigration and Emigration in Rwanda, and its enabling Ministerial Order 06/01 of 2019 relating to Immigration and Emigration, require all foreign employees working in Rwanda to hold work permits. There are no exceptions to this requirement. The granting of work permits is subject to an employer proving the lack of local talent for a particular position.

International agencies, as well as companies and/or NGOs with contracts with the Government, may be given work permits with fewer requirements than those provided for under the laws.

The Ministry of Labour and Public Service periodically releases an 'Occupations on Demand List' (ODL) which highlights skills that are lacking or in short supply in the local market. For these occupations, work permits are easily granted once a foreign national provides proof of skill. These permits are usually given for two years and are usually also freely renewed as long as the skill remains on the ODL.

For all other occupations, an employer is required to undertake a 'Labour Market Test'. This is a procedure in terms of which a company must demonstrate that, after sufficient advertising, it has

failed to find a Rwandan suitable for the position that must be filled. Usually, a two-year permit will be given, during which time the company will be required to train locals for this position.

The CEO or managing director of a foreign-owned company will usually be given a work permit fairly easily regardless of the skill level.

PROCUREMENT

There are no compulsory targets and restrictions for private companies. Law 62 of 2018 governing Public Procurement (**Procurement Law**), however, provides minimum amounts below which tenders can only be offered to local companies. Local companies are furthermore given a 15% preferential treatment over foreign companies in tenders that exceed the minimum threshold.

4. Foreign land ownership restrictions

The new Law 27/2021 governing land in Rwanda, provides that foreigners can own land under a lease for periods up to 99 years, which are renewable. This restriction also applies to companies which are majority (51%) foreign owned. However, the law also provides that a Presidential Order may, for exceptional circumstances of strategic national interest, approve the granting of a freehold title to a foreigner. Foreigners are however restricted under the new law to ownership of one residential family house, and any other land owned by a foreigner must be for investment purposes. Foreigners' leasehold titles are not automatically renewable.

Rwandans are also given up to 99-year automatically renewable leases, with freehold tenure restricted to investors. Individuals who had freehold at the time of the land reform maintained their freehold titles; however, if transferred, the new owner receives a leasehold title.

5. Reporting obligations

Limited relevance.

6. Penalties for non-compliance

Law 007/2021 governing companies in Rwanda, provides for a fine of up to RWF 5 million (approximately USD 5 000) for failure to appoint a resident director. Regarding work permits, there is no liability on the company but rather on the individuals without work permits. Individuals can be fined up to RWF 200 000 (approximately USD 200). Licensees also risk fines specified in specific licences for failure to meet licensing conditions.

Licences (above and beyond the Company Registration Certificate) are given in regulated sectors: banking, energy, insurance, mining, payment services, tourism, transport and water. A company cannot operate in such sector without a valid licence.

Local empowerment/local content provisions in licences will usually be limited to the number of locals to be trained and employed by a particular date (usually a percentage of the total employees). The risk of non-compliance is mostly limited to fines as opposed to loss of licences.

An employer who employs a foreign national without a work permit is liable upon conviction to imprisonment for a term of not less than 15 days and not more than five months, or a fine not less than RWF 1 million and not more than RW 3 million or both.

7. Proposed or contemplated changes to regulations

Limited relevance.

South Africa

BOWMANS

SOUTH AFRICA

1. Local empowerment obligations

Broad-based black economic empowerment (**B-BBEE**) is aimed at incentivising companies to promote the inclusion of black South Africans (being South African citizens who have been racially classified as African, Indian or Coloured) in the ownership, management and control of the country's economy. B-BBEE is not aimed at restricting foreign ownership or investment in the country.

The B-BBEE status required by most entities doing business in the South African market is primarily driven by commercial pressures rather than by regulatory requirements, although there are limitations on foreign participation in certain strategic sectors and in certain instances B-BBEE minimum thresholds may be set. There are currently no restrictions on land ownership by foreigners in South Africa.

The Broad-Based Black Economic Empowerment Act 2003 (**BEE Act**) is the principal legislation for the promotion and measurement of B-BBEE. The Codes of Good Practice (**Codes**) are published under the BEE Act and detail the manner in which B-BBEE must be measured in South Africa. There are also various sector-specific codes published under the BEE Act which detail the manner in which B-BBEE must be measured for businesses operating in particular sectors (although sector-specific codes generally apply the same broad principles as the Codes). Where a sector-specific code has been issued, businesses in that sector are required to apply the relevant sector code rather than the Codes.

In assessing B-BBEE, a 'scorecard' (measurement) approach is used whereby the different aspects of B-BBEE, including ownership, management control, skills development, enterprise and supplier development (including preferential procurement), and socioeconomic development, are accorded points to arrive at the B-BBEE score of a company. The Codes set out these indicators to measure B-BBEE and the weightings attached to these indicators.

The 'ownership' element in the Codes relates to the extent to which ownership interests (i.e., voting rights and economic interest) in a measured enterprise, are held by black people and black women specifically, and the extent to which such ownership interests are unencumbered by debt (referred to as 'net value').

The Codes provide that the general ownership 'compliance' target, for which points are scored on a pro rata basis, is 25% plus one vote of the shares in the company held by black South Africans. Additional points are awarded for ownership held by black female South Africans (with an ownership 'compliance' target of 10%).

Sector-specific codes may contain slightly different ownership targets.

The Codes also impose a subminimum threshold of 40% for the net-value target, failing which a penalty will be imposed in terms of which the measured enterprise will drop one B-BBEE level.

Other than in certain state licensing, permitting and authorisation processes, there is no 'hard law' requiring that any private entity in South Africa must achieve a certain level of B-BBEE or that black people must hold a certain percentage of equity in a business.

There are also no sanctions for non-compliance under the B-BBEE legislative framework. However, B-BBEE 'compliance' provides commercial benefits and is considered a business imperative, especially for companies doing business with government bodies and state-owned enterprises and, increasingly, with private sector customers.

2. Local ownership targets or restrictions

There are no general restrictions on foreign ownership in South Africa, although certain strategic sectors are subject to specific regulation, including local ownership targets. Overleaf are some examples of the types of local ownership targets in licensing and approval processes in certain sectors.

SECTOR-SPECIFIC REQUIREMENTS

- **Aviation**

  Under South African law, every commercial aviation carrier requires an air service licence. A domestic licence issued in terms of the Air Services Licensing Act 1990 is required in respect of services operated within South Africa. An international carrier licence issued in terms of the International Air Services Act 1993 is required in respect of services operated between South Africa and another state.

  An applicant for a domestic licence must, if it is a juristic person, be incorporated in South Africa and non-residents may not hold more than 25% of the voting rights unless approved by the Minister of Transport. An applicant for an international carrier licence must, if it is a juristic person, be incorporated in South Africa and the voting rights must be 'substantially held' by residents of South Africa unless approved by the Minister of Transport.

- **Information, communications technology and telecommunications (including broadcasting)**

  The Electronic Communication Act 2005 (**ECA**) imposes limitations on foreign control of commercial broadcasting services and provides that a foreign national may not, whether directly or indirectly:

  - exercise control over a commercial broadcasting licensee; or
  - have a financial interest or an interest either in voting shares or paid-up capital in a commercial broadcasting licensee exceeding 20%.

  Any prospective licensee in either the telecommunications or broadcasting sector is required, if it is a natural person, to be a South African citizen, or if it is a legal entity (such as a company), to be incorporated in South African law and to have its principal place of business in South Africa.

  It is a requirement under the ECA for an individual licence applicant (not a class – general authorisation – licence registrant) to have at least 30% of its shares (or such higher percentage shareholding as specified in the invitation to apply) held by historically disadvantaged persons (**HDPs**), which includes, but is not limited to, black people.

  The HDP ownership requirements also apply where an individual licence is transferred subject to a 'transfer of control', amended or renewed.

  On 31 March 2021, South Africa's telecommunications regulatory authority, the Independent Communications Authority of South Africa (**ICASA**), published the long-awaited Regulations in respect of the Limitations of Control and Equity Ownership by Historically Disadvantaged Groups and the Application of the ICT Sector Code (**Regulations**). The Regulations are published under the ECA and seek to promote the equity ownership of HDPs (referred to as HDGs) and promote B-BBEE objectives in South Africa.

  Individual licensees are required to do the following to comply with the Regulations:

  - have a minimum of 30% of its equity ownership held by HDGs, which is determined on a flow-through basis and which includes equity ownership held indirectly through other structures (for example, a trust), as confirmed in Appendix 1 of the Regulations;
  - have a minimum of 30% of its equity ownership held by black people, which is determined on a flow-through basis;
  - maintain this ownership level throughout the duration of its licence period as a condition of its licence, as confirmed in the Explanatory Memorandum which accompanies the Regulations; and
  - provide ICASA with proof of compliance in this regard on an annual basis in accordance with the Compliance Procedure Manual Regulations 2011, published under the ICASA Act 13 of 2000.

  The Regulations provide that compliance with the black equity requirement by itself will constitute compliance with the HDG equity requirement. This seems to give individual licensees an option to use the black equity requirement to comply with the HDG equity requirement. It must, however, be noted that this requirement is suspended until ICASA promulgates a commencement date for the Regulations in this regard. Aside from the above new HDG and black equity requirements, the Regulations also provide for a minimum achievement of a level 4 B-BBEE status (for both individual and class licensees), although existing class licensees will not be required to comply with this requirement until a licensee renews or amends its class licence or if it transfers its class licence.

  There is a transitional period for existing licensees to comply with the Regulations as follows:

  - class licensees and small and medium enterprises must comply with the Regulations within 48 months of 31 March 2021; and
  - 'Large Individual Licensees' (i.e., an individual licensee with annual turnover of ZAR 50 million or more) must comply with the Regulations within 36 months of 31 March 2021.

  It must, however, be noted that class and individual licensees must take active steps towards complying with the Regulations during the transitional period. For example, class and individual licensees must comply with certain B-BBEE targets, as set out in Appendix 2 of the Regulations, during the transitional period.

- **Mining**

  The Mineral and Petroleum Resources Development Act 2002 (**MPRDA**) creates a standalone B-BBEE regime, as set out in the Mining Charter. The Minister of Mineral Resources will only grant a new or renewed mining right to an applicant if it has a minimum of 30% black ownership at the licensing stage, comprising relevant community and employee ownership structures.

  Holders of existing mining rights (granted prior to the implementation of the revised Mining Charter) that achieved 26% black ownership are recognised as compliant for the duration of the mining right.

  Mining companies can place reliance on continuing consequences of empowerment transactions undertaken before September 2018. However, the recognition of continuing consequences does not apply to the transfer and renewal of mining rights.

- **Private security**

  Although there are currently no local ownership restrictions in the private security industry, the Private Security Industry Regulation Amendment Bill proposes that at least 51% of the ownership of both existing and new security service providers must be held by South African citizens.

  The Minister of Police will also be empowered to prescribe a different percentage of ownership and control in respect of different categories of security business (e.g., response security, assets in transit, locksmiths, etc.), taking into account the security interests of South Africa. The President has not yet signed the proposed Bill (which has been pending since 2012) and it is not clear when, or if, it will come into effect.

3. Local management targets or restrictions

In terms of the measurements under the B-BBEE regime, a company can increase its score for 'management control' if it increases the number of black directors on its board and, in particular, the number of black women on its board.

The number of black people who participate in all levels of management (executive, senior, middle and junior management) is also measured. Companies above a certain size have additional and separate obligations, in terms of the Employment Equity Act 1998, to prepare employment equity plans and to submit returns regarding their progress on employment equity to the Department of Employment and Labour. These plans set targets which align to regional demographic requirements in respect of the companies' labour count.

In terms of the Private Security Industry Regulation Act 2001, the management and executive functionaries of a company providing security services, as well as the members of its board, must be constituted by citizens or permanent residents of South Africa.

In terms of the ECA, not more than 20% of the directors of a commercial broadcasting licensee may be foreign nationals.

4. Other factors such as skills development, enterprise development, employee-related or procurement-related targets or restrictions

In terms of the Codes, companies are also measured in respect of the following:

- **Skills development**

  Companies can score points for the amount of money spent on skills development programmes for black employees, the number of learnerships facilitated for black people (with additional points for black women and disabled people), money spent on bursary programmes, and the implementation of mentorship programmes. Other examples of skills development include learnerships, internships and apprenticeships for black people. Additionally, an entity may score points for absorbing black people into the workforce at the end of such a learnership, internship or apprenticeship.

- **Enterprise and supplier development**

  Enterprise and supplier development includes preferential procurement-related targets and measures the extent to which entities buy goods and services from black-owned companies with strong B-BBEE recognition levels, who themselves comply with requirements in order to be classified as 'Empowering Suppliers'.

  Points for the preferential procurement element are scored depending on the extent to which companies procure goods and services from black-empowered suppliers who comply with certain criteria to qualify as Empowering Suppliers. Companies can increase their scores on this element if they procure a greater percentage of goods and services from suppliers with higher B-BBEE ratings, from Qualifying Small Enterprises (**QSEs**) (businesses with annual turnover of less than ZAR 50 million) and exempted micro-enterprises (**EMEs**) (businesses with annual turnover of less than ZAR 10 million), from suppliers that are at least 51% black owned, and from suppliers that are at least 30% owned by black women.

  Enterprise development involves contributions (both monetary and non-monetary) that a company makes to developing businesses that are owned by black people. The types of contributions that will be measured include, for example, investing in businesses owned by black people, making loans to businesses owned by black people, providing credit guarantees to businesses owned by black people, providing preferential credit terms to businesses owned by black people, giving discounts, and providing training or mentoring.

  Supplier development refers to the enterprise development contributions (both monetary and non monetary) that a company makes to its black-owned suppliers and, in particular, small black-owned businesses who are its suppliers. Supplier development may be achieved by developing suppliers to fulfil their (measured entities') supply chain needs.

  Specific obligations relating to procurement, supplier and enterprise development for the mining sector are set out in the Mining Charter.

5. Foreign land ownership restrictions

There are currently no restrictions on the ownership of land by foreigners in South Africa. However, the Regulation of Land Holdings Bill 2017 (**Land Bill**), proposes the prohibition of the acquisition of agricultural land by foreigners.

The Land Bill proposes allowing foreign nationals to enter long-term leases in respect of agricultural land, but such leases cannot be less than 30 years or the natural life of the lessee and may not be subject to renewal periods in excess of 50 years. Furthermore, the Land Bill proposes that foreign nationals may acquire agricultural land where black persons hold a controlling interest in the land. All existing agricultural land held by foreigners would, in terms of the Land Bill, become subject to a right of first refusal held by the Minister for Rural Development and Land Reform and, should this right not be exercised, must be offered to South African citizens.

Land reform is a contentious issue in South Africa and the Land Bill has not progressed any further through the parliamentary processes since its introduction in 2017.

6. Reporting obligations

When a company presents any information in relation to its B-BBEE score, for example in the context of a tender response, this must be supported by a certificate issued by an accredited verification or ratings agency, which certifies a measured entity's B-BBEE level and is valid for a period of 12 months.

Listed companies are required to report annually on their B-BBEE compliance to the B-BBEE Commission. All major B-BBEE ownership transactions above a certain threshold (ZAR 25 million) must be submitted to the B-BBEE Commission for registration.

Certain sector-specific legislation requires information on compliance with ownership targets to be submitted to the relevant regulator for that sector.

7. Penalties for non-compliance

There are no penalties under the B-BBEE legislative framework relating to B-BBEE performance. However, there may be penalties in certain sectors where B-BBEE requirements, or minimum ownership targets, are imposed for licensing or other authorisation purposes. The relevant sector-specific regulator may also refuse to grant a licence, or may suspend or withdraw a licence, in the event of non-compliance with B-BBEE requirements or minimum ownership targets.

Furthermore, under the B-BBEE legislation, it is a criminal offence to engage in a 'fronting practice' (i.e., where enterprises make representation that they have adopted B-BBEE initiatives in order to score points when, in substance, the initiatives have not been adopted) or to make deliberate misrepresentations in relation to a measured enterprise's true B-BBEE status.

The B-BBEE Commission will investigate alleged fronting practices and may refer such practices for prosecution. Fines for fronting may be up to 10% of a company's annual turnover.

8. Proposed or contemplated changes to regulations

Recent amendments to the Competition Act include provisions for an executive body to assess acquisitions of control by foreign acquiring firms over a 'national security interest'. (A foreign acquiring firm is one incorporated or effectively managed outside South Africa.) This assessment is entirely separate from that of the existing merger control regime and focusses on the impact and adverse effects on national security interests that could be brought about by those transactions.

These amendments are not yet in effect and are expected to be brought into force by proclamation at a later date once, among other things, the specific national security interests covered are identified and the President (by way of regulations and notices) has determined the notification, processes and procedure.

Also, a recent amendment to the Competition Act, which is already in effect, is the requirement that competition authorities consider the effect of a merger on the promotion of a greater spread of ownership, in particular to increase the levels of ownership by HDPs and workers in firms in the market. In some instances, the competition authorities have interpreted this provision as requiring a positive impact on ownership, the result of which has been a sharp increase in the number of mergers approved subject to conditions requiring the introduction of HDP/worker ownership. In other instances, the competition authorities have accepted that this provision could be interpreted as having a neutral effect on competition.

Tanzania

BOWMANS

TANZANIA

1. Local ownership targets or restrictions

There are certain limited restrictions on foreign ownership in Tanzania, including in the capital markets, insurance, mining, merchant shipping and telecommunications sectors.

There are also land ownership restrictions – non-citizens may not be allocated or granted land unless it is for investment purposes under the Tanzanian Investment Act 1997. Foreign nationals and foreign companies need to apply to the Tanzanian Investment Centre (**TIC**) to be allowed to own land by way of a derivative right for investment purposes and their investment must be greater than the set threshold in order to qualify.

The Capital Markets and Securities (Foreign Investors) Regulations 2014 (**Foreign Investors Regulations**) provide that participation of foreign investors in the Dar es Salaam Stock Exchange must be subject to the conditions or requirements prescribed by the Bank of Tanzania. Furthermore, the Foreign Investors Regulations require continuous disclosures of acquisitions of 5% and more by foreign investors.

Foreign companies are also eligible under the Capital Markets and Securities (Foreign Companies Public Offers, Eligibility and Cross Listing Requirements) Regulations (**Cross Listing Regulations**) to issue securities to the public in Tanzania subject to compliance with the Capital Markets and Securities Act. Foreign companies are required to list such securities on a stock exchange in Tanzania subsequent to such public offer and to comply with the eligibility criteria in the Cross Listing Regulations.

VOLUNTARY REQUIREMENTS

Investors seeking to invest in Tanzania can opt to obtain a certificate of incentives issued under the Tanzania Investment Act. Whether or not the certificate will be issued depends on a number of factors, including the extent to which the investment will contribute to:

- the creation of employment for Tanzanians;
- the acquisition of new skills or technology for Tanzanians;
- tax revenues or other government revenues;
- a transfer of technology to Tanzania;
- an increase in foreign exchange, either through export or import substitution;
- utilisation of domestic raw materials, supplies and services;
- adoption of value addition in the processing of local, natural and agricultural resources; or
- utilisation, promotion, development and implementation of information and communications technology.

SECTOR-SPECIFIC REQUIREMENTS

- **Information, communications technology and telecommunications (including broadcasting)**

  The Electronic and Postal Communications Act 2010, read with the Electronic and Postal Communications (Licensing) Regulations, provide that any company licensed in the sector is required to issue at least 25% of its shares to the general public in the case of network facilities, network services or application services licensees. A content service licensee must issue at least 51% of its shares to the general public. However, the following licences are exempted from the minimum public shareholding requirements:

  - network facilities or a network services licence wholly owned by the Government;
  - network facilities or a network services licence in which the Government owns 25% shares or more; and
  - network facilities licence for the lease of towers.

- **Insurance**

  The Insurance Act 2009 provides that an entity may not be registered as an insurer unless it is a body corporate incorporated under the Companies Act or any other law; is deemed to be resident in Tanzania; and has at least one-third of the controlling interest, whether in terms of shares, paid-up capital or voting rights, held by Tanzanian citizens.

Furthermore, the Insurance Act requires that at least one-third of the controlling interest in an insurance broker, whether in terms of shares, paid-up capital or voting rights, is held by Tanzanian citizens.

- **Mining**

  The Mining Act, Cap 123 R.E. 2019 provides that generally, mineral rights shall not be granted to a person who is not a citizen of Tanzania and has not been ordinarily resident in Tanzania for a period of four years or such other period as may be prescribed. Furthermore, mining rights shall not be granted to a company that has not established a physical and postal address in Tanzania for the purpose of serving legal notices and other correspondences, or to a company unless it is incorporated under the Companies Act and intends to carry out the business of mining under a mining licence.

  Licences to mine gemstones may only be granted to Tanzanians, regardless of the size of the operation. The only exception is where the Minister of Energy and Minerals has determined that the development is likely to require specialised skills, technology or a high level of investment, in which case the licence may be granted to non-Tanzanians provided that their participation does not exceed 50%.

  A special mining licence for mining gemstones cannot be granted to a non-citizen unless the licence is held by that person in undivided participating shares with Tanzanian citizens whose undivided participating shares may not amount to less than 25%.

  A primary mining licence for any mineral may only be issued to Tanzanian citizens, partnerships which are exclusively composed of Tanzanian citizens, and companies whose members (who must be Tanzanian citizens) exercise control over the company (both direct and indirect) from within Tanzania.

  The Mining (Minimum Shareholding and Public Offering) Regulations require that the holder of a special mining licence must have 30% of the total issued and paid-up shares held by Tanzanians and the local shareholding must be obtained through a public offer under the Dar es Salaam Stock Exchange. Companies exempted from this requirement are those that have entered into an agreement with the Government of Tanzania, where the agreement provides for non-dilutable free carried interest shares in the capital of a mining company and an economic benefits-sharing arrangement.

  In any mining operations under a mining licence or a special mining licence, the Government will have not less than 16% non-dilutable free carried interest shares in the capital of a mining company, depending on the type of minerals and the level of investment.

  In addition to the free carried interest shares, the Government will be entitled to acquire, in total, up to 50% of the shares of the mining company commensurate with the total tax expenditures incurred by the Government in favour of the mining company. Acquisition by the Government of shares in the company will be determined by the total value of the tax expenditures enjoyed by the mining company.

  The Mining (Local Content) Regulations provide that a non-indigenous Tanzanian company that intends to provide goods or services to a contractor, a subcontractor, a licensee, the entity to be established or designated as such for purposes of holding Government mineral assets, or another allied entity within Tanzania, is required to incorporate a joint venture company with an indigenous Tanzanian company. That indigenous Tanzanian company must be afforded an equity participation interest of at least 20%.

  An indigenous Tanzanian company is defined as a company incorporated under the Companies Act that has at least 20% of its equity owned by a citizen or citizens of Tanzania and has Tanzanian citizens holding at least 80% of executive and senior management positions and 100% of non-managerial and other positions.

- **Oil and gas**

  In the oil and gas sector, licensees, contractors and subcontractors are required to give preference to goods and services that are manufactured or locally available in Tanzania. A local company is defined under the Petroleum (Local Content) Regulations as a company or subsidiary company incorporated under the Companies Act, which is 100% owned by a Tanzanian citizen, or a company that is in a joint venture partnership with a Tanzanian citizen or citizens whose participating share is not less than 15%.

  While there is no specific prohibition against foreign buyers of companies licensed under the Petroleum Act 2015, the Tanzania Petroleum Development Company (which is the national oil company in Tanzania) must maintain a participating interest of not less than 25% unless it decides otherwise.

  The Tanzania Petroleum Development Company may enter into partnership with either a Tanzanian or a foreign entity through an open tender process or direct bidding.

  Furthermore, there are local content requirements under the Act (and the regulations issued under it), which require entities operating in the oil and gas sector to give preference to goods and services provided by Tanzanian citizens or local companies. (These are companies incorporated in Tanzania and either owned by Tanzanian citizens or in a joint venture partnership with Tanzanian citizens whose participating share must not be less than 15%).

- **Shipping**

  Under the Surface and Marine Transport Regulatory Authority (Miscellaneous Port Services) Licensing Rules, miscellaneous port services licences may only be issued to local companies. The Licensing Rules define a 'local company' to mean a company registered in Tanzania and solely owned by Tanzanian citizens.

  In terms of the Tanzania Shipping Agencies (Shipping Agents) Regulations 2018, a company is eligible for a shipping agency licence if, among other reasons, it is incorporated under the Companies Act in which 60% or more of the share capital is held by citizens of Tanzania.

2. Local management targets or restrictions

Generally, there are no minimum local management targets or restrictions. However, the Insurance Act requires that one-third of the members of the board of an insurance company must be Tanzanian citizens. Furthermore, the director, controller, manager or principal officer who handles the day-to-day management of the company must be resident in Tanzania.

In terms of the Mining Act, a primary mining licence will only be issued to a company whose directors are exclusively Tanzanian citizens. Also, under the Mining (Local Content) Regulations, the minimum local content for any mining activity at the management level is 30% at the start, 50% to 60% in five years and up to 70% to 80% in 10 years. For indigenous Tanzanian companies, 80% of executive and senior management positions and 100% of non-managerial positions must be held by Tanzanian citizens.

In the petroleum industry, under the Petroleum (Local Content) Regulations, the local content requirement to be attained in petroleum activity at the management level is 10% at the start, 15% after five years and 25% in 10 years.

3. Other factors such as skills development, enterprise development, employee-related or procurement-related targets or restrictions

The Mining Act, read together with the Mining (Local Content) Regulations, requires companies in the mining sector to support and carry out a technology transfer programme. Companies are also required to submit a succession plan for any employment position that is occupied by expatriate staff to ensure that the minimum local content levels specified in the legislation are met.

4. Foreign land ownership restrictions

The Land Act, Cap 113, R.E. 2019 provides that non-citizens may not be allocated or granted land unless it is for investment purposes under the Tanzania Investment Act.

Foreign companies need to apply through the Tanzania Investment Centre to be allowed to own land by way of a derivative right for investment purposes. Their investment must be greater than USD 300 000 in order to qualify.

During mergers and acquisitions, if the target company owns land in Tanzania, then the Land Act and the Tanzania Investment Act apply. These Acts provide that foreign-controlled companies (i.e., companies that have more than 50% of their shares owned by foreigners) can only acquire land after obtaining a certificate of incentives from the Tanzania Investment Centre, and the land owned by the company must be held under a derivative title issued by the Tanzania Investment Centre, as opposed to a certificate of occupancy.

5. Regulatory oversight and reporting obligations

Regulators may conduct inspections which, among other things, will seek to establish the extent of compliance with the local ownership rules.

SECTOR-SPECIFIC REQUIREMENTS

- **Mining**

  In the mining sector, companies are required to submit a local content performance report every year. The Mining Commission monitors and investigates mining companies to ensure local content compliance within the framework of the national policy on local content.

- **Oil and gas**

  Companies operating in the petroleum sector are also subject to local content regulations. An annual local content performance report should be submitted to the regulators, which are the Petroleum Upstream Regulatory Authority (**PURA**) for upstream operators and the Energy and Water Utilities Regulatory Authority (**EWURA**) for midstream and downstream operators. PURA and EWURA monitor and investigate oil and gas companies to ensure compliance with the local content regulations within the framework of the national policy on local content.

- **Capital markets and securities**

  A stock exchange is required to report on the securities held by foreign investors in each listed company. Such reports are submitted to the Capital Markets and Securities Authority on a daily basis and to the Bank of Tanzania on a monthly basis.

6. Penalties for non-compliance

Sector-specific legislation prescribes general and specific offences which may be punishable by fines and/or imprisonment. The regulators may also refuse to grant a licence or suspend or revoke a licence issued under the applicable regulation in the event of non-compliance.

7. Proposed or contemplated changes to regulations

Limited relevance.

Uganda

BOWMANS

UGANDA

1. Local empowerment obligations

Uganda's local empowerment framework presently covers land ownership and local content both in the petroleum sector and in government incentivisation of investments.

The Investment Code Act 2019 grants the Minister of Finance, Planning and Economic Development powers to restrict the activities in which foreign investors can participate. The Act provides for the issuance of investment licences to eligible investors and regulates the granting of government and other incentives to investors. Foreign investors are required to meet a financial threshold of USD 250 000.

A foreign investor includes a company that is not incorporated under the laws of an East African Community member state, as well as one that is incorporated in Uganda but whose majority shares are held by individuals other than citizens of those member states.

In order to qualify for incentives, the investor should, among others, establish that at least 70% of the raw materials used are sourced locally and that at least 60% of its employees are citizens.

The Ministry of Trade, Industry and Cooperatives in 2017 developed a 'Buy Uganda, Build Uganda' trade policy (BUBU) geared towards local consumption and support for locally manufactured goods and services. This policy also provides guidance to policy makers to ensure that the promotion of locally manufactured goods is integrated into their procedures and policies.

The Parliament of the Republic of Uganda then passed the National Content Bill 2019, covering all licensable activities and sectors in the country. The Bill is yet to be assented to by the President.

The National Content Bill seeks to impose local content obligations on every licensable activity in Uganda. Should it be assented to, it will enjoin the Government and licensees in all sectors to prioritise Ugandan persons and residents in public procurement, and to ensure skills and technology transfer to Ugandan entities.

The Bill defines a Ugandan company as one that is 'incorporated under the laws of Uganda, which is wholly owned or controlled by citizens of Uganda'.

SECTOR-SPECIFIC REQUIREMENTS

- **Oil and gas**

  Licensees are obligated to source specified goods and services locally in Uganda and to give preference to Ugandan companies and individuals for their procurement needs. These goods and services are listed in the schedule to the Petroleum (Exploration, Development and Production) (National Content) Regulations 2016.

  The Regulations define a Ugandan company as one that is 'incorporated under the laws of Uganda which provides value addition to Uganda, uses available local raw materials, employs 70% Ugandans; and is approved by the Petroleum Authority of Uganda'.

- **Procurement**

  The Public Procurement and Disposal of Public Assets Act was amended in 2021 to, among others, provide for preference to be given to domestically manufactured goods and Ugandan contractors and Ugandan consultants, in order to promote their development. Preference takes the form of a competitive advantage when competing with foreign manufactured goods, foreign contractors or foreign consultants for public procurement contracts.

2. Local ownership targets or restrictions

There are no general restrictions in place in respect of foreign ownership in Uganda save for some regulated sectors which expressly set out the nature and extent of such restrictions. Besides the regulated sectors, the other express restrictions to foreign ownership relate to land ownership.

As such, a company can be 100% foreign owned in Uganda and there is no legal requirement to have a local shareholder or director, except in the following regulated sectors.

SECTOR-SPECIFIC REQUIREMENTS

- **Information, communications technology and telecommunications (including broadcasting)**

  It is now a legal requirement under the new Telecommunications Licensing Framework 2019 for licensed telecommunications companies to list on the Uganda Securities Exchange as a condition for the granting of a National Telecommunications Operator Licence.

  All existing licence holders as at May 2020 are required to apply for new licences and to list at least 20% of their shares on the Uganda Stock Exchange within two years of the date of issue of their new licences. The terms of listing for new players will be agreed upon on a case-by-case basis. The new framework was effective from June 2020.

- **Mining**

  The Mining Act 2003 provides that all minerals in Uganda are vested in the Government of Uganda in trust for the people of Uganda. The Mining Act restricts the granting of mineral rights to Ugandan citizens or companies registered or incorporated under the laws of Uganda. However, in practice, foreign-owned companies can, upon successful application, be granted prospecting, exploration and mining rights under licence, subject to the conditions set out in each licence.

- **Oil and gas**

  State participation is required in the oil and gas sector and the terms are set out in production sharing agreements that are executed between the Government, through the Uganda National Oil Company, and the relevant oil and gas company. Terms relating to shareholding are agreed on a case-by-case basis and expressly set out in the respective agreement.

3. Local management targets or restrictions

Limited relevance.

4. Other factors such as skills development, enterprise development, employee-related or procurement-related targets or restrictions

Limited relevance.

5. Foreign land ownership restrictions

FREEHOLD AND LEASEHOLD TENURE

Shareholding structure has a bearing on issues of land ownership under the Land Act 1998.

Foreign nationals and companies controlled by persons other than Ugandan nationals are only permitted to hold a leasehold interest for up to 99 years.

Foreign nationals, by law, cannot acquire freehold land or land registered under the Mailo Land Tenure System in Uganda. These land tenure systems are recognised by Article 237 (3) of the Constitution of the Republic of Uganda and section 2 of the Land Act (CAP 227 as amended). They are both registered to be held in perpetuity and are subject to statutory and common law qualifications (such as the right to sell, lease, mortgage, pledge, subdivide, create trusts, cater for third-party rights/interests or otherwise dispose of the land).

However, being rooted in the allotment of land by the British Colonial Government pursuant to the 1900 Uganda Agreement, ownership of land under the Mailo Land Tenure System is distinct from ownership of developments on the land made by a lawful or *bona fide* occupant.

CUSTOMARY LAND TENURE

Similarly, the present legal regime on land ownership in Uganda does not permit non-citizens to acquire and hold interests in the customary tenure system. More than 80% of the land in Uganda is held under unregistered customary tenure. Despite the lack of registration, customary tenure is recognised under article 237(1) of the Constitution of Uganda.

Foreigners who require access to customary land may obtain it through the grant of usage or other third-party rights over the land. This can be done if the family, community or association holding the land duly exercises their right to obtain a certificate of customary ownership or to convert the land from customary tenure to freehold tenure.

Article 237(4a) of the Constitution provides that all Ugandan citizens owning land under customary tenure may acquire certificates of customary ownership in a manner prescribed by Parliament. Subject to the restrictions contained therein, a certificate of customary ownership entitles the holder to sell, lease, mortgage, accord usufructuary rights over, or otherwise create third-party interests in the land.

Proprietors of customary land may also convert it into freehold tenure. According to section 9 of the Land Act (CAP 227 as amended), any person, family, community or association holding land under customary tenure on former public land may convert the customary tenure into freehold tenure in accordance with the Act. The conversion would entitle the proprietors to lease the land to non-citizens.

The devolution of customary tenure depends largely on the family, community or association's ability to agree on the exercise of their right to convert or certify. It also depends on their ability to agree on the terms upon which to grant third-party rights on the land. In the former case, statutory processes for conversion or certification involve public inquiries into the existence and nature of claims on the land and are duly concluded upon the issuance of a certificate of customary ownership or a freehold title (as the case may be). Like a freehold title, a certificate of customary ownership 'shall be taken to confirm and is conclusive evidence of the customary rights and interests specified in it'.

6. Regulatory oversight and reporting obligations

The Investment Code Act establishes the Uganda Investment Authority (UIA) as the body mandated to promote, attract, facilitate, register, monitor and evaluate investments and business activities in Uganda. There is an obligation to notify the UIA of all foreign investment interests in Uganda.

The UIA, empowered by the amendment to the Investment Code Act 2019, has created a 'one-stop centre', a single access point for information and service transactions for investors. The one-stop centre comprises government and private sector institutions that are responsible for investment. These include the Uganda Registration Services Bureau, which is mandated to register all business entities that are required by law to be registered in Uganda. Others are the Uganda Revenue Authority for tax-related matters, Uganda National Bureau of Standards for certifying standards and quality of goods, and the Uganda Free Zone Authority, among others.

7. Penalties for non-compliance

Failure to register with the Uganda Investment Authority attracts a fine of UGX 20 million or a term of imprisonment of four years, or both.

8. Proposed or contemplated changes to regulations

Limited relevance.

Zambia

BOWMANS

ZAMBIA

1. Local empowerment obligations

Companies and state institutions with 25 employees or more are required to apply economic empowerment measures that include:

- identifying and eliminating employment barriers which adversely affect 'targeted citizens' as defined under the Citizens Economic Empowerment Act 2006
- (**CEE Act**);
- preparing and implementing employment equity plans in order to achieve employment equity;
- ensuring development of targeted citizens and implementation of training programmes; and
- making reasonable adjustments for targeted citizens to ensure that they enjoy equal opportunities and are equally represented at board and management levels, as well as in the workforce.

2. Local ownership targets or restrictions

In terms of the CEE Act, the Ministry responsible for commerce, trade and industry is required to reserve specific areas of business for targeted citizens, Citizen Influenced Companies (**CICs**), Citizen Empowered Companies (**CECs**) and Citizen Owned Companies (**COCs**).

A CIC is a company in which 5% to 25% of the equity is owned by Zambian citizens and in which Zambian citizens have significant control of the management of the company. A CEC is a company in which 25% to 50% of the equity is owned by Zambian citizens. A COC is a company in which at least 50.1% of the equity is owned by Zambian citizens and in which Zambian citizens have significant control of the management of the company.

These companies are given preferential treatment in accessing and being awarded tenders for procurement of goods or services by state institutions.

The requirements under the CEE Act are compulsory for state institutions, as well as for employers who employ at least 25 employees.

Licences for foreign investors to engage in 'specific businesses' are only granted to foreign investors who have entered into a joint venture or partnership agreement with a Zambian citizen or a CEC. The term 'specific businesses' is defined by the President. The President is yet to issue regulations defining specific businesses.

3. Local management targets or restrictions

Limited relevance.

4. Other factors such as skills development, enterprise development, employee-related or procurement-related targets or restrictions

PROCUREMENT

In terms of the Citizen Empowerment (Preferential Procurement) Regulations 2011:

- The Citizens Economic Empowerment Commission (**CEEC**) and the Zambia Public Procurement Authority (**ZPPA**) must reserve procurement for a CIC, CEC or COC when procuring goods with a value not exceeding ZMW 3 million (approximately USD 175 300), building construction works with a value not exceeding ZMW 20 million (approximately USD 1 168 600) and civil and road works with a value not exceeding ZMW 30 million (approximately USD 1 753 120);
- Procurement of a non-consulting service with a value below ZMW 1 million (approximately USD 58 440) must be exclusively reserved for a CIC, CEC or COC unless it is not possible to acquire the services from a CIC, CEC or COC; and
- A foreign bidder who is awarded a contract is required to ensure that, where practical, at least 40% of its personnel are citizens.

One of the functions of ZPPA is to formulate preference and reservation schemes to promote the economic development of citizen bidders and suppliers in collaboration with the appropriate government institutions. ZPPA collaborates with CEEC under the Citizen Empowerment (Preferential Procurement) Regulations 2011 to provide preference to citizens offering specific goods and services.

The Public Procurement Act 8 of 2020 provides that a procuring entity must, before entering into any international agreement relating to procurement, obtain the approval of the Zambia Public Procurement Authority and the Treasury and, once the approval is given, seek the advice of the Attorney-General.

A procuring entity is generally required to use open national bidding, which is limited to citizens and local bidders for all procurements of works, goods and non-consulting services.

A local bidder or supplier is one who is licensed to undertake business activities in Zambia, but who is not a citizen supplier.

A procuring entity is also generally required to use open national selection, which is limited to local and citizen bidders, in all procurement of consulting services. However, in limited circumstances, the selection may be opened to foreign bidders, provided that, where a foreign bidder is selected, it must partner with a citizen or local supplier/ bidder.

SECTOR-SPECIFIC REQUIREMENTS

- **Construction**

  In terms of the National Council for Construction Act 2003 (**NCC Act**), it is an offence to award a contract for construction works to a foreign company without the approval of the National Council for Construction (**NCC**). Furthermore, subject to the NCC's best practice project assessment scheme and best practice contractor recognition scheme, a foreign company cannot be awarded a contract for construction works unless it undertakes the construction works in partnership or jointly with a Zambian company.

- **Mining**

  The granting of mining rights over areas between 6.68 hectares and 400 hectares is reserved for CICs, CECs and COCs. Artisanal mining can only be undertaken by Zambian citizens or co-operatives consisting only of Zambian citizens.

  Similarly, gold panning certificates can only be granted to these persons. Furthermore, small-scale mining can only be undertaken by a CIC, CEC or COC. Only a Zambian citizen, CIC, CEC or COC can apply for a mineral trading permit and only mining licence holders and mineral trading licence holders may trade in minerals.

  There are generally no restrictions in relation to large-scale prospecting licences, large-scale mining licences and mineral processing licences. However, the approval of any application for a large-scale mining licence will consider the applicant's undertakings in respect of employment, training and local business development. These undertakings will be included as a condition of the licence and the mining right holder must fulfil these undertakings.

- **Oil and gas**

  In considering bids for the grant of a petroleum exploration licence, petroleum development licence or petroleum production licence, the Minister responsible for mines and minerals development will consider the bidder's proposals with respect to the employment and training of Zambian citizens and, in respect of a production licence, the applicant's intention to acquire goods and services from within Zambia. Furthermore, when considering an application for a petroleum exploration licence, the Minister will assess a bidder's proposal for the promotion of local business development.

  Licence holders must, on a continuous basis, give preference to the maximum extent possible to materials and products made in Zambia and service agencies located in Zambia and owned by Zambian citizens or bodies corporate registered under the Companies Act. Licence holders must also give preferential employment to Zambian citizens to the maximum extent possible (consistent with safety, efficiency and economy).

- **Transportation and domestic haulage**

  In terms of the Citizen Empowerment (Transportation of Heavy and Bulk Commodities by Road) (Reservation) Regulations 2021, the domestic haulage of commodities within Zambia is reserved for local transporters (that is, a CIC, CEC or COC) only, while the transportation of 50% of the export and import of commodities must be by local transporters.

- **Commercial cleaning**

  In terms of the Citizen Economic Empowerment (Reservation) Scheme Regulations 2019, the provision of commercial cleaning services is reserved for Zambian citizens or a CIC, CEC or COC).

- **Poultry**

  In terms of the Citizens Economic Empowerment (Reservation) Scheme 2017, the sale of live birds in a market or any other designated place is reserved for targeted citizens, COCs, CECs and CICs.

- **Foreign land ownership restrictions**

  In terms of the Lands Act Chapter 184 of the Laws of Zambia, a person who is not a Zambian citizen is restricted from owning land in Zambia unless the non-Zambian:

  - is a permanent resident in Zambia;
  - is an investor within the meaning of the Zambia Development Agency Act or any
  - other law that promotes investment in Zambia;
  - is a company registered under the Zambian Companies Act with less than 25% of the issued shares owned by non-Zambians;
  - obtains the President's consent in writing under his hand;
  - is a statutory corporation created by an Act of Parliament;
  - is a co-operative body registered under the Co-operatives Societies Act with fewer than 25% of the members being non-Zambians;
  - is granted a concession or right under the National Parks and Wildlife Act;
  - is a body registered under the Land (Perpetual Succession) Act and is a non-profitmaking, charitable, religious, educational or philanthropic organisation or institution registered and approved by the Minister; or
  - is a Commercial Bank registered under the Companies Act 2017 and the Banking and Financial Services Act 2017.

5. Regulatory oversight and reporting obligations

The CEEC, under the Ministry of Small and Medium Enterprises Development, is the statutory regulatory body that is tasked with overseeing compliance with the obligations under the CEE Act. The CEEC is mandated to promote the empowerment of citizens who are or have been marginalised or disadvantaged and whose access to economic resources and development capacity has been constrained due to various factors. In carrying out its mandate, the CEEC assesses state institutions and companies to ensure that they comply with the provisions of the CEE Act.

Under the CEE Act, every state institution and company is required to submit a report to the CEEC once a year on the progress being made to achieve broad-based economic empowerment in accordance with a sector plan or strategy. Additionally, state institutions and companies are also expected to publish summaries of the progress report in their annual reports.

6. Penalties for non-compliance

There are numerous penalties for non-compliance with the local content provisions under different pieces of legislation.

The CEEC Act makes it an offence for a director or shareholder to be held out as a de facto director or shareholder of a company for purposes of hiding the true identity of the shareholders or directors of that company. The penalty for committing such an offence is a fine not exceeding ZMW 6 000 (approximately USD 352). Furthermore, the penalty for awarding a contract for domestic transportation and domestic haulage and commercial cleaning is a fine not exceeding ZMW 2 400 (approximately USD 140) or imprisonment for a term not exceeding three years, or both.

The penalty for awarding a contract of construction to a foreign company that does not undertake construction work in partnership with or jointly with a Zambian company or firm is a fine not exceeding ZMW 6 000 (approximately USD 350) or imprisonment for a term not exceeding two years, or both.

With regard to the mining sector, a person or a company which is not a CIC, CEC or COC and which undertakes small-scale mining or artisanal mining commits an offence and is liable, (a) in the case of an individual, to a penalty not exceeding ZMW 150 000 (approximately USD 8 830) or to imprisonment for a term not exceeding five years, or to both; or (b) in the case of a body corporate or un-incorporate body, to a penalty not exceeding ZMW 300 000 (approximately USD 17 650).

7. Proposed or contemplated changes to regulations

The Insurance Act 38 of 2021 (**Insurance Act**) requires foreign shareholding in insurance companies and insurance brokerages to be limited to 70% and 49% respectively. The Insurance Act, enacted into law on 19 May 2021, is yet to come into effect. In addition, the proposed regulations (the Insurance (Shareholding) Regulations 2022) which will prescribe the compliance date for the minimum local shareholding requirements for brokers and insurance companies, are still in draft form, but the proposed compliance due date is 1 January 2026.

The penalty for failure to comply with the shareholding requirements under the Insurance Act is a fine not exceeding ZMW 5 000 (approximately USD 882).

Zimbabwe

SCANLEN & HOLDERNESS

ZIMBABWE

1. Local ownership targets or restrictions

The current position with regards to the Indigenisation and Economic Empowerment Act (CAP 14:33) (IEE Act) is that the IEE Act will not apply to any business in the national economy other than a company in the business of extracting such minerals as may be prescribed by the Minister of Indigenisation and Empowerment in consultation with the Minister responsible for Mines and the Minister responsible for Finance. The net effect is that:

- the indigenisation requirement will in principle apply to all mining businesses;
- platinum and diamond miners do not have to comply with the indigenisation requirement;
- the Minister may in future prescribe the minerals to which the indigenisation requirements will apply; and
- currently, no extractive business is obliged to comply with the indigenisation requirement.

IMPLICATIONS OF THE MINISTER DESIGNATING A MINERAL UNDER THE IEE ACT

If the Minister designates a mineral, then a company mining the designated mineral will have to comply with the indigenisation requirement that 51% of the designated extractive industries be owned by a designated entity. Designated entities are the:

- Zimbabwe Mining Corporation;
- Zimbabwe Consolidated Diamond Company; and
- National Indigenisation and Economic Empowerment Fund.

Part of the 51% may be held by a community share ownership scheme or employee share ownership scheme or both. The following transactions are prohibited unless 51% of the restructured business is owned by a designated entity and the designated entity is equitably represented on the board:

- merger or restructuring of shareholding that requires notification to the Competition Commission;
- acquisition of a controlling interest that requires notification to the Competition Commission;
- unbundling;
- relinquishing a controlling interest except to a designated entity; or
- projected or proposed investment in a prescribed sector.

The Minister may permit (in writing) a business to:

- comply with the Act within such period as he or she may prescribe; or
- achieve indigenisation and empowerment quotas through the use of credits within and for such periods as the Minister may prescribe.

In its original form, the IEE Act required that at least 51% of the shares of every public company and any other business in Zimbabwe be owned by indigenous Zimbabweans. The IEE Act and the Indigenisation and Economic Empowerment (General) (Amendment) Regulations 2010 (**Regulations**) are still in place but no longer provide for compulsory indigenisation except for designated minerals. Under the Act and Regulations, businesses could comply with ownership threshold requirements through the establishment of:

- employee share ownership trusts;
- management share ownership trusts; and
- community share ownership trusts.

RESERVED SECTORS

Apart from general indigenisation, certain sectors were reserved for Zimbabwean citizens. The current sectors reserved for Zimbabwean citizens only are as follows: advertising agencies, agriculture, bakeries, barber shops and hairdressing and beauty salons, employment agencies, estate agencies, grain milling, local art and craft, marketing and distribution, milk processing, retail and wholesale trade, tobacco grading and packaging, tobacco processing, transport (including passenger road, freight, water, air and rail) and valet services.

Foreigners are not allowed to invest or operate in a reserved sector unless they obtain approval to operate in the reserved sector.

2. Local management targets or restrictions

Limited relevance.

3. Other factors such as skills development, enterprise development, employee-related or procurement-related targets or restrictions

The IEE Act obliges all government departments, statutory bodies, local authorities and all 'companies' to procure at least 51% of their goods and services, required to be procured in terms of the Procurement Act (CAP 22:14) (**Procurement Act**), from businesses in which a controlling interest is held by indigenous Zimbabweans.

Furthermore, where goods and services are procured in terms of the Procurement Act from businesses in which a controlling interest is not held by indigenous Zimbabweans, the IEE Act provides that any subcontracting must occur in favour of businesses in which a controlling interest is held by indigenous Zimbabweans.

4. Foreign land ownership restrictions

While foreign land ownership is not restricted, Government has adopted a policy of indigenous ownership of agricultural land.

The Land Acquisition Act (CAP 20:10) allows for the acquisition of commercial farms by Government with fair compensation.

5. Regulatory oversight and reporting obligations

Where a designated extractive business is required to have an approved indigenisation plan, the Economic Empowerment Unit is authorised to conduct investigations into and monitor compliance with and adherence to such a plan. The unit is also empowered to monitor the activities of approved businesses operating in reserved sectors.

6. Penalties for non-compliance

Non-compliance with the IEE Act and the Regulations is an offence, punishable by a fine or imprisonment.

7. Proposed or contemplated changes to regulations

Although the Regulations are still in place, they have been amended to state that indigenisation will be required in designated extractive businesses.

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