Investing in Kenya

In a recent news conference, the Governor of the Central Bank of Kenya, Dr Patrick Njoroge, said that Kenya's underlying economic numbers pointed to "strong growth" in 2020, despite the coronavirus global pandemic. The Central Bank of Kenya and the International Monetary Fund estimate that the size of the Kenyan economy in 2019 was Kenya Shillings 9.7 trillion (USD 91.8 billion). It was projected that Kenya's economy would grow by 6.2% in 2020, up from 5.8% in 2019. However, due to the COVID-19 global pandemic, the World Bank estimates that Kenya's GDP growth will decelerate to 1.5%. The level of government borrowing remains a concern for many, and the situation is likely to get worse before it gets better.

Kenya remains an attractive investment destination for various reasons. The government has been undertaking various policy and legislative initiatives with a view to improving ease of doing business. The enactment of several business laws in the recent past, digitisation of company and land records, among other initiatives, have seen Kenya's ranking improve from 61 in 2018 to 56 in 2019, among 190 economies in the ease of doing business. The country has a fairly youthful and well-educated population. Labour is relatively cheap, with minimum wage currently set at just around USD 130 per month in the cities. The middle class has been growing steadily over the years. It is estimated that there are 22.86 million internet users in Kenya. Kenya is a pioneer in the use of mobile money transfer, with an equivalent of 46 per cent of the estimated size of the Kenyan economy being transacted through mobile money in 2019 alone. Payment systems in Kenya consist mainly of electronic payments, payment cards and mobile money transfers. Although a lot of retail transactions are still largely done in cash, these payment systems adequately serve all non-cash financial transactions. Furthermore, there are no exchange controls although large sums of money must be transferred through a licensed bank. There are no restrictions on the repatriation of dividends, profits or foreign currency.

Investors have several forms of legal entities to choose from, when deciding their investment vehicle. The limited liability company remains the most popular, although limited liability partnerships are increasingly become popular, especially due to their tax advantage as pass through entities. Corporate income tax for resident companies, including subsidiaries of foreign companies, is currently at 25% while the highest tax rate for individual income tax is 25% (down from 30%, w.e.f 2020).

It is important note that in order for a company operating in Kenya to be issued with a tax pin by the Kenya Revenue Authority, the company must either appoint a resident who has a personal tax pin as a director or obtain a letter of introduction from the Kenya Investment Authority (KenInvest). This an administrative issue, as the law does not require a local or resident director. It is possible to appoint a resident director who subsequently resigns as soon as the tax pin is issued. A tax pin is a mandatory requirement in most transactions, including opening of bank accounts.

While there is no blanket restriction on foreign shareholding, some specific industries require local shareholding. These include telecommunications, where at least 20% Kenyan shareholding is required within three years of receiving a telecommunications licence; insurance, where at least one third of the controlling interest in an insurance company must be wholly under the direct or indirect control of East African citizens, and at least 60% of the paid-up share capital of an insurance broker must be owned by Kenyans or partnerships whose partners are Kenyans or by corporate bodies whose shares are wholly owned by Kenyans or wholly owned by the government of Kenya; retirement benefits where foreign ownership in a retirement scheme administrator is capped at a maximum of 40%; the restriction for engineers requiring 51% of shares in an engineering firm to be held by Kenyans; and the private security sector where foreign shareholding is limited to 75%.

According to the Kenyan Constitution, foreigners can own land. However, they can only own leasehold interest in land for a renewable term of a maximum of 99 years. In addition, foreigners are also restricted from owning agricultural land, except with the approval of the President.

There are several tax and non-tax investment incentives including the following:

a) Foreign investors investing USD 100,000 (or more) can apply for an investment certificate from KenInvest who subsequently assist in procuring certain licences and entry permits for the business and for the investor.
b) Investors in capital intensive industries are granted capital allowances which include deductions for tax purposes in relation to the cost of buildings and machinery used in manufacturing, fibre optic cables, telecommunication equipment, farm works and wear and tear allowances on motor vehicles, office equipment and furniture.
c) The creation of Export Processing Zones (EPZs) designated to promote and facilitate production of goods for export. EPZs enjoy various tax benefits such as 10 year corporate tax holiday and 25% tax thereafter, 10 year withholding tax holiday on remittances to non-residents, customs duty exemptions, perpetual exemption from VAT and payment of stamp duty on legal instruments. Further, EPZ firms have no restriction on foreign ownership, with 100% foreign shareholding allowed.
d) The creation of Special Economic Zones (SEZs) where business-enabling policies are implemented and sector-appropriate on-site and off-site infrastructure and utilities are provided. SEZs enjoy certain tax exemptions such as: lower corporation tax rate of 10% for first 10 years and 15% for the next 10 years, lower withholding tax rate of 5% on payments made to non-residents (royalties, interest, management fees); withholding tax exemption on dividends paid to non- residents, excise duty exemption on importation of goods and services; and exemption of stamp duty on the execution of any instrument relating to business activities of the SEZ.
e) Businesses are allowed to carry forward losses for a period of nine years succeeding the year of the loss.
f) The law protects foreign investments against expropriation and unlawful compulsory acquisition.
g) The Kenyan Constitution protects the right to property for all persons in any part of the country.
h) Investors in the Country have access to the International Centre for Settlement of Investment Disputes (ICSID) which arbitrates cases between foreign investors and host governments. The Judiciary is also functional and fairly independent although it takes long to resolve disputes

through the courts. Most investors incorporate arbitration clauses in commercial agreements to resolve any dispute that may arise from the agreement in order to resolve the disputes faster.

i) There are no restrictions in the repatriation of dividends and profits out of the country, although amount of USD 10,000 or its equivalent in any currency must be transferred through a licensed bank.

j) Work permits are not difficult to obtain. There is a special class of work permit issued to investors who invest USD 100,000 in the country.

Investors can also benefit from contacting KenInvest, the statutory body whose duty is to promote investment in Kenya. It does this by providing information to prospective investors on starting a business, working in and hiring labour in Kenya. It also provides investors with information on the requisite permits required for investment in the various sectors of the economy. KenInvest also facilitates the application of investment licences and investment related permits such as entry permits by investors, tax pin for the individual investors and their companies and other industry specific licences required to operate.

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