

# Kenya

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## Going public: confidence and cross listing

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Neither Kenya, nor east Africa in the wider context, has been spared from the knock-on effects of the global financial crisis. However, and in spite of the state of global markets, Kenya has witnessed significant capital market development and a number of Kenyan companies have turned to both local and regional capital markets as an alternative, flexible source of income.

### Checks and balances

Recognising the need for a robust regulatory environment and investor security, the Capital Markets Authority (CMA) and the Nairobi Stock Exchange (NSE) have been working together on initiatives to boost investor confidence. These include the recent publication by the CMA of the Capital Markets (Licensing Requirements) (General) (Amendment) Regulations 2009 (the 2009 Licensing Amendment Regulations), which introduce further checks and balances.

The 2009 Licensing Amendment Regulations were primarily targeted at enhancing transparency and raising capital requirements among stockbrokers, investment banks and other licensees. Key changes include the introduction of a minimum paid-up share capital of KSh50 million (\$657,000) for stockbrokers (up from KSh5 million) and the requirement to prepare monthly reports and accounts to be made available to the CMA.

Investment banks are now required to furnish evidence of paid-up share capital of a minimum amount of KSh250 million (up from KSh30 million). In terms of accounting transparency, financial statements must now be prepared in accordance with International Financial Reporting Standards, with the

publication in at least two daily newspapers of half-yearly unaudited accounts and annual audited accounts. Stockbrokers and investment banks are also required to obtain professional indemnity insurance securing at least five times their daily average turnover.

### Listing locally

The listing of securities on the NSE is regulated by the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations 2002 (as amended) (the Disclosure Regulations), which require companies seeking to offer securities to the public to obtain the approval of the CMA and publish an information memorandum to be made available to the public for free. The allotment policy should reserve at least 25% of the ordinary shares that are the subject of an IPO and subsequent listing for investment by local investors. Prospective issuers are also required to comply with the detailed eligibility requirements prescribed with respect to various market segments.

### Regional cross listing

The NSE has, in conjunction with neighbouring securities exchanges, pursued an agenda for the development of cross listing to promote simultaneous public issues and introductions of securities in the region with a view to attracting regional flows of capital and allowing issuers to tap into a wider capital base.

In an attempt to integrate and promote capital market development between members of the East African Community, Kenya has signed MoUs with neighbouring Tanzania and Uganda to facilitate cross listing of securities. Regulations specifically dealing with cross-border introductions and cross listing have been published in Uganda and Tanzania and to date four companies including Kenya Commercial Bank (KCB), Kenya Airways, East African Breweries and Jubilee Insurance have cross listed in all three jurisdictions.

With the admission of Rwanda to the East African Community and following approval by Rwanda's capital markets advisory council, KCB floated its shares on Rwanda's over-the-counter market, becoming the first company to list on four east African securities exchanges - an indication perhaps of confidence in the region's financial sector and Kenya's role as its hub.

## Financial and corporate

### Recommended firms

#### Tier 1

Anjarwalla & Khanna  
Kaplan & Stratton

#### Tier 2

Hamilton Harrison & Mathews  
Walker Kontos

#### Tier 3

Daly & Figgis  
Iseme Kamau & Maema

#### Tier 4

Coulson Harney Advocates  
Muriu Mungai & Co  
Muthaura Mugambi Ayugi & Njonjo

The biggest stir in the Kenyan legal market this year was the high-profile departure of two partners from Kaplan & Stratton to form a new firm called Coulson Harney. The move led commentators to doubt the firm's position as undisputed leader of the Kenyan market, with the improving Anjarwalla & Khanna now seen as providing an equal quality of service.

Corporate and infrastructure bonds are proving a good source of work for Kenyan law firms. Kengen launched a \$150 million private infrastructure bond in January 2009,

and commentators say a number of corporate bonds are in the pipeline.

Some financing work still exists in the market, but most of it is connected to energy and communications projects. Commentators note a shift towards regional work, and many of the projects to receive financing reflect this – energy projects in particular. The construction of a fibre-optic cable from Kenya to the UAE is one notable project on a regional level.

M&A work is quiet, but Kenyan banks, communications and energy companies are seen as viable future targets for investors. Commentators meanwhile suggest that the government may sell all or part of its stake in the National Bank of Kenya, creating work for local firms. Privatisation is also expected to keep law firms busy, with the government selling its stake in various companies such as hotels. However some commentators are sceptical of the value of this work, as some of the assets or stakes are small.

### **Anjarwalla & Khanna**

Anjarwalla & Khanna joins the top tier this year due to the quality and volume of its work, combined with strong market feedback. In fact, many competitors say it is the firm they would recommend in the case of conflict: “They have picked up a huge amount of work. They are a good competitor, I rate them highly,” says one peer.

Both Karim and Atiq Anjarwalla are equally well-regarded. Atiq Anjarwalla is described as “someone you can work with, he doesn’t have an ego” by one peer, who adds that Karim Anjarwalla is “at the top”. Sonal Sejjal is another partner who attracts praise from the market.

The firm is noted for its financial and corporate work, with capital markets the only practice area it is not particularly involved in. Energy projects have given the firm substantial work, with rising star Amyn Mussa acting for the sponsor Lake Turkana Wind Power on the construction of the Turkana wind power project. The wind farm’s link to the national grid is to be constructed under a public-private partnership (PPP) project, and is expected to supply 30% of Kenya’s power when completed.

The firm is working on a regional level too, advising Astonfield Renewable Resources on developing clean and renewable energy projects in west Bengal. The total value of the projects is \$2 billion.

Anjarwalla & Khanna is representing both the East African Marine System and Essar Telecom Kenya on the construction of a fibre-optic cable connecting Kenya to Fujairah in the United Arab Emirates. It is a

PPP project, with the Government of Kenya involved.

#### **Leading lawyers**

Atiq Anjarwalla  
Karim Anjarwalla  
Sonal Sejjal

### **Kaplan & Stratton**

Kaplan & Stratton was the centre of attention in 2008 after the departure of former partners Philip Coulson and Richard Harney, along with three associates, to form a new firm. Some commentators suggest that this affects the firm’s ranking, with the loss of capability and clients to other firms.

But clients think this is a little unfair. “I don’t think this will affect them,” says one. “They are excellent. We have worked a couple of deals with them on two major transactions.”

Both clients and competitors comment that partner Oliver Fowler’s abilities are a big advantage for Kaplan & Stratton. “There is no doubt that Oliver is superb, probably the best corporate lawyer in Kenya. He is very knowledgeable, he is very clever, like an oracle,” says one peer.

Recent work saw Fowler lead a team that acted as Kenyan counsel for Standard Bank in a bridging finance deal for Essar Telecom. The loan was worth €50 million and was completed in 2009. Again in 2009 Fowler advised Illinois Tool Works on the purchase of a Kenyan packaging company.

In September 2008 the firm finished three years of work advising an independent power project called Rabai Power. Kaplan & Stratton acted as Kenyan counsel on Rabai Power’s €79 million facility. The firm also performed a due diligence on Rift Valley Railways for PME Infrastructure Managers, regarding an infrastructure fund PME is supplying Rift Valley Railways.

#### **Leading lawyers**

Oliver Fowler

### **Hamilton Harrison & Mathews**

Hamilton Harrison & Mathews “is probably the busiest law firm in Kenya” says one competitor, while another notes: “The firm is involved in every deal, not just in Kenya, but in east Africa.”

Richard Omwela is the rainmaker at the firm say peers, while Paras Shah is the driving force on the ground. “Paras is honest, straight. He is our go-to-guy; he is bright and knows the market,” says one international client.

Recent work has seen the firm involved on a number of different types of deals. The firm advised Kenya Electricity Generating Company (Kengen) on its private infrastructure bond that commenced in January 2009. The bond is valued at \$150 million and is listed on the Nairobi Stock Exchange. Omwela is also advising Chevron, Shell and BP as purchasers of shares in Kenya Petroleum Refineries, worth over \$100 million.

Shah counselled Standard Chartered Bank Kenya as mandated lead arranger on a syndicated loan to Telkom Kenya. The negotiations finished in February 2009 and the loan is worth \$110 million. The firm also advised Brookside Dairy and Spinknit Dairy on their \$25 million merger.

#### **Leading lawyers**

Andrew Mugambi  
Richard Omwela  
Paras Shah

### **Walker Kontos**

Walker Kontos’ strength is banking and finance matters say commentators. Michael Kontos is the firm’s most visible partner, with one client describing him as “very switched on and practical”. Alexandra Kontos is another leading lawyer at the firm.

In March 2009 the firm advised a syndicate of lenders involved with the Olkaria III geothermal power project. The project was worth \$110 million and the work included providing Kenyan counsel on finance and project documents, as well as a number of other areas.

Michael Kontos advised Anadarko Algeria Company on its negotiations with the Kenyan government on entering into petroleum sharing contracts for the exploration of five potential drilling sites off the coast of Kenya.

In 2008 Peter Mwangi, in the role of transaction leader, advised Kenya Commercial Bank regarding a cross listing on the Dar es Salaam and Ugandan stock exchanges.

#### **Leading lawyers**

Alexandra Kontos  
Michael Kontos  
Peter Mwangi

### **Other ranked firms**

Market sources say that **Daly & Figgis’** visibility has receded in recent years and the firm drops a tier accordingly. Despite the visibility issues, Ashwini Bhandari and Hamish

Keith are still very respected within the Kenyan market.

Daly & Figgis is known for its M&A work, and the firm advised Safaricom on its KSh128 million (\$1.7 million) acquisition of One Communications in May 2008. Keith and Bhandari led a team that undertook a due diligence on Kenya Electricity Generating Company (Kengen) for KPMG, who was the lead transaction advisor on Kengen's KSh5 billion bond.

Keith was also mandated to advise Scangroup on WPP Group's investment into Scangroup through a share issue, in a transaction that totalled KSh1.3 billion. Daly & Figgis also gave Kenyan counsel to Dynamic Global Advisors on its establishment of operations in Kenya.

*Leading lawyers:* Ashwini Bhandari and Hamish Keith

**Iseme Kamau & Maema** is a young firm that is building up a reputation, particularly for banking work. "I think they are doing well," says one peer. "They are not getting the top-tier work, but I can see that changing in the next two or three years."

**Coulson Harney** was formed in September 2008 by two former Kaplan & Stratton partners, Philip Coulson and Richard Harney. Both are well regarded, with one peer saying: "Richard Harney is one of the best. He is always a pleasure [to have] on the other side".

Coulson Harney debuts in tier four, but the market is anxious to see how the firm develops. The firm is seen as M&A and capital market specialists.

Despite its short time in the market, Coulson Harney has already secured some notable work. It advised NIC Bank on its \$10 million acquisition of Savings & Finance Commercial Bank, while WPP Group mandated the firm on its acquisition of a stake in Scangroup.

Harney also advised Centum Investment Company on its purchase of a stake in Carbacid Investments.

*Leading lawyers:* Philip Coulson and Richard Harney

**Muriu Mungai & Co** has good government contacts that deliver it work, and is described as a young and aggressive firm that pushes competitors hard for mandates. The firm is best known for its work representing the Kenyan government on the Safaricom IPO.

In December 2008 the firm advised Universal Corporation, a Kenyan pharmaceuticals group, on an equity financing by Finnfund. The firm also counselled Lantech Africa on a private placement.

*Leading lawyers:* Njoroge Nani Mungai

**Muthaura Mugambi Ayugi & Njonjo** is a newcomer to the rankings, and is noted by several partners as a good up-and-coming firm that is developing a reputation for M&A work.

"Suzanne Muthaura is the driving force" says one competitor. "She is very good." The firm is counselling Simba Energy on the \$100 million construction and operation of an electricity generating plant.

*Leading lawyers:* Suzanne Muthaura