

Kenya

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**Paras Shah and Daniel Wanjau
Hamilton Harrison & Mathews
Nairobi**

Companies in Kenya have traditionally used banks for financing, which is usually secured over assets of the company (usually, land and business). However, companies have recently started using more sophisticated financing sources, particularly syndications of financial institutions and from the capital markets, by issuing commercial paper and bonds. Some larger companies (including state corporations) have also considered listing shares (by way of initial public offerings, rights issues or secondary floatation) on the Nairobi Stock Exchange (the NSE) as a means of raising equity.

The primary legislation governing the capital markets in Kenya is the Capital Markets Act (the CMA), and the subsidiary regulations made under this Act. These regulations have been in force since 2002, and few changes have been made since then. The Capital Markets Authority (the Authority) is, however, considering a review of the regulations.

The CMA prescribes that no person may offer its securities for subscription or sale to the public or a section of the public in Kenya unless, before the offer, it publishes an information memorandum and files a copy of it with the Authority. Companies have the option of raising finance from the Main Investment Market Segment, the Alternative Investment Market Segment or the Fixed Income Securities Market Segment (for corporate and treasury bonds). Shares or bonds can be traded on the NSE.

The listing of bonds or shares on the NSE is regulated by the Capital Markets (Securities) (Public Offers, Listing and Disclosures) Regulations 2002 (the Listing Regulations).

The Listing Regulations require a company seeking approval for offering securities to the public to publish a prospectus, to issue the prospectus free of charge to the members of the public, and to ensure that the prospectus complies with the detailed provisions set out in the Listing Regulations.

The Listing Regulations also set out in detail the eligibility requirements for a company to issue securities, which vary according to the type of security being offered and the market segment on which the securities are to be listed.

The Authority considers any applications for approvals of

offers of securities to the public, taking into consideration any comments from the NSE.

To apply for the listing of securities on the NSE, a company is required to appoint a sponsoring stockbroker and notify the NSE. The NSE has its own listing rules. It is through the sponsoring stockbroker that all applications, presentations and ancillary matters will be presented to the NSE.

The Listing Regulations do not apply to private offers (which are defined in the Listing Regulations), or to securities offered by the government or by entities that are not companies.

The most recent addition to legislation relating to listed shares in Kenya is the Central Depositories Act (the CDA). Under the CDA, a securities exchange can prescribe that a listed security is immobilized. Immobilized securities can only be dealt with using a securities account opened with a central depository (to date, only the Central Depository and Settlement Corporation has been approved as a central depository under the CDA). The central depository is authorized under the CDS to appoint central depository agents (stockbrokers, banks and so on), through whom some functions are carried out. The NSE has immobilized shares of all companies listed on the NSE. Partly due to this, trading of shares on the NSE has become more efficient, and trading volumes have increased.

The Companies Act (which has remained mostly unchanged and is still largely based on the Companies Act 1948 of England) requires a company to issue a prospectus for the purposes of offering shares or debentures to the public. The prospectus must comply with the criteria set out in this Act. At the time of writing, the government is considering reviewing the entire Companies Act.

The Capital Markets (Foreign Investors) Regulations 2002 (the Foreign Investors Regulations) define a foreign investor as "any person who is not a local investor or an east African investor". A listed company is required to reserve at least 25% of its ordinary shares for investment by local investors in the issuer or listed company. The shares to be reserved should be the percentage of the ordinary shares already listed on the securities exchange. A listed company would have to immediately report to the NSE all transactions that would result in the percentage of ordinary shares held by foreign and east African investors reaching 70% or more.

When the acquisition of shares in a listed company results in

the purchaser acquiring effective control of the company, the purchaser must comply with the Capital Markets (Takeovers and Mergers) Regulations 2002, which set out the procedure to be followed in the case of such acquisitions. These regulations set out in detail the various thresholds for acquiring effective control. Procedures for applying for an exemption from these regulations is also prescribed.

Competition legislation in Kenya is contained in the Restrictive Trade Practices Monopolies and Price Control Act, which attempts to control monopolies and takeovers. Any transaction that results in a takeover or merger requires the consent of the minister of finance.

Corporate and commercial

Recommended firms

Tier 1

Kaplan & Stratton

Tier 2

Anjarwalla & Khanna Advocates

Daly & Figgis Advocates

Hamilton Harrison & Mathews

Iseme Kamau & Maema Advocates

Walker Kontos Advocates

Kaplan & Stratton

Contemporaries of Kaplan & Stratton describe the firm as “the biggest corporate and commercial law firm in Kenya” and as being “highly reputable in the business community in Kenya, especially when it comes to advising on commercial contracts.” With 13 partners and seven associates, the firm is a founding member of the pan-African legal network Lex Africa, as well as a member of international legal network Lex Mundi.

The corporate and commercial practice is headed by Oliver Fowler, who is described by his peers as being a “highly respected, sensible lawyer”. His fellow partner Richard Harney is also highly praised as a “very good lawyer”. He worked on the high-profile privatization of Kenya Airways. The firm has recently hired two new associates, Mahesh Acharya and Maina Kigundu.

Kaplan & Stratton has had an active year. Binti Shah and Oliver Fowler advised the Standard Bank and a consortium of lenders on a KSh6 billion (\$78 million) syndicated loan facility to Celtel Kenya, and the firm served as local counsel to Africa’s largest soda producer, Magadi Soda Company, on the \$98.1 million financing its business expansion.

In one of the largest financial acquisitions ever to have taken place in Kenya, Kaplan & Stratton acted for CFC Bank on the \$24 million purchase of Alico Kenya Life Insurance, which was completed in December 2004. The firm also advised on the issue and Nairobi Stock Exchange listing of a \$20 million bond by the East African Development Bank.

Clients previously advised by the firm include Crédit Agricole Indosuez, East African Breweries, Diageo, Kenya Airways, Xerox, Nation Media Group and Sumaria Group.

Leading lawyer

Oliver Fowler

Key contact partner

Richard Harney

Anjarwalla & Khanna Advocates

Anjarwalla & Khanna Advocates is cited by one client as a “professional outfit with the highest levels of ethics and integrity, with a solid background ... their work is both professional and diligent.” Another client said that it “finds them highly professional and effective.”

Among the fine team of nine partners and 10 associates, Atiq Anjarwalla and Karim Anjarwalla are well respected by their contemporaries: “with their experience both in east Africa and Europe they bring many years of experience, especially in matters of corporate and commercial transactions”; they are also “strong in international trade transactions, and therefore we also use them for transactions in the Middle East”. Karim Anjarwalla is also described by a client as “extremely diligent ... we spent months in tough negotiations which were successfully concluded in large part due to his contribution”.

Anjarwalla & Khanna is the founding member of the Africa Legal Network, pooling resources of member firms with a view to providing integrated legal services to clients in the east African countries of Kenya, Uganda and Tanzania.

At the time of writing, the firm is advising DEG, a member of the KfW banking group and Proparco on the proposed financing of a hotel group in Uganda. Other deals include advising a group of companies in Kenya, Uganda and Tanzania in connection with financing oil storage terminals in the east African region. Anjarwalla & Khanna is also acting on behalf of an inter-government education organization, African Virtual University, on providing educational programmes and products throughout Africa. In June 2004, the firm closed a deal advising South Africa’s second-largest mobile phone network operator, Mobile Telephone Networks, on the proposed acquisition of a mobile telecommunications operator.

Leading lawyers

Atiq Anjarwalla

Karim Anjarwalla

Key contact partners

Karim Anjarwalla

Sonjal Sejpal

Daly & Figgis Advocates

One of the oldest and largest law firms in Kenya, Daly & Figgis Advocates has an impressive list of international clients, including Coca-Cola and Vodafone Kenya (which the firm serves as sole legal counsel). Heading a team of prominent lawyers (nine partners and six associates), Hamish Keith is highly praised by his peers, described as a “very experienced commercial lawyer” with “expertise, experience and accessibility”.

Among the year's highlights, the firm advised Chinese major telecommunications company Huawei on setting up a number of branches in Kenya, and acted for Her Majesty's Department of International Development on setting up a microfinance trust in the region. On the finance side, the firm concluded the long-running securitization of US grain miller Seaboard's investment in its Kenyan associate, the Unga Group, acted for Diamond Trust Bank Kenya in relation to raising Tier II subordinated debt capital, and advised Vodafone, Vodafone Kenya and Safaricom in relation to setting up a further export credit agency facility for Safaricom, east Africa's largest GSM telephone operator.

Corporate work, meanwhile, saw the firm act for Lonrho Africa in relation to the sale of Lonrho Hotels Kenya, advise all parties in relation to Akiba Bank's acquisition of East African Building Society, Kenya's largest building society and the first such transaction in Kenya, and work alongside Clifford Chance to advise and act on setting up Actis in Kenya after the CDC Group's global restructuring.

Other clients Daly & Figgis have advised in recent times include Lafarge Group, British Oxygen Group (BOC), International Financial Corporation (IFC), SCAS-Delmas Vieljeux and Pfizer.

Leading lawyer

Hamish Keith

Key contact partners

Zul Alibhai

Ashwini Bhandari

Hamith Keith

Hamilton Harrison & Mathews

Described by one peer as "an upcoming firm that does good work," Hamilton Harrison & Mathews has certainly improved its position in the market over the past year. One client remarks that the firm has an "impressive depth in banking-related litigation, corporate finance and commercial law ... the firm approaches issues with commercial objectives in mind and provides solutions-driven advice." Another client would "certainly consider using them again, as the service received was excellent."

With eight partners and 10 associates, the firm is a member of global professional network the World Service Group. Richard Omwela, who "continues to shine," heads the corporate and commercial practice. Among the firm's team, Paras Shah is highly recommended by the market, one client describing him as an "impressive up and coming commercial lawyer in Nairobi ... he is very efficient and has a sound commercial mind". Shah is particularly adept at advising on finance and corporate matters. Another client picked out Adil Khawaja, recommending him as "a fine commercial litigation lawyer ... he has an impressive success record for dispute resolution work for us, and is a highly skilled advocate and negotiator."

The firm was seen advising a syndicate of local banks, including Standard Chartered Kenya and Barclays Bank Kenya, on a \$65 million syndicated loan facility to Kenya Ports

Authority, which closed in May 2004. This was a unique transaction, in that it was a private loan to a state authority that was secured by receivables of Kenya Ports Authority. It also advised Standard Chartered Kenya on a number of other transactions, including a KSh2 billion (\$26 million) preferred rights issue.

On another notable deal that closed in June 2004, Hamilton Harrison & Mathews acted for one of the largest ever corporate deals to take place in Kenya between ING Bank and a leading mobile telephone operator, Celtel, involving the provision of \$70 million-worth of debt facilities. The firm also advised Actis Capital on its \$6 million acquisition of one of Rwanda's leading banks, Banque Commerciale du Rwanda, and won a role working on the conversion of the Equity Building Society into one of the largest commercial banks in Kenya, Equity Bank, in a deal valued at KSh500 million.

Hamilton Harrison & Mathews' client list is impressive and, as well as the above, includes Kenya Commercial Bank, The Kenya Power & Lighting Company, CFC Bank, Guardian Bank, Giro Commercial Bank, I&M Bank, Telkom Kenya, Kenya Shell, Stanbic Bank, the Insurance Company of East Africa and Sopa Lodges.

Leading lawyers

Adil Khawaja

Paras Shah

Key contact partners

Richard Omwela

Paras Shah

Iseme Kamau & Maema Advocates

Iseme Kamau & Maema Advocates appears for the first time in the *IFLR1000* this year, in response to multiple recommendations from peers and clients alike. The firm is described as "an upcoming competitor," while one client said managing partner James Kamau has "expertise and experience," and "the ability to think outside the box."

The firm, based in Nairobi, has four partners, seven associates and around 30 support staff. James Kamau and William Maema head the corporate and commercial department, advising on a broad range of practice areas including corporate finance, labour law, telecommunications, media, e-commerce, and intellectual property. It also benefits from well-established relationships with leading firms in many African countries, the UK and the US.

Over the past year Iseme Kamau & Maema has handled a number of large deals, including advising Barclays Bank of Kenya Ltd on structuring an asset finance deal, acting for Nation Media Group in connection with its acquisition of leading political news magazine, *Weekly Review*, and separately representing a leading milling company, a new hospital and a leading photography development company on various levels of financing they required, totalling \$11.2 million.

The quality of the firm's work has attracted some of the most desirable clients in the market, including the Coca-Cola Company, Microsoft, Hewlett-Packard, Africa Online

Holdings, AMSCO (an affiliate of the International Finance Corporation) and Kenya Commercial Bank.

Leading lawyer

James Kamau

Key contact partner

James Kamau

Walker Kontos Advocates

Walker Kontos Advocates is well regarded by the market, one client explaining that it “uses Walker Kontos because it has demonstrated competence in Kenya by handling complex corporate and commercial transactions”. This sentiment is backed up by another client, who states that the firm “has demonstrated a high level of competence and personal attention to our company requirements and needs ... we have experienced a high level of success with this organization”.

With an expanded team of seven partners and 10 associates, the firm forms part of the Africa Legal Alliance that forges links of cooperation in transactions involving other African jurisdictions. Alexandra Kontos and Michael Kontos are highly recommended by their peers, one client praising Michael Kontos as being an “experienced” and “solutions-orientated” lawyer.

The firm recently worked on one of the biggest syndicated loans ever to take place in Kenya, advising borrower Celtel Kenya on the KSh6 billion (\$78 million) facility, which closed in April 2005. April was a busy month for the firm – it also acted for Stanbic Bank on Faulu Kenya’s KSh500 million bond issue, which was listed on the Fixed Income Securities Market Segment (FISMS) of the Indian Stock Exchange. In another notable deal, the firm advised a consortium of financial institutions (including the European Investment Bank, International Finance Corporation, and the Netherlands Development Finance Company) on a project finance-related loan to the Magadi Soda Company, valued at \$58.5 million.

On the corporate side, Walker Kontos has also had a great year. Among the year’s highlights the firm advised the Bank of Africa on the acquisition of Calyon’s (formerly Crédit Agricole Indosuez) Kenyan operations, acted for Orchid Enterprises on the acquisition of General Accident Insurance Company and, in December 2004, worked on the sale of 25% of the shares in Bank of Africa Group to the Netherlands Development Finance Company.

Other clients advised by the firm include Proparco Groupe Agence Française de Développement, Nalin Nail Works and Kenya Commercial Bank.

Leading lawyers

Alexandra Kontos

Michael Kontos

Key contact partners

Alexandra Kontos

Michael Kontos

Peter Mwangi

Collins Namachanja