

Kenya

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1. Fintech regulatory framework: a summary of the most relevant laws and regulations concerning fintech and financial innovation.

Kenya does not have a single, comprehensive fintech statute. However, fintech activities are regulated through sector-specific frameworks that apply directly or indirectly apply to fintech and innovation in the financial services sector. The most relevant of these laws and regulations are set out below.

Central Bank of Kenya Act, Cap 491 (CBK Act)

The CBK Act establishes the Central Bank of Kenya (CBK), whose responsibility includes formulating financial policies and regulating the provision of financial services. The CBK licenses and supervises banks, financial institutions, foreign exchange dealers, payment service providers (PSPs), money remittance operators (MROs) and non-deposit taking credit providers (NDTCPs), including digital credit providers (DCPs). The CBK has on occasion issued non-binding 'no-objection' letters indicating that a proposed activity does not appear to contravene existing laws or regulations. The CBK also has in place various guidelines and policies including corporate governance, consumer protection and cybersecurity that aim to provide guidance to sector players.

National Payment System Act, No 39 of 2011 (NPS Act) and National Payment System Regulations (NPS Regulations)

The NPS Act defines the services offered by a PSP to include:

- sending, receiving, storing or processing of payments, or the provision of other services in relation to payment services through any electronic system;
- possessing, operating, managing or controlling a public switched network for the provision of payment services; or
- the processing or storing of data on behalf of such PSPs or users of such payment services.

The NPS Regulations set out the application fees and the licensing/authorisation procedures that must be followed by any person intending to offer payment services in Kenya. The NPS Regulations provide that in addition to getting a CBK authorisation, a mobile PSP must obtain a licence from the Communications Authority of Kenya (CA).

The NPS Act and the NPS Regulations prohibit the conduct of business as a PSP without CBK authorisation. Failure to have the requisite authorisation is an offence attracting penalties of up to KES 500,000 or imprisonment for up to three years, or both. The NPS Regulations allows a PSP to appoint agents whose responsibility includes sending, receiving and processing payments.

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The categories of approved services in the directory of authorised PSPs as at the date of this publication include to:

- issue, process, store, send and facilitate mobile money payments;
- provide a platform that facilitates processing of payment on behalf of merchants;
- receive, store, and facilitate payments for parking using pre-paid cards and mobile money;
- own, possess, operate or control infrastructure for the provision of payment services; and
- provide a platform that facilitates processing of payments on behalf of merchants.

Notably, the CBK governor stated in 2024 that the CBK is in the process of updating the NPS Act.

Money Remittance Regulations, 2013 (the ‘MR Regulations’)

The MR Regulations provide for the licensing and regulation of MROs. An authorised MRO is allowed to deal in inbound and outbound international money transfer transactions. Once authorised as an MRO, an MRO is required not to engage in any other business other than what is authorised by the CBK. The MR Regulations exempts banks and microfinance institutions from applying for and obtaining an MRO licence.

In terms of forex inflows and outflows, the CBK requires that MROs ensure that these must be done through bank accounts and therefore, there are no wallet-to-wallet remittances. A person who provides money remittance services in Kenya without a licence commits an offence, and on conviction is liable to a fine not exceeding KES 500,000 or to imprisonment for a term not exceeding three years, or both.

CBK Digital Credit Providers Regulations, 2022 (the ‘Digital Credit Provider Regulations’)

Under the CBK (Amendment) Act, 2021 (CBK Amendment Act) and the Digital Credit Providers Regulations, digital credit business is designated as a regulated activity. DCPs are required to be licensed by the CBK. However, the CBK Act was amended in 2024 by the Business Laws Amendment Act, 2024 (the ‘Business Laws Amendment Act’) and references to digital credit business were deleted and replaced with non-deposit taking credit business (NDTCP business). The CBK Act now defines non-deposit taking credit business to mean:

- granting of loans or credit facilities, whether or not digitally, to members of the public or a section of it, with or without interest, and either secured or unsecured on the goods or assets purchased;
- asset financing whether directly or through a third-party financier;
- buy now, pay later arrangements as determined by the CBK but not including hire-purchase agreements governed by the Hire-Purchase Act;

- credit guarantees;
- pay-as-you-go arrangements as may be determined by the CBK;
- peer-to-peer lending under collective investment schemes regulated under the Capital Markets Act; and
- any other activity that the CBK may determine to be a NDTCP business.

The implication of the amendment is that DCPs now fall under the provision of NDTCP business. Under the CBK Act, a person operating a NDTCP business without a licence is liable on conviction to imprisonment for a term not exceeding three years, to a fine not exceeding KES 5m or both.

As at the date of this publication, the CBK has published the draft Central Bank of Kenya (Non-deposit taking Credit Providers) Regulations, 2025 ('draft NDTCP Regulations'). The draft NDTCP Regulations intends to repeal the Digital Credit Providers Regulations. Should the NDTCP Regulations come into force, existing licensees under the Digital Credit Providers Regulations will be deemed licensed under the new framework and will not be subject to any new registration requirements. Any licence applications pending at commencement will be processed under the corresponding licensing provisions of the draft NDTCP Regulations. All rights accrued and liabilities incurred under the 2022 regime will be preserved and treated as having arisen under the NDTCP Regulations.

Capital Markets Act, Cap 485A (the CMA Act)

The CMA Act establishes the Capital Markets Authority (CMA), whose role includes regulating public offering of securities. The Act defines the term 'security' and identifies various securities including

- debt instruments;
- depository receipts;
- shares;
- futures relating to assets or property; and
- asset-backed securities and any other security defined by the CMA under the CMA Act.

The Virtual Asset Service Providers Act, 2025 (the 'VASP Act') amended the CMA Act to empower the CMA to regulate virtual asset service providers (VASPs) in accordance with the VASP Act (further detailed in section 2). Prior to the enactment of the VASP Act, the CMA had issued various warnings to the public, especially touching on initial coin offerings and cryptocurrency transactions which lacked regulatory sanctions.

The CMA in March 2019 published the Regulatory Sandbox Policy Guidance Note (Sandbox Policy) to allow for testing of innovative products, solutions and services including fintech products. The Sandbox Review Committee (SRC) has a mandate to provide regulatory support and review, consider sandbox applications and to implement test plans to allow sandbox entrants to transition to licensing categories. The Sandbox Policy is only applicable to servicing fintechs and financial services that are directly within the regulatory parameters of the CMA.

Capital Markets (Investment-Based Crowdfunding) Regulations 2022 (Crowdfunding Regulations)

Under the Crowdfunding Regulations, the establishment, maintenance or operation of an investment-based crowdfunding platform requires a licence from the CMA. The Crowdfunding Regulations extend to platforms within Kenya, those targeting Kenyan investors from abroad, or those with key components physically located in Kenya. Operating such a platform without a licence is considered an offence, with potential penalties including fines up to KES 5m or imprisonment for two years, along with restitution. Unlicensed crowdfunding platforms face even higher penalties: up to KES 10m and restitution. Micro, small and medium-sized enterprises meeting certain criteria, including a minimum two-year operating track record and good corporate governance, can raise funds up to KES 100m within a 12-month period through licensed crowdfunding platforms. These platforms can apply to the CMA for approval to exceed this limit. Eligible investors, including sophisticated retail investors, are subject to investment limits set by crowdfunding operators, with a KES 100,000 limit for retail investors.

Capital Markets (Online Foreign Exchange Trading) Regulations 2017 (Online Trading Regulations)

Under the Online Trading Regulations, a person shall not carry on a business as a dealing online foreign exchange broker, non-dealing online foreign exchange broker or a money manager unless that person is licensed by the CMA. Online foreign exchange trading means internet-based trading of foreign exchange and includes trading in contracts for difference based on a foreign underlying asset. In this regard, the CMA issued warnings to Kenyans against engaging in online foreign exchange trading through unlicensed entities, as they risk losing their investments and may not be protected by law.

Kenya Information and Communications Act, Cap 411A (KICA)

KICA establishes the Communications Authority of Kenya (CA), which regulates the information, communications, media and broadcasting industries, including e-commerce, in Kenya. The CA has a licensing framework that is technology neutral. CA may license a fintech where its operating model incorporates a technological aspect, and the implementation of the innovation requires the fintech to establish its own telecommunications infrastructure or results in content creation. In such cases, the CA issues an approval or licence, a letter of no objection, or a confirmation that an entity does not require a telecommunications licence. Mobile money service providers (MPSPs) and mobile virtual network operators (MVNOs) usually fall under the regulatory ambit of the CA.

The various regulators, including the CBK and CMA, also rely on other laws and regulations that have an impact either directly or indirectly on fintech companies. These include: (1) data protection laws; (2) anti-money laundering laws; (3) consumer protection laws; (4) cybersecurity laws; (5) competition laws; and (6) access to information laws.

2. Regulations on crypto assets: a summary of the legal framework regarding crypto assets and how they are regulated.

The VASP Act provides for the regulation of virtual assets (VAs). The VASP Act was assented to law on 15 October 2025 and commenced on 4 November 2025. The VASP Act was developed to protect the interests of consumers and in response to Kenya's vulnerability to money laundering, terrorism financing and proliferation financing (ML/TF/PF) risks. This was due to challenges in enforcing anti-money laundering and countering the financing of terrorism (AML/CFT) measures because virtual assets were not designated as reporting institutions under the Proceeds of Crimes and Anti-Money Laundering Act, 2010 (POCAMLA).

A VA is defined in the VASP Act as a digital representation of value that can be digitally traded or transferred, and can be used for payment or investment purposes, and does not include digital representation of fiat currencies, securities and other financial assets. The CMA and the CBK are the designated regulated authorities for VAs and they have the power to:

- license VASPs;
- regulate, supervise and monitor promoters of VA offerings;
- issue directions, directives and enforcement actions;
- issue and publish notices, guidelines and guidance notes regarding VAs; and
- ensure financial soundness and stability of the financial system in respect of VAs.

VASPs that offer one or more of the permissible activities must be authorised by either the CBK or the CMA as designated in the VASP Act.

Permissible activities include:

- VA wallets;
- VA exchanges;
- VA payment processors;
- VA brokerage;
- VA investment advisory services;
- VA management;
- initial coin offerings;
- VA tokenisation;
- token issuance platforms; and
- stablecoin issuance.

These activities have been designated to be under the supervision of either the CBK or the CMA. According to a joint public notice issued by the CBK and the CMA on 18 November 2025, the general public was advised that the Cabinet Secretary for National Treasury, in consultation with the CBK and the CMA, is still developing regulations to provide further guidance and facilitate implementation of the VASP Act. As at the date of this publication, the National Treasury has published the draft Virtual Asset Service Providers Regulations 2026 ('Draft VASP Regulations'), the objective of which is to operationalise the VASP Act. The Draft VASP Regulations are going through the legislative process in the Kenyan National Assembly before coming into force.

The Finance Act, No 9 of 2025 introduced a ten per cent excise duty on fees charged on VA transactions. This replaced the digital asset tax, which was pegged at a rate of three per cent of the transaction value of digital asset exchanges.

As of the time of writing, the Insurance Regulatory Authority has published the draft Insurance (Amendment) Regulations, 2025 which seek to designate VA insurance as a new class of business to enable local insurers to underwrite risks linked to VAs including hacking, fraud and theft.

3. Payment service providers and digital wallets: a summary of regulations applying to payment service providers and/or digital wallets.

As discussed in section 1, PSPs are regulated by the CBK under the framework established by the NPS Act and NPS Regulations. The NPS Act provides for the regulation and supervision of payment systems and PSPs. PSPs must be authorised by the CBK, and any person who provides payment services without a licence is guilty of an offence. The CBK's National Payments Strategy 2022–2025 (CBK NPS Strategy) classifies PSPs to include mobile money providers, payment switches and international money remittance providers/operators. The CBK may authorise a PSP as: (1) an electronic retail transfer provider; (2) a small money issuer; (3) an e-money issuer; and (4) a designation of payment instrument. The core capital requirement for a PSP is KES 5m and is dependent on the licence applied for.

As discussed in section 1, if a PSP also offers money remittance services, the PSP must apply for authorisation as an MRO, and the MRO must be registered separately with the CBK. Money remittance business is defined to mean a service for the transmission of money or any representation of monetary value without any payment accounts being created in the name of the payer or the payee, where:

- funds are received from a payer for the sole purpose of transferring a corresponding amount to a payee or to another payment service operator acting on behalf of the payee; or
- funds received on behalf of and made available to the payee.

The minimum core capital requirement for an MRO is KES 20m.

There are no specific regulations regulating digital wallets. Nevertheless, digital wallets are regulated within the auspices of the NPS Act, NPS Regulations and MR Regulations. Digital wallet services in Kenya are mostly offered through a mobile app or web browser, which allows immediate payments and/or debit, credit or prepaid card transactions. As part of CBK's future commitments, the CBK NPS Strategy intends to ensure that there is full interoperability across mobile wallets,

channels and providers under a unified scheme. As stated in section 1, the CBK governor stated in 2024 that the CBK is in the process of updating the NPS Act.

4. Special support for fintechs: a description of special programmes supporting the fintech ecosystem, fintech startups (eg, regulatory sandboxes and accelerator programmes) and regulations regarding special support.

Startups in Kenya receive a great deal of support both locally and internationally, with many accelerators, incubators and venture capitalists targeting startups in the country. Some key accelerators/incubators that accept fintech startups include the Baobab Network, Growth Africa, NaiLab, iBizAfrica and the Catalyst Fund.

The CBK recognises the importance of regulatory support for innovation, and takes an approach labelled the 'test and learn' approach. Under the CBK NPS Strategy, the CBK promises to continue to facilitate this approach with the main objective of building on its legacy of supporting innovation that is consistent with the CBK's policy and regulatory mandate.

The Sandbox Policy discussed in section 1 offers the CMA the opportunity to accelerate understanding of emerging technologies, support the adoption of an evidence-based approach to regulation, and facilitate deepening and broadening of Kenya's capital markets. Companies and startups are invited to apply to join the sandbox, and if successful, they have a 12-month period to deploy their product and conduct live testing. Upon exit from the sandbox, they become eligible for grant of an existing applicable licence or grant of permission to operate in Kenya subject to specified terms.

The CA has also introduced a regulatory sandbox that enables the testing of innovative products, solutions and services with the potential to expand Kenya's ICT markets and facilitate technology transfer or commercialisation of research and innovation. The regulatory sandbox is available to both domestic and foreign entities, including incubators that are willing to pilot innovative technology solutions.

The Startup Bill 2022 is going through the legislative process in the Kenyan Senate. This Bill aims to create an innovative environment for entrepreneurs. If passed, the Bill proposes to establish the Kenya National Innovation Agency to: (1) create partnerships among local and international business incubators; (2) create online directories of startups and incubators; and (3) register and certify startups and incubators if certain conditions are met. The Bill allows for the establishment of credit guarantee schemes intended to provide accessible financial support and act as a guarantee for investors in startups.

6. Open banking: a summary of regulations regarding open banking and direct or indirect regulations that affect open banking.

There are currently no regulations or prescribed requirements for open banking in Kenya, but the CBK has recognised the possibility of moving to open architecture in the CBK NPS Strategy.

The CBK strategy contains provisions relating to development on standards for open but secure application program interfaces (APIs). These standards will include API specifications for:

- identification, verification and authentication;
- customer account information/data access;
- transaction initiation; and
- formats and coding languages for APIs.

Due to the risk associated with opening up data from financial institutions to third parties, CBK intends to develop clear risk management frameworks and standards, including providing clarity on liability and consumer protection. The CBK sought to review open but secure API standards as a medium-term goal by 2023 or 2024; of the time of writing, the CBK has not released a comprehensive, mandatory set of API standards to enhance easier cross-platform services.

6. Regulation of virtual asset service providers.

VASPs are regulated by the VASP Act as referred to in section 2. VASPs that conduct any permitted activities in Kenya must obtain a licence from the CBK or the CMA as applicable. Regulatory authority is allocated between the CBK and the CMA based on the specific activity undertaken, in accordance with the delineation set out in the VASP Act. Only companies limited by shares registered under the Companies Act, Cap 486 (the 'Companies Act') or foreign companies limited by shares and registered under the Companies Act are eligible to apply for a licence. The VASP Act also set out the general obligations of licensed VASPs, including the requirement to maintain a physical office in Kenya where its business activities are carried out and the requirement to comply with ML/FT/PF preventive measures.

VASPs are permitted to conduct the following activities:

- VA wallets;
- VA exchanges;
- VA payment processors;
- VA brokerage;
- VA investment advisory services;
- VA management;
- initial coin offerings;
- VA tokenisation;
- token issuance platforms; and
- stablecoin issuance.

These activities have been designated to be under the supervision of either the CBK or the CMA. For more information, please refer to section 2.

7. AML and the Travel Rule in crypto asset transactions.

In 2023, the Kenya National Risk Assessment on Money Laundering and Terrorism Finance (ML/TF) risks of VAs and VASPs was conducted to identify threats and vulnerabilities. The risk assessment was conducted by a technical working group led by the Financial Reporting Centre (FRC) and comprised the CMA, CBK, law enforcement agencies, financial sector reporting entities and VASPs. The risk assessment rated the VA/VASPs' ML risk as medium and TF risk as low, and recommended the regulation of VA/VASPs. This led to the development and enactment of the VASP Act.

The VASP Act provides that the relevant regulator of a VASP (CBK or the CMA, depending on the permitted activity) will be responsible for regulation, supervision and enforcement of compliance AML/CFT measures. Additionally, the VASP Act amended the Proceeds of Crimes and Anti-Money Laundering Act, 2010 (POCAML) by designating VASPs as reporting institutions.

VASPs are required, under POCAML and the Proceeds of Crime and Anti-Money Laundering Regulations, 2023 (the 'POCAML Regulations'), to monitor on an ongoing basis all complex, unusual, suspicious or such other transactions, whether contemplated or not. Additionally, where a VASP suspects that any such transaction or activity may constitute or is related to ML/TF/PF, it must report the suspicious or unusual transaction or activity to the FRC within two days after the suspicion arose. VASPs are required to register with the FRC and to submit annual compliance reports detailing compliance with POCAML, the POCAML Regulations and the VASP's internal AML rules.

VASPs are also required to file reports with the FRC on all cash transactions equivalent to or exceeding US\$15,000 or its equivalent in any other currency carried out by them, whether or not the transaction appears to be suspicious.

VASPs are required to conduct customer due diligence measures in both domestic and cross-border transactions to verify the identities of customers and beneficial owners, including the ultimate beneficial owners being the natural persons behind a legal person and legal arrangement. VASPs must apply enhanced due diligence to business relationships and transactions involving any natural and legal person, legal arrangements or financial institutions originating from countries identified as posing a higher risk of ML/TF/PF by either the Financial Action Task Force or by the Cabinet Secretary for National Treasury. VASPs are further required to conduct a ML/TF/PF risk assessment any time before the introduction of a new product, business technology or new technology for both new and existing products.

While VASPs are supervised by either the CBK or the CMA for compliance with AML/CFT requirements, the FRC remains the overarching supervisor of all reporting institutions with respect to AML/CFT.

8. Enforcement and cross-border recognition of tokenisation and structuring of secured transactions involving crypto assets.

The Movable Property Security Rights Act (Chapter 499A of the Laws of Kenya) (MPSRA) was enacted in the year 2017 to facilitate the use of movable property as collateral for credit facilities in Kenya. Section 1 of the MPSRA defines the term 'collateral' to mean 'a movable asset that is subject to a security right...'; and the term 'movable asset' to mean 'any tangible or intangible asset'.

From the MPSRA's inclusive conception of the term 'intangible asset' (which expressly lists receivables, choses in action, deposit accounts, electronic securities and intellectual property (IP) rights), it appears that non-physical property interests such as crypto assets may constitute 'intangible assets' depending on the exact nature of the crypto assets. Furthermore, crypto assets that represent a right that may be enforced against a third party can be treated as choses in action and therefore fall within the definition of 'intangible property' under the MPSRA.

A security right in a crypto asset is created by a security agreement, provided that the grantor has rights in the crypto asset to be encumbered and/or the power to encumber that crypto asset. This security agreement:

- must be in writing and signed by the grantor;
- identify the secured creditor and the grantor;
- describe the secured obligations in a manner that reasonably allows their identification; and
- describe the collateral in a manner that it can be reasonably identified.

The form of security agreement that can be granted over a crypto asset under Kenyan law will depend on the nature of the asset and the manner in which it is held or controlled. In practice, security over intangibles – such as debts, bank accounts and shares, all of which are choses in action – is ordinarily taken by way of a legal charge. It may also be feasible to take a common law pledge over a crypto asset, provided: (1) the pledgee can obtain and maintain possession of the pledged crypto asset in a manner recognised by law; and (2) that the pledged crypto asset must be transferable by delivery of possession. In the context of crypto assets, this would generally necessitate the pledgee obtaining exclusive control over the relevant private keys or wallet such that, in substance, the pledgee holds possession and can exclude the pledgor and third parties.

Perfecting a security interest is important to ensure the security is valid against any relevant third parties and to ensure the security has the intended priority over other creditors. The security agreement/letter of pledge (as applicable) over crypto assets is perfected in Kenya through stamping and registration at the applicable registries. The security agreement over crypto assets/letter of pledge (as applicable) will require to be stamped exempt in Kenya pursuant to the provisions of the Stamp Duty Act and the MPSRA. Stamping is required in order to allow the document to be adducible as evidence in a Kenyan court.

The security agreement/letter of pledge (as applicable) over crypto assets will require to be registered at the Collateral Registry. Registration at the Collateral Registry is carried out through its online portal. Registration typically takes one day. A notice must be sent to the grantor(s) of security thereafter. There is currently no fee for registration pursuant to the MPSRA. The period of effectiveness of the

registration of an initial notice registered with the Collateral Registry is ten years; it may be extended only within six months prior to its expiry by the registration of an amendment notice that indicates in the designated field a new period, not exceeding another ten years.

Where the security agreement over the crypto assets amounts to a charge over book debts (there is much debate over whether it can amount to a book debt), the particulars will require to be registered at the Companies Registry within 30 days of execution, where the grantor is a company incorporated in Kenya. A registration fee of up to KES 14,000 is payable for registration at the Companies Registry: these fees will vary depending on the value of the secured amount.

In the case of a default, the enforcement rights available to the secured creditor will be governed by the specific enforcement provisions that are set out in the security agreement as may be complemented by statute and common law, where applicable. When enforcing security rights over a crypto asset, the secured creditor will typically secure control of the crypto asset itself or of the corresponding wallet held by a custodian. The secured creditor would then sell the crypto asset to meet the outstanding obligations. If a pledge over a crypto asset has been duly perfected, the secured creditor will already be in possession of the crypto asset and can enforce by exercising its right of sale.

A public auction is not mandatory. Pursuant to section 72 of the MPSRA, the secured creditor may select the method, manner, time, place and other aspects of the sale or other disposition, lease or license, including whether to sell or otherwise dispose of, lease or license collaterals individually, in groups or as a whole. This section further gives the secured creditor the option to buy the collateral at a public auction or a private auction, but only if the collateral is of a kind that is customarily sold on a recognised market

The law governing the security agreement/letter of pledge is set out in the MPSRA. The MPSRA distinguishes between creation and enforcement of the security as follows:

- The law applicable to the creation, effectiveness against third parties and priority of a security right in an intangible asset is the law of the country in which the grantor is located.
- The law applicable to the creation, effectiveness against third parties, priority and enforcement of a security right in a right to payment of funds credited to a deposit account, as well as to the rights and obligations between the financial institution and the secured creditor, is the law of the country in which that financial institution has its place of business. If the financial institution has places of business in more than one country, the law applicable is the law of the country in which the branch maintaining the deposit account is located.
- The law applicable to the creation, effectiveness against third parties and priority of a security right in an electronic security is the law of the country in which the issuer is located.
- The law applicable to the creation, effectiveness against third parties and priority of a security right in IP is the law of the country in which the IP is protected.
- The law applicable to issues relating to the enforcement of a security right in an intangible asset is the law applicable to the priority of the security right.

Separately, the VASP Act vests the CMA with oversight of VA tokenisation, initial coin offerings and tokenisation issuance platforms, and empowers the Cabinet Secretary for National Treasury & Economic Planning to issue regulations on third-party transactions and relationships. As of the time of writing, no such regulations have been issued. Any such regulations, once issued, may affect – or provide further detail on – the securitisation of crypto assets as collateral.

9. Litigation and jurisdiction on crypto assets: legal implications of disputes involving crypto assets.

Jurisdictional clauses incorporating foreign jurisdictions are generally legally binding and enforceable in Kenya. The doctrine of freedom of contract allows parties to choose and agree on suitable terms that will legally bind them in a contract. Based on this, if an agreement contains a ‘governing law’ or ‘jurisdiction’ clause that assigns a foreign country jurisdiction in case of a dispute, a Kenyan party’s submission to the foreign jurisdiction will generally be legally binding and enforceable. Such jurisdictional clauses must be expressly notified to the parties and should not be incorporated by mere inference. The Kenyan judiciary generally gives effect to party autonomy and the selection of foreign choices of law clauses.

10. Intellectual property and crypto assets: legal protection, ownership, enforcement and monetisation of IP rights related to digital and virtual assets

In Kenya, innovations and inventions are protected under the Industrial Property Act, 2001 as either patents or utility models. An innovation is defined to include a utility model, technovation model, industrial design and any other non-patentable creations or improvements deemed as deserving specified IP rights. On the other hand, an invention for the purposes of protection is defined as a solution to a specific problem in the technological field, which may relate to either a product or a process. Based on the definitions, ownership is determined by establishing who the inventor is: that is, the party responsible for devising the invention or their legal representative.

Section 22 of the Industrial Property Act stipulates that an invention is only patentable if it is new, involves an inventive step and is industrially applicable. An ‘inventive step’ is recognised if the invention encompasses a non-obvious idea to a person skilled in specific art, when compared to prior art; that is, novelty must be present, bringing forth a non-obvious idea. The Act further discusses what novelty is under section 23 by stating that an invention is new if it is not anticipated by prior art. The scope of the prior art considered under the Act includes everything made available to the public anywhere in the world through written disclosures like drawings and illustrations, oral disclosures, exhibitions, use and non-written means. With respect to utility models, the above provisions on patents usually apply saving for the fact that utility models do not require an inventive step. VAs, especially tokenised assets, are covered within this scope if they meet the above criteria for patents or utility models.

The enforcement and protection of invention and innovations against third parties requires an inventor to apply for a patent/utility model to the Kenya Industrial Properties Institute, guided by section 34 of the Act. Once granted, the patent/utility model will be published and subsequently registered and serve as a legal protection against unauthorised third-party use.

The assessment of whether to seek protection in foreign jurisdictions is usually dependent on the commercial interests of the inventor. One must weigh the costs of registration in each jurisdiction vis-a-vis the proposed exploitation and use of the asset in that jurisdiction. If an inventor anticipates that a certain jurisdiction is likely to be commercially rewarding, it is likely that they will opt for registration in such a jurisdiction. The applicable legal framework is also a factor in seeking protection, primarily because some countries' IP laws may not be developed enough to allow for the protection of inventions and innovations. Even where such IP laws are in place, some countries do not have operational IP offices, which makes registration an uphill task. On the flip side, other countries have developed robust legislation and are members of regional IP bodies such as the African Regional Intellectual Property Organization (ARIPO), which makes the protection of IP rights such as patents easier. These considerations must therefore be borne in mind when deciding whether to register in certain countries.

While the protection of inventions is properly established, the framework governing monetisation of IP crypto assets in Kenya is not yet well established.



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