

**LEGAL MANAGEMENT, CONSTITUTIONAL RIGHTS,  
VISION 2030  
&  
SOCIO-ECONOMIC ROLES OF MSMEs**

Ndung'u Ndegwa, BDS Consultant

[ndegwadn@gmail.com](mailto:ndegwadn@gmail.com)

8th October 2021

# Presentation Outline

- Business ownership
- Intellectual property rights
- Taxation in Kenya
- Consumer Protection Rights
- Impact of COVID 19 Pandemic
- Marginalization in Business
- Vision 2030 and SMEs
- Big 4 Agenda and SMEs

# 1. Sole Proprietorship

- owned and operated by one person
- easy and inexpensive to create
- owner has complete authority over all business activities
- least-regulated form of business ownership
- income is taxed at the personal rate of the owner

## Disadvantages

- Raising capital is more difficult
- business is totally reliant on the skills and abilities of the owner
- death of owner dissolves the business unless there is a will to the contrary
- the owner has unlimited liability

## 2. Partnership

- an unincorporated business with two or more owners who share the decisions, assets, liabilities, and profits
- draws on the skills, knowledge, and financial resources of more than one person
- law requires that all partnerships have at least one general partner (a participant who has unlimited personal liability and takes full responsibility for managing the business)
- Partnerships are inexpensive to create
- General partners have complete control
- Partners can share ideas

### Disadvantages

- It is difficult to dissolve one partner's interest without dissolving the partnership
- There may be personality conflicts
- Partners can be held liable for each others' actions

## 3. Corporation

- registered by a state and operates apart from its owners; it issues shares of stock and lives on after the owners have sold their interest or passed away
- the owners of the business are protected from liability for the actions of the company
- limited liability (partial responsibility of a corporate shareholder; he or she is responsible only up to the amount of his or her individual investment)
- ability to raise investment money

### Disadvantages

- expensive to set up
- income more heavily taxed

## 4. Limited Liability Company

- LLC is **simpler to set up** than a corporation
- LLC allows for the **flexibility** of a partnership structure
- LLC protects its owners with the **limited liability** of a corporation, its members are not liable for the company's debts.

## 5. NON-PROFIT CORPORATIONS (NGO)

A legal entity that makes money for reasons other than the owner's profit; it can make a profit, but the profit must remain within the company

A nonprofit corporation must fall within one of four categories:

- religion
- charity
- public benefit
- mutual benefit

# Land ownership

- **Certificate of Title**: This is under Cap 281 issued due to subdivision without change of user. Change of user happens when one shifts from, for instance, agriculture to residential.
- **Certificate of Lease**: Where a lessee (occupant) holds rights to land for a specific period and subject to conditions imposed on land rights by the lessor (landowner). The period can be 33, 50, 66 or 99 years for all urban plots.
- **Freehold Title**: Where the land owner has the maximum rights in terms of period of ownership and use of the land.
- **Sectional Title**: This is a title for a unit within a building, for example a flat.



# Intellectual Property Protection for MSMEs in Kenya

- **IPR** is an exclusive right granted to a person or an organization to have exclusive rights to use its own *plans, ideas*, or other intangible assets without the worry of competition at least for a specific period of time. These rights can include trademarks, copyrights, patents, industrial design rights, etc
- The purpose of registration of intellectual property is to **encourage innovation** without the fear of a competitor stealing the idea or taking credit of it.
- Example: M-KOPA Solar where Safaricom Ltd has in partnership with M-KOPA launched the first ever GSM-enabled pay-as-you-go solar solution that customers pay for using mobile money

# Laws governing Intellectual Property in Kenya

- The Industrial Property Act 2001
- The Copyright Act 2001
- The Trademarks Act (Cap 506)
- The Trade Description Act 2009
- The Anti-counterfeit Act 2008
- The Food Drug and Chemical Substances Act (Cap 254)
- The Seed and Plant Varieties Act (Cap 326)

# Trademark

- **Trademark** is a word, phrase, symbol, and/or design that identifies and distinguishes the source of the goods of one party from those of others(Trademarks Act Cap 506). Unlike patents and copyrights, trademarks do not expire after a set term of years
- consists at least one of the following particulars:
  - Name of the company, individual or firm represented in a special or particular manner
  - Signature of the applicant for registration or some predecessor in the business
  - An invented word or words
  - A word or words having no direct reference to the character or quality of the goods and not being a geographical name or surname
  - Any other distinctive mark

# Process of registering a trademark in Kenya

- Conduct a trademark **search** at Kenya Industrial Property Institute (KIPI) - by filling form TM 27
- Application for **registration** - through form TM2 accompanied by 7 representations of the mark
- trademark is **advertised** in the industrial property journal or Kenya Gazette to allow any interested party an opportunity to raise any objections within 60 days
- issue of **certificate** of registration in the trademarks register - valid for 10 years but renewable

# Copyright

- **Copyright** is a legal right created by the law of a country that grants the creator of an original work **exclusive rights** for its use and distribution for specified time.
- The exclusive rights are not absolute but limited by limitations and exceptions contained in the copyright law
- applicable in music industry

# Patent

- A **patent** is a right granted to an inventor by the government that permits the inventor **to exclude others** from making, selling or using the new and useful invention for a period of 20 years from the filing date of a patent application.
- You get a patent by filing a patent application with the appropriate government department.

## Note:

- Patents refer to an invention, whereas copyrights refer to the expression of an idea, such as an artistic work. They are governed by different rules, so it is important to know which is applicable to your works

# Kenya Industrial Property Institute (KIPI)

Parastatal under the Ministry of Industry, Trade and Cooperatives is the one charged with the responsibility of safeguarding intellectual property. The functions of the Institute include;

- To administer Industrial Property Rights;
- Provision of Technological Information to the public;
- Promoting Inventiveness in Kenya and
- Provision of Training on Industrial Property

# Taxation in Kenya

Kenya Revenue Authority (KRA) is the organization whose mandate is to collect taxes in the country. The authority's Income Tax Department administers various direct taxes, which have different rates



# Income Tax

Income tax is a tax charged for each year of income, upon all the income of a person whether resident or non-resident, which is accrued in or was derived from Kenya. It is imposed on:

- Business income from any trade or profession
- Employment income
- Rent income
- Dividend and Interests
- Pension income
- Income from a Digital Marketplace
- Natural resource income among others

# Methods of Income Tax Deduction

- **Pay as You Earn:** This is a method of collecting tax at source from individuals in gainful employment
- **Corporation Tax:** a form of income tax that is levied on companies. (Resident companies at 30% and non - resident companies at 37.5%.)
- **Withholding Tax:** deducted at source from Interest, dividends, royalties, management or professional fees, commissions, pension or retirement annuity, rent, appearance or performance fees for entertaining or sporting (various rates)
- **Advance Tax:** applicable to Public Service Vehicles. It is not a final tax, but a tax partly paid in advance before a public/commercial service vehicle is registered or licensed.
- **Installment Tax:** paid by persons who have tax payable for any year that amounts to Kshs. 40,000 and above
- **Turnover tax:** Based on annual turnover (yet to be operationalized)

# Other Forms of Taxes

- ✓ Rental Income tax
- ✓ Value Added Tax (VAT)
- ✓ Excise Duty: imposed on goods manufactured in Kenya, or imported into Kenya
- ✓ Capital Gains Tax
- ✓ Agency Tax: Stamp duty, betting tax

# County Levies

- These are various and county-specific, but common ones are:
- Single Business permit
- Produce cess
- etc

# Constitutional Rights (2010)

- ❖ That children must be protected from **hazardous** or exploitative labour
- ❖ Freedom of **association** - every person has the right to form, join or participate in the activities of a trade union.
- ❖ Right to fair **remuneration**.
- ❖ Right to a clean and healthy **environment**.
- ❖ Right to clean and safe **water** in adequate quantities.
- ❖ That County Governments shall be in charge of controlling air **pollution**.
- ❖ That land shall be held, used and managed in a manner that is equitable, efficient, productive and **sustainable**.
- ❖ That acquisition of land can only be done if it is necessary in the interest of defence, public safety, public morality, public health, town and country planning or the development or utilisation of any property that is for the benefit of the **public**.
- ❖ national **values** such as good governance, transparency and accountability will be upheld.
- ❖ Right to freedom and **security** of the person.
- ❖ that the state shall ensure access to **justice** for all persons.

# CONSUMER PROTECTION RIGHTS IN KENYA

The **Competition Authority of Kenya** is a body established under the Competition Act, No. 12 of 2010 (the Act). The Authority's mandate is to enforce the Act with the objective of enhancing the welfare of the people of Kenya by promoting and protecting effective competition in markets and preventing misleading market conduct throughout Kenya. It does this by:

- Promoting and enforcing compliance with the Act;
- Receiving and investigating complaints from legal or natural persons and consumer bodies

# Consumer Rights

- Consumer rights that are included in Article 46 of the Constitution of Kenya, 2010, are;
  - Right to goods and services of reasonable quality.
  - Right to the information necessary for them to gain full benefit from goods and services.
  - Right to the protection of their health, safety and economic interests.
  - Right to compensation for loss or injury arising from defects in goods or services.

# Consumer protection bodies working with Competition Association of Kenya

- i. Kenya Bureau of Standards (KEBS)
- ii. Kenya Industrial Property Institute (KIPI)
- iii. Communication Authority of Kenya (CAK)
- iv. Anti-counterfeit Agency
- v. Kenya Consumer Protection Advisory Committee (KECOPAC)
- vi. Department of Weights and Measures (MoITED)
- vii. Central Bank of Kenya (CBK),
- viii. Insurance Regulatory Authority (IRA),
- ix. Energy Regulatory Commission (ERC),
- x. Medical Practitioners & Dentists Board.



# Main Consumer Rights Organizations in Kenya

- Consumer Unity & Trust Society (CUTS International (India-based))
- Consumer Federation of Kenya (COFEK)
- Consumer International/Change Network (CIN): in 100+ countries
- Kenya Consumer Organization (KCO) - member of CUTS Intl

## COVID 19 Pandemic: Impact of MOH Protocols/ Guidelines

### Negative Impact

- Curfew reduces business operation hours
- reduced no. of passengers/sitting space in hotes impacts on profit
- infrastructural changes eg. washing areas, restructured counters, thermal guns, sanitizers, etc increase cost of business

### Opportunities

- online business expansion
- home goods/appliances and services (e.g. gyms) demand rise
- home-based enterprises growth

# Marginalization in Business

## *Characteristics of Marginalization*

- ✓ Living in a geographically remote location
- ✓ Ecologically fragile environment or extremely prone to natural phenomena or man-made hazards such as pollution, environmental degradation and diseases
- ✓ Living off a subsistence livelihood.
- ✓ Under-developed infrastructure
- ✓ Use of outdated technologies
- ✓ Underdevelopment caused by adherence to cultural practices
- ✓ Little or no influence on political decisions affecting lives.

# How can a Marginalized Person Access Formal Credit?

Usage of financial service providers (%)	
Service provider	2016
MFI	3.6
SACCO	12.9
Bank	38.4
Informal	41.4
Mobile financial services	71.4

*Source: 2016 FinAccess Household Survey*

# Kenya Vision 2030 and the SME

National long-term development blue-print that aims to transform Kenya into a newly industrializing, middle-income country providing a high quality of life to all its citizens by 2030

- ❑ **Economic Pillar**-Aims to achieve an average economic growth rate of 10 per cent per annum and sustaining the same until 2030
- ❑ **Social Pillar**-Seeks to engender just, cohesive and equitable social development in a clean and secure environment
- ❑ **Political Pillar** - Aims to realize an issue-based, people-centered, result-oriented and accountable democratic system

# The Impact of SMEs on National Economies

- ❑ Biggest source of new **employment** (80%) and economic growth.
- ❑ High tax revenues to Government which goes to **social welfare** e.g. NHIF
- ❑ Value-add in **processing**
- ❑ **Innovations** (products and services)
- ❑ **Foreign currency** that exports bring in to help balance the country's balance of payments
- ❑ Increased **capital value** of the small businesses from their profits

# Big 4 Agenda and SMEs

GOK 5-year development Agenda (2018-2022) focusing on 4 Pillars:

- ❖ Manufacturing
- ❖ Affordable housing
- ❖ Universal Health Coverage
- ❖ Enhanced Food Security

# Conclusion

- ❑ Good understanding of the legal environment impacts **positively** to business growth
- ❑ Business must operate **within** the law
- ❑ It is the right of business owners/operators to constantly **advocate** for favourable legislation



