

2017

LIBERALIZATION OF TRADE IN SERVICES IN COMESA: PHASE TWO



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Abbreviations and Acronyms

AUC	African Union Commission
ACEK	Association of Consulting Engineers of Kenya
AG	Attorney-General
AIM	Alternative Investment Market
ASAL	Arid and Semi-Arid Lands
BOO	Build Own Operate
BOT	Build Own Operate Transfer
BOOT	Build Own Operate Transfer
BORAQS	Board of Registration of Architects and Quantity Surveyors
BPO	Business process outsourcing
CLE	Council for Legal Education
CPAs	Certified Public Accountants
CBK	Central Bank of Kenya
CFTA	Continental Free Trade Area
CEEC	Centre for Energy Efficiency and Conservation
COMESA	Common Market of East and Southern Africa
DRC	Democratic Republic of Congo
EAC	East African Community
EBK	Engineers Board of Kenya
EAC CMP	East African Community Common Markets protocol
EACIA	East African Institutes of Accountants
EARB	Estate Agents Registration Board
EPC	Export Promotion Council
ERP	Enterprise Resource Planning
ERA	Energy Regulatory Authority
ERC	Energy Regulatory commission
ERS	Economic Recovery Strategy
FDI	Foreign Direct Investment
GATS	General Agreement on Trade in Services
GDP	Gross Domestic Product
GTAP	Global Trade Analysis Project
ICT	Information and Communication Technology
IPFA	International Project Financing Association
IBM	International Business Machines Corporation
ICPAK	Institute of Certified Public Accountants of Kenya
ICPAR	Institute of Certified Public Accountants of Rwanda.
IPO	Initial Public offering
IT	Information Technology
ITU	International Telecommunication Union
IPPs	Independent Power Producers

JKIA	Jomo Kenyatta International Airport
JVA	Joint Venture Agreement
JHPIEGO	International non-profit health organization affiliated with The Johns Hopkins University
KENGEN	Kenya Electricity Generating Company
KEBS	Kenya Bureau of Standards
KETRACO	Kenya Electricity Transmission Company
KNEB	Kenya Nuclear Electricity Board
KENAS	Kenya Accreditation Service
KNBS	Kenya National Bureau of Statistics
KVB	Kenya Veterinary Board
KPC	Kenya Pipeline Corporation
KPLC	Kenya Power and Lighting Company
LAPSET	The Lamu Port and South Sudan Ethiopia Transport
LCPDP	Least Cost Power Development Plan
LPG	Liquid Petroleum Gas
LSK	Law Society of Kenya
M-Pesa	A Swahili term for Mobile Money
MRA	Mutual Recognition Agreements
MBS	Mombasa
NCA	National Construction Authority
NCST	National Council for Science and Technology
NEMA	National Environmental Management Authority
NOCK	National Oil Corporation of Kenya
NRB	Nairobi
OSHA	Occupational Safety and Health Act
OECD	Organization For Economic Co-Operation And Development
OEPC	Oil Exploration and Production Companies
OIEPs	Oil Exploration and Production Companies
OMCs	Oil Marketing Companies
PIEA	Petroleum Institute of East Africa
PPAs -	Power Purchase Agreements
PPP	Public Private Partnership
EAC PS	East African Community Partner State
QS's	Quantity Surveyors
R&D	Research and development
REA	Rural Electrification Authority
REFIT	Renewable Energy Feed in Tariff
RE	Renewable Energy
REREC	Rural Electrification and Renewal Energy Corporation

SADC	South African Development Community
SERC	Strathmore Energy Research Centre
SGR	Standard Gauge Railway
SMEs	Small and Medium Enterprises
SMMEs	Small Medium and Micro Enterprises
SDG	Sustainable Development Goal
SEZs	Special Economic zones
TICAD	Tokyo International Conference on African Development
TVET	Technical and Vocational Education and Training
UNCTAD	United Nations Conference on Trade and Development
UNCPC	United Nations Provisional Central Product Classification
UNFPA	United Nations Population Fund
UNSDG	United Nations Sustainable Development Goal
WTO	World Trade Organization

Background to the COMESA Trade in Services Negotiations

The Common Market of Eastern and Southern Africa (COMESA) Member States started negotiations on liberalization of Trade in Services in 2004. The negotiations started with development of rules of procedure and negotiating guidelines which ended in 2009. After the adoption of the Rule of Procedure and Negotiating Guidelines in 2009, Member States undertook the process of undertaking identification of sectors that were going to be liberalized, guided by their commitments in World Trade Organization (WTO) and other negotiations they were undertaking on liberalization of services within their regions i.e. East African Community (EAC) and South African Development Cooperation (SADC). Member states agreed to start negotiations on liberalization of four priority sectors: Tourism services; Communication services; Transport services; and, Financial services. Negotiations on liberalization of these priority sectors started in 2010 and were finalized in 2014.

Upon completion of negotiations of the four priority sectors, Members States agreed that in order to meet the provisions of General Agreement of Trade in Services (GATS) Article 5, which guides negotiations of services from a regional perspective, there was need to identify three more sectors to ensure substantial coverage. As such, Member States agreed to initiate and finalize negotiations in the following three sectors: Business services; Construction and Related engineering services; and, Energy services. Kenya being member of COMESA was expected to engage in the process of liberalizing these three additional sectors in 2015, but this second round is yet to commence. Under the 2017 COMESA calendar of events, it is estimated that the negotiations will commence in March 2018.

Against this background, and in preparation of the second phase of negotiations, the Ministry of Industry, Trade and Cooperatives commissioned this analytical study focusing on three broad sectors, that is Business Services Sector; Construction and Related Engineering Sector; and, the Energy Services Sector. The aim of the study is to assess the level of preparedness of the sectors through stakeholders' consultations, and using the input, prepare Kenya's proposed schedules of commitment for the three sectors.

This report comprises of four broad parts. Parts 1, 2 and 3 looks at the broad Business Services Sector, Construction and Related Engineering Services Sector and the Energy Sector respectively. For each sector, the report examines the economic significance of the various sub sectors comprising the sector, while reflecting on the various factors driving growth of the subsectors. Further, the report examines key constraints and challenges facing each sector, while pinpointing the potential trade in services opportunities available for Kenya in the COMESA region. For each sector, the report proposes a negotiating approach in the upcoming COMESA trade in services negotiations. Finally, the report examines the regulatory framework as exists for each sector and subsectors.

Part 4 of the report consists of the proposed schedules of commitments for each of the three broad sectors.

COMESA Member States

- | | |
|----------------|----------------|
| 1. Burundi | 11. Malawi |
| 2. Comoros | 12. Mauritius |
| 3. Congo | 13. Rwanda |
| 4. Djibouti | 14. Seychelles |
| 5. Egypt | 15. The Sudan |
| 6. Eritrea | 16. Swaziland |
| 7. Ethiopia | 17. Uganda |
| 8. Kenya | 18. Zambia |
| 9. Libya | 19. Zimbabwe |
| 10. Madagascar | |

PART 1: BUSINESS SERVICES

Defining Business Services

The WTO Classification defines Business Services to include the following services categories: Professional services; Computer services; Research and development; Real estate; Rental and leasing; and, Other business services including advertising, management consulting, services incidental to agriculture, mining, manufacturing, and energy distribution, technical consulting, maintenance and repair of equipment, building cleaning, packaging, and publishing.

Business services are important intermediate inputs in the production of many agricultural and manufacturing products that are significant for regional integration at the East African Community (EAC) and COMESA levels, and even at global levels (read WTO). There exists an undisputed linkage between business services and other sectors of the economy.¹ According to Dihel, input-output calculations based on Global Trade Analysis Project (GTAP), data shows significant downstream linkages of business services, and specifically professional services with a broad range of agricultural products, mining and manufacturing of garments, leather, paper, metal and chemicals.² Business businesses use the services of specialists firms in areas such as legal, accounting, transport, distribution, information technology, finance and statistics to cut costs, increase productivity and boost competitiveness. In the end, consumers benefit from the lower costs and greater choice that arise from applications of the services sector.³

At the EAC level, Kenya has scheduled Legal services (advisory and representation services in judicial procedure concerning other fields of law), Accounting and auditing services, Architectural services, Engineering services (Advisory and consultative engineering services), Computer and related services (consultancy related to the installation of computer hardware), Research and Development Services and Leasing or Rental services as appearing the Table 1. At the WTO, Kenya has not scheduled any commitments in the Business Services sector.

¹ Saez S, Mackenna M, Hoffman, B Valuing Trade in Services, The Africa Competitiveness Report, 2015

² See Developing Professional Services in Africa, Nora Dihel, 2010, available at http://www.uneca.org/sites/default/files/uploaded-documents/AEC/2010/Papers/session_i.1.3_1_developing_professional_services_in_africa_through_regional_integration.pdf

³ Saez S, Mackenna M, Hoffman, B Valuing Trade in Services, The Africa Competitiveness Report, 2015

Table 1: Kenya's Liberalization of Business Services (EAC and WTO)

Broad sector	EAC	WTO	CFTA
BUSINESS SERVICES	Professional services <ul style="list-style-type: none"> • Legal advisory and representation services in judicial procedure concerning other fields of law (CPC 86119) • Accounting and auditing services (CPC 862 excluding CPC 86213 and CPC 86211) • Architectural services (CPC 8671) • Advisory and consultative engineering services (CPC 86721) 	No commitments in Business Services	Identified as a priority sector
	Computer and related services <ul style="list-style-type: none"> • Consultancy related to the installation of computer hardware (CPC 841) Research and development <ul style="list-style-type: none"> • Research and developmental services on natural sciences (CPC 851) Leasing or rental services <ul style="list-style-type: none"> • Leasing or rental services concerning aircrafts (CPC 83104) • Leasing or rental services concerning other land transport equipment (CPC 83105) • Leasing or rental services concerning agricultural machinery and equipment (CPC 83106) • Leasing or rental services concerning agricultural machinery and equipment without operator (CPC 83106) • Leasing or rental services concerning construction machinery and equipment without operator (CPC 83107) • Leasing or rental concerning office machinery and equipment (including computers) without operator (CPC 83108) • Leasing and rental services concerning other machinery and equipment without operator (CPC 83109) • Rental of commercial vehicles with operator (CPC 7124) • Rental of aircraft with crew (CPC 734) 		

Professional Services

Professional services⁴ play an important role in the functioning of modern economies. They contribute directly and indirectly to economic growth, including lowering transactions costs and by creating spillovers of knowledge to other industries.⁵ Under the EAC,

⁴ Under the WTO Classification, professional services fall under the broad category of Business Services which include professional services, computer services, research and development, real estate, rental and leasing, other business services such as advertising, management consulting, services incidental to agriculture, mining, manufacturing, and energy distribution, technical consulting, maintenance and repair of equipment, building, cleaning, packaging, and publishing.

⁵ See Developing Professional Services in Africa, Nora Dihel, 2010 available at http://www.uneca.org/sites/default/files/uploaded-documents/AEC/2010/Papers/session_i.1.3_1_developing_professional_services_in_africa_through_regional_integration.pdf.

COMESA and CFTA integration agenda, professional services are important intermediate inputs to agricultural and manufacturing products, which are major sectors of export interest to Kenya.

Professional skills and services, including accounting and legal services, can play a critical role in reducing transaction costs, which as cited from work by Collier and Gunning, are the most significant impediment to economic growth in Africa.⁶ For example, accountancy and audit services are used in a broad spectrum of economic activities by both large firms and SMEs in ensuring accountability and financial integrity. Legal services are increasingly important for functioning and predictable investment environments. Engineering services, including those services falling under the built environment, are critical to the development of infrastructure including roads, rail, water, telecommunications, energy and financial services, needed by all economic activities including agriculture, manufacturing, education, health and education.

The liberalization of trade under the EAC and COMESA integration agenda has increased the demand for relevant, efficient and affordable professional services. In Kenya, other EAC Partner States and the COMESA regions, the potential for governments to drive the demand for professional services, especially in construction, engineering and consequently, financial, tourism and health services is increasing due to the ongoing infrastructure projects. For Kenyan firms, this is a terrific opportunity as the EAC and COMESA regions have shortages of professional service suppliers, while Kenyan professionals are well regarded. Professional firms and individual service suppliers can take advantage of the recent innovations in financial, telecommunication and transport sectors to reduce transaction and infrastructure costs while enhancing their efficiency.

Kenya exports considerable quantities of professional services, especially to East and Southern African countries, and also to European countries, especially the United Kingdom, and the United States of America. It is worth noting that only in very few instances is this export of services done at an official level and those who move do so entirely on their own without any type of support. Remittances from professionals working abroad have been recognized as forming a sizeable proportion of foreign exchange earnings. These remittances have in some cases exceeded revenues from the traditional export of coffee and tea. However, the growth and export potential of professional services in Kenya is affected by the fact that in the past, the government has not prioritized support to professionals who are desirous of exporting their services. In fact, for the longest period,

⁶ See Developing Professional Services in Africa, Nora Dihel, 2010 available at http://www.uneca.org/sites/default/files/uploaded-documents/AEC/2010/Papers/session_i.1.3_1_developing_professional_services_in_africa_through_regional_integration.pdf.

the Export Promotion Council (EPC), the export trade support institution in Kenya, had not placed professional services in its agenda. It is only in 2015 that the Export Promotion Council, with the support of the Common Wealth Secretariat, developed a strategy for the promotion of select services. Further, Kenya does not have specific funds to support professionals who want to export their services. Kenyan professionals who export services within the EAC, COMESA, across the continent or even globally do so under their own private arrangements. In addition, the government has not developed tax incentives e.g. tax deductions or holidays, for professionals who generate foreign exchange through export of their services. However, there is lack of adequate disaggregated data on professional services and as such, it is not possible to assess properly the behavior of professional services exports, and where these services are exported to.⁷

Liberalization of Professional Services by Kenya

At the WTO level, Kenya has not inscribed any commitments for professional services for the broad sector of Business Services. At the EAC level, Kenya has not made any commitments for engineering services (except for advisory services), integrated engineering services, medical and dental services, veterinary services, urban planning and landscape architectural services, and services provided by mid wives and physiotherapists.⁸ Also, Kenya has not schedule any commitments for Pharmacy services and quantity surveying services.⁹ This is despite the fact that Kenya is reputed to produce highly qualified professionals, and as such, there is hardly any threat for stiff competition from other EAC Partner States. In fact, Kenya produces considerable quantities of professional services, and in this regard, enjoys a comparative advantage in professional services. Failure to open up to at the EAC level¹⁰ defeats the ongoing processes of harmonization of educational standards within the EAC region, and sends the wrong signals to the other Partners States.

Stakeholders have indicated that Kenya has existing export interest and unexplored potential in professional services to EAC and COMESA regions. Within the COMESA region, stakeholders indicated that Kenya should focus on liberalizing Architectural services, Engineering services, Integrated Engineering services, Urban planning and Landscape Architectural services, Quantity Surveying and Land surveying services to complement the growth of the Construction and Related Engineering services. Further, Engineering services

⁷ There is urgent need to develop a proper methodology on collecting statistical data on trade in services, and train government officials, including KNBS on the same.

⁸ This is despite the fact that Kenya is reputed to produce the best professionals in the region, and as such, there is hardly any threat for competition from the other partner states. Further, failure to open up to other partner states defeats the ongoing process of harmonization of educational standards by partner states, and sends the signals to the other partners states.

⁹ Which have not been classified under the W/120.

¹⁰ Or even at the COMESA leve.

and Integrated Engineering services constitute the professions that Kenya should focus on in the liberalization of the Energy Services Sector.

Under the EAC integration agenda, Partner States are currently engaged in the process of revising their schedules of commitments with a view to deepening them. In its revised schedule, Kenya plans to liberalize the following: Legal services; Accounting, Auditing and Book keeping services; Taxation services; Architectural services; Engineering Services; Integrated Engineering Services; Urban Planning, Landscape and Architectural Services; Medical and Dental services; Veterinary Services; and, Services provided by midwives, nurses and physiotherapists. It is expected that this process will be complete before the end of 2018.

Legal Services in Kenya

The legal profession in Kenya is a liberal profession carried out independently from the government, and guided by the Advocates Act.¹¹ Under Sections 11 to 15 of the Act, a person wishing to qualify as an advocate in Kenya must meet specific academic and professional qualifications before admission to the Kenyan bar. Those wishing to pursue private practice must become members of the Law Society of Kenya (LSK) as required by Section 23 of the Act, and obtain annual practicing certificates under Section 22. However, to practice in the public sector, one does not have to maintain membership in the LSK or obtain an annual practicing licence.

Section 12 of the Advocates Act restricts admission to the Kenyan bar to Kenyan citizens and citizens of other EAC Partner States. Section 13 of the Advocates Act makes it mandatory for an applicant for admission as an advocate to have or be eligible for conferment of a degree in law from a recognized university in Kenya or a university, college or institution approved by the Council for Legal Education (CLE).¹² Further, an applicant must have completed pupillage and passed such examinations as may be prescribed by the CLE.¹³

¹¹ Chapter xx of the Laws of Kenya.

¹² This provision has been very controversial. See *Rita Biwott Vs CLE* where the applicant's application to be admitted to the Kenya School of Law was rejected on the ground that the Council did not approve her two-years degree at the University of Edinburgh under Section 13(1) of the Advocates Act. In finding for the applicant, the High Court ruled that she had not been given a hearing before her application was rejected and thus there was a breach of the rules of natural justice. The decision of the Council was quashed and the principal of the Kenya School of Law ordered to admit her into the school. Also See *Michael Omole Oharo & others v CLE*, the applicants were holders of law degrees from universities in India (recognition of universities). Applicants applied to be admitted to the KSL and were refused admission for failing to meet the academic qualifications under S. 13. The applicants went to court seeking orders that the respondent's decision denying them admission to the KSL be quashed and that the respondent had failed to give them a hearing before denying them admission. Case relied on Rita Biwott's case. Previously this provision contained a list of the universities recognized by the CLE. This was changed to give absolute discretion to the CLE to consider specific applications.

¹³ In other jurisdictions called bar exams.

Under Section 11 of the Advocates Act, the Attorney-General (AG) can use his absolute discretion to allow a practitioner who is entitled to appear before superior courts of a Commonwealth country to act as an advocate in Kenya. Such admission by the AG can only be for the purpose of a specified suit/matter or in regard to which the person so admitted has been instructed by the Attorney-General or an advocate. Such a person should not be not disqualified or suspended by virtue of the Advocates Act. The foreign advocate must pay a prescribed admission fee to the Registrar. If appearing in court, the foreign advocate must appear with an advocate. In Kenya, foreign advocates are not entitled to sign or file any pleadings in court.

The legal services sector in Kenya is dominated by domestic providers, often individual practitioners and small firms. Most of these firms are general practitioners, lacking competencies in sophisticated practice in complex infrastructure projects and PPP models in energy and financing. Kenya has a handful of medium sized firms with technical and financial capacity to undertake complex and sophisticated legal projects within Kenya and across borders for international clients who lend to and do business in Africa. However, these shortcomings notwithstanding, stakeholders from the legal sector indicated that Kenyan lawyers, who feel that they have a competitive advantage amongst their EAC counterparts, are often unable to provide services to clients within the EAC region due to the existence of multiple barriers in the regulatory frameworks of other partner states.¹⁴ This is despite the fact that Kenya has fully liberalized its legal sector, allowing participation by advocates from other EAC Partner States. The opening up of Kenya's legal sector at the EAC level notwithstanding, the World Bank Restrictiveness Index indicates that Kenya's legal services market is among the most closed globally, despite being highly competitive for existing players.

But with Kenya's economic development and natural resources potential being recognized globally, some of the world's biggest law firms have been trying to break into Kenya's legal market. For instance, Baker & McKenzie, which with more than 4,000 lawyers is the world's second biggest law firm, has been trying to break into Kenya. This is because Nairobi is viewed to be amongst Africa's financial capitals, together with Lagos and Johannesburg.¹⁵ Baker & McKenzie already has offices in Cairo, Casablanca and Johannesburg. The attractiveness of Kenya's legal market to foreign legal firms is driven by several factors including:

- The growth of the capital markets with foreign companies dual-listing in Kenya and in other jurisdictions such as United Kingdom and USA. For instance, Atlas

¹⁴ LSK Kenya needs to commission a regulatory audit of the relevant legal frameworks of other EAC Partner States to enable it be more specific on this assertion.

¹⁵ Financial Times, Big Global firm trying to get a foothold in Kenya, available at <https://www.ft.com/content/e4eb1eb4-9f06-3dbd-bcb7-dec321dff9a4>.

Development & Support Services, an east African oil group with an annual turnover of USD 40million has cross-listed its shares at Nairobi Securities Exchange as well as London's AIM. The IPOs market in Kenya and Africa has been viewed as promising.

- Debt which is a highly sought-after area. Following Kenya's maiden sovereign bond issue, which raised a record USD 2billion with a further USD 750million follow-up, lawyers hope domestic corporates may take to the international debt markets for the first time, benchmarking themselves against Kenya's international ranking.
- Big infrastructure projects – from energy and mining to roads and rail– are viewed as having potential to yield opportunities for international deals as government turn to international bond markets to finance potentially transformative dream projects.

Unfortunately, most local firms lack technical potential to handle such projects in mergers, acquisitions, oil and gas, and mining. In fact, stakeholders from the energy sector indicated that there is a dire shortage of competent and experienced law firms and legal consultants in Kenya to provide advisory services in energy PPP projects. This has necessitated the hiring of foreign law firms and legal consultants to provide expert advice and legal services at very steep prices.

Such knowledge gaps in complex and emerging legal field make a strong case for Kenya to liberalize its legal practice to COMESA member states and under the CFTA so as to facilitate skills and knowledge transfer, experience

'I have been telling the LSK that we cannot keep this legal market closed forever.' Professor Githu Muigai, Attorney General of Kenya

Source: The Standard, 3rd February 2014

sharing and competence building for Kenyan legal practitioners. However, such shortcomings notwithstanding, the Law Society of Kenya is of the view that legal services market in Kenya should neither be liberalized at the COMESA, nor at the continental level. It is worth mentioning that in the past, the Attorney General has warned Kenyan lawyers to prepare for stiff competition from foreign lawyers as a result of regionalization and globalization of legal practice.¹⁶

Recently, the worldwide consolidation trend experienced by many developed and middle-income economies that resulted in a growing number of large multinational law firms with vast international networks is being observed in Kenya with firms such as DLA Piper setting up through local partnerships. However, the Kenyan bar remains closed to foreign lawyers, although as already described in the previous paragraph, the Attorney General

¹⁶ The Standard, 3rd February 2014, Foreign lawyers to work in Kenya, available at <https://www.standardmedia.co.ke/article/2000103789/foreign-lawyers-to-work-in-kenya>.

has discretion to open it up to practitioners from Commonwealth jurisdictions, as and when there is need.

Some of the restrictions in the legal profession include:

- a) Advertising – Under the Advocates’ (Marketing and Advertising) Rules 2014,¹⁷ advocates in Kenya may advertise their services, but such advertising should be “objective true and dignified”. The regulations impose limitations on the content, means, and manner of advertising.¹⁸
- b) Minimum pricing- The Advocates Act mandates the Chief Justice to regulate remuneration of advocates in respect of all professional business. The remuneration schedule of the Advocates Act stipulates the minimum allowable charges for various legal services including litigation (the mainstay of Kenya’s legal profession), conveyancing of property, the formation of companies, probate and administration, and landlord and tenant work. Any service listed in the schedule is automatically reserved for advocates. It is an offence for an unqualified person to offer such a service to another person.
- c) Legal form – the Advocates Act requires an advocate to use his/her real name in registering a business name of a firm or a partnership. Recently, the legal profession embraced limited partnerships as a new model through which to practise law. However, this new form needs to be aligned with the primary law that regulates legal practice.
- d) Monopolies that advocates enjoy in the provision of legal service. While a number of services can only be provided by advocates, others can be liberalized and be made the subject of competition between the legal profession and other service providers, including the accounting and taxation professions. This is an issue that the Kenyan legal profession should reconsider in light of globalization.

¹⁷ Advocates’ (Marketing and Advertising) Rules 2014, available at <http://ilawkenya.com/wp-content/uploads/2014/02/THEADVOCATES-MARKETING-ADVERTISING-RULES-2014-2.pdf>.

¹⁸a) In March 29, 2012, the High Court of Kenya ruled that advocates could advertise their services. Justice David Majanja in the Matter between Okenyo Omwansa and Another vs. The Attorney General & two others (High Court petition No. 126 of 2011) declared that Rule 2 banning advertisements by advocates was unconstitutional and inconsistent with Article 46 (1) and 48 of the Kenya Constitution, 2010. To respond to this ruling, the Law Society of Kenya published the Advocates’ (Marketing and Advertising) Rules 2014. Advocates are subject to these rules when deciding to advertise their services. In particular, the regulation requires advertising to be “objective true and dignified”, and imposes limitations on the content, means, and manner of advertising. For instance, it lays down the information that can be advertised and the information that “may not be included”, such as names of clients, pictures, and reference to tariffs. Moreover, for each means of communication, specific limits are imposed regarding the size and also the frequency of advertising; for instance, a lawyer can place a magazine advertisement which should not exceed the size of 5 x 5 inches and can only do so once per quarter in each year. These advertising rules are still restrictive and do not allow advocates to make reference to the fee charged, identify former clients, nor mention any award obtained

Accounting, Auditing and Book Keeping¹⁹ and Taxation Services

According to the Institute of Certified Public Accountants of Kenya (ICPAK), the umbrella body that regulates and coordinates activities of qualified and registered Certified Public Accountants (CPAs) in Kenya as mandated by The Accountants Act, Cap 531 of the laws of Kenya, there were 6,041 accountants as at December 2010. This number rose to 7,363 in 2011. The current number as at 2017 could not be ascertained.²⁰ The regulation and coordination of Taxation and Auditing Services also fall under the mandate of ICPAK. Some of the restrictions in the accounting profession include:

- a) The services are provided by the profession under an exclusive right.
- b) Marketing and advertising - while providing general information on the service provided is permitted, professionals are forbidden from providing specific information.²¹ ICPAK guidelines on marketing and publicity further clarify that *“while marketing, which is the process of identifying client needs and making the product to satisfy these, is acceptable, advertising which is the communication to the public of the services that a professional accountant has to offer, is limited by law, custom and the Code of Ethics.”* Under the Ethical Marketing and Publicity Practices in the Accounting Profession Guideline 1/2010, paid announcements in the press are permitted in the case of opening of a new office, changes in membership, changes in the name/address of a firm, and appointment of a new member at the firm.
- c) Cooperation across sectors is only allowed between comparable licensed professions. These restrictions limit market strategies available to professionals to enhance their competitiveness in the ever-changing global marketplace.

In 2011, competent authorities from Kenya, Rwanda and Tanzania entered into an MRA for the Profession of Accountancy. Consequently, the MRA established the East African Institutes of Accountants (EACIA). A study conducted by EABC in 2013²² indicates that since the coming into place of the MRA, the majority of professional accountants moving within the region are from Kenya, e.g., the ICPAR in Rwanda has a total membership of approximately 200 members of whom 120 are Kenyans. Also, by 2013, 24 Kenyans had

¹⁹ Accounting, auditing and bookkeeping services are part of subsector "A." of "1. Business Services" of the Services Sectoral Classification List. The corresponding classification number under the United Nations' "Provisional Central Product Classification"(CPC) is 862. There are no further sub-categories provided for under W/120. Under the CPC, however, the category of "Accounting, auditing and bookkeeping services" (CPC 862) is further sub-divided into Accounting and auditing services (CPC 8621) made up of Financial Auditing services (CPC 86211), Accounting review services (CPC 86212), Compilation of financial statements services (CPC 86213), and other accounting services (CPC 86219); and Bookkeeping services, except tax returns (CPC 8622) Bookkeeping services, except tax returns (CPC 86220).

²⁰ ICPAK was unavailable for consultation, and was represented by APSEA in stakeholders' consultations.

²¹ See Code of Ethics for Professional Accountants, Institute of Certified Public Accountants of Kenya.

²² EABC Study on the Implementation of the Accountants' MRA, 2013.

been registered in Uganda, 17 in Tanzania and one in Burundi; 17 Ugandans had been registered in Kenya and 21 in Rwanda; and five Tanzanians had been registered in Rwanda and five in Burundi. The study found that none of the professionals from Burundi had moved to other Partner States under the Accountants' MRA. Similarly, the study found that professional accountants from Tanzania are not pursuing practice opportunities within the EAC region, but they have demonstrated minimal interest in Rwanda.

The above numbers indicate that Kenya is competitive in the provision of accounting, taxation and auditing services within the EAC, and by implication in the Sub Saharan region. As such, the liberalization of this sector poses no threat to Kenyan firms and professionals. However, stakeholders²³ were of the view that Kenya should not schedule any commitments under the COMESA integration agenda before competent bodies for this profession from COMESA member states have had an opportunity to discuss the possibility of negotiating a mutual recognition agreement.

Engineering Services

The Engineers Act 2011 defines professional engineering services as engineering services and advice in connection with any feasibility study, planning, survey, design, sketch, drawing, specifications, construction (which constitutes execution of works and services on built environment such as buildings, infrastructure, renovations, alterations, etc.) commissioning, operation, maintenance, supply of specialized engineering equipment and management of engineering works or projects and includes any other engineering services approved by the Engineering Board of Kenya. Engineering professional services are diverse and are utilized in all sectors of economy including manufacturing, agriculture, transport, energy, tourism etc. Global practice has seen growth in new and evolving areas of engineering in keeping with technological advancements.

In Kenya, engineering professional practice is dominated by local small practices and one man shows, making the field highly fragmented in terms of organization, size, business culture and management. There are 45 local engineering firms, and no foreign firms registered in Kenya. The combined capacity of firms, though large, is too scattered to meet demand for large engineering projects.²⁴ This is a big contrast with other competing economies, e.g. Mozambique and South Africa which have a market structure that is closer

²³ Represented by APSEA.

²⁴ See Nora Dihel World Bank research which notes that in Mozambique and South Africa the market structure of engineering firms is competitive due to the fact that the firms operate like accounting firms where a small number of large firms dominate the markets. In South Africa, industry consolidation in consulting engineering has picked, where large firms play an increasingly dominant role.

to that of accounting services, i.e. a small number of large firms dominate the markets. In South Africa, industry consolidation is a recent trend in consulting engineering where large firms play an increasingly dominant role. Currently, Kenya has a total of 12,271 constitutes as follows -1928 Professional engineers, 371 consulting engineers and 9972 graduate engineers. As at August 2017, there were 203 foreign engineers licensed in Kenya. Foreign engineering firms are also prevalent especially on contract engagement with large scale construction works.

The Engineering Board of Kenya (EBK) established by the Engineers Act of Kenya, 2011 is the regulator of the engineering profession. Professional engineers in firms or on contact basis are assessed on an individual basis under the Act. Under Section 16 of the Act, for a person to qualify as a professional engineer, they must:

- Be registered as a graduate engineer and obtained practical experience. To be registered as a graduate engineer, Section 19 requires one to have a degree in engineering from a recognized university or such other qualifications as the Board may determine and be a citizen or a permanent resident of Kenya;
- Have passed professional assessment examination conducted by the ERB; and
- Be a corporate member of the Institution of Engineers of Kenya.

To qualify as a consulting engineer under Section 16, one must have:

- Practised in a specialized engineering field as a professional engineer for a period determined by the Board; and,
- Achieved a standard of competence to enable him to practise as a consulting engineer in that specialization.

Under Section 22, a foreign individual wishing to be registered as an engineer in Kenya must:

- Possesses the necessary qualifications recognized for the practice of engineering as a professional engineer in the country where he normally practises and that immediately before entering Kenya he was practising as a professional engineer and holds a valid licence; and
- Be resident in Kenya holding a valid working permit. For a foreign firm, it must be incorporated in Kenya with a minimum of 51% of its shares held by Kenyan citizens.

To qualify for registration as an engineering consulting firm, one of the partners must be registered as a consulting engineer in Kenya.

Under Section 23, a foreign professional can be licensed as a temporary engineer for a period not exceeding one year for the express purpose of carrying out specific work under a contract. Such a foreign professional is required to have a valid working permit, and demonstrate they ordinarily are not resident in Kenya. To be granted a temporary license, the foreign engineer person must possess necessary qualifications recognized for practice as a professional engineer such as being registered by an equivalent regulator in their home country and hold a valid practicing license. Where the expertise skills of such a foreign engineer are rare in Kenya, the foreign engineer applicant is required to provide an undertaking to train local engineers to fill the skills gap. It is worth mentioning that the Engineers Act of Kenya defines a “foreign person” as a person who is not a citizen or a permanent resident of Kenya.²⁵

Under Section 24, a registered consulting engineer who has at least 15 years relevant and proven experience in design and construction management specific to the work to be checked and has the ability, standing in the profession, special knowledge or practical experience can be registered as accredited checkers with powers to review and verify the work of a professional engineer in ensuring that the work is adequate and complies with safety requirements.

Section 15 of Kenya Engineering Technicians and Technologists Act of 2016 defines the various categories for registration to include a professional or a candidate.

- A professional can either be a professional engineering technologist; or a certified engineering technician.
- A candidate can either be a candidate engineering technologist; or a candidate engineering technician

To practice in any of the categories above, Section 15 of the Act requires one to be registered in that category. A person may only practice in a consulting capacity if registered in the Category of consulting engineering technologist. A person who is registered in the category of candidate can only perform work in the engineering technology profession only under the supervision and control of a professional of any category prescribed by the Act.

Section 28 requires persons engaging in practice of engineering technology to obtain an annual practicing licence. To obtain the annual licence, one must undergo Continuous Professional Development, provide a statutory declaration confirming that no professional complaint has been made against him or her and pay the prescribed fee.

²⁵ This section requires review to align it with the CMP and the MRA for Engineers.

Under Section 21 of the Act, for a foreign person or foreigner firm (under Section 19) to be registered as professionals in any of the defined categories, they must:

In the case of a natural person— possesses the necessary qualifications recognized for the practice of engineering technology as a professional in a prescribed category in the country where he or she normally practices, and that immediately before entering Kenya, he or she was practicing as a professional in the category. He/she must hold a valid license. The person must also be resident in Kenya with a valid working permit. For a foreign firm, it must be incorporated in Kenya and a minimum of 51% of its shares should be held by a citizen or citizens of Kenya.

Under Section 22, a foreign person or firm may be registered as a temporary professional engineering technologist or firm if the Board is satisfied that the person is not ordinarily resident in Kenya and intends to be present in Kenya in the capacity of a professional engineering technologist for the express purpose of carrying out specific work. Such a person must be qualified to practice in their home country, and immediately before entering Kenya, must have been practising as a professional engineering technologist and must hold a valid license from his or her country of origin. The applicant must pay a prescribed fee. Such temporary registration is only valid for the duration of contract or for one year, subject to renewal. Where the expertise skills of a person registered under Section 22 are not available in Kenya, the applicant is required to give an undertaking that Kenya citizens shall be trained to fill the skills gap.

This report observes that the regulatory and administrative framework for engineering professional services, which is comparable to that of Tanzania, is unnecessarily restrictive and needs reform.²⁶ However, stakeholders are of the view that the restrictiveness is necessary to ensure that only suitably qualified persons are allowed to practice in Kenya (especially since concerns have been raised over qualifications of foreign professional engineers), while providing opportunities to local professionals.

The restrictiveness notwithstanding, stakeholders are of the view that:

- a) Movement of engineers in the EAC, COMESA and in Africa, especially in the areas of civil engineering, electrical engineering, mechanical engineering, agricultural engineering and engineering technologies in infrastructure development where expertise on the development needs of Member States as well as applicable technologies would easily be shared, is very important. For Kenyan professionals, multiple opportunities are presented by the booming construction and energy sectors, and industrialization agendas being pursued by most African countries.

²⁶ ERB indicated that Uganda is currently reviewing its regulatory framework to mirror that of Kenya and Tanzania, albeit with variations.

- b) Cross border supply of engineering services within the EAC, COMESA and the wider African continent should be encouraged and facilitated. As such, stakeholders have indicated a willingness to open up engineering professional services under the COMESA integration agenda. For Kenya, Zambia, Swaziland, Mauritius, Malawi, Comoros, Eretria, South Sudan, DRC, Uganda, Zimbabwe, Swaziland and Ethiopia present export opportunities for engineering services.
- c) Kenya should request all COMESA Member States to open engineering services and integrated engineering services.

However, such liberalization in the COMESA and within the African continent should be accompanied by implementation of minimum comparable approaches in three areas, that is education, practice and categorization of professionals. For example, within the EAC, engineering degree programs offered by public universities in Kenya, Uganda and Tanzania is very similar. When it comes to practice, competent authorities from Tanzania, Uganda and Kenya have concluded an engineering MRA in 2012. At that time, Rwanda, Burundi and South Sudan did not have competent authorities and regulatory frameworks. Rwanda has now enacted a law establishing Rwanda Engineering Council. As such:

- There is need for uniformity for in the categorization and identification of disciplines for the engineering professionals in the EAC and COMESA for any MRA concluded to be implemented. For instance, Uganda does not have graduate engineers, but it has professional engineers.

When it comes to professional assessment of engineers within the COMESA region, and at a continental level, stakeholders were of the view that the French speaking countries might pose a challenge as their approach to assessment id very differently from that of Kenya. This is viewed as being disadvantageous to Kenya. All EAC PS have similarities in terms of assessment of professionals.

- Thus, stakeholders have indicated the need for equivalence of practice in all COMESA member states. This is because evaluation becomes a challenge when there is no equivalence. Consequently, this makes actualization of any MRAs concluded difficult. Further, if COMESA member states will move towards negotiating an MRA, there is need for clarity on what it will entail. In addition, regulators from all COMESA member states need to develop general frameworks on engineering profession.

Architectural and Quantity Surveying Services

The architectural and quantity surveying professional practice in Kenya is regulated by the Board of Registration of Architects and Quantity Surveyors (BORAQS) under the Architects

and Quantity Surveyors Act²⁷ As at 2017, Kenya had 234 registered quantity surveying firms and 671 registered quantity surveyors. In the architectural profession, there are 361 registered firms and 1228 registered architects. The number of foreign professionals licensed to practice in Kenya is 5% of total number of registered architects and quantity surveyors. Stakeholders from this indicated that the number of trained and licensed professionals is low as a result of the fact that for the longest time, only University of Nairobi was offering training for quantity surveyors, while architectural training was offered by University of Nairobi and Jomo Kenyatta University of Agriculture and Technology.²⁸ Currently, Technical University of Kenya and Jomo Kenyatta University of Agriculture and Technology are offering these courses.

Under Section 7 of Architects and Quantity Surveyors Act,²⁹ for one to qualify to be registered as an architect in Kenya, one must:

- a) has attained the age of twenty-one years
- b) have a minimum of five years of approved training (in some universities, e.g. University of Nairobi, this is six years.
- c) This must be followed by at least one year of practical experience in the work of an architect to the satisfaction of the Board
- d) Have passed a prescribed examination.

For foreign architects wishing to be registered in Kenya, one must:

- a) have been admitted as a corporate member of an approved professional institution whose qualifications for such admission are not less than those set out above.
- b) Have had a minimum of one year of professional experience in Kenya to the satisfaction of the Board or has satisfied the Board that he has otherwise acquired an adequate knowledge of Kenya building contract procedures;
- c) Pay a registration fee prescribed by the board.

Under Section 8 of the Architects and Quantity Surveyors Act, for one to qualify to be registered as a quantity surveyor, one must:

- a) have attained the age of twenty-one years;
- b) Have passed a prescribed examination; or, has been admitted as a corporate member of an approved professional institution whose qualifications for such admission include the equivalent of such prescribed examination;

²⁷ Chapter 525 of the Laws of Kenya.

²⁸ The first class from Technical University of Kenya is yet to graduate.

²⁹ Chapter 525 of the Laws of Kenya.

- c) Have had a minimum of one year of professional experience in Kenya to the satisfaction of the Board or has satisfied the Board that he has otherwise acquired an adequate knowledge of Kenya building contract procedures; and,
- d) Have paid the prescribed registration fee.

It is worth noting that the Act stipulates the Conditions of Engagement and the Scale of Professional Charges, and professionals are not allowed to go below the minimum allowable under the Act.

Similar to the engineering profession, architectural and quantity surveying professional practice in Kenya is dominated by small firms, with some having one partner. Previously, this field was dominated by foreigners, especially from United Kingdom and Australia, but foreign professional firms have been on the decline due to increased competition. Some quantity surveyors and architects supply their services on an individual basis without registering a business name. Stakeholders are of the view that the Kenyan market does not seem to accommodate big partnerships as they are administratively expensive and require physical offices, whereas individuals can practice from the comforts of their homes equipped with only a computer.

Stakeholders have indicated that Kenyan Quantity Surveyors and Architects are highly competitive. Consequently, their services are highly sought after and have been exporting their services to multiple Sub Saharan countries including South Africa, Botswana, Namibia, Rwanda, Uganda, Tanzania and South Sudan. In fact, some Kenyan professional firms have established branches in most of these countries to facilitate efficient and effective supply of services³⁰

Kenya has a small number of foreign architects and quantity surveyor registered to practice. It is worth mentioning that under Regulations and Conditions of Practice, foreigners can partner with local professionals without necessarily registering with BORAQS, thus enabling them to practice as silent partners long as they do not sign documentation, allowing the local registered partner to remain in charge.

Level of Liberalization

At the EAC level, Architectural services area fully liberalized. However, Quantity Surveying services and other professional services that compliment architectural services, including planning services, project management services, designing services, environmental consulting services, geospatial services, etc. are not. In addition, services provided by

³⁰ For example, Tetura International, Cymbion EAC, EDG & Ateria, K&M Arch Plans, etc.

technicians in these fields are neither liberalized, nor are they covered in MRAs that have so far been concluded. In 2011, EAC Partner States, with the exception of Tanzania, entered into an MRA to facilitate cross border trade of architectural services, and in 2016, they signed a Memorandum of Understanding to operationalize the MRA. So far, there are 11 architects, five quantity surveyors and one firm registered in Kenya under the MRA. This is addition to professionals from Spain, South Africa, United Kingdom, Egypt and Italy who continue to provide services in the country. Egypt, Germany, Belgium and Slovakia have recently expressed an interest to enter into MRAs with Kenya.

Stakeholder are of the view that:

- In revising its schedules of commitments, Kenya should liberalize professional services that compliment architectural services.
- Similarly, under the COMESA regional integration agenda, Kenya should schedule all construction related professional services that have the potential to compliment growth of the Construction and Related Engineering Services sector and the Energy Sector. However, it is important to note that at the EAC level, only Engineering, Architectural and Integrated Engineering services have been liberalized.
- Kenya should liberalize real estate services, as these services complement the construction and built environment sectors.
- From a negotiating perspective, Kenya should request all COMESA countries to liberalize all construction related professional services as Kenya has export interests, capabilities and potential in most COMESA member states' markets.
- However, while pursuing liberalization of construction related professional services, it will be important to conduct a bench marking exercise on educational standards, training of professionals and licensing of professionals within the COMESA Member States.³¹ The benchmarking process should be conducted during the negotiation process.
- Negotiations to liberalize professional services within the COMESA region should be complimented by a parallel process of negotiating MRAs between COMESA member states. This will enable Kenya to understand the regulatory frameworks for relevant professional services under negotiation as existing in various COMESA member states. BORAQS indicated that with the benefit of hindsight, negotiating MRAs long after scheduling liberalization commitments for professional services is often complicated, and full of unpleasant surprises.

³¹ For example, some COMESA countries recognize four years training programs, while others require five years.

Health Sector Professionals

Kenya has a comparative advantage in movement of its health professionals within the EAC and COMESA region, an addition to movement to the traditional destinations of Europe and USA. This can be facilitated by enhancing the training facilities, while engaging in diplomatic advocacy with governments of African countries to reduce regulatory barriers that often plague movement of natural persons providing services across borders. Further, encouraging foreign investments in first class hospitals in Kenya (Mode 3 imports) will facilitate transfer of skills to Kenyan doctors when they work with renown health experts from other leading health destinations.

Because of the benefits which have accrued from its import of health services under Mode 3 enabling Kenya to have well established health care facilities, including four public referral hospitals and multiple private high-class health facilities, Kenya has the capacity to continue attracting Mode 2 trade in health services (based on the travel of health care consumers from various EAC and other African countries into Kenya for specialized treatment. The fact that world class medical specialists often provide their services under Mode 4 to Kenyan medical facilities has boosted Kenya's exports under Mode 2. However, to be competitive, Kenya will need to reprice its health services to more affordable rates.

However, Kenya continues to experience migration of health professionals to Europe, South Africa and USA. The pull and push factors driving migration of Kenyan health professionals broadly mirror those that apply to highly skilled workers in general. They include:

- Inadequate remuneration in the home country.
- The desire to work in better educational or better managed health systems and to continue education and training while working.
- Shortages of doctors and nurses in the host countries further encourage the outflow of Kenya healthcare professionals
- Family reasons, but in very rare case.

With a high population of technologically proficient and innovative youth, Kenya can package itself to provide offshoring of other business or financial services, such as medical transcription or health insurance and claims processing, a market that is large and largely untapped in the COMESA region and within the continent. Telemedicine presents a high potential in Kenya for due to the presence of healthcare technology firms and well-trained young doctors who are under-paid in public health facilities.

To maintain an acceptable level of quality in medical services, Kenya imposes qualification and academic degree requirement to practitioners in these fields. For example, to practice

medicine in Kenya, a doctor is required to possess a university degree, and thereafter one must have completed one year of internship before becoming a full member of the medical profession. Continuous professional education is mandatory for all licensed and registered doctors and nurses. Nurses do not need a degree, but require a certificate or a diploma with mandatory practical training and a minimum set of subjects to practice as a nurse. Doctors and nurses must be licensed by the medical board/nurses' council before being permitted to practice. The same goes for medical service institutions. The Kenya Dentists and Medical Practitioners Board and the Nurses Council of Kenya respectively are mandated by law to: register practitioners, set standards, administer and monitor continuous professional education, and enforce compliance and discipline among health professionals.

There exist restrictions on telemedicine (mode 1) and medical tourism (mode 2) in Kenya. Although a domestic resident hospital/individual can obtain medical services directly from a foreign professional/hospital located outside their country, the insurance policy limits coverage if diagnosis and medical services are provided on a cross-border basis. In Kenya, to be covered, the insurance needs to have a regional footprint, and special provisions also apply on the type of ailment that restrict the services and level of coverage.

Stakeholders are of the view that services offered by health professionals should not be liberalized at this stage. This is partly due to the fact that these services have not been liberalized at the EAC level, in addition to the fact that the health sector is a sensitive sector.

Veterinary Services³²

Veterinary services are important in the provision of an enabling environment for safeguarding animal life, health and welfare as well as animal propagation and production for food security and economic development. Vision 2030 has identified livestock as one of the priority subsectors that will play a significant role towards the attainment of national GDP growth rate of 10% towards making Kenya a middle-income economy. Veterinary professional services are key to ensuring that animal health, welfare and production services contribute to food security, while ensuring that sanitary and phytosanitary requirements in matters of trade in animal and animal products and standards for veterinary products are maintained.

In Kenya, Veterinary Services are under the overall control and direction of the Veterinary Authority, and consequently, the overall responsibility for veterinary services lies with the

³² Under the UNCPC Ver. 1.0 Code 932, Veterinary services are defined to include Veterinary services for pet animals, Veterinary services for livestock and other veterinary services.

national and county governments. Private sector organizations, veterinarians, veterinary paraprofessionals or aquatic animal health professionals are normally accredited or approved by the Veterinary Authority to deliver the delegated functions.³³ In animal disease control, a formal delegation system assists the management of diseases classified as “private good” performed by accredited private sector service providers while management of diseases classified as “shared good” is carried out in partnership between the both levels of government and private service providers. The management of notifiable animal diseases is a “public good.”³⁴

The National Veterinary Policy³⁵ indicates that Kenya has a highly recognized educational system and qualification infrastructure for training veterinary professionals. However, a study conducted under the EAC MRA Negotiation Process notes that Kenya, just like other EAC Partner States, is not graduating adequate numbers of veterinary professionals and veterinary paraprofessionals to offer services to the agricultural industry.³⁶ In addition, the veterinary profession is afflicted by many challenges including: Weak regulation, monitoring and supervision of service providers. This has which has resulted in abuse of the veterinary practice as well as abuse and misuse of veterinary medicines; and, The distribution of professionals and paraprofessionals is skewed against the ASALs where the sub-optimal animal: professional ratio encourages use of inadequately trained community members. In 2013, Kenya had 1110 veterinary surgeons.³⁷

These situations need to be effectively addressed through effective regulation of the profession and ensuring that all regions in Kenya, including the pastoral areas, benefit from quality animal health services in accordance with international standards. To achieve this optimal provision of veterinary services, Kenya needs to consider liberalizing veterinary services within the EAC and the COMESA region to facilitate importation of highly needed professional services, while facilitating skills and technology transfer and research and research dissemination and implementation, especially in support private animal health service providers through research and technology transfer.

³³ According to the National Veterinary Policy, 2015.

³⁴ See National Veterinary Policy, 2015. Prior to the structural adjustments that took place in late 1980s, all veterinary surgeons and veterinary para-professionals were employed in the public sector. However, after the privatization of the veterinary clinical services in early 1990s and the embargo on recruitment of the veterinary professionals in the public sector, many veterinary surgeons and veterinary para-professionals joined the private sector. This created a need to enhance regulation of their services in order to protect the livestock industry

³⁵ Developed by the Ministry of Agriculture, Livestock and Fisheries, April 2015.

³⁶ Veterinary Services in the EAC - A Report prepared to facilitate MRA Negotiations for Veterinary Professionals

³⁷ See Veterinary Services in the EAC - A Report prepared to facilitate MRA Negotiations for Veterinary Professionals.

The veterinary profession in Kenya is regulated by the Kenya Veterinary Board (KVB) under the Veterinary Surgeons and Para-professionals Act.³⁸ The Act covers Veterinary specialists, veterinary surgeons and veterinary para-professionals.

- Under Section 15 of the Act, for a person to qualify for registration as a veterinary surgeon in Kenya, he/she be a citizen of Kenya, holding a degree in veterinary medicine from a university recognized in Kenya, and has after such qualification served an internship of not less than twelve months under a veterinary surgeon with not less than five years' standing. He must be a member of a registered professional association representing the interests of veterinary surgeons. The Board may require an applicant to undertake an examination to satisfy itself that the applicant's knowledge and skill qualify such person for registration.³⁹ Under Section 15(4), a person seeking registration must apply to the board within a period of five years after qualification.
- Under Section 16 of the Act, Foreign veterinary surgeons may apply for temporary registration under the Act provided it is as a volunteer for a non-profit organization recognized by the Board, providing veterinary services in underserved areas. Applicant must be in good standing with home professional regulator and may be asked for an oral or written examination.
- Under Section 17 of the Act, to be registered to practice as veterinary para-professional in Kenya, one must be a citizen of Kenya, who has either completed a two year post-secondary school training course in animal health at an approved institution, followed by a 12 month internship; or has completed a one year course in animal health (for those who have a certificate in Animal Husbandry, Range Management or Wildlife Management) and served a 12 month internship of a registered veterinary surgeon. In addition, they must be a member of a registered association representing the interests of veterinary para-professionals and swear a prescribed oath.

The competent authorities from all EAC Partner States have concluded an MRA to facilitate cross broader supply of veterinary services in the EAC region.

³⁸ The mandate of KBV include: the registration and licensing of veterinary surgeons and veterinary paraprofessionals; regulate training of veterinary surgeons and veterinary paraprofessionals; carry out inspection of veterinary service providers; and, accredit animal health training institutions, veterinary laboratories, animal welfare and breeding services.

³⁹ The examination referred to in subsection (2) may be conducted by the Board or by any other authority or institution appointed by the Board, and such examination shall be conducted subject to such terms and conditions as the Board may determine.

Mutual Recognition Agreements as a Tool for Promoting Trade in Professional Services

With a view to boosting cross border trade of select professional services, competent authorities for accountancy, architectural, engineering and veterinary services in EAC Partner States⁴⁰ have negotiated mutual recognition agreements (MRAs) to reduce barriers for professionals wishing to supply their services across the region. Other professionals, including lawyers and pharmacists, are engaged in negotiation MRAs. Despite the MRAs for these key professions being concluded, there has not been a significant increase in the movement of professionals within the EAC region. This is largely due to:

By 2017, MRAs had been concluded for Architects, Engineers, Accountants and Veterinarians. The MRA for Lawyers is yet to be signed, while Pharmacists are negotiating theirs.

- Lack of mainstreaming of the provisions of the MRAs in the respective Partner States' laws;
- The failure of the Partner States to approximate their laws with the provisions of the EAC CMP; Absence of information sharing mechanism within the Community;
- Weak financial and technical capacities of professional associations to effectively participate in the regional deliberations concerning trade in services and to offer support to their members; and,
- Low levels of awareness amongst practitioners of the existence of the MRAs, the EAC CMP and the benefits they portend.

MRAs concluded in the EAC

To date, Partner States have negotiated Annex VI to the CMP on Mutual Recognition of Academic and Professional Qualifications. Partner States have also negotiated Common Benchmarks for Recognition of Foreign Academic and Foreign Professional Qualifications. Regulation 2 of Annex VI to the CMP states the purpose of the Annex as “..... to implement the provisions of Article 11.1(a) of the Protocol on the Establishment of the EAC Common Market and to ensure that there is uniformity among the Partner States in the implementation of the Article and that, to the extent possible, the process is transparent, accountable, fair, predictable and consistent with the provisions of the Protocol.”

By 2017, MRAs had been concluded for Architects, Engineers, Accountants and Veterinarians. The MRA for Lawyers is yet to be signed, while Pharmacists are negotiating theirs. Despite the MRAs for these key professions being concluded by the competent authorities, there has not been a significant increase in the movement of professionals within the EAC region. This is largely due to: Lack of mainstreaming of the provisions of the MRAs in the respective Partner States' laws; The failure of the Partner States to approximate

⁴⁰ See Annex VI to the CMP on Mutual Recognition of Academic and Professional Qualifications. Partner States have also negotiated Common Benchmarks for Recognition of Foreign Academic and Foreign Professional Qualifications. Regulation 2 of Annex VI to the CMP states the purpose of the Annex as “..... to implement the provisions of Article 11.1(a) of the Protocol on the Establishment of the EAC Common Market and to ensure that there is uniformity among the Partner States in the implementation of the Article and that, to the extent possible, the process is transparent, accountable, fair, predictable and consistent with the provisions of the Protocol.”

their laws with the provisions of the EAC CMP; Absence of information sharing mechanism within the Community; Weak financial and technical capacities of professional associations to effectively participate in the regional deliberations concerning trade in services and to offer support to their members; and, Low levels of awareness amongst practitioners of the existence of the MRAs, the EAC CMP and the benefits they portend

Computer and Related Services

In Kenya, Computer and Related Services Sub Sector is closely linked to the Information, Communication and Technology Sector. For EAC, information and technology remain a key factor in the ever-changing investment terrain. The role played by computer related services and related technology and innovation institutions cannot be gain said. The W/120 defines Computer and Related Services to include consultancy services related installation of computer hardware; software implementation services; data processing services; and, data base services.

The ICT sector is very diverse covering both manufacturing and services firms.⁴¹ According to the OECD, ICT sector definition (see Table 1) ICT manufacturing covers the manufacture of electronic components, computer and peripheral equipment, communication equipment, consumer electronics and magnetic and optical media. ICT trade and services activities cover software publishing, telecommunications, computer programming and consultancy, data services and web portals, as well as the repair of computers and communication equipment.⁴² The Kenya National Masterplan (2014-2017) defines ICT as a range of technologies for gathering, storing, retrieving, processing, analysing, and transmitting information, recognizing, *“that dynamic market and technology developments have led to convergence where boundaries between previously separate ICT services, networks, and business practices have eroded.”*

⁴¹ The W/120 definitions of Computer and Related Services and Communication services are disaggregated, and presents challenges in discussion of the broader Computer Services which form part of the broad ICT sector. Thus, the ICT sector comprises some aspects on the broad Business services Sector.

⁴² See WTO/OECD

Table 1: OECD Definition of the ICT Sector - Based on ISIC Rev. 4

ICT manufacturing industries	
2610	Electronic components and boards
2620	Computers and peripheral equipment
2630	Communication equipment
2640	Consumer electronics
2680	Magnetic and optical media
ICT trade industries (wholesale)	
4651	Computers, computer peripheral equipment and software
4652	Electronic and telecommunications equipment and parts
ICT services industries	
5820	Software publishing
61	Telecommunications
620	Computer programming, consultancy and related activities
631	Data processing, hosting and related activities; web portals
951	Repair of computers and communication equipment

Source: OECD, 2011

The ICT sector has been earmarked as a corner stone of Vision 2030. Since 2000, the ICT⁴³ sector in Kenya has witnessed exponential growth and development, outperforming most other sectors of the economies of this economy. For Kenya, the ICT sector has been dominated by unprecedented rates of mobile phone penetration and attendant success in innovations of services riding on mobile phones, especially mobile money and mobile applications, including M-Pesa⁴⁴ for which Kenya has a strong reputation. Economic sectors which have benefited from this exponential growth include the financial sector which has become more inclusive as a result of mobile money and related applications, agricultural sector, the distribution sector where e-commerce has been redefined by mobile money, education and health sectors where new ICT innovations are redefining new methods of impacting education and delivery of health services, especially in the rural areas which have traditionally lacked access. For instance, sector players like Safaricom and Huawei have pooled their unique expertise and services in information technology and mobile connectivity to design and test transformational software and digital health solutions. MSD has announced a USD 1.5 million grant, through its Merck for Mothers initiative, to a new project by JHPIEGO which will engage with the Kenya Red Cross Society (KRCS) in Mandera and Migori. Similarly, UNFPA has also partnered with the Kenyan innovation incubator NaiLab to support young Kenyan entrepreneurs to develop innovate software.

⁴³ Information and Communications Technology(ies), popularly known as ICT or ICTs has been defined as an umbrella term that includes any communication device or application, encompassing radio, television, cellular phones, computer and network hardware/software, satellite systems and so on, as well as the various services and applications associated with them.

⁴⁴ A Kiswahili term for mobile money.

The ICT services sector in Kenya has been ranked among the fastest growing globally. For instance, the 2015 World Economic Global Information Technology Report ranked Kenya at position two in Africa for government success in promoting ICTs to drive social and economic transformation, including facilitating financial inclusion. Kenya stood at position ten for its policy and regulatory initiatives that enable growth of this sector.⁴⁵

Vision 2030, Kenya's economic development blueprint, has recognised the ICT sector as being important on a macroeconomic level. Not only is the ICT industry a steadily growing sector with a high economic significance, but ICT-based solutions and technologies also make valuable and important contributions to value creation in other sectors, e.g. trade in goods and services, manufacturing and infrastructure industries. Kenya ICT Masterplan 2014-2017⁴⁶ indicates that ICT(s) have a critical role in driving the economic, social and political development of Kenya as espoused in Vision 2030, while acting as the backbone to a knowledge economy and society that will lead to real socio-economic growth. It is therefore imperative to address key challenges that may hinder the ICT sector from playing its rightful role in national development.

Kenya is ranked among the top global sources of ICT innovations and software. Consequently, the ICT sector has attracted massive investment, in addition to global recognition that saw Kenya host the Global Entrepreneurship Summit in 2015. According to the International Telecommunication Union (ITU), Kenya is a model for ICT adaption and proliferation in Africa.⁴⁷ In June 2016, ITU ranked Kenya as one of Africa's fastest-growing ICT markets where ICTs have increased productivity in all spheres of the economy and production processes. ICTs have been central to enabling expansion of skills, thus contributing to improved standards of living for Kenyans.⁴⁸

Although there is no data on this component of the ICT sector, Kenya has multiple ICT firms providing a wide array of services including web design, software development, Business Processes Outsourcing service providers, call centers, etc. Renowned ERPs solution providers including Oracle, SAP, Microsoft have regional offices in Nairobi, and Kenyan ICT export their professional expertise to various countries under various implementation projects. Other leading global technology firms with offices in Kenya include Google, IBM, Nokia, etc. In BPO, Kenyan firms export an array of services ranging from inbound/outbound customer voice, email, or SMS support, inbound and outbound sales via phones,

⁴⁵From an EAC perspective, Rwanda was ranked at position one in Africa and 19th in the world for government success in promoting ICTs to achieve social and economic impact for its citizens, especially through use of ICTs to improve service delivery in education, energy, health and environment sectors

⁴⁶ Ministry of Information, Communication and Technology

⁴⁷ See speech delivered at the International Telecommunication Union (ITU) conference during the presentation to President Uhuru Kenyatta of the ICTs Sustainable Development Award in recognition of outstanding achievements in the communications sector: <http://www.itu.int/en/ict-sdg-award/2015/Pages/kenya.aspx>.

⁴⁸ See Kenya's Draft ICT Policy (2016).

customer satisfaction surveys, and back-office support, to database management such as updating changes to information portals or live updates of stock markets, safe data storage and back-up facilities, transcription from voice to text or video sub-titling, to entertainment or professional service chat support. In ICT/ITES, Kenyan firms export design services such as animations of web-advertising, user interface systems, icon and banner advertisements, but also high-end corporate and technology solutions such as hardware and disaster recovery. KenCall is one of the Kenyan firm success story in the area of export of computer and related services. KenCall has been very successful in exporting higher value-added BPO services to developed countries is KenCall.⁴⁹

The ongoing explosion of local ICT development groups such as iLab, iHub, Nailab, University of Nairobi's C4DLab and infoDev's mlabs in Kenya has set the stage for innovation of applications and information services such as Drumnet, mFarm, Ushahidi, etc. Over the years, Kenya has become home to multiple African Regional hubs including, IBM's first African Research lab, Nokia's Africa Headquarters and Google's first Sub-Saharan Africa office (outside of South Africa).⁵⁰ In fact, Global Technology Reports of 2011, 2012 and 2013 have shown that Kenya has a high potential to be a leader in innovations which if well directed can be her competitive edge, while steering economic growth. Infact, Kenya's capacity for innovation when compared with two countries in the lower middle income (Ghana and Senegal), two countries in the upper middle income (South Africa and Brazil) and one country in high income (Portugal), it has been found that in terms of capacity to innovate, Kenya is at the same level with South Africa and Portugal, which are middle and high-income countries respectively.⁵¹

It is worth mentioning that The Special Economic Zone Act, 2015 aims at encouraging foreign direct investment and positioning Kenya as a prominent business hub in the region through the establishment of special economic zones (SEZs)⁵² including business service parks (e.g. regional headquarters), information communication technology parks, and science and technology parks.⁵³ The Science, Technology, and Innovation Act, 2013⁵⁴ aimed at facilitating the promotion, coordination and regulation of the progress of science, technology and innovation in Kenya prioritizes the development of science, technology and innovation, while entrenching technology and innovation into the national production system. Thus, within the EAC, COMESA, within the African continent, Kenya

⁴⁹ *Can Kenya Become a Global Exporter of Business Services? Nora Dihel et al. World Bank Africa Trade Policy Note.*

⁵⁰ See The National ICT Masterplan, 2017

⁵¹ See The Global Information Technology Report, 2013, 2012, & 2011, referenced in the National ICT Masterplan, 2017.

⁵² The government had planned to freeze new investments within its EPZs before the end of 2015 as it set up the SEZs model.

⁵³ The designation of SEZs was expected to be announced in the first quarter of 2016. The pilot programme for the SEZs was done in Mombasa, Kisumu and Lamu. Naivasha near Olkario Geothermal Plants was also designated a SEZ with the aim of offering a discounted power tariff to enterprises in SEZ.

⁵⁴ This Act repealed the Science and Technology Act, Cap 250 of the Laws of Kenya which came into force on July 1977, and established the National Council for Science and Technology (NCST).

should consider liberalizing Computer and Related Services so as to exploit trade in ICT Services in light of the following existing factors:

1. Kenya is among the few Africa countries that is exporting software development services to global technology firms from USA, India, South Africa, Spain, Germany, etc. As already discussed in this study, technology companies founded in the United States, India, Germany and Spain are setting up software development centers in Kenya, where young Kenyan developers have led to growing technology communities.⁵⁵ Microsoft has already launched its Microsoft 4 Afrika initiative, aiming to help empower African youth, entrepreneurs, developers and others to make their ideas a reality, and export their services to the globe under Modes 1, 3 and 4.
2. There are tremendous opportunities to develop technology innovations by Kenya professionals and firms to alleviate the shortage of health professionals, and to serve patients across borders. For example, ICT business to business innovations can be used to facilitate e-health and telemedicine where facilities such as radiology machines and human resources such as doctors are shared across distributed hospitals, within the country and across borders as Kenya pushes forward in developing its health tourism.
3. In addition, mobile phone-based software applications can be used to provide various medical services including data analytics where exploitation of anonymized and aggregated data offers opportunities for innovation and the development of new services and alternative revenue streams for ICT firms. Further, the development of wellness applications for mobile phones, and sensors for diagnostics and monitoring applications can reduce the need for high numbers of health workers, while ensuring access to health services by more citizens.
4. Opportunities exist for develop ICT innovations to revolutionize business to business supply of education, health, travel and research services in Africa, and the world at large. Evidence already exist of ICT revolutionizing the financial sector in Kenya through mobile money solutions. M-pesa concept has been exported throughout the world, and many countries are replicating the M-PESA's success, expanding it into other services, such as savings, credit, e-commerce and government transactions. However, research on ICT products and services indicate that importers of ICT services make a decision to purchase based on the following factors: Price, competency, flexibility in delivery, financial stability of supplier, and, ICT service capabilities. To diversify its exports, Kenyan service suppliers in this space need to ensure that they are competitive in all the five factors.

⁵⁵ See USA Today, November 1, 2016, *USA Tech firms turn to Africa based developers*, available at <https://www.usatoday.com/story/tech/2016/10/31/us-tech-firms-turn-africa-based-developers/92281922/>.

However, Kenya will review its regulatory framework for this sub sector and enact legislation on anti -hacking response measures, data protection and cyber security, while developing a regulatory framework for ICT professionals.

SWOT Analysis of the ICT Sector

<p>Strengths</p> <ul style="list-style-type: none"> • A high population of youth with technology and digital capabilities. • Good digital/ ICT infrastructure • Government driven investment facilitation including technology hubs, especially in urban counties. • Thriving financial and transport sectors which are high consumers of business to business ICT services • High capabilities for innovations • Presence of many ICT global leaders • Availability of competent professionals. • Presence of online communities/forums where ICT experts and developers discuss ICTs/offline forums where citizens and SMEs can discuss ICT 	<p>Weaknesses</p> <ul style="list-style-type: none"> • Limited human resource capacity, including skills shortages. • ICT professionals are unregulated. • Unreliable ICT infrastructure in rural counties. • Lack of affordable infrastructure especially electricity and business premises • Few domestic venture capital industry - Low access to funding • Scarcity of experienced tech entrepreneurs • The need for sustained development, attraction and retention of talent • The need for leadership • The need for focus on smart specialization (including the development of relevant specialist skills) to capitalize on public investment opportunities in R&D
<p>Opportunities</p> <ul style="list-style-type: none"> • Growing SMEs in various economic sectors including agribusiness, transport, manufacturing, in need of ICT solutions. • Growing business with no physical premises, who use e-commerce and other ICT solutions. • Technology driven education systems looking for efficient ICT solutions • Digitization of government processes, including at county levels • Development of online/offline communities of SMEs to discuss their ICT needs. • National and county administrative and other government functions are being transformed through the development of online and mobile applications, in areas such as payments and information services. • Need for innovative approaches to cyber security solutions as critical data runs over city networks the networks. 	<p>Threats</p> <ul style="list-style-type: none"> • Global cyber crime • Perception of Kenya as an insecure country • All EAC Partner States are positioning themselves as ICT hubs • Unpredictable immigration procedures in many African countries where Kenyan professionals export ICT services under mode 4.

Computer and related services is a skills intensive business sub-sector. The growth of internet use and proliferation of affordable portable devices such as mobile phones, tablets and lap tops; the need for sophisticated computer data applications; the increased capability of cloud computing to deliver complex services; and the growing demand for services which assist in the integration of computer networks have driven growth in the computer services industry. Global spending on computer services is forecast to reach 673.6 Billion U.S dollars by the end of 2017. The 2016 Global Information Technology Report emphasised on the need for firms to adopt new information technology in order to leverage them for development. Firms are adopting new technologies to increase productivity thus increasingly seeking Information Technology (IT) services such as consultancy services related to the installation of computer hardware; software implementation services; data processing services; and data base services to facilitate their adoption of new technologies.

Level of Liberalization

The above successes notwithstanding, Kenya has not scheduled any commitments Computer and Related services at the WTO.⁵⁶ At the EAC level, Kenya has only liberalized consultancy services related to the installation of computer hardware at the EAC level. Other EAC Partner States have scheduled different commitments, with Rwanda, Burundi and Uganda scheduling the highest numbers of commitments in this sub sector. However, seeing that Kenya is the biggest economy in the EAC, it has a competitive advantage over other Partner States in this area, it should consider liberalizing this sub sector to reach the depth of Rwanda, Burundi, or even Uganda, Partner States who are not as competitive in this sub sector as Kenya is. This is especially important in light of the emphasis that Kenya has placed on ICT, and BPO in particular in achieving Vision 2030, and the global recognition that Kenya has continued to receive. Under the COMESA integration agenda, Kenya should consider fully opening up this sub sector as it has a competitive advantage over most COMESA member states, and negotiate with other COMESA member states to open up fully. This will enable Kenya to pursue its export potential under mode 3 and 4 as it has highly qualified information technology professionals including programmers, computer engineers and IT firms who are market leaders in the region. However, Kenya will review its regulatory framework for this sub sector and enact legislation on anti -hacking response measures, data protection and cyber security.

Research and Development Services

The economic growth of any country depends on its continuous capacity to educate, innovate, and build. Long-term national investments in basic and applied research and

⁵⁶ Although it has some commitments under the Communication sector.

development (R&D) play a key role in the flow of market-based innovations through a complex system that leverages the combined talents of scientists and engineers, entrepreneurs, business managers and industrialists.

Literature review reveals that a significant impact on employment results from innovation impacts not only in high tech enterprises, but also other industries that benefit from increased capabilities and productivity. In fact, mutually reinforcing and complementary investments in R&D by both private and public sectors work together to support the development, production, and commercialization of new products and processes.⁵⁷

Globally, literature review reveals that:

- Businesses and industries that perform R&D exhibit a greater likelihood of innovation. In Kenya, few businesses in the private sector conduct R&D. The government investment in R&D is also minimal.
- Basic and applied R&D that the private sector engages in is unlikely to support economic development sufficiently. In most instances, research and development requires sustained and direct funding from national government to create a knowledge base of potentially transformative ideas that are critical building blocks of innovation.
- Investments in R&D by the private sector may decrease during times of economic distress.
- Public funding is essential to sustaining the excellence of public research institutions that play a significant role in a country's innovation system. However, state funding for public research in universities in Kenya is not prioritized by the national government.
- National funded academic R&D is normally instrumental in creating and sustaining a high class of higher education system that prepares the next generation of scientists and engineers and also attracts and trains high ability international students, researchers, and faculty. This has been the case in American Universities
- Appropriate visa policies enable the attraction and retention of the best and brightest foreign-born students, faculty and researchers in Kenya.

In Sub Saharan Africa, including Kenya, research and development as a service is not as developed as would be ideal. This is due to the fact that for a long time, industries did not have the funds to commit to research departments, which are usually cost centers, and neither did the government. Institutions of higher learning also lack funds to commit to

⁵⁷ See Research and Development, Innovation, and the Science and Engineering Workforce available at <https://www.nsf.gov/nsb/publications/2012/nsb1203.pdf>.

research, and have always relied on donor funding. The government funded research institutions have also faced budgetary challenges, making research a low priority area.

Level of Liberalization of Research and Development Services Sub-sector

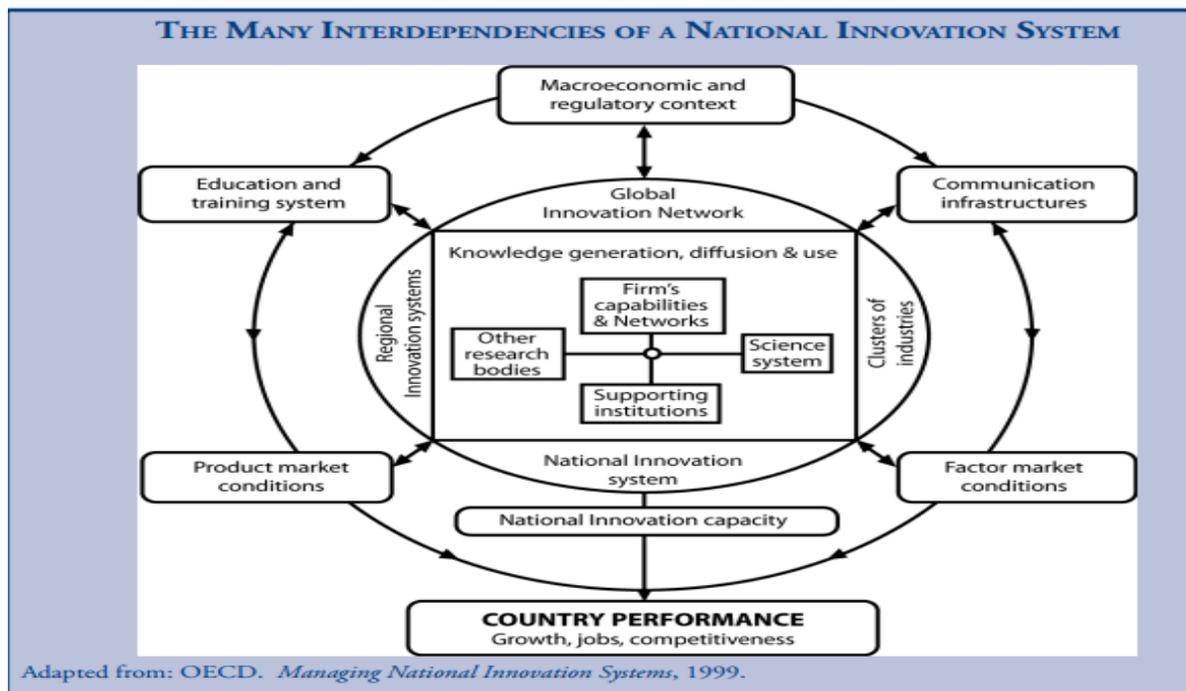
The liberalization approach of this sub sector by Kenya in the COMESA should be informed by Kenya's level of openness at the EAC. Under the EAC, Kenya has only opened Research and Development Services on natural sciences (CPC 851).⁵⁸ However, in light of the important role played by research, and Kenya's limited capacity in this area, this is one sub sector which, if partially liberalized, would benefit Kenya, in its quest for Vision 2030 to be a fully industrialized economy. The Science, Technology, and Innovation Act, 2013 aimed at facilitating the promotion, coordination and regulation of the progress of science, technology and innovation in Kenya prioritizes the development of science, technology and innovation, while entrenching technology and innovation into the national production system. Outside of this law, this sub-sector lacks a central regulatory framework.

At the COMESA level, Kenya should consider liberalizing Research and Development Services on natural sciences (CPC 851)⁵⁹, noting to place restrictions on modes 3 and 4, requiring transfer of technology and limiting use of research findings outside the territory of Kenya. It is also important to conduct continuous consultations with stakeholders during negotiation process and long after negotiations to determine how the aspirations of Vision 2030 can be realized through research and innovation in new areas without compromising the interests of the country.

⁵⁸ Burundi, Rwanda and Uganda have liberalized this sub sector in its entirety. Tanzania has not scheduled any commitments in this area.

⁵⁹ Research and experimental development services on natural sciences and engineering and technology for casting, metal, machinery, electricity, communications, vessels, aircraft, civil engineering, construction, information, etc. (CPC 85103)

Illustration: The many interdependencies of a National Innovation System



Real Estate Services

The real estate industry in Kenya is a large industry. Normally, the demand for real estate services is driven by the construction sector. According to the Kenya Property Market Update, in the First Half of 2017, Kenya's construction sector, which is traditionally a strong contributor to Kenya's GDP, experienced a slowdown in the first quarter of 2017, expanding 8.4% compared to 10.2% over the same period in 2016⁶⁰. Major infrastructural projects in telecommunications, energy, roads, rail and ports continue to be rolled out throughout the country through Public Private Partnerships (PPPs). Other EAC Partner States and COMESA Member States have also witnessed rapidly growing construction industries, which are creating a demand for real estate services. These have increased the demand for real estate services in Kenya.

The real estate services sector has participation of both international and local property firms and agents. There are also independent professionals, including those from the 'Landed Professions' who provide services in this sub sector. Professionals in this sub sector are regulated by the Estate Agents Act.⁶¹ Real estate agents in Kenya are registered by the Estate Agents Registration Board (EARB).

⁶⁰ See Knight Frank's Kenya Property Market Update, First Half 2017.

⁶¹ Chapter 533 of the Laws of Kenya.

To qualify for registration under the Act, Section 13 requires that:

- A person to be a Kenyan citizen.
- Be a full member of the Institution of Surveyors of Kenya in the chapters of Valuation and Estate Management Surveyors, Building Surveyors and Land Management Surveyors or corporate member of the Royal Institution of Chartered Surveyors (in the General Practice or Land Agency or Agriculture sections) and he is qualified to be or is a full member of the Institution of Surveyors of Kenya in the chapters of Valuation and Estate Management Surveyors, Building Surveyors and Land Management Surveyors.
- A person to be a holder of a degree, diploma or licence from any university or college or school which is recognized by the Board; or member of an institution the membership of which is recognized for the time being by the Board as furnishing sufficient evidence of an adequate academic training for practice as an estate agent; and, has had practical post-qualification experience of not less than two years, of which not less than six months has been in Kenya.

Level of Liberalization of Sub Sector

Kenya has not liberalized this sub sector at the EAC level.⁶² Stakeholders are of the view that Kenya should consider liberalizing this sub sector at the EAC level.⁶³ Similarly, Kenya should liberalize this sub- sector under the COMESA liberalization agenda in light of its importance to the construction sector in the ongoing infrastructure development in Kenya, the EAC and COMESA region. However, it will be important to enhance professional ethics and the enforcement thereof to address rogue and unethical agents, especially foreign ones.

Rental/Leasing Services without operators

This sub sector of rental and leasing services without operators include rentals or leases relating to ships, aircrafts, other transport equipment and other machinery and equipment. The leasing sector in Kenya, with the EAC and COMESA region has slowly been evolving, and currently most companies lease machinery and equipment as opposed to buying. Further, most manufacturing concerns and other companies whose core business is not transport opt for leasing of motor vehicles, as opposed to buying. Leasing of aircrafts and ships is now common in the tourism sector, and various firms have cropped up to satisfy

⁶² Rwanda and Uganda have made some commitments in this sub sector, while Burundi, Kenya and Tanzania have not made any commitments in this sub sector.

⁶³To reach the depth of commitments that have been made by Rwanda and Uganda, in the minimum, or fully.

the increasing demand for services under this sub sector. At the EAC level, Kenya has made substantial commitments in this sub sector.⁶⁴

Kenya should consider making similar commitments at the COMESA level to compliment the leasing needs presented by the construction industry in infrastructure development in major projects including telecommunications, energy, transport, health and hospitality. As indicated in the chapter on Construction Sector, most SMEs in the construction sector do not own machinery/equipment, and thus really on leasing most of their requirements.

Other Business Services

This is a very wide sub-sector and it includes almost all services which are incidental to trade in goods or all the other services sectors, including the construction and energy sectors. At the EAC level, Kenya has not made any commitments. However, it is worth noting that this subsector has various services that constitute the Energy Sector including: Management consulting services (CPC 865); Services related to management consulting (CPC 866); Technical testing and analysis services (CPC 8676 partial); Services incidental to mining (CPC 883); Site preparation work for mining (CPC 5115); Services incidental to energy distribution (CPC 887); Related scientific and technical consulting services (CPC 8675); and, Maintenance and repair of equipment (CPC 633).

Stakeholders are of the view that Kenya should liberalize services that are in short supply in Kenya which will complement the growth of the construction, mining and upstream activities in the energy sectors. These include: Management consulting services, Services related to management consulting, Technical testing and analysis services, Services incidental to mining, Related scientific and technical consulting services, and, Maintenance and repair of equipment. However, such liberalization should be subject to the development of regulatory frameworks on local content and requirements for transfer of technology and skills.

Annex 1: Regulatory Framework for Business Services

⁶⁴ Tanzania has committed rental of ships, aircrafts, and high technology transport equipment. The other Partner States have not made any commitments.

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	ORIGIN OF MEASURE(ACT/REGULATION/POLICY)	SPECIFIC PROVISIONS	OTHER MEASURES/ADMINISTRATIVE PRACTICE
HORIZONTAL COMMITMENTS						
All Sectors included in the Schedule of Commitments	Requirement to incorporate or establish business locally	None	Requirement to incorporate or establish business locally	Companies Act No. 17 of 2015	<p>Section 970 (1) – Foreign company required to have local representative “The Registrar may not register a foreign company under this Part unless the company has at least one local representative in relation to whom the foreign company has complied with the prescribed requirements of the foreign companies regulations relating to local representatives of foreign companies.”</p> <p>Section 938 (2b) - Registered foreign company to have registered office “The company shall ensure— b) that a local representative of the company is present at all times when the office is open”.</p>	None
	Mode 4 unbound except for measures concerning the entry and temporary stay of persons employed in management and expert jobs for the implementation of foreign investment. Employment of foreign natural persons	Mode 4 commitments are in accordance with the schedule on free movement of workers ⁶⁵	Kenyan subsidiary can only bring in six expatriates, subject to clear evidence that the skills are not available in Kenya, have two years prior employment in home country and can be allowed to stay for two years that can be extended.	Kenya Citizens and Immigration Regulations, 2012	Seventh Schedule – Classes of Permits- Class C: Prescribed Profession A member of a prescribed profession who intends to practice that profession, whether alone or in partnership, in Kenya, and who— a) possesses the prescribed qualification; and b) has in his own right and at his full and free disposition sufficient capital and other resources for the purpose,	Class D Work Permit requirements by Directorate of Immigration and Registration of Persons: Copies of academic/professional certificates along with the CV; Evidence that the organization failed to fill the vacancy from the local labor market; Form 25 dully filled,

⁶⁵ This was a scheduling error that is being rectified under ongoing revision of EAC Partner States’ schedules of commitments.

	<p>for the implementation of foreign investment shall be agreed upon by the contracting parties and approved by Government</p>		<p>Business visitors cannot engage in direct provision of services and entry allowed for 90 days in a calendar year</p>		<p>c) is registered with the professional body, association or institute to which he belongs in his own country; and d) whose practice of that profession will be of benefit to Kenya.</p> <p>Class D: Employment A person who is offered specific employment by a specific employer, the government of Kenya or any other person or authority under the control of the Government or an approved technical aid scheme under the United Nations Organization or some other approved Agency (not being an exempted person under section 34(3), who is in possession of skills or qualifications that are not available in Kenya and whose engagement in that employment will be of benefit to Kenya.</p> <p>Regulation 31(5) Visitor's Pass The holder of a visitor's pass shall not accept or engage in any form of employment, whether paid or unpaid, or engage in any other income generating activity in Kenya, without the permission of an immigration officer, in writing.</p> <p>Regulation 34(1 D) Special Pass Any person who wishes to enter or remain in Kenya for— any other purpose which an immigration officer considers suitable, may apply to an immigration officer, in Form 32 set out in the First Schedule, for a special pass or in the case of an application that is to be made at the point of entry, completion of an entry declaration form shall be deemed to be an application for a special pass.</p>	<p>signed and sealed by the company; processing Fee Kshs.10,000 non-refundable.; and fee is Ksh. 200,000/= per year or part thereof.</p>
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					<p>Regulation 34 (2) An immigration officer may, after considering an application made under paragraph (1), issue a special pass to the applicant in Form 35 set out in the First Schedule, for such period that does not exceeding six months as he may specify in the pass.</p> <p>Regulation 34 (3) A special pass shall, subject to the terms and conditions as may be specified in the pass, permit the holder to enter Kenya within the period specified therein and to remain in Kenya for such period, not exceeding six months from the date of issue and to re-enter Kenya at any time during the period of validity of the pass.</p>	
	-	-	Resident firms taxed at 30% and Non-resident at 37.5%	Income Tax Act Cap. 470	Third Schedule of the Income Tax Act	Kenya Revenue Authority Website – Types of Taxes : “Corporation tax is a form of income tax that is levied on companies. Resident companies are taxable at a rate of 30% w.e.f year of income 2000 while non - resident companies are taxable at a rate of 37.5%.w.e.f year of income 2000”.

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
SECTOR-SPECIFIC COMMITMENTS											
1. BUSINESS SERVICES											
A. Professional Services											
Legal Services	No commitments as at August 2017	Legal advisory and representation services in judicial procedures concerning other fields of law. None under mode 1, 2 and 3. Mode 4 - In accordance with the Schedule on the Free Movement of Workers. ⁶⁶	No commitments as at August 2017	NIL	Qualifications for admission as advocate restricted to citizens of Kenya, Rwanda, Burundi, Uganda and Tanzania	Qualifications for practicing as an advocate (Non-discriminatory)	NIL	Advocates Act Cap. 16	Section 9 - Qualifications for practicing as an advocate “Subject to this Act, no person shall be qualified to act as an advocate unless a) he has been admitted as an advocate; and b) his name is for the time being in the Roll; and c) he has in force a practicing certificate”. What are the requirements/procedure for obtaining a practicing certificate? Section 11 - Foreign advocates “No foreign advocate shall be	NIL	Law Society of Kenya – Established by the Law Society of Kenya Act No. 21 of 2014. Its mandate is to supervise the practice of law and uphold the Constitution of Kenya and advance the rule of law and the administration of justice. Council of Legal Education - Established by the Legal Education Act No. 27 of 2012. Its mandate is to regulate legal education in Kenya and advise the

⁶⁶ This was a scheduling error that is being rectified under ongoing revision of EAC Partner States’ schedules of commitments.

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>entitled to practice unless he is instructed by, and if appearing in court appears with, an advocate or any person mentioned in section 10, nor shall any foreign advocate be entitled to sign or file any pleadings in court”.</p> <p>Section 12 – Qualifications for admission as an advocate “Subject to this Act, no person shall be admitted as an advocate unless—(a) he is a citizen of Kenya, Rwanda, Burundi, Uganda or Tanzania; and (b) he is duly qualified in accordance with section 13”.</p> <p>Section 13 – Professional and academic qualifications</p>		<p>Government on matters relating to legal education and training.</p> <p>The Judiciary- It established by Chapter 10 of the Constitution of Kenya to exercise judicial authority that is derived from the people.</p> <p>Kenya School of Law – Established by /section 3 of the Kenya School of Law Act No. 26 of 2012. Its main mandate is to train persons to be advocates under the Advocates Act (Cap. 16); ensure continuing professional development</p>

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									“(1) A person shall be duly qualified if— (a) having passed the relevant examinations of any recognized university in Kenya he holds, or has become eligible for the conferment of, a degree in law of that university; or (b) having passed the relevant examinations of such university, university college or other institution as the Council of Legal Education may from time to time approve, he holds, or has become eligible for conferment of, a degree in law in the grant of that university, university college or institution which the Council may in		for all cadres of the legal profession; provide para-legal training; provide other specialized training in the legal sector; develop curricular, training manuals, conduct examinations and Confer academic awards; and undertake projects, research and consultancies.

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>each particular case approve; and thereafter both—</p> <p>(i) he has attended as a pupil and received from an advocate of such class as may be prescribed, instruction in the proper business, practice and employment of an advocate, and has attended such course or tuition as may be prescribed for a period which in the aggregate including such instruction, does not exceed eighteen months; and</p> <p>(ii) he has passed such examinations as the Council of Legal Education may prescribe; or</p> <p>(c) he possesses any other qualifications which are acceptable to and</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>recognized by the Council of Legal Education;</p> <p>(d) he is an Advocate for the time being of the High Court of Uganda, the High Court of Rwanda, the High Court of Burundi or the High Court of Tanzania;</p> <p>(e) he is for the time being admitted as an advocate of the superior court of a country within the Commonwealth and—</p> <p>(i) has practised as such in that country for a period of not less than five years; and</p> <p>(ii) is a member in good standing of the relevant professional body in that country:</p> <p>Provided that the Council may, in addition, require</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									that a person to whom this paragraph applies undergo such training, for a period not exceeding three months, as the Council may prescribe for the purpose of adapting to the practice of law in Kenya. (2) The Council of Legal Education may exempt any person from any or all of the requirements prescribed for the purposes of paragraph (i) or paragraph (ii) of subsection (1) upon such conditions, if any, as the Council may impose”.		
Accounting, auditing and bookkeeping services	No commitments as at	Accounting and Auditing Services.	No commitments as at August 2017	EAC Mutual Recognition Agreement for the	Requirement to be registered by the Institute of Certified	Requirement to have an annual license to practice as an accountant	NIL	Accountants Act No. 15 of 2008	<i>Accountants Act Section 18 – Requirement for Practicing Certificate</i>	NIL	Institute of Certified Public Accountant Kenya – established by

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
	August 2017	None under mode 1, 2 and 3. Mode 4 - In accordance with the Schedule on the Free Movement of Workers. ⁶⁷		Profession of Accountancy – 04.09.2011	Public Accountant Kenya to be able to practice in Kenya	(non-discriminatory)			“(1) No person shall practice as an accountant unless he is the holder of a Practicing certificate and a license to practice that are in force”. Accountants Act Section 20 – Application for Practicing Certificate “A person wishing to obtain a practicing certificate shall apply to the Registration Committee.” Accountants Act Section 21 – Issue of Practicing Certificate “Where an application is made by a person in accordance with section 20,		Section 3 of the Accountants Act No. 15 of 2008. Its main mandate is to promote standards of professional competence and practice amongst members of the institute; promote research in the area of accounts and finance and related matters; and promote international recognition of the institute. Kenya Accountants and Secretaries National Examination Board established by Section 14 of

⁶⁷ This was a scheduling error that is being rectified under ongoing revision of EAC Partner States’ schedules of commitments.

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>the Registration Committee shall issue to such person a practising certificate if it is satisfied that the person—</p> <p>(a) is registered;</p> <p>(b) has received, from an accountant who is the holder of a practising certificate, instruction of such nature and for such period as may be prescribed; and</p> <p>(c) meets such other requirements as may be prescribed, and, if not so satisfied, shall refuse the application”.</p> <p>Accountants Act Section 22 – Issue of Annual Licence</p> <p>“(1) Where the holder of a practising certificate intends</p>		<p>the Accountants Act No. 15 of 2008. Its main mandate is to prepare syllabuses for professionals’ and technicians’ examinations in accountancy and company secretarial practice and related disciplines; make rules with respect to such examinations; arrange and conduct examinations and issue certificates to candidates who have satisfied examination requirements; promote recognition of its examinations in foreign countries; promote and</p>

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>to practise as a firm, whether as a sole practitioner or in a partnership, he shall apply to the Registration Committee for an annual licence in the prescribed form, furnishing the Registration Committee with such details of the firm as it may require.</p> <p>(2) Where an application is made by a person under subsection (1), the Registration Committee shall issue him with an annual licence if it is satisfied that the person—</p> <p>(a) holds a practising certificate; and</p> <p>(b) meets such other requirements as may be prescribed, and, if not so satisfied, shall</p>		<p>carry out research relating to its examinations; and promote the publication of books and other materials relevant to its examination.</p>

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>refuse the application. (3) An annual licence issued under this Act shall be valid from the date of issue to the thirty-first December of the year of issue and shall be renewed at the end thereof.”</p> <p><i>Accountants Act Section 26 – Qualifications for Registration</i> “(1) Subject to this section, a person is qualified to be registered if the person— (a) has been awarded by the Examinations Board a certificate designated the Final Accountancy Certificate; or (b) holds a qualification approved under subsection (2) by the Council.</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>(2) The Council may in consultation with the Examinations Board and with the approval of the Minister, from time to time, by notice in the Gazette, approve qualifications which it considers sufficient to allow a person to be registered, and may, in like manner, withdraw any such approval.</p> <p>(3) Notwithstanding subsection (1) or (2), the Council may require a person making an application for registration to satisfy the Registration Committee, in such manner as it may direct, that the person has—</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>(a) adequate knowledge of local law and practice; (b) adequate experience in accounting; and (c) acceptable professional conduct and general character which, in the opinion of the Committee, make such person a fit and proper person to be registered, and unless the person so satisfies the Registration Committee, he shall not be treated as being qualified to be registered.”</p> <p>Accountants Act Section 48 – Amendment of Cap.486</p> <p>“Section 161 of the Companies Act (Cap. 486) is amended by repealing subsection (1) and substituting therefor the</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									following new subsection— (1) A person or firm shall not be qualified for appointment as auditor of a company unless he or, in the case of a firm, every partner in the firm, is the holder of a practising certificate issued pursuant to section 21 of the Accountants Act, 2008 (No. 15 of 2008).”		
Taxation Services	No commitments as at August 2017	No commitments as at August 2017	No commitments as at August 2017	EAC Mutual Recognition Agreement for the Profession of Accountancy – 04.09.2011	Tax agents/professionals must be licensed to offer taxation services.	NIL	NIL	Tax Procedures Act No. 29 of 2015 Kenya Revenue Authority Act No.2 of 1995	<i>Tax Procedures Act Section 19 – Application for Tax Agent License</i> “(1) An individual or a partnership may apply to the Commissioner for a licence as a tax agent. (2) An application under subsection (1) shall be in the prescribed form and accompanied	NIL	Kenya Revenue Authority – Established under the Kenya Revenue Authority Act No.2 of 1995. Its mandate is to collect and receive all revenue on behalf of the Government under the supervision of the Minister of Finance.

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>by the prescribed fee.</p> <p>(3) An applicant shall, in addition to the requirements set out in subsections (1) and (2), be required to be recommended for registration by the Tax Agents Committee”.</p> <p><i>Tax Procedures Act Section 20 – Licensing of Tax Agents</i></p> <p>“(1) The Commissioner shall issue a licence to an applicant under section 19 if the applicant is a fit and proper person to prepare tax returns, notices of objection, or otherwise transact business with the Commissioner under a tax law on behalf of a taxpayer.</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>(2) The Commissioner shall issue a licence to a partnership under section 19 if—</p> <p>(a) a partner in the partnership or an employee of the partnership is a fit and proper person to prepare tax returns, notices of objection and transact business with the Commissioner on behalf of a taxpayer; and</p> <p>(b) every partner in the partnership is of good character and integrity”.</p> <p><i>Tax Procedures Act Section 21 – Limitation on the performance of tax services for taxpayers</i></p> <p>“A person, other than a tax agent, shall not—</p> <p>(a) represent another person as</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									that other person's tax agent; or (b) offer assistance to another person for a reward in respect of that other person's rights or obligations under a tax law. (2) Subsection (1) (b) shall not apply to a legal practitioner acting in the ordinary course of the person's profession.”		
Architectural Services	No commitments as at August 2017	Architectural Services. None under mode 1, 2 and 3. Mode 4 - In accordance with the Schedule on the Free Movement of Workers. ⁶⁸	No commitments as at August 2017	Mutual Recognition Agreement for the Profession of Architecture- 30.07.11 The agreement established the East African Institution	To offer architectural services one must be registered in Kenya and a minimum of one year professional experience in Kenya or has satisfied the Board that he has otherwise acquired an	NIL	NIL	Architects and Quantity Surveyors Act Chapter 525	<i>Architects and Quantity Surveyors Act – Qualifications for registration as an architect</i> “No person shall be registered as an architect unless he— (a) has attained the age of twenty-one years; and (b) either—	NIL	The Board of Registration of Architects and Quantity Surveyors established by Section 4 of Architects and Quantity Surveyors. Its mandate is to make by-laws on scale fees to be charged by architects and

⁶⁸ This was a scheduling error that is being rectified under ongoing revision of EAC Partner States' schedules of commitments.

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
				of Architects.	adequate knowledge of Kenyan building contract procedures				(i) has had a minimum of five years of approved training followed by at least one year of practical experience in the work of an architect to the satisfaction of the Board, and has passed a prescribed examination; or (ii) has been admitted as a corporate member of an approved professional institution whose qualifications for such admission are not less than those set out in subparagraph (i) of this paragraph; and has had a minimum of one year of professional experience in Kenya		quantity surveyors, fees to be paid for registration and other matters related to architect and quantity survey. Architectural Association of Kenya is an association of professionals in the built and natural environment in Kenya incorporating architects, quantity surveyors, town planners, engineers, landscape architects and environmental design consultants and construction project managers. It is registered

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									to the satisfaction of the Board or has satisfied the Board that he has otherwise acquired an adequate knowledge of Kenya building contract procedures; and (d) has paid the prescribed registration fee.”		under the Societies Act Chapter 108 of the Laws of Kenya. Some of its objectives are coordinating the activities of the professionals in built and natural environment in Kenya; develop standards of professional education, training and practice; to establish and accredit Continuing Professional Development programmes; to liaise with government and regulatory agencies on matters affecting registration and licensing of professionals engaged in the

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
											built and natural environment, among others
Engineering Services ⁶⁹	No commitments as at August 2017	Advisory and Consultative Engineering Services. None under mode 1, 2 and 3. Mode 4 - In accordance with the Schedule on the Free Movement of Workers. ⁷⁰	No commitments as at August 2017	EAC Mutual Recognition Agreement for Engineers – 07.12.2012	Restrictions for registration as a professional engineer, consulting engineer or consulting firm for foreigners Foreigner to be registered as a professional engineer or consulting engineer he/she must possess the necessary qualifications for the practice of	Engineering programs in public and private universities and other tertiary level educational institutions offering education in engineering must be approved and accredited (non-discriminatory)	NIL	Engineers Act No. 43 of 2011	Engineers Act Section 32 (1) – Practising Licence “A person shall not engage in the practice of engineering unless that person has been issued with a licence and has complied with the requirements of this Act”. Engineers Act Section 34 (1) and (2) – No fees to be charged by unlicensed persons “ (1) A person shall not be entitled to recover	NIL	Engineers Board of Kenya established under Section 3 of the Engineers Act. It is responsible for, <i>inter alia</i> , the registration of engineers and firms; regulation of engineering professional services, setting standards; issuing licenses to qualified persons; approving and accrediting engineering programs in

⁶⁹ This includes integrated engineering services. The engineers need to explain whether they treat engineering services and integrated engineering services differently.

⁷⁰ This was a scheduling error that is being rectified under ongoing revision of EAC Partner States’ schedules of commitments.

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
					<p>engineering as a professional engineer in the country where he/she normally practices; immediately before entering Kenya he/she was practicing as a professional engineer; holds a valid license from that country; and he/she is a resident of Kenya with a valid work permit</p> <p>For an engineering consulting firm to be registered it must have a certificate of registration of either a</p>				<p>a charge for professional engineering services unless that person is licensed under this Act.</p> <p>(2) A person who contravenes the provisions of subsection (1), commits an offence.</p> <p><i>Engineers Act Section 16 – Qualifications for registration as professional or consulting engineers</i></p> <p>“Subject to the provisions of this Act, a person shall be eligible for registration under this Act as a professional or consulting engineer if—</p> <p>(a) for a professional engineer, that person—</p> <p>(i) is registered as a graduate engineer</p>		<p>public and private universities and other tertiary level educational institutions offering education in engineering; and assess, approve or reject engineering qualifications of foreign persons intending to offer professional engineering services or works.</p>

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
					<p>business or a company; at least 50% of the shares of the firm must be held by a Kenyan citizen; one of the partners or principal shareholder must be registered as a consulting engineer and has a valid license.</p> <p>Must be a citizen or a permanent resident of Kenya to be registered as a graduate engineer</p> <p>Requirement of a practicing license</p>				<p>and has obtained practical experience as prescribed under this Act;</p> <p>(ii) has passed professional assessment examination conducted by the Board; and</p> <p>(iii) is a corporate member of the Institution of Engineers of Kenya;</p> <p>(b) for a consulting engineer, that person—</p> <p>(i) has practiced in a specialized engineering field as a professional engineer for a period determined by the Board; and</p> <p>(ii) has achieved a standard of competence to enable him To practice as a consulting engineer in that particular</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>specialization”.</p> <p><i>Engineers Act Section 17(1) – Application for registration</i> “A person eligible to be registered as a professional or consulting engineer under section 16 may apply to the Registrar, in a prescribed form and on payment of prescribed fee, to be registered under this Act”.</p> <p><i>Engineers Act Section 18 – qualifications for registration as a graduate engineer</i> “Subject to provisions of this Act, a person shall be eligible for registration under</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>this Act as a graduate engineer if that person—</p> <p style="padding-left: 40px;"><i>(51)</i> holds a degree in engineering from a recognized university or such other qualifications as the Board may determine; and</p> <p>(b) is a citizen or a permanent resident of Kenya”.</p> <p><i>Engineers Act Section 19(1) – Application for registration</i></p> <p>“(1) A person eligible to be registered as a graduate engineer under this Act shall apply to the Registrar”.</p> <p><i>Engineers Act Section 20 (1) – Registration of</i></p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p><i>an engineering consulting firm</i></p> <p>“Subject to the provisions of this Act, a person may register an engineering consulting firm if—</p> <p style="padding-left: 40px;"><i>(51)</i> the firm has a certificate of registration of a business name or a certificate of incorporation; it has at least one partner or principal shareholder who is registered as consulting engineer and who has a valid licence in a specified discipline;</p> <p>© at least fifty one percent of the shares in the firm are held by Kenyan citizens; and</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>(d) he fulfils any other condition as may be stipulated by the Board”.</p> <p><i>Engineers Act Section 22 – Restrictions on registration of foreigners</i></p> <p>“A foreign person or firm shall not be registered as a professional engineer or consulting engineer or engineering consulting firm unless—</p> <p>(a) in the case of a natural person—</p> <p>(i) that person possesses the necessary qualifications recognized for the practice of engineering as a professional engineer in the country where he normally practices and that immediately</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>before entering Kenya he was practising as a professional engineer and holds a valid licence; and (ii) he is a resident of Kenya with a valid working permit;</p> <p>(b) in the case of a firm, the firm is incorporated in Kenya and a minimum of fifty one per cent of its shares are held by Kenyan citizens”.</p> <p>Engineers Act Section 23 (1) “A foreign person may be considered for registration as a temporary professional engineer if that person satisfies the Board that— a) he is not ordinarily resident in Kenya; b) he intends to be present in Kenya</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>in the capacity of professional engineer for the express purpose of carrying out specific work; and c) he possesses the necessary qualifications recognized for the practice of engineering as a professional engineer in the country where he normally practices and that immediately before entering Kenya, was practicing as a professional engineer and holds a valid license from his country of origin”.</p> <p><i>Engineers Act Section 51 – Practicing without a license</i> “A person who engages in practice of engineering or</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									charges a professional fee without a valid license issued by the Board commits an offence and shall be liable on conviction to a fine not exceeding two million shillings or to imprisonment for a term not exceeding five years, or both ⁷¹ .		
Integrated Engineering Services ⁷¹	No Commitments as at August 2017	Integrated Engineering Services. None under Modes 1, 2 and 3. Mode 4 - In accordance with the Schedule on the Free Movement	No Commitments as at August 2017	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL

⁷¹ Engineering services has been considered as including integrated engineering services. The engineers need to explain whether they treat engineering services and integrated engineering services differently.

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
		of Workers. 72									
Engineering Technology	No Commitments as at August 2017	No Commitments as at August 2017	No Commitments as at August 2017	NIL	Requirement to be registered to practice as a professional engineering technologist or a certified engineering technician. Requirement for registration of an engineering consulting firm. The engineering consulting firm must be incorporated in Kenya and a minimum of 50% of its	Requirement of a practicing licence to practice in Kenya which is valid for only one year (non-discriminatory)	NIL	Engineering Technology Act No. 23 of 2016	Engineering Technology Act Section 15 – Categorization of Registration. “(1) A person may be registered in the engineering technology profession as a— (a) professional, which includes— (i) a professional engineering technologist; or (ii) a certified engineering technician. (b) candidate, which includes— (i) a candidate engineering technologist; or (ii) a candidate engineering technician.	NIL	Kenya Engineering Technology Registration Board established by the Section 3 of the Engineering Technology Act. its mandate is to issue licenses; disciplinary of members; assess, approve or reject engineering technology qualifications of foreign persons; set standards for the profession; conduct professional examinations for the

⁷² This was a scheduling error that is being rectified under ongoing revision of EAC Partner States’ schedules of commitments.

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
					<p>shares held by a citizen of Kenya or citizens of Kenya.</p> <p>For temporary registration, where the skills of the foreigner are not available in Kenya, the foreigner must issue the board with an undertaking that he/she shall train Kenyan citizens to fill the skills gap</p>				<p>(2) A person may not practice in any of the categories contemplated in subsection (1), unless he or she is registered in that category.</p> <p>(3) A person may only practice in a consulting capacity if registered in the Category of consulting engineering technologist.</p> <p>(4) A person who is registered in the category of candidate must perform work in the engineering technology profession only under the supervision and control of a professional of any category as prescribed”.</p> <p><i>Engineering Technology Act Section 21 – Registration of Foreigners</i></p>		<p>purposes of registration</p>

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>“(1) A foreign person or body of foreigners shall of not be registered as professionals in any categories under section 15(1)(a) or engineering technology firm under section 19 unless—</p> <p>(a) in the case of a natural person—</p> <p>(i) that person possesses the necessary qualifications recognized for the practice of engineering technology as a professional in any category under section 15(1)(a) in the country where he or she normally practices, and that immediately before entering Kenya, he or she was practicing as a professional in any</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>category under section 15(1)(a) and holds a valid license; and (ii) he or she is a resident of Kenya with a valid working permit; (b) in the case of a firm, the firm is incorporated in Kenya and a minimum of fifty-one percent of its shares are held by a citizen or citizens of Kenya. (2) If the conditions stipulated in subsection (1) are not fulfilled, the person or firm applying for registration may be considered for temporary registration under section 22”.</p> <p><i>Engineering Technology Act Section 22 –</i></p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p><i>Temporary Registration</i></p> <p>“(1) A foreign person may be considered for registration as a temporary professional engineering technologist or firm if that person satisfies the Board that—</p> <p>(a) he or she is not ordinarily resident in Kenya; he or she intends to be present in Kenya in the capacity of a professional engineering technologist for the express purpose of carrying out specific work; and</p> <p>(c) he or she possesses the necessary qualifications recognized for the practice and that immediately before entering Kenya, was practising as a</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>professional engineering technologist and holds a valid license from his or her country of origin.</p> <p>(2) An application for registration under this section shall be in the prescribed manner and shall be accompanied by the prescribed fee.</p> <p>(3) The Board may require an applicant to appear before it in the process of considering his or her application and shall require every applicant to produce documentary evidence of his or her work or employment immediately prior to entering Kenya.</p> <p>(4) The registration of a person under this section shall be valid for the period</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>or for the duration of the work as the Board may specify. (5) Where the expertise skills of a person registered under this section are not available in Kenya, the Board shall notify the applicant and the applicant shall provide an undertaking that Kenya citizens shall be trained to fill the skills gap. (6) The Board may approve temporary registration for such period not exceeding one calendar year and may renew the registration as it may consider necessary”.</p> <p>Engineering Technology Act Section 28- Practising Licence</p> <p>(1) A person shall not engage in the</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>practice of engineering technology unless that person has been issued with a license and has complied with the requirements of this Act.</p> <p>(2) A person applying for a license shall be required to submit a certificate of continuing professional development issued by the Board, a statutory declaration confirming that no professional complaint has been made against him or her and pay the prescribed fee.</p> <p>(3) A license issued under subsection (1) shall be valid for one year from the first of January to the thirty-first of December of the</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>year during which it is issued and may, upon expiry, be renewed.</p> <p>(4) The Registrar shall enter into the Register the date of issuance of a license to every person licensed under this section”.</p> <p>Engineering Technology Act Section 42 (1 and 3)—Unlawful use of name</p> <p>(1) A person who, being not registered or licensed within six months after enactment of this Act—</p> <p>(a) wilfully and falsely takes or uses in any way the style or form or title of "Engineering Technologist" in describing his or her occupation or his</p>		

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									<p>or her business or any other name, style, title, addition or description implying whether in itself or in the circumstances in which it is used, that such person or body or persons is an "Engineering Technologist";</p> <p>or</p> <p>(b) displays any sign, board, card or other device or uses prescribed stamp representing or implying that he or she is an engineering technologist, commits an offence. (3) The Board may grant exemptions upon application to any person or group of persons for the use of the description or use of the term "Engineering Technologists" and such</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									exemptions shall be in accordance with any recognised written international education accords or treaty or convention to which Kenya has ratified?.		
Urban Planning and Landscape Architectural Services	No Commitments as at August 2017	No Commitments as at August 2017	No Commitments as at August 2017	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL
Physical Planning	No Commitments as at August 2017	No Commitments as at August 2017	No Commitments as at August 2017	NIL	NIL	NIL	NIL	Physical Planning Act Physical Planners Registration Board Act No.3 of 1996	Physical Planners Registration Section 21 – Unregistered persons not to practice as physical planners	NIL	Physical Planners Registration Board established by Section 3 of the Physical Planners Registration Act whose mandate includes, <i>inter alia</i> , to register physical planners; set and conduct examinations for purposes of registration of members; and

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
											verify the qualifications and eligibility of the applications seeking registration with the Board.
Land Surveyors	No Commitments as at August 2017	No Commitments as at August 2017	No Commitments as at August 2017	NIL	NIL	To offer Land surveying services one must be registered in Kenya by the Land Surveyors Board (non-discriminatory) One must have attained the age of twenty-one years	NIL	Survey Act Cap 299 Laws of Kenya	<i>Survey Act – Section 10 – Persons eligible to be licensed</i> “No person shall be licensed under this Act unless he is qualified as hereinafter provided; and every person who is so qualified shall be entitled, on payment of the prescribed fee, to be granted a licence by the Board in the prescribed form.” <i>Survey Act – Section 11 – Persons entitled to be examined</i> “No person shall be examined for a licence to practise	NIL	The Land Surveyors’ Board. It is established under Section 7 of Survey Act, Cap 299 Laws of Kenya. Its mandate include conducting examination of candidates for admission as licensed surveyors in accordance with the provisions of Survey Act, granting licences to surveyors, taking disciplinary proceedings against licensed surveyors and hearing and

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>as a surveyor unless— (a) he has previously practised land surveying regularly and faithfully for such period as the Board may require, in the Survey of Kenya or with a licensed surveyor in Kenya or in one of the countries approved for the purposes of paragraph (d) of subsection (1) of section 12 of this Act, and he produces either a statutory declaration from the Director or from such licensed surveyor, as the case may be, in such form as may be prescribed, or such other evidence as may satisfy the Board, that he has so served for the period required by the Board; or (b) he satisfies the</p>		<p>determining any dispute between any licensed surveyor and his client as to the fees charged by the licensed surveyor.</p>

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>Board that he has pursued suitable courses of study in land surveying and mathematics and he has had practical experience in land surveying.</p> <p><i>Survey Act – Section 12 – Exemptions</i></p> <p>(1) Any person who— (a) was duly registered as a licensed surveyor in accordance with the provisions of any written law relating to the registration of surveyors in force at any time before the commencement of this Act; or (b) is the holder of an East African Land Survey Certificate; or (c) has taken a degree in land surveying from a university recognized by the</p>		

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									<p>Board, passed the Kenya land law examination and has had not less than two years practical experience with the Survey of Kenya or with a licensed surveyor to the satisfaction of the Board; or (d) is the holder of a licence to practise as a surveyor in any country which the Minister may, by notice in the Gazette, approve; or (e) is the holder of the qualification of Fellow or Professional Associate of the Royal Institute of Chartered Surveyors in subdivision V (Land Surveying); or (f) has complied with the provisions of paragraph (b) of section 11 of this Act, shall, upon</p>		

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									<p>the production of such evidence thereof as may be prescribed including evidence of full membership of the Institution of Surveyors of Kenya (Chapter of Land Surveyors), and subject to the provisions of subsection (2) be exempted from the whole examination or from examination in any subject, in accordance with the directions of the Board. (2) A person holding any of the qualifications mentioned in paragraph (d) or (e) of of this section, shall not be exempted from examination unless— (a) he satisfies the Board that he has had field experience in land surveying;</p>		

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									<p>and (b) he carries out to the satisfaction of the Board, a trial survey; and (c) he satisfies the Board that he is capable of conducting land surveys in accordance with the provisions of this Act and of any regulations made thereunder.</p> <p><i>Survey Act – Section 15 – Conditions precedent to issue of licence</i></p> <p>“Except as otherwise provided in this Act, no person shall receive a licence from the Board authorising him to practise as a licensed surveyor unless— (a) he has attained the age of twenty-one years; and (b) he has passed the prescribed</p>		

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									examination to the satisfaction of the Board or has been exempted therefrom; and (c) he has complied with the provisions of this Act.		
Medical and Dental Services	No Commitments as at August 2017	Medical and Dental Services. None under Modes 1, 2 and 3 as at August 2017. Mode 4 - In accordance with the Schedule on the Free Movement of Workers. ⁷³	No Commitments as at August 2017	EAC Mutual Recognition Agreement for Doctors and Dentists	Foreign medical and dental practitioners must apply for temporary licences to perform specific work or works in specific institutions in Kenya.	Medical practitioners and dentists wishing to engage in private practice must hold a license to engage in private practice. (non-discriminatory) A person should not undertake the following for a charge unless he/she is appropriately licensed: offer medical or	NIL	<i>Medical Practitioners and Dentist Act, Cap 253 of the Laws of Kenya</i> Medical Practitioners and Dentists (Inspections and Licensing) Rules 2014	<i>Medical Practitioners and Dentist Act – Section 6 – Registration of medical practitioners and dentists</i> (1) Every person eligible to be registered as a medical practitioner or as a dentist may apply in the prescribed form to the Registrar for registration in the register, and every such application shall be accompanied by	NIL	Medical Practitioners and Dentists Board established under Section 4 of the Medical Practitioners and Dentist Board Ministry of Health Kenya Medical Association is a voluntary membership organization open to all medical and dental

⁷³ This was a scheduling error that is being rectified under ongoing revision of EAC Partner States' schedules of commitments.

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						<p>surgical advice or attendance, performs an operation as a medical practitioner or dentist or prescribes medicine as a medical practitioner or dentist (non-discriminatory)</p> <p>A private practitioner is not permitted to operate a private clinic unless the premises where the clinic is situated has been approved by the board. (non-discriminatory)</p>			<p>the prescribed fee. (2) Where a person has complied with the provisions of subsection (1) and has been accepted by the Board as being eligible for registration and has satisfied the Registrar that he has been so accepted, he shall be registered.</p> <p><i>Medical Practitioners and Dentist Act – Section 14 – Registration of medical practitioners and dentists</i></p> <p>(1) Registration as a medical practitioner or a dentist under this Act, or the granting of a licence under section 13, shall only entitle the person so registered or</p>		<p>practitioners registered in Kenya. Its mandate include, inter alia, to promote the practice of medicine in Kenya; to uphold high standards of medical ethics and conduct; and to liaise with medical associations around the world.</p>

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>so licensed to practise medicine or dentistry or to render medical or dental services, as the case may be, in a salaried post under a Government or local government health scheme or in such salaried posts in such institutions as the Board may from time to time approve.</p> <p>(2) No medical practitioner or dentist shall act as or engage in private practice as a private practitioner or may be employed by a private practitioner, unless he holds a licence to engage in private practice under the provisions of section 15.</p> <p><i>Medical Practitioners and</i></p>		

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									<p><i>Dentist Act</i>, Section 22 (1) Any person who wilfully and falsely takes or uses any name, title or addition implying a qualification to practise medicine or surgery or dentistry, or who, not being registered or licensed under this Act, practises or professes to practise or publishes his name as practising medicine or surgery or dentistry, or who, not being licensed under section 15, practises as a private practitioner, shall be guilty of an offence and liable to a fine not exceeding ten thousand shillings, or to imprisonment for a term not</p>		

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									<p>exceeding twelve months or to both.”</p> <p>Medical Practitioners and Dentists (Inspections and Licensing) Rules 2014 – Part III Rule 5 (1) – Practising Licence Subject to section 15 of the Act, no person shall engage in practice as a medical or dental practitioner unless that person holds a valid practising licence issued under these Rules.</p> <p>Medical Practitioners and Dentists (Inspections and Licensing) Rules 2014 – Part III Rule 5 (2,3, & 4) “(2) The Board shall grant temporary licences to eligible foreign</p>		

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									<p>medical and dental practitioners to perform specific work or works in specific institutions in Kenya. (3) A licence issued under sub-rule (2) shall be for a period not exceeding twelve (12) months and shall be renewable for a maximum period of three years. (4) Notwithstanding the provisions of sub-rule (3), any foreign medical or dental practitioner who seeks to extend his licence beyond the period of three years as specified under sub-rule (3), must apply to the Board for permanent registration”.</p> <p>Medical Practitioners and Dentists (Inspections and Licensing) Rules</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<i>2014 – Part IV Rule 12(1)</i> “No private practitioner shall operate a private clinic unless the premises where the clinic is situated has been inspected and approved by the Board”.		
Veterinary services	No Commitments as at August 2017	Veterinary Services None under Modes 1, 2 and 3. Mode 4 - In accordance with the Schedule on the Free Movement of Workers. ⁷⁴	No Commitments as at August 2017	NIL	To offer veterinary services one must be registered by Kenya Veterinary Board. (non-discriminatory)	Full registration as a Veterinary surgeon can only be given to Kenyan Citizens, non-citizens can only be granted temporary registration of foreign veterinary surgeons (discriminatory)	NIL	Veterinary Surgeons and Veterinary Paraprofessionals Act No. 29 of 2011.	<i>Veterinary Surgeons and Veterinary Paraprofessionals Act – Section 13 - Requirement for registration</i> “(1) No person shall practise, or hold himself out, whether directly or indirectly, as practising or being able to practise as a veterinary surgeon or veterinary paraprofessional or to take up	NIL	Kenya Veterinary Board. It is established under Section 3 of the Veterinary Surgeons and Veterinary Paraprofessionals Act No. 29 of 2011. Its mandate is to register and license veterinary surgeons and veterinary paraprofession

⁷⁴ This was a scheduling error that is being rectified under ongoing revision of EAC Partner States’ schedules of commitments.

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									<p>employment as such unless he is registered and licensed under this Act. (2) No organization or institution shall offer animal health services unless it is registered and issued with a licence by the Board and has a registered veterinary surgeon in its employment in charge of the animal health and welfare services.</p> <p><i>Veterinary Surgeons and Veterinary Paraprofessionals Act - 15 - Qualification for registration of veterinary surgeons</i></p> <p>“(1) A person shall be qualified to be registered as a veterinary surgeon under this Act if he— (a) is a citizen</p>		<p>als; regulate training of veterinary surgeons and veterinary paraprofessionals and to carry out inspection of veterinary service providers.</p> <p>Kenya Meat Commission. It is established under the Kenya Meat Commission Act, Cap 363 with the objective of promoting the country’s meat industry through the purchase and slaughter of livestock and to act as a strategic drought management agent as a buyer of last resort.</p> <p>Kenya Animal Genetics</p>

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									of Kenya; (b) holds a degree in veterinary medicine from a university recognized in Kenya, and has after such qualification served an internship of not less than twelve months under a veterinary surgeon with not less than five years' standing; and (c) is a member of a registered professional association representing the interests of veterinary surgeons. (2) The Board may in its discretion require an applicant under this section to undertake such examination as it may prescribe to satisfy itself that the applicant's knowledge and skill qualify such		Resource Centre. It is established as a State Corporation vide Legal Notice No. 110. Its main objective is to control venereal diseases and genetic improvement of exotic dairy cattle through collection and distribution of quality bull semen. Kenya Veterinary Vaccines Production Institute. It is established as a parastatal institution via Legal Notice No. 223 of 4th June 1990. Its mandate is to coordinate and undertake production of

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									<p>person for registration. (3) The examination referred to in subsection (2) may be conducted by the Board or by any other authority or institution appointed by the Board, and such examination shall be conducted subject to such terms and conditions as the Board may determine. (4) A person seeking registration shall apply to the Board within a period of five years after qualification, and any person applying after the expiry of that period shall be subject to the provisions of subsection (2). (5) A person registered by the Board under this section shall swear or affirm the oath</p>		<p>veterinary vaccines and to undertake research with respect to vaccine development.</p>

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									<p>set out in the Third Schedule, and shall be entitled to have his name entered in the register maintained by the Registrar for that purpose. (6) Every registered person shall be issued with a certificate of registration in the prescribed form which shall be signed by the Registrar. (7) Any person who practises veterinary medicine or surgery without having been registered under this section or otherwise contravenes any other provisions of this section commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand shillings or to</p>		

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									<p>imprisonment for a term not exceeding twelve months, or to both.”</p> <p><i>Veterinary Surgeons and Veterinary Paraprofessionals Act – Section 16</i></p> <p>- Temporary Registration of foreign veterinary surgeons</p> <p>“(1) A person, being a qualified veterinary surgeon, who is not a citizen of, or is not ordinarily resident, in Kenya, but intends to be in Kenya for the purposes of carrying out any activity to which this Act applies in any underserved area of Kenya, or on any other related assignment, engagement or consultancy for which he has been engaged, shall,</p>		

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									<p>before embarking on the assignment, apply to the Board for temporary registration as a foreign veterinary surgeon for the purposes of this Act: Provided that temporary registration under this section shall only be given to persons engaged by volunteer non-profit organizations recognized by the Board, which provide veterinary services in underserved areas. (2) An application for temporary registration shall be made through the organization engaging the applicant, and shall be submitted to the Board in the prescribed form and accompanied by— (a) the fee prescribed by the Board, and</p>		

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									<p>certified copies of the applicant's certificates in veterinary medicine, duly authenticated by the registration authority of the country where they were obtained; (b) proof of membership of a professional association in the country of the applicant; and (c) a letter attesting to good professional conduct from the registration authority in the country of the applicant. (3) The Board may require a person applying for temporary registration to appear before it in person for an examination, whether oral or written. (4) Upon due consideration of an application submitted to it under this section,</p>		

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									<p>the Board shall make and communicate its decision to the applicant within a reasonable time, but not later than fifteen days, and the decision of the Board shall be final. (5) If the Board is satisfied that the applicant has fulfilled all the conditions for temporary registration as a foreign veterinary surgeon under this section it shall direct the Registrar to effect the registration and issue the applicant with a certificate of temporary registration: Provided that a person registered under this section shall be subject to the requirements of section 26 with regard to an annual licence. (6) A certificate of</p>		

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									<p>temporary registration issued pursuant to this section may be subject to such terms and conditions as the Board may consider fit, and such terms and conditions may include— (a) that the veterinary surgeon so registered confines his practice to the area for which engaged, and (b) that for every year he practises in Kenya he submits to the Board a quarterly report showing, inter alia, the progress made towards the completion of the task in respect of which the registration is issued. (7) Any person who contravenes the provisions of this section, or abets, aids, facilitates or</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>in any way assists any person to contravene the provisions of this section, commits an offence and shall be liable, on conviction, to a fine not exceeding one hundred thousand shillings, or to imprisonment for a term not exceeding one year, or to both. (8) Any registered veterinary surgeon who abets, facilitates, or assists in the employment of a person in contravention of this section shall be liable to have his registration suspended for a period not exceeding three years. (9) In addition to any penalty under this section, any person who is not a citizen of Kenya</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>who contravenes this section shall be deported from the country. (10) Any person, institution or organization which engages any foreign veterinary surgeon contrary to the provisions of this section shall be taken to have abetted, facilitated, aided or assisted such a person to practise veterinary medicine and surgery in Kenya in contravention of this Act, and shall be subject to the penalties prescribed.</p> <p><i>Veterinary Surgeons and Veterinary Paraprofessionals Act – Section 17 - Qualification and Registration of veterinary para-professionals</i></p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>“(1) A person shall be qualified for registration as a veterinary paraprofessional if the person— (a) is a citizen of Kenya, and (b) has either— (i) has successfully completed a post-secondary school training course in animal health science lasting two years or more at an institution approved by the Board and has obtained a certificate, diploma or degree, and has thereafter served an internship of not less than twelve months under the supervision of a registered veterinary surgeon; or (ii) is qualified in animal husbandry, range management or wildlife health and has undergone a</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>course of not less than one year in animal health prescribed by the Board, and has served an internship of not less than twelve months under the supervision of a registered veterinary surgeon, and (c) is a member of a registered association representing the interests of veterinary para-professionals. (2) A person practises as a veterinary para-professional if he performs any of the functions set out in the Second Schedule in the manner specified therein: Provided that the Cabinet Secretary may, on the advice of the Board, from time to time and as the need arises, review the Second</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>Schedule. (3) An application under this section shall be in the relevant Form 3 set out in the Fourth Schedule, and shall be accompanied by— (a) such amount of registration fee as the Board may determine from time to time, (b) certified copies of relevant certificates, and (c) a letter from a registered veterinary surgeon certifying that the applicant served internship under his supervision as required by subsection (1)(c). (4) A person registered under this section shall swear or affirm the oath set out in the Third Schedule, and shall be entitled to have his name entered in the register of</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>veterinary para-professionals maintained by the Registrar for that purpose. (5) Every registered person shall be issued with a certificate of registration which shall be signed by the Registrar. (6) The Board may at any time cancel the approval of a training institution referred to in subsection (1)(b) if it is of the opinion that the qualification obtained therefrom is no longer of a satisfactory standard for the purposes of registration under this section: Provided that such cancellation shall not invalidate the registration of any person who graduated from that institution and was registered</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									prior thereto. (7) A person seeking registration under this section shall apply to the Board within a period of five years after qualification, and any person applying after the expiry of that period shall be required to pass such examination as the Board may prescribe.”		
Services provided by midwives, nurses, physiotherapists and para-medical personnel	No Commitments as at August 2017	Services provided by Midwives, Nurses, Physiotherapists and Para-Medical Personnel. None under Modes 1, 2 and 3. Mode 4 - In accordance with the Schedule on the Free Movement	No Commitments as at August 2017	NIL	To offer services as a midwife in Kenya, one must be registered by Nursing Council of Kenya (non-discriminatory) To offer services as a nurse in Kenya, one must be registered by Nursing Council of	NIL	NIL	Nurses Act, Cap 257 Laws of Kenya Nutritionists and Dieticians Act No. 18 of 2007 Clinical Officers (Training, Registration and Licensing) Act Chapter 260 Physiotherapists Act No. 20 of 2014	<i>Nurses Act – Section 13 – Persons entitled to be registered</i> “Except as otherwise provided in this Act or in any regulations made thereunder, every person shall be entitled to registration on the appropriate register who satisfies the Council that he is of good character and has paid the prescribed	NIL	Nursing Council of Kenya. It is established under Section 3 of Nurses Act, Cap 257 Laws of Kenya. Its mandate include improving standard of the nursing profession in all their aspects and to safeguard the interests of all nurses, improving the

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
		of Workers. 75			Kenya (non-discriminatory) To offer physiotherapy services in Kenya, one must be registered by the Physiotherapy Council of Kenya (non-discriminatory) To offer services as a Clinical Officer in Kenya, one must be registered by Clinical Officers Council (non-discriminatory)				registration fee, and who— (a) has undergone a prescribed course of instruction and has passed the appropriate examination conducted or prescribed by the Council; or (b) has undergone a course of training and passed an examination, elsewhere than in Kenya, which the Council recognizes as equivalent to the training and instruction required in the case of persons trained in Kenya and as equivalent to the qualification by examination required under this Act.		standards of professional nursing and of health care and advise the Minister on matters concerning all aspects of nursing. Kenya Nutritionists and Dieticians Institute. It is established under Section 4 of Nutritionists and Dieticians Act No. 18 of 2007. Its key mandate is to determine and set a framework for the professional practice of nutritionists and dieticians and to set and enforce

⁷⁵ This was a scheduling error that is being rectified under ongoing revision of EAC Partner States' schedules of commitments.

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
					To offer services as a nutritionist or dietician in Kenya, one must be registered by Kenya Nutrition and Dietician Accreditation Board (non-discriminatory)				<p><i>Nurses Act - Section 14 - Rolls to be kept</i></p> <p>“(1) The Registrar shall, under the direction of the Council, compile and keep in his office the following rolls— (a) a roll of nurses; (b) a roll of midwives; (c) a roll of community health nurses; (d) a roll of psychiatric nurses, and such other rolls as may from time to time be required by the Council with the approval of the Minister. (2) Subject to the payment of a retention fee, there shall be entered and maintained on the appropriate roll the name and address of every person entitled to be enrolled under this Act together with his</p>		standards of professional practice and ethics on nutrition and dietetics in Kenya.

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>professional qualifications and such other particulars as may be prescribed by the Council.</p> <p><i>Nurses Act – Section 16-Records of licences to be kept</i></p> <p>“(1) The Registrar shall, under the direction of the Council, compile and keep in his office the following separate records of licences to practise nursing in Kenya— (a) a record of nurses licensed to practise general nursing; (b) a record of nurses licensed to practise midwifery; (c) a record of nurses licensed to practise community health nursing; (d) a record of nurses licensed to practise psychiatric</p>		<p>Clinical Officers Council. It is established under Section 3 of Clinical Officers (Training, Registration and Licensing) Act Cap 260. Its key mandate is to assess the qualifications of clinical officers and to ensure the maintenance and improvement of the standards of practice by clinical officers and to supervise the professional conduct and practice of clinical officers.</p> <p>Physiotherapy Council of Kenya. It is established under Section 3 of Physiotherapist</p>

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									<p>nursing; (e) a record of nurses licensed to practise sick children's nursing, and all such other records as may from time to time be required by the Council with the approval of the Minister. (2) There shall be entered on the appropriate record the name and address of every person licensed under this Act together with his professional qualifications and such other particulars as may be prescribed by the Council.</p> <p>Nurses Act – Section 17 - Private practice “(1) No person shall engage in private practice as a nurse unless such person— (a) is a citizen of Kenya; (b) is registered,</p>		s Act No. 20 of 2014. Its main objective is to exercise general supervision and control over the training and practice of physiotherapists in Kenya and to advise the Government in relation to all aspects thereof.

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									<p>enrolled or licensed as a nurse under this Act; (c) has served as a nurse for a period of not less than three years under supervision of a senior nurse of not less than seven years standing; (d) is a holder of an annual licence known as a practising certificate for that year; (e) is a holder of such other qualification as may be prescribed.</p> <p>(2) Notwithstanding the provisions of subsection (1), a person who is not a citizen of Kenya may be licensed to practise as a nurse if he satisfies the Council that— (a) he is of good character; (b) he has paid the prescribed fees; (c) he has undergone a course of training</p>		

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									<p>and passed an examination, elsewhere than in Kenya, which would not qualify him to be registered or enrolled under this Act but which the Council recognizes as sufficient to enable him to practise nursing in Kenya. (3) A licence issued under subsection (2)— (a) shall be for such period and for such purpose as the Council may prescribe; (b) may, on its expiry, be renewed for such period, not exceeding one year, as the Council may prescribe. (4) Where a licence issued under subsection (2) is renewed, details of the renewal shall be entered in the appropriate</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>record. (5) Where a licence issued under subsection (2) expires and is not renewed within thirty days of expiry, the name of the holder of the licence shall be removed from the appropriate record and the Council may decline further requests for renewal of such a licence or impose a levy on such further requests. (6) For the purposes of this Act— (a) a person shall be deemed to engage in private practice as a nurse if such person— (i) practises on his own account and is entitled to receive, for his own financial benefit, the entire amount of all fees and charges; (ii) practises in partnership with</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>others and is entitled to receive, for his own financial benefit, a share of the fees and charges; (b) a person shall not be deemed to engage in private practice as a nurse if such person is employed by— (i) the Government or any other public body; (ii) any person or employer where all fees and charges accrue to the person or employer despite the fact of him being employed in his professional capacity as a nurse. (7) An application for a practising certificate or its renewal shall be made to the Council in the prescribed form and shall be accompanied by such fee as the Council may from</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>time to time determine. (8) Where an application is made by a person in accordance with subsection (7), the Council shall issue to such person a practising certificate for that year if it is satisfied that the person fulfils the requirements set out in subsection (1) and has paid the fee referred to in subsection (7) of this section. (9) A practising certificate shall be valid from the date on which it is issued and shall expire on the thirtieth day of December of every year unless its holder ceases to be a registered person under this Act. (10) Where a practising certificate ceases to be in force in</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>accordance with subsection (7), the person to whom the certificate was issued shall deliver it to the Council within thirty days from the date on which he ceases to be registered. (11) Any person who contravenes— (a) subsection (1) or (2), in addition to being culpable of professional misconduct, commits an offence and is liable to a fine not exceeding five hundred thousand shillings or to imprisonment for a term not exceeding one year, or to both; (b) subsection (7) commits an offence and is liable on conviction to a fine not exceeding fifty thousand shillings.</p>		

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									<p><i>Nutritionists and Dieticians Act Section 17-Registration of nutritionists and dieticians</i></p> <p>“(1) A person eligible to be registered as a nutritionist or dietician shall apply in the prescribed form to the Registrar, and the application shall be accompanied by the prescribed fee. (2) Where a person has complied with the provisions of section 16 and has been accepted by the Council as being eligible for registration, such person shall be registered. 18. Certificate of registration The Institute shall issue to every person registered under this Act, a</p>		

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									<p>certificate in the prescribed form”</p> <p><i>Nutritionists and Dieticians Act Section 22 - Licensing</i></p> <p>“(1) No person shall engage in private practice unless he has been issued with a valid licence to practice. (2) The Institute may issue to a nutritionist or dietician who has applied in the prescribed form, a licence to practice on his or her own behalf or to be employed by a registered nutritionist or dietician. (3) The Institute shall grant a licence to a nutritionist or dietician on payment of the prescribed fee, and shall state whether the licensee may practice on his</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>own behalf or on employment.”</p> <p><i>Nutritionists and Dieticians Act – Section 23 - Qualification for practice on own behalf</i></p> <p>“(1) Notwithstanding, that a nutritionist or dietician has been issued with a licence under this Act, he shall not engage in practice on his own behalf, either full time or part-time, unless he has practised in Kenya continuously on a full-time basis for a period of not less than two years after being registered— (a) in a salaried post, either as an employee in the Government of Kenya as a nutritionist or dietician; or (b) in</p>		

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									<p>an organisation approved by the Institute; or (c) as an employee of a nutritionist or dietician who has been engaged in a continuous full-time private practice on his own behalf in Kenya for a period of not less than five years. (2) The person employing a nutritionist or dietician under this section shall in the prescribed form notify the Institute of the commencement and termination of employment of such person.</p> <p><i>Nutritionists and Dieticians Act – Section 24 - Validity of licence</i></p> <p>“(1) After the expiry of twelve months from the commencement of this Act, no person</p>		

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									<p>shall engage in the practice of nutrition and dietetics practice unless he has been duly issued with a registration certificate and a practicing license by the Institute in accordance with this Act. (2) A licence granted under this Act shall be valid for one year. (3) On expiry, a license may be renewed for such further period, not exceeding one year. (4) Where a licence expires and is not renewed for a period of one year, the name of the holder of the licence shall be removed from the appropriate record.”</p> <p><i>Clinical Officers (Training, Registration and Licensing) Act –</i></p>		

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									<p><i>Section 7</i> <i>Registration and effect of registration</i></p> <p>“(1) A person shall be entitled to registration if he satisfies the Council that he— (a) has successfully undergone a prescribed course of training at an approved training institution; (b) has applied for registration in the prescribed form; (c) has paid the prescribed fees for registration; and (d) is a fit and proper person to be registered. (2) Any person who is aggrieved by the decision of the Council not to register him may appeal to the High Court within sixty days of such refusal and the High Court may confirm, annul or</p>		

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									<p>vary the Council's decision. (3) The Registrar shall, with the approval of the Council, issue to every person registered under this Act a certificate of registration in the prescribed form. (4) A person who has been registered by the Council shall be entitled to render medical or dental services in any medical institution in Kenya approved for the purposes of this section by the Minister by notice in the Gazette."</p> <p><i>Clinical Officers (Training, Registration and Licensing) Act – Section 8- Unregistered persons rendering medical services</i></p>		

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									“(1) No person shall be entitled to render medical or dental services in Kenya as a clinical officer unless he has been registered by the Council under this Act. (2) Any person in charge of a medical institution who allows any unregistered person to render medical or dental services as a clinical officer in their institution shall be guilty of an offence and shall be liable to a fine not exceeding ten thousand shillings or imprisonment for six months or to both. (3) Any person who attempts to obtain or obtains registration by false pretences or who utters a false certificate with intent to obtain registration shall		

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									<p>be liable to a fine of not less than five thousand shillings or to imprisonment for six months or to both.”</p> <p><i>Clinical Officers (Training, Registration and Licensing) Act – Section 11 - Private practice</i></p> <p>“(1) No clinical officer shall engage in private practice unless he has been issued with a valid private practice licence by the Council in accordance with regulations made under section 16. (2) The Council may authorize the Registrar to issue to a clinical officer, who has applied in the prescribed form and who has rendered unblemished medical or dental</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>services in the service of the Government or in the service of any organization or institution approved by the Council for the purposes of this section, for a period of not less than ten years, a licence to engage in private practice on his own behalf or to be employed either full-time or part-time by a clinical officer or a medical practitioner or dentist engaged in private practice. (3) Licences shall be granted on the payment of the prescribed fee and shall state whether the licensee may practice on his own behalf or in employment. (4) Licences for private practice shall expire on the 31st of December</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>in the year they are granted and issued and shall be renewable in accordance with the regulations made under section 16. (5) The Council may cancel or refuse to issue or to renew a licence. (6) No premises may be habitually used for the purposes of private practice unless they are authorized for such use by the Director of Medical Services. (7) A person aggrieved by the decision of the Council in exercising its powers under subsection (5) may appeal to the High Court within thirty days of the Council's decision being communicated to him."</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p><i>Clinical Officers (Training, Registration and Licensing) Act – Section 13 - Limitations of private practice</i></p> <p>“(1) A clinical officer who is licensed to engage in private practice shall only treat the ailments listed in the First Schedule. (2) A clinical officer who is licensed to engage in private practice shall only handle and shall only issue prescriptions for the drugs and equipment listed in the Second Schedule. (3) No clinical officer engaged in private practice shall keep open his clinic unless he is personally present for more than eight hours a day. (4) The Third Schedule shall have effect with</p>		

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									<p>respect to the minimum requirements for a private practice clinic. (5) No clinical officer engaged in private practice shall undertake to treat the diseases and ailments listed in the Fourth Schedule, but he may render the necessary First Aid and thereafter, without undue delay, refer such cases to the nearest medical officer or medical practitioner or dentist in private practice on referral. (6) The Minister may, in consultation with the Council, amend the First, Second, Third and Fourth Schedules. (7) A clinical officer who fails to comply with the requirements of subsections (1),</p>		

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									<p>(2), (3) and (5) shall be guilty of an offence and liable to a fine not exceeding five thousand shillings or to imprisonment for a term not exceeding six months or to both.”</p> <p>Physiotherapists Act Section 20 - Persons eligible to be registered.</p> <p>“(1) Subject to the provisions of this section, a person shall be eligible for registration under this Act as a physiotherapist if the person — (a) is the holder of a qualification which is recognized by the Council; (b) after obtaining that qualification, has engaged in training employment under the supervision of a registered</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>physiotherapist for such period, being not less than one year, as the Council may approve; (c) satisfies the Council that, while engaged in training employment as specified in paragraph (b), has acquired sufficient knowledge of, and experience in the practice of physiotherapy. (2) A person who is the holder of a qualification from an accredited institution outside Kenya shall be eligible for registration under this Act as a physiotherapist if the person — (a) is the holder of a qualification obtained from an institution that is accredited and recognized by the regulating authority</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>responsible for the registration of physiotherapists in the country of study; (b) has engaged in physiotherapy practice under the supervision of a physiotherapist registered by the Council for such period, being not less than twelve months, as the Council may approve; and the Council is satisfied that the qualifications obtained by the person meet such requirements for a course leading to a qualification in physiotherapy as the Council shall from time to time prescribe pursuant to section 4 (2) (a). (3) Where the Council finds that a person has not completed all courses prescribed pursuant to</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>section 4(2)(a), the Council shall require that person to — (a) attend such interview as may be appropriate; (b) undergo an oral or written examination or both; and (c) take the courses required in an institution recognized and approved by the Council prior to engaging in supervised practice. (4) Despite subsection (3), all qualifications issued by a university or institution accredited under the Universities Act, 2012 or the Technical and Vocational Education and Training Act, 2013 shall be recognized by the Council. (5) The Council may,</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>after assessing the suitability for registration of a person under subsections (1) and (2), direct that before registration, the person shall undergo such further period of training or pass such examination in an institution accredited under the Universities Act, 2012 or the Technical and Vocational Education and Training Act, 2013. (6) The Council shall not authorise the registration of a person unless it is satisfied— (a) that the requirements of subsection (1) or (2) have been fulfilled; or (b) in the case of a person referred to in subsection (3) that the requirements of subsection (5)</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>have been fulfilled and that the person has undergone any further period of training or passed any examination specified by the Council. (7) The Council may, where it considers it expedient, delegate the assessment of suitability for registration under subsection (2) to a committee of the Council which shall, after making the assessment, make recommendations to the Council. (8) The Council shall register every qualified person by such particulars as the Council may prescribe, in the appropriate register kept for that purpose pursuant to section 22.</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p><i>Physiotherapists Act – Section 24 - Qualification for private practice.</i></p> <p>“(1) Subject to this Act, no person shall engage in private practice as a physiotherapist unless that person holds a valid practicing certificate issued under this Act. (2) For the purposes of this Act, a person shall be deemed to engage in private practice if the person practices as a physiotherapist —</p> <p>(a) on the persons own account and is entitled to receive the entire amount of all fees and charges earned for the persons own financial benefit; (b) in partnership with others and is entitled to receive a share of the profits earned by</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>such partnership and is liable to bear a share of any losses incurred by such partnership, but no person shall be deemed to engage in private practice where he is employed — (i) by the Government or any other public body; (ii) by a state corporation as defined by the State Corporations Act; or (iii) by any person or partnership engaged in his profession where all fees and charges earned by him are to the benefit of his employer, notwithstanding that he is engaged in his professional capacity as a physiotherapist.</p> <p>(3) A person who engages in private practice as a physiotherapist contrary to the</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									provisions of this section commits an offence and shall, on conviction, be liable to a fine not more than one million shillings, or to imprisonment for a term not less than one year, or to both.		
B. Computer and Related Services											
Consultancy services related to the installation of computer hardware	No commitments as at August 2017	Under Consultancy Services Related to the Installation of Computer Hardware. None under mode 1, 2 and 3. Mode 4 - In accordance with the Schedule on the Free	No commitments as at August 2017	NIL	NIL ⁷⁷	NIL	NIL	NIL	NIL	NIL	Computer Society of Kenya – is a membership society representing Kenya’s ICT industries and professionals in both public and Private Sector. Its functions include, accreditation of ICT institutes, training of ICT professionals and

⁷⁷ The Information Communication Technology Practitioners Bill, 2016 is pending in parliament and it provides for the training, registration, licensing and standards of ICT practitioners in Kenya. Once passed. It also proposes to formation of an ICT Institute to regulate ICT practitioners in Kenya.

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
		Movement of Workers. ⁷⁶									establishment of ICT industry excellency awards, standards and code of conduct among others.
Software implementation services	No commitments as at August 2017	No commitments as at August 2017	No commitments as at August 2017	NIL	NIL ⁷⁸	NIL	NIL	NIL	NIL	NIL	Computer Society of Kenya – is a membership society representing Kenya’s ICT industries and professionals in both public and Private Sector. Its functions include, accreditation of ICT institutes, training of ICT professionals and establishment of ICT industry

⁷⁶ This was a scheduling error that is being rectified under ongoing revision of EAC Partner States’ schedules of commitments.

⁷⁸ The Information Communication Technology Practitioners Bill, 2016 is pending in parliament and it provides for the training, registration, licensing and standards of ICT practitioners in Kenya. Once passed. It also proposes to formation of an ICT Institute to regulate ICT practitioners in Kenya.

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
											excellency awards, standards and code of conduct among others.
Data processing services	No commitments as at August 2017	No commitments as at August 2017	No commitments as at August 2017	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL
Data base services	No commitments as at August 2017	No commitments as at August 2017	No commitments as at August 2017	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL
C. Research and Development Services											
NIL R&D services on natural sciences	No commitments as at August 2017	Services on Natural Sciences. None under mode 1, 2 and 3. Mode 4 - In accordance with the Schedule on the Free Movement	No commitments as at August 2017	None	Requirement for licence from National Commission for Science, Technology and Innovation to undertake research	NIL	NIL	Science Technology and Innovation Act No. 28 of 2013	<i>Science Technology and Innovation Act, Section 12 - Requirement for licence to undertake research</i> “(1) Subject to the provisions of any other law, a person shall not undertake scientific research in Kenya without obtaining a licence under this Act	NIL	National Commission for Science, Technology and Innovation – Established at Section 3 of Science Technology and Innovation Act No. 28 of 2013. Its mandate is to regulate and assure quality in the science,

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
		of Workers. 79							(2) Subsection (1) shall not apply to a person conducting scientific research within a university or an academic research institution programme. (3) Any person undertaking or intending to undertake research in science and technology in the country, or who accesses, handles, or transfers any material or technology or moves it within, from or into the country, shall apply to the Commission for the grant of a licence in accordance with this Act (4) Notwithstanding		technology and innovation sector and advise the Government in matters related thereto. Advisory Research Committee – Established at Section 9 of Science Technology and Innovation Act No. 28 of 2013. Its mandate is to encourage, promote and co-ordinate all types of research. Kenya National Innovation Agency – Established at Section 28 of

⁷⁹ This was a scheduling error that is being rectified under ongoing revision of EAC Partner States' schedules of commitments.

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>the generality of subsection (2), the Cabinet Secretary may, on recommendation of the Commission, by notice in the <i>Gazette</i>, exempt any research from the requirements of subsection (1).</p> <p>(5) Notwithstanding the provisions of subsection (1), no licence shall be granted for any research involving activities which—</p> <p>(a) may adversely affect the culture of any community in Kenya;</p> <p>(b) may adversely affect the environment;</p> <p>(c) may result in the exploitation of intellectual property rights of Communities to their traditional knowledge.</p>		<p>Science Technology and Innovation Act No. 28 of 2013. Its mandate is to develop and manage the Kenya National Innovation System, and for that purpose to institutionalise linkages between universities, research institutions, the private sector, the Government, and other actors in that System.</p>

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>(d) may, in the view of the Commission, adversely affect the lives of Kenyans.</p> <p>Science Technology and Innovation Act, Section 13 - Grant of Licence</p> <p>“(1) The Commission shall, upon receipt of an application under section 12, evaluate the application, and if satisfied that the conduct of the research is beneficial to the country, and, that the research shall not adversely affect any aspect of the nature, environment or the security of the country, issue to the applicant a licence in the prescribed form.</p> <p>(2) The licence issued under this</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>section shall be under the seal of the Commission and shall indicate the commencement and expiry date: Provided that a holder of a licence may apply for the extension of the licence period on proof that the completion of the research was delayed for a justifiable cause, and such extension shall not be withheld unreasonably.</p> <p>(3) The Commission shall keep a register of all persons granted licence under this Part, which register shall be available for public inspection during normal working hours free of charge.”</p>		
R&D services on social	No commitments as	No commitment	No commitments as at	NIL	Requirement for licence from	NIL	NIL	Science Technology and	Science Technology and Innovation Act,	NIL	National Commission for Science,

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
sciences and humanities	at August 2017	s as at August 2017	August 2017		National Commission for Science, Technology and Innovation to undertake research in Kenya.			Innovation Act No. 28 of 2013	<p>Section 12 - Requirement for licence to undertake research</p> <p>“(1) Subject to the provisions of any other law, a person shall not undertake scientific research in Kenya without obtaining a licence under this Act</p> <p>(2) Subsection (1) shall not apply to a person conducting scientific research within a university or an academic research institution programme.</p> <p>(3) Any person undertaking or intending to undertake research in science and technology in the country, or who accesses, handles, or transfers any material or technology or moves it within, from or into the</p>		<p>Technology and Innovation – Established under section 3 of Science Technology and Innovation Act No. 28 of 2013. Its mandate is to regulate and assure quality in the science, technology and innovation sector and advise the Government in matters related thereto.</p> <p>Advisory Research Committee – Established under Section 9 of Science Technology and Innovation Act No. 28 of 2013. Its mandate is to encourage, promote and co-ordinate all</p>

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									country, shall apply to the Commission for the grant of a licence in accordance with this Act (4) Notwithstanding the generality of subsection (2), the Cabinet Secretary may, on recommendation of the Commission, by notice in the <i>Gazette</i> , exempt any research from the requirements of subsection (1). (5) Notwithstanding the provisions of subsection (1), no licence shall be granted for any research involving activities which— (a) may adversely affect the culture of any community in Kenya;		types of research. Kenya National Innovation Agency – Established under Section 28 of Science Technology and Innovation Act No. 28 of 2013. Its mandate is to develop and manage the Kenya National Innovation System, and for that purpose to institutionalise linkages between universities, research institutions, the private sector, the Government, and other actors in that System.

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>(b) may adversely affect the environment;</p> <p>(c) may result in the exploitation of intellectual property rights of Communities to their traditional knowledge.</p> <p>(d) may, in the view of the Commission, adversely affect the lives of Kenyans.</p> <p><i>Science Technology and Innovation Act, Section 13 - Grant of Licence</i></p> <p>“(1) The Commission shall, upon receipt of an application under section 12, evaluate the application, and if satisfied that the conduct of the research is beneficial to the country, and, that the research shall</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>not adversely affect any aspect of the nature, environment or the security of the country, issue to the applicant a licence in the prescribed form.</p> <p>(2) The licence issued under this section shall be under the seal of the Commission and shall indicate the commencement and expiry date: Provided that a holder of a licence may apply for the extension of the licence period on proof that the completion of the research was delayed for a justifiable cause, and such extension shall not be withheld unreasonably.</p> <p>(3) The Commission shall keep a register of all persons granted</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									licence under this Part, which register shall be available for public inspection during normal working hours free of charge.”		
Interdisciplinary R&D services	No commitments as at August 2017	No commitments as at August 2017	No commitments as at August 2017	NIL	Requirement for licence from National Commission for Science, Technology and Innovation to undertake research in Kenya.	NIL	NIL	Science Technology and Innovation Act No. 28 of 2013	Science Technology and Innovation Act, Section 12 - Requirement for licence to undertake research “(1) Subject to the provisions of any other law, a person shall not undertake scientific research in Kenya without obtaining a licence under this Act (2) Subsection (1) shall not apply to a person conducting scientific research within a university or an academic research institution programme. (3) Any person undertaking or intending to	NIL	National Commission for Science, Technology and Innovation – Established under section 3 of Science Technology and Innovation Act No. 28 of 2013. Its mandate is to regulate and assure quality in the science, technology and innovation sector and advise the Government in matters related thereto. Advisory Research Committee –

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>undertake research in science and technology in the country, or who accesses, handles, or transfers any material or technology or moves it within, from or into the country, shall apply to the Commission for the grant of a licence in accordance with this Act</p> <p>(4) Notwithstanding the generality of subsection (2), the Cabinet Secretary may, on recommendation of the Commission, by notice in the <i>Gazette</i>, exempt any research from the requirements of subsection (1).</p> <p>(5) Notwithstanding the provisions of subsection (1), no</p>		<p>Established under Section 9 of Science Technology and Innovation Act No. 28 of 2013. Its mandate is to encourage, promote and co-ordinate all types of research.</p> <p>Kenya National Innovation Agency – Established under Section 28 of Science Technology and Innovation Act No. 28 of 2013. Its mandate is to develop and manage the Kenya National Innovation System, and for that purpose to institutionalise linkages between</p>

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>licence shall be granted for any research involving activities which—</p> <p>(a) may adversely affect the culture of any community in Kenya;</p> <p>(b) may adversely affect the environment;</p> <p>(c) may result in the exploitation of intellectual property rights of Communities to their traditional knowledge.</p> <p>(d) may, in the view of the Commission, adversely affect the lives of Kenyans.</p> <p>Science Technology and Innovation Act, Section 13 - Grant of Licence</p> <p>“(1) The Commission shall, upon receipt of an application under section 12,</p>		universities, research institutions, the private sector, the Government, and other actors in that System.

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>evaluate the application, and if satisfied that the conduct of the research is beneficial to the country, and, that the research shall not adversely affect any aspect of the nature, environment or the security of the country, issue to the applicant a licence in the prescribed form.</p> <p>(2) The licence issued under this section shall be under the seal of the Commission and shall indicate the commencement and expiry date: Provided that a holder of a licence may apply for the extension of the licence period on proof that the completion of the research was</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>delayed for a justifiable cause, and such extension shall not be withheld unreasonably.</p> <p>(3) The Commission shall keep a register of all persons granted licence under this Part, which register shall be available for public inspection during normal working hours free of charge.”</p>		
D. Real Estate Services											
Involving own or leased property	No commitments as at August 2017	No commitments as at August 2017	No commitments as at August 2017	NIL	NIL	None citizens cannot own a freehold estate but can hold lease hold estate for a period of 99 years (discriminatory)	NIL	The Constitution of Kenya Land Registration Act No. 3 of 2012	Article 65(1) of the Constitution of Kenya – Land holding by non-citizens - “A person who is not a citizen may hold land on the basis of leasehold tenure only, and any such lease, however granted, shall not exceed ninety-nine years. Section 107(3) of Land	One must obtain certificate of registration of Real Estate from Land Registry	National Land Commission – Established by the Constitution of Kenya and National Land Commission Act, 2012. Its mandate is to manage public land on behalf of the national and county government.

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p><i>Registration Act</i> – ‘for the avoidance of doubt, any lease granted to a none, citizen shall not exceed 99 years.’</p> <p>Section</p>		<p>Ministry of Land, Housing and Urban Development – Responsible for development of land policy</p> <p>Land Registry – Mandated to register property in Kenya.</p> <p>Lands Control Board - established under section 5 of Land Control Act Cap 302 Laws of Kenya for every land control area. Its mandate is to control and issues consent to all transactions affecting agricultural land in Kenya.</p>

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
											County Governments – Established under First schedule of the Constitution of Kenya, 2010
On a fee or contract basis	No commitments as at August 2017	No commitments as at August 2017	No commitments as at August 2017	NIL	Requirement for registration as an Estate Agent to be able to practice in Kenya (non-discriminatory).	Must be a Kenyan citizen (discriminatory) Requirement to have an annual license to practice as an Estate Agent (non-discriminatory)	NIL	Estate Agents Act. Cap 533 Laws of Kenya	<i>Estate Agents Act Section 13 - Conditions and qualifications for registration -</i> “(1) Subject to this Act, a person who is a citizen of Kenya shall be entitled, on making an application to the Board in the prescribed form and on payment to the Board of the prescribed fee, to be registered under this Act and to have his name entered in the register if he is— (a) a full member of the Institution of Surveyors of Kenya in the chapters	NIL	Estate Agents Registration Board - established under section 3 of Estate Agents Act. Its mandate is to register estate agents and ensuring that the competence and conduct of practising estate agents are of a standard sufficiently high to ensure the protection of the public, and for that purpose may exercise the powers conferred, and shall perform the duties imposed, upon

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									of Valuation and Estate Management Surveyors, Building Surveyors and Land Management Surveyors; or (b) a corporate member of the Royal Institution of Chartered Surveyors (in the General Practice or Land Agency or Agriculture sections) and he is qualified to be or is a full member of the Institution of Surveyors of Kenya in the chapters of Valuation and Estate Management Surveyors, Building Surveyors and Land Management Surveyors; (c) the holder of a degree, diploma or		the Board by the provisions of this Act.

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>licence from any university or college or school which is recognized for the time being by the Board;</p> <p>or</p> <p>(d) a person who—</p> <p>(i) is the holder of a degree, diploma or licence of a university or college or school or a member of an institution the membership of which is recognized for the time being by the Board as furnishing sufficient evidence of an adequate academic training for practice as an estate agent; and</p> <p>(ii) has had, to the satisfaction of the Board, practical post qualification experience in such practice of not less than two</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>years of which not less than six months has been in Kenya; or</p> <p>(e) a person who is not qualified under paragraphs (a), (b), (c) or (d) but is of good character and satisfies the Board that he has not been convicted (whether in Kenya or elsewhere) of an offence involving fraud or dishonesty.</p> <p>(2) Notwithstanding the fact that he has sufficient qualifications under subsection (1), the Board may require an applicant for registration as an estate agent under this Act to satisfy it that his professional and general conduct has been</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									such that, in the opinion of the Board, he is a fit and proper person to be registered under this Act and the Board may direct the registrar to postpone the registration of an applicant until it is so satisfied.”		
E. Rental/Leasing Services Without Operators											
Relating to ships	No commitments as at August 2017	No commitments as at August 2017	No commitments as at August 2017	NIL	Requirement for the ship to be licenced to operate in Kenya (non-discriminatory).	NIL	NIL	Merchant Shipping Act No. 4 of 2009 Kenya Maritime Authority Act No. 5 of 2006.	Merchant Shipping Act, Section 57 - Ships to be licensed - (1) Subject to subsections (2) and (3), every ship of 24 meters and below and every vessel of whatever length trading or operating solely within the territorial and inland waters of Kenya shall be licensed under this Act. (2) Ships registered under this Act shall be exempted from being	NIL	Kenya Maritime Authority - Established at Section 3 of Kenya Maritime Authority Act No. 5 of 2006. Its mandate is to regulate, coordinate and oversee maritime affairs in the Republic of Kenya.

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									licensed under this section. (3) The Director-General may in writing exempt, either generally or specifically, ships from compliance with subsection (1), subject to such conditions as he may stipulate.		
Relating to aircraft	No commitments as at August 2017	Leasing or Rental Services Concerning Aircraft None under mode 1 and 2. Mode 3 - Requirement for joint venture with the nationals. Mode 4 - In accordance with the Schedule on the Free Movement	No commitments as at August 2017	NIL	Requirement for existence of a current agreement between the KCAA and the State of the Registry of the Aircraft (discriminatory). -Air Operate Certificate (AOC) is required to operate a foreign registered aircraft for a period not exceeding six consecutive	The total number of dry leased aircraft must not be such that an AOC holder will not be predominantly dependent on foreign registered Aircraft (non – discriminatory)	NIL	Civil Aviation Act, 2013 The Civil Aviation (Air Operator Certification and Administration) Regulations, 2013.	<i>The Civil Aviation (Air Operator Certification and Administration) Regulations, 2013, Section 23 - Dry leasing of foreign registered aircraft -</i> “(1) An air operator certificate (AOC) holder may dry-lease a foreign-registered aircraft for commercial air transport as authorised by the Authority. (2) An AOC holder shall not	NIL	Kenya Civil Aviation Authority – Established at Section 4 of Civil Aviation Act, 2013. It is the state agency for the management of aviation safety in Kenya.

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
		of Workers. 80			months (non-discriminatory).				operate a foreign registered aircraft unless— (a) there is in existence a current agreement between the Authority and the State of Registry that, while the aircraft is operated by a Kenyan AOC holder, these Regulations governing the issuance of the AOC and its operation specification shall apply; (b) there is in existence a current agreement between the Authority and the State of Registry that— (i) while the aircraft is operated by the AOC holder, the		

⁸⁰ This was a scheduling error that is being rectified under ongoing revision of EAC Partner States' schedules of commitments.

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>Airworthiness Regulations of the State of Registry are applicable; or (ii) if the State of Registry agrees to transfer some or all of the responsibility for airworthiness to the Authority under Article 83<i>bis</i> of the Chicago Convention, the Civil Aviation (Airworthiness) Regulations, 2013 shall apply to the extent agreed upon by the Authority and the State of Registry; or (iii) the agreement acknowledges that the Authority shall have unrestricted access to the aircraft at any place and any time. (3) Pursuant to sub regulation (2), an AOC holder may operate a</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>foreign registered aircraft for a period not exceeding six consecutive months.</p> <p>(4) The total number of dry leased aircraft shall be such that an AOC holder will not be predominantly dependent on foreign registered aircraft.</p> <p>(5) A person who wishes to operate a dry leased aircraft shall provide the Authority with the following information—</p> <p>(a) the aircraft type and serial number;</p> <p>(b) the name and address of the registered owner;</p> <p>(c) the State of Registry and registration marks;</p> <p>(d) the Certificate of Airworthiness and statement from the</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>registered owner that the aircraft fully complies with the airworthiness requirements of the State of Registry;</p> <p>(e) the name, address and signature of the lessee who shall be responsible for the operational control of the aircraft under the lease agreement, including a statement that the lessee fully understands the responsibilities under the applicable regulations;</p> <p>(f) the aircraft type and serial number;</p> <p>(g) the name and address of the registered owner;</p> <p>(h) the State of Registry and registration marks;</p> <p>(i) the Certificate of Airworthiness</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>and statement from the registered owner that the aircraft fully complies with the airworthiness requirements of the State of Registry;</p> <p>(j) the name, address and signature of the lessee who shall be responsible for the operational control of the aircraft under the lease agreement, including a statement that the lessee fully understands the responsibilities under the applicable regulations; (k) a copy of the lease and maintenance agreement; and</p> <p>(l) the duration of the lease and any other information as the</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>Authority deems necessary.</p> <p>(6) A Kenyan AOC holder may dry lease an aircraft registered in another contracting State for the purpose of commercial air transportation provided that the following conditions are met—</p> <p>(a) the aircraft carries certificate airworthiness issued, in accordance with Annex 8, to the Chicago Convention by the State of Registry and meets the aircraft registration and marking requirements of that state;</p> <p>(b) the aircraft is of a type design which complies with all of the</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>requirements that would be applicable to that aircraft were it registered in Kenya, including the requirements which shall be met for issuance of a Kenyan certificate of airworthiness including type design conformity, condition for safe operation, and the noise, fuel venting, and engine emission requirements</p> <p>(c) the aircraft is maintained according to an approved maintenance programme; and</p> <p>(d) the aircraft is operated by a Kenyan licensed flight crew employed by the Kenyan AOC holder.</p> <p>(7) An AOC holder operating a dry leased aircraft</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>shall have operational control of that aircraft.</p> <p>(8) An AOC holder shall provide satisfactory evidence that the aircraft has been deleted from the lessor's AOC before the Authority lists the aircraft on the lessee's AOC.</p> <p>(9) An AOC holder engaged in the dry leasing of aircraft shall make the dry lease agreement explicit concerning the maintenance programme and minimum equipment list to be followed during the lease period.</p> <p>(10) Where the lease arrangement is determined to be a dry lease involving an aircraft that</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>possess a certificates of registration and certificate of airworthiness issued by the State of the Registry, and the dry lease is acceptable to the Authority, operations specifications shall be developed by the AOC holder containing at least the following—</p> <ul style="list-style-type: none"> (a) the names of the parties to the lease agreement and the duration thereof; (b) the nationality and registration marks of each aircraft involved in the agreement; (c) the type of aircraft to be used; (d) the area of operation; and (e) the regulations applicable to the operation.” 		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
Relating to other transport equipment	No commitments as at August 2017	Leasing or Rental Services relating to other transport equipment. None under mode 1 and 2. Mode 3 - Requirement for joint venture with the nationals. Mode 4 - In accordance with the Schedule on the Free Movement of Workers. ⁸¹	No commitments as at August 2017	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL
Relating to other machinery and equipment	No commitments as at August 2017	No commitments as at August 2017	No commitments as at August 2017	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL

⁸¹ This was a scheduling error that is being rectified under ongoing revision of EAC Partner States' schedules of commitments.

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
	August 2017										
Other Leasing or Rental Services Concerning other Land Transport Equipment (CPC 83105)	No commitments as at August 2017	Leasing or Rental Services Concerning other Land Transport Equipment None under mode 1 and 2. Mode 3 - Requirement for joint venture with the nationals. Mode 4 - In accordance with the Schedule on the Free Movement of Workers. ⁸²	No commitments as at August 2017	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL
Leasing or Rental Services Concerning	No commitments as at	Leasing or Rental Services Concerning	No commitments as at	NIL	NIL	NIL	Agriculture is devolved function hence	NIL	NIL	NIL	Ministry of Agriculture Livestock and Fisheries –

⁸² This was a scheduling error that is being rectified under ongoing revision of EAC Partner States' schedules of commitments.

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
g Agricultural Machinery and Equipment Without Operator (CPC 83106)	August 2017	Agricultural Machinery and Equipment Without Operator None under mode 1 and 2. Mode 3 - Requirement for joint venture with the nationals. Mode 4 - In accordance with the Schedule on the Free Movement of Workers. ⁸³	August 2017				performed by the County Governments.				responsible for policy formulation. County Governments -Established in the first Schedule of the Constitution of Kenya.
Leasing or Rental Services Concerning Construction	No commitments as at August 2017	Leasing or Rental Services Concerning Construction Machinery	No commitments as at August 2017	NIL	NIL	NIL	NIL	National Construction Authority Act No. 41 Of 2011	NIL	NIL	National Construction Authority – Established at Section 3 of National

⁸³ This was a scheduling error that is being rectified under ongoing revision of EAC Partner States' schedules of commitments.

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
on Machinery and Equipment Without Operator (CPC 83107)		and Equipment Without Operator. None under mode 1 and 2. Mode 3 - Requirement for joint venture with the nationals. Mode 4 - In accordance with the Schedule on the Free Movement of Workers. ⁸⁴									Construction Authority Act No. 41 of 2011. Its mandate include, inter alia, to oversee the construction industry and coordinate its development in Kenya.
Leasing or Rental Services Concerning other Machinery and equipment	No commitments as at August 2017	Leasing or Rental Services Concerning other Machinery and equipment	No commitments as at August 2017	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL

⁸⁴ This was a scheduling error that is being rectified under ongoing revision of EAC Partner States' schedules of commitments.

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
Without Operator (CPC 83109)		Without Operator None under mode 1 and 2. Mode 3 - Requirement for joint venture with the nationals. Mode 4 - In accordance with the Schedule on the Free Movement of Workers. ⁸⁵									
F. Other Business Services											
Advertising services	No commitments as at August 2017	No commitments as at August 2017	No commitments as at August 2017	NIL	Requirement for licence by various county government by-laws for physical advertisements (non-	NIL	NIL	Advertising Code of Practice and Guiding Principles for the Kenyan Market	NIL	Advertising Code of Practice and Guiding Principles for the Kenyan Market to guide	Advertising Standard Body of Kenya – it was set up by the marketing and advertising industry in Kenya to

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SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
					discriminatory)						<p>ensure that its system of self-regulation works in an efficient and sufficient manner and that its principal activities do not work in any way whatsoever, against the public interest.</p> <p>The Association of Practitioners in Advertising (APA). Its mandate is to enforce advertising standards through adherence to the code of advertising practice and direct marketing and also advocate for professionalism among its members.</p>

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
											Marketing Society of Kenya – It is the national umbrella body for all marketers in Kenya whose key mandate is to empower and regulate the marketing industry by creating policy that governs the Marketing Industry.
Market research and public opinion polling services	No commitments as at August 2017	No commitments as at August 2017	No commitments as at August 2017	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL
Management consulting service	No commitments as at August 2017	No commitments as at August 2017	No commitments as at August 2017	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL
Services related to man. Consulting	No commitments as at August 2017	No commitments as at August 2017	No commitments as at August 2017	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
Technical testing and analysis serv.	No commitments as at August 2017	No commitments as at August 2017	No commitments as at August 2017	NIL	NIL	NIL	Requirement for accreditation to practice in Kenya.	NIL	NIL	NIL	Kenya Accreditation Service (KENAS) - Established under the States Corporations Act, Cap 446; vide Legal Notice No. 55 of May 2009. It is mandated to offer accreditation services in Kenya.
Services incidental to agriculture, hunting and forestry	No commitments as at August 2017	No commitments as at August 2017	No commitments as at August 2017	NIL	Requirement for licence to operate in Kenya (non-discriminatory).	NIL	NIL	Forest Conservation And Management Act No. 34 of 2016	Forest Conservation And Management Act Section 33 - Management of private forests “(1) A person who owns a private forest, including a forest in the course of establishment, on land owned by the person, may apply to the Service for registration of the forest under this section. (2) The	NIL	Ministry of Agriculture Livestock and Fisheries - Its mandate is to formulate policies on agriculture. Kenya Forest Service - Established at Section 7 of Forest Conservation And Management Act No. 34 of 2016. Its mandate

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									Service shall register a forest under subsection (1) where the forest meets the criteria prescribed in rules made under this Act. (3) Upon registration under subsection (2), the owner of a private forest may apply— (a) to the Service for technical advice regarding appropriate forestry practices and conservation; or (b) to the Fund, subject to availability of funds, loans from the Fund for the development of the forest, provided that the funds are obtained and utilised in accordance with the procedures set out by the Service. (4) A person who establishes or owns a private forest may apply to		include, inter alia, to conserve, protect and manage all public forests. County Governments – Agriculture is a devolve function of the county governments.

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>the relevant authorities for exemption from payment of all or part of the land rates and such other charges as may be levied in respect of the land on which the forest is established.”</p> <p><i>Forest Conservation And Management Act Section 56 - Authorization and private sector involvement</i></p> <p>“(1) The Service may, whenever circumstances make it necessary or appropriate to do so, invite the private sector to participate in the sustainable management of forests under their jurisdiction. (2) The Service may issue</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>authorisations for forestry activities in form of— (a) a permit; (b) a timber licence; (c) a special use licence; (d) a contract; (e) a joint management agreement; or (f) a concession agreement. (3) No authorization shall be issued in respect of a forest for which there is a pre-existing authorization, except on terms mutually agreed upon by all the parties involved.</p> <p><i>Forest Conservation And Management Act Section 57 - Eligibility for authorization</i></p> <p>“(1) A person shall not be eligible to apply for an authorisation under section 59 unless that</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>person— (a) possesses the capacity to enter into binding agreements with the Service; (b) has the technical and financial capacity to undertake the forestry activities for which the authorisation is sought; and (c) in the case of a foreign investor, has complied with all the laws for the time being in force relating to investment by foreigners. (2) In the case of a timber licence, special use licence, contract, joint management agreement or concession— (a) capacity under subsection (1)(a) includes competence to enter into contracts; (b) technical capacity under subsection</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>(1)(b) includes the competence to undertake forestry activities, as demonstrated by employment of technical staff, access to equipment, satisfactory past performance and a record of statutory and regulatory compliance; and</p> <p>(c) financial capacity under subsection (1)(b) includes solvency and ability to conform to good business practices as demonstrated by the applicant's financial statements for the past three years, where applicable, and tax compliance certificates. (3) When issuing authorizations under this Act, the Service shall comply with the relevant public</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									procurement and asset disposal laws, and any other relevant written law.		
Services incidental to fishing	No commitments as at August 2017	No commitments as at August 2017	No commitments as at August 2017	NIL	Requirement for licences and authorization (non – discriminatory)	Requirement for annual renewal of the licence and authorization. (non – discriminatory)	NIL	Fisheries Management And Development Act No. 35 Of 2016	<p><i>Fisheries Management And Development Section 84 - Licences and authorizations required</i></p> <p>“(1) A valid and applicable licence issued in accordance with Section 92(3) shall be required for—</p> <p>(a) using an industrial fishing vessel for fishing or fishing related activities in the Kenya fishery waters; (b) using a semi-industrial fishing vessel for fishing or related activities in the Kenya fishery waters; (c) using an artisanal fishing vessel for commercial</p>	NIL	<p>Kenya Fisheries Advisory Council – Established by Section 6 of Fisheries Management And Development Act No. 35 Of 2016. Its mandate include, inter alia, formulating policies in relation to the co-ordination of fisheries management in relation to the aquatic environment and human dimensions.</p> <p>Kenya Fisheries Service – Established by</p>

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>purposes; (d) commercial aquaculture; and (e) such other activity or activities within the scope of this Act for which a licence or authorization may be required by the management measures in an applicable Fisheries Management Plan adopted in accordance with the requirements in this Act, or as may be prescribed from time to time. (2) The respective county governments shall be responsible for issuing licenses with respect to— (a) using any vessel for recreational fishing in the Kenya fishery waters; and (b) operating a fish processing establishment</p>		<p>Section 7 of Fisheries Management And Development Act No. 35 Of 2016. It is responsible for the conservation, management and development of Kenya's fisheries resources</p> <p>Kenya Fish Marketing Authority – Established at Section 198 of Fisheries Management And Development Act No. 35 Of 2016. Its mandate include, inter alia, develop, implement and co-ordinate a national fish marketing strategy and to</p>

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>within the respective county. (3) The Cabinet Secretary shall prescribe the standards for the registration of vessels and grant, renewal and revocation of licences by a county government under sub-section (2). (4) Each County Government may enact county specific legislation setting out the—</p> <p>(a) criteria for the registration of a vessel and issuance of a licence to an applicant for a licence under subsection (2); (b) information required to be submitted by an applicant for registration or issuance of a licence; (c) process of determination of an application; (d) conditions for</p>		ensure that fish and fishery products from Kenya enjoy market access at local, national, regional and international levels as premier products.

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>the issuance or renewal of a licence under this Act; (e) grounds for the rejection of an application or cancellation of a licence issued under this Act; (f) process of application for the renewal of licences, de-registration of a vessel and revocation of a licence issued to an applicant by the county government; and (g) appointment of inspectors or such other authorised officers to carry out such inspections as the county executive committee member responsible for fisheries may consider necessary for the implementation of this Act. (5) A valid and</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>applicable written authorization issued in accordance with section 88 and 89 shall be required for— (a) using a Kenyan fishing vessel in areas outside the Kenyan fishery waters; (b) each transshipment, including the transfer of fish from a fishing vessel to a carrier vessel or a shore based facility for the purpose of export; (c) using any vessel for marine scientific research or test fishing; (d) using any foreign fishing vessel to enter a port in Kenya; and (e) deployment and maintenance of any fish aggregating device in the Kenya fishery waters.</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p><i>Fisheries Management And Development Section 92 - Period of validity of licences and authorizations</i></p> <p>“A licence or authorization issued pursuant to this Act shall, unless otherwise provided, be valid for a maximum period of one year and may be renewable, subject to any fisheries management decision taken in accordance with this Act and the terms and conditions set out in the licence or authorization.”</p> <p><i>Fisheries Management And Development Section 98. Conditions for fishing for</i></p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p><i>industrial or semi-industrial fishing vessel</i></p> <p>“(1) Fishing licences issued for industrial or semi-industrial fishing vessels for fishing or fishing activities shall include the following conditions— (a) the fishing vessel shall clearly display at all times such markings as may be prescribed and shall not change such markings without written permission from the Director-General; (b) the fishing vessel shall at all times fly the flag of the State of which it is national; (c) the operator shall hold a valid registration in respect of the fishing vessel as may be required by the flag State or entity for that type</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>of vessel and issued by such flag State or entity; (d) the operator shall hold only one valid registration in respect of the fishing vessel and shall not at the same time hold more than one such registration; (e) the operator shall comply at all times with such requirements for trawling gear as may be prescribed; (f) the operator shall not carry on board the fishing vessel any fishing gear that has not been approved for fishing activities pursuant to the fishing licence or authorization; (g) the operator shall not carry firearms aboard unless authorized by the Director-General; (h) unless otherwise authorized by the</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>Director-General, the operator shall ensure that at least forty five percent of the crew members on board each fishing vessel are citizens of Kenya;) the operator shall comply with all relevant provisions of national law relating to navigational standards, standards relating to work conditions on board fishing vessels and the safety of vessels at sea; (j) the operator shall comply with any direction given by the Director General for inspection of the vessel prior to departing from the Kenya fishery waters; and (k) such other conditions that are required pursuant to this Act, or that</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>may be required by Public Notice by the Cabinet Secretary by notice in the Gazette or as may be prescribed. (2) A person who contravenes any condition in subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding fifty million shillings or to a term of imprisonment not exceeding five years or to both.</p> <p><i>Fisheries Management And Development Section 128 - Fisheries access</i></p> <p>“(1) The Cabinet Secretary may, on behalf of the Government of Kenya and in accordance with</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>the provisions of this Act, any applicable international agreement and national policies and strategies, and taking into account the advice of the Fisheries Advisory Council established under Section 6, permit access by foreign fishing vessels to the fishery waters for fishing or fishing related activities. (2) Permission under Subsection (1) may be given pursuant to— (a) such international agreement, fisheries partnership agreement, joint venture or other written agreement or arrangement setting out the terms and conditions of fisheries access as are required</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									pursuant to this Act and additional terms and conditions as may be recommended by the Director-General, with— (i) States or regional economic integration organisations; (ii) any fishing association or similar body; (iii) a publicly incorporated company; or (iv) such other persons or bodies as the Cabinet Secretary considers appropriate; and/or (b) an access right granted by the Cabinet Secretary, taking into account the provisions of subsections (1) and (2) and in consultation with the Director-General, in accordance with such conditions as		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>he may require and as may be prescribed, including the— (i) maximum number of such rights to be granted for a given period of time; (ii) maximum period of time during which such right can be held; (iii) fishery or fisheries to which rights-based access applies; (iv) qualifications of applicants for such rights; (v) procedures for application for such rights; (vi) criteria for the grant of such rights; (vii) conditions for the use of such rights; (viii) transferability of such rights; and (ix) conditions for the cancellation or revocation of such rights; or (c) a determination by the Cabinet Secretary, on the</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>recommendation of the Director-General, that each vessel meets the requirements under this Act for licence issuance, including the standards for licence approval in section 90 and such other requirements that may be prescribed or required by national policy or by notice in the Gazette and— (i) the vessel, its operator, master and beneficial owner have not engaged in or were not reasonably suspected to have engaged in illegal, unreported or unregulated fishing in any place during the five-year period prior to application for the license; and (ii) the Cabinet Secretary determines there</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>are clear benefits to Kenya for issuing such a licence. (3) Fisheries access granted pursuant to subsection (2) shall be subject to this Act and such other terms and conditions as may be required by the Cabinet Secretary on the advice of the Director-General. (4) The Director-General shall, in respect of each proposed arrangement, right and licence for fisheries access determine— (a) the estimated value of the fisheries to the other party; and (b) the designated area, an access fee and other required benefits to Kenya, except that such fee or benefits shall not include development assistance or</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									benefits that are unrelated to the value of the fisheries access. (5) Fisheries access shall be permitted solely for purposes of fishing or fishing related activities in the exclusive economic zone or at a designated port, and shall not be permitted for any activity in the territorial sea except for navigating directly through it to port. (6) No licence or other authorization for fishing or fishing related activities shall be issued to a foreign fishing vessel unless fisheries access has been granted in accordance with this Act.		
Services incidental to mining	No commitments as at	No commitments as at August 2017	No commitments as at	MOU in the Cooperation on Oil and Gas Sector	Requirement for licences and Permits.	NIL	NIL	Mining Act No. 12 of 2016.	<i>Mining Act Section 32 - Categories of mineral right -</i>	NIL	Directorate of Mines – established at Section 7 of the

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
	August 2017		August 2017	between the Republic of Kenya and the Federal Democratic Republic of Ethiopia					“(1) The Cabinet Secretary, on the recommendation of the Mineral Rights Board, may grant, deny or revoke a mineral rights. (2) A mineral right may be granted in respect of a large scale operation or small scale operation. (3) The following licences and permits may be granted for a mineral right under this Act to authorise a mineral right holder to engage in— (a) large scale operations which shall include— (i) a reconnaissance licence; (ii) a prospecting licence; (iii) a retention licence; (iv) a mining licence; or (b) small scale operations, which shall include— (i) a prospecting		Mining Act No. 12 of 2016. Its mandate is to promote the effective and efficient management and the development of mineral resources, and the mining sector in Kenya. The Directorate of Geological Survey - Established at Section 7 of the Mining Act No. 12 of 2016. Its mandate is to provide geoscience expertise and data to the government on all matters related to geology and the development of minerals in Kenya.

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									<p>permit; or (ii) a mining permit. (4) The Cabinet Secretary may on the recommendation of the Mineral Rights Board, by notice in the Gazette, designate any other mineral right which may be granted under this Act.”</p>		<p>The National Mining Corporation - Established at Section 22 of the Mining Act No. 12 of 2016. Its mandate is to engage in mineral prospecting and mining; and any other related activities.</p> <p>Mineral Rights Board - Established at Section 30 of Minerals Act No. 12 of 2016. Its mandate is to advise and give recommendations, in writing, to the Cabinet Secretary on among other things, the grant, rejection, retention, renewal, suspension, revocation,</p>

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
											variation, assignment, trading, tendering, or transfer of Mineral Rights Agreements.
Services incidental to manufacturing	No commitments as at August 2017	No commitments as at August 2017	No commitments as at August 2017	Declaration of Special Arrangements for the Reciprocal Promotion and Protection of Investments between the Government of French Republic and the Government Republic of Kenya Declaration of Special Arrangements for the Reciprocal Promotion and Protection of	NIL	NIL	NIL	Foreign Investments Protection Act Chapter 518 Laws of Kenya Micro and Small Enterprises Act No. 55 of 2012 Kenya's Industrial Transformation Programme The Special Economic Zones Act, 2015	Foreign Investments Protection Act Section 2 - Foreign investors may apply for and be granted certificates “(1) A foreign national who proposes to invest foreign assets in Kenya may apply to the Minister for a certificate that the enterprise in which the assets are proposed to be invested is an approved enterprise for the purposes of this Act. (2) The Minister shall consider every application made under subsection (1) and in any case	NIL	Ministry of Industry, Trade and Cooperatives – Responsible for policy formulation The Micro and Small Enterprise Authority (MSEA). This is a state corporation established under the Micro and Small Enterprise Act No. 55 of 2012. Its mandate is to formulate and Coordinate policies that will facilitate the integration and harmonization

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				<p>Investments between the Government of the Islamic Republic of Iran and the Government of the Republic of Kenya</p> <p>Declaration of Special Arrangements for the Reciprocal Promotion and Protection of Investments between the Government of the Republic of Kenya and the Government of the Republic of Burundi.</p>					<p>in which he is satisfied that the enterprise would further the economic development of, or would be of benefit to Kenya, he may in his discretion issue a certificate to the applicant. (3) Deleted by Act No. 7 of 1988, s. 3. (4) Every certificate shall state— (a) the name of the holder; (b) the name and a description of the enterprise; (c) the amount of the foreign assets invested or to be invested by the holder of the certificate in the enterprise divided as between— (i) capital, being deemed to be a fixed amount representing the equity of the holder in the</p>		<p>of various public and private sector initiatives, for the promotion, development and regulation of the Micro and Small Enterprises to become key Industries of Tomorrow.</p> <p>The Special Economic Zones Authority- Established under Section 10 of The Special Economic Zones Act, 2015. Its mandate include, inter alia, to make recommendations to the Cabinet Secretary on all aspects of designation, approval, establishment,</p>

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				<p>Declaration of Special Arrangements for the Reciprocal Promotion and Protection of Investments between the Government of the Republic of Kenya and the OPEC Fund for International Development, on behalf of the Republic of Kenya and of the OPEC Member States</p> <p>Declaration of Special Arrangements for the Reciprocal Promotion</p>					<p>enterprise for the purposes of this Act and which shall be expressed in the certificate in, and shall for the purposes of this Act be in, either Kenya currency or the relevant foreign currency; and (ii) any loan, which may be expressed in, and may for the purposes of this Act be in, either Kenya currency or the relevant foreign currency; (d) the foreign currency invested or to be invested; (e) deleted by Act No. 7 of 1988, s. 3; (f) such other matters as may be necessary or desirable for the purposes of this Act. (5) If the foreign assets have not yet been invested a conditional certificate shall be</p>		<p>operation and regulation of special economic zones.</p> <p>Kenya Association of Manufacturers (KAM). It is established as a private Sector body as the representative organisation for manufacturing value-add industries in Kenya. It provide and essential link for co-operation, dialogue and understanding with the Government by representing the views and concerns of its members to the relevant authorities.</p> <p>Kenya Private Sector</p>

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				<p>and Protection of Investments between the Government of the State of Kuwait and the Government of the Republic of Kenya</p> <p>Declaration of Special Arrangements for the Reciprocal Promotion and Protection of Investments between the Government of the Slovak Republic and the Government of the Republic of Kenya</p>					issued stating, in addition to the details specified in subsection (3), the period in which they shall be invested.”		<p>Alliance (KEPSA). It is established as a limited liability membership organization. It bring together the business community in a single voice to engage and influence public policy for an enabling business environment</p> <p>Kenya National Chamber Of Commerce And Industry (KNCCI). It is a membership based organization with an objective to promote, coordinates and protects commercial and industrial interests in Kenya.</p>

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				Declaration of Special Arrangements for the Reciprocal Promotion and Protection of Investments between the Government of the Republic of Mauritius and the Government of the Republic of Kenya							
Services incidental to energy distribution	No commitments as at August 2017	No commitments as at August 2017	No commitments as at August 2017	NIL	Requirement for licence to operate (non-discriminatory).	NIL	NIL	Energy Act Chap 314 Laws of Kenya	<i>Energy Act Section 27 - Requirements for a licence or permit</i> “(1) Subject to the provisions of this Act, a licence or licences as the case may be, shall be required for the— (a) generation,	NIL	Energy Regulatory Commission - Established at Section 4 of Energy Act Chap 314 Laws of Kenya. Its mandate include, inter alia, to regulate importation, exportation,

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									<p>importation or exportation, transmission or distribution of electrical energy; or</p> <p>(b) supply of electrical energy to consumers: Provided that for undertakings involving a capacity not exceeding 3,000 kW, the provisions of subsections (2), (3) and (4) shall apply. (2) A permit shall be required in respect of all undertakings— (a) intended for the supply of electrical energy to other persons or consumers; and (b) with a generating plant of over 1000 kW intended for own use. (3) Any undertaking operating pursuant to a permit granted under this Act shall — (a) in any</p>		<p>generation, transmission, distribution, supply and use of electrical energy, petroleum and petroleum products and renewable and other forms of energy.</p>

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>case where conveyance of electrical energy to or from any transmission or distribution network is possible, meet the minimum requirements of the owner or operator of the transmission or distribution network as approved by the Commission, and the owner or operator of any such undertaking shall inform the network owner or operator of all connected load and generation equipment that might have material effect on the network; and (b) be subject to such conditions as may be specified by the Commission. (4) A permit shall not be required in the</p>		

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									<p>case of installations with a generating plant of a capacity not exceeding 1000 kW and connected within the premises of any person in such a manner that conveyance of electrical energy to a transmission system or a distribution system cannot occur. (5) A person who contravenes the provisions of this section commits an offence and shall, on conviction, be liable to— (a) in the case of contravention of subsection (1) a fine not exceeding two million shillings, or to a maximum term of imprisonment of two years, or to both; and (b) in the case of</p>		

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									<p>contravention of subsections (2), (3) and (4), a fine not exceeding one million shillings, or to a maximum term of imprisonment of one year, or to both.</p> <p><i>Energy Act Section 32 - Licensee and a permit holder to provide access</i></p> <p>“(1) A licensee or permit holder who is a network service provider shall provide access to all existing and potential network users of that part of the grid owned or operated by him upon— (a) payment of such fees and other charges for network services; and (b) compliance with such minimum</p>		

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									<p>requirements of the network service provider, as may be approved by the Commission. (2) A licensee or permit holder shall provide the Commission with such information as the Commission may prescribe to enable the Commission approve the fees, charges and requirements under subsection (1). (3) In this section— “network service” means a transmission service or distribution service associated with the conveyance and controlling the conveyance, of electrical energy through the network; “network service provider” means a</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									person who engages in the activity of owning, controlling, or operating a transmission or distribution system pursuant to a licence or permit granted under this Act; “network user” means a person licensed under this Act to generate, transmit, distribute or supply electrical energy or a large retail consumer.		
Placement and supply services of Personnel	No commitments as at August 2017	No commitments as at August 2017	No commitments as at August 2017	An agreement between the Government of Kenya and Saudi Arabia for the recruitment of Kenyan domestic workers.	NIL	NIL	NIL	NIL	NIL	NIL	Ministry of EAL, Labour and Social Protection – Responsible for formulation of policies on labour National Employment Authority – Established at Section 7 of National Employment

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
											Authority Act, 2016. Its mandate include, inter alia, to advice on formulation of employment policies and strategies for national and county governments in Kenya.
Investigation and security	No commitments as at August 2017	No commitments as at August 2017	No commitments as at August 2017	NIL	Mandatory registration by Private Security Regulatory Authority before being allowed to offer security services (non-discriminatory)	Requirement for registration of individual private security provider must be a Kenyan Citizen (discriminatory)	NIL	Private Security Regulation Act No. 13 Of 2016	<p><i>Private Security Regulation Act Section 6 - Mandatory registration</i></p> <p>“Any person or firm offering private security services shall be registered by the Authority in accordance with this Act.”</p> <p><i>Private Security Regulation Act Section 21 - Registration of individual</i></p>	NIL	Private Security Regulatory Authority – Established by Section 7 of Private Security Regulation Act No. 13 Of 2016. Its mandate is to ensure the effective administration, supervision, regulation and control of the private security services industry in Kenya and to

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p><i>private security service provider</i></p> <p>“A person shall not engage in the provision of private security services or offer private security services in Kenya at a fee unless that person is registered by the Authority in accordance with this Act.</p> <p><i>Private Security Regulation Act Section 23 - Requirement for Registration</i></p> <p>“(1) An individual private security services provider shall make an application for registration to the Authority in such form and manner as may be prescribed and the application shall be accompanied by</p>		formulate and enforce standards for the conduct of the private security services industry in Kenya.

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>the prescribed application fee.</p> <p>(2) An individual shall be eligible for registration as an individual private security provider if that person—</p> <p>(a) is a citizen of Kenya or a person who is ordinarily resident in Kenya;</p> <p>(b) is over eighteen years of age;</p> <p>(c) holds at least a primary school certificate;</p> <p>(d) has attended training in security matters in an institution accredited by the Authority;</p> <p>(e) submits a certificate of good conduct issued by the Directorate of Criminal Investigation;</p> <p>(f) where he or she previously served in any of the disciplined services,</p>		

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									<p>produces a certificate of discharge and a certificate of clearance from such service;</p> <p>(g) has no criminal record; and</p> <p>(h) is of sound mind.</p> <p><i>Private Security Regulation Act Section 26 - Renewal of registration</i></p> <p>“(1) An individual private security service provider shall annually register with the Authority in a manner prescribed by the Authority.</p> <p>(2) An application for renewal under this section shall be made to the Authority in such form and manner as may be prescribed and shall be accompanied by—</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>(a) the prescribed application fee; and</p> <p>(b) evidence of having undertaken training in security matters of not less than a week in the preceding year.</p> <p>(3) The Authority shall consider the application for renewal of registration referred to under subsection (1) and may renew or decline to renew the registration.</p> <p>(4) The Authority may decline to register or renew the registration of any individual private security service provider where the Authority after undertaking investigations is convinced that the applicant no longer meets the requirements set out under section 23 (2), is a threat to</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>national security; or for any other compelling and justifiable cause.</p> <p>(5) Where the Authority declines to renew the registration of an applicant as provided under subsection (4), the Authority shall communicate, in writing, the reasons for declining.</p> <p>(6) Where an application for renewal of registration is refused, any fee paid under subsection (2) shall be refunded to the applicant.”</p> <p><i>Private Security Regulation Act Section 28 - Mandatory registration</i></p> <p>“A person shall not engage in the provision of</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>private security services or offer private security services in Kenya at a fee unless that person is licensed by the Authority in accordance with this Act.</p> <p><i>Private Security Regulation Act Section 29 - Requirements for licensing</i></p> <p>“(1) An application for a licence to offer private security services in Kenya shall be made to the Authority in writing, in the manner prescribed and shall be accompanied by such fees as shall be prescribed by the Authority.</p> <p>(2) A person shall be eligible for registration as a private security service</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>provider if that person—</p> <p>(a) is a company incorporated and established in Kenya;</p> <p>(b) if a foreign company, is registered whether as a limited liability company or a partnership in accordance with the laws of Kenya and has at least twenty five percent local shareholding;</p> <p>(c) has persons performing executive or management functions in respect of the security business who are registered as private security service providers under this Act; and</p> <p>(d) has been security-vetted and nothing adverse has been established.</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p><i>Private Security Regulation Act Section 39 - Ineligibility for registration</i></p> <p>“(1) A person shall not be registered to provide private security services under this Act if that person—</p> <p>(a) is in the permanent employment of the Authority, the National Intelligence Service, the disciplined services or the prisons department;</p> <p>(b) has been convicted by a competent court of an offence involving violence, theft or fraud;</p> <p>(c) is an undischarged bankrupt;</p> <p>(d) is found to be associating with</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>any organization which is prohibited under any law for the time being in force;</p> <p>(e) being a public officer, is dismissed from service on grounds of misconduct or moral turpitude;</p> <p>(f) is an agent of foreign power; or</p> <p>(g) is or has engaged in acts prejudicial to national security or national interests.</p> <p>(2) A partner, owner or shareholder of a private security firm who becomes disqualified under subsection (1) shall cease to be a partner, owner or shareholder of the firm for purposes of providing private security services and the provisions of</p>		

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									the Companies Act (Cap. 486) shall apply."		
Related scientific and technical consulting services	No commitments as at August 2017	No commitments as at August 2017	No commitments as at August 2017	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL
Maintenance and repair of equipment (not including maritime vessels, aircraft or other transport equipment)	No commitments as at August 2017	No commitments as at August 2017	No commitments as at August 2017	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL
Building-cleaning services	No commitments as at August 2017	No commitments as at August 2017	No commitments as at August 2017	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL
Photographic services	No commitments as at August 2017	No commitments as at August 2017	No commitments as at August 2017	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL
Packaging services	No commitments as at August 2017	No commitment	No commitments as at August 2017	NIL	NIL	NIL	NIL	NIL	NIL	NIL	The Institute of Packaging Professionals

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
	at August 2017	s as at August 2017	August 2017								Kenya. It is registered under the Societies Act of Kenya. Its objectives include, inter alia, to stimulate consciousness of good packaging; undertake and promote study, research and development in packaging and package design; and to recommend standards for packages, packaging materials, processes and equipment;
Printing, publishing	No commitment as at August 2017	No commitment as at August 2017	No commitment as at August 2017	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL
Convention services	No commitment as	No commitment	No commitment as at	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
	at August 2017	as at August 2017	August 2017								

PART 2: CONSTRUCTION AND RELATED ENGINEERING SERVICES

Conceptualizing the Construction and Related Engineering Services Sector⁸⁶

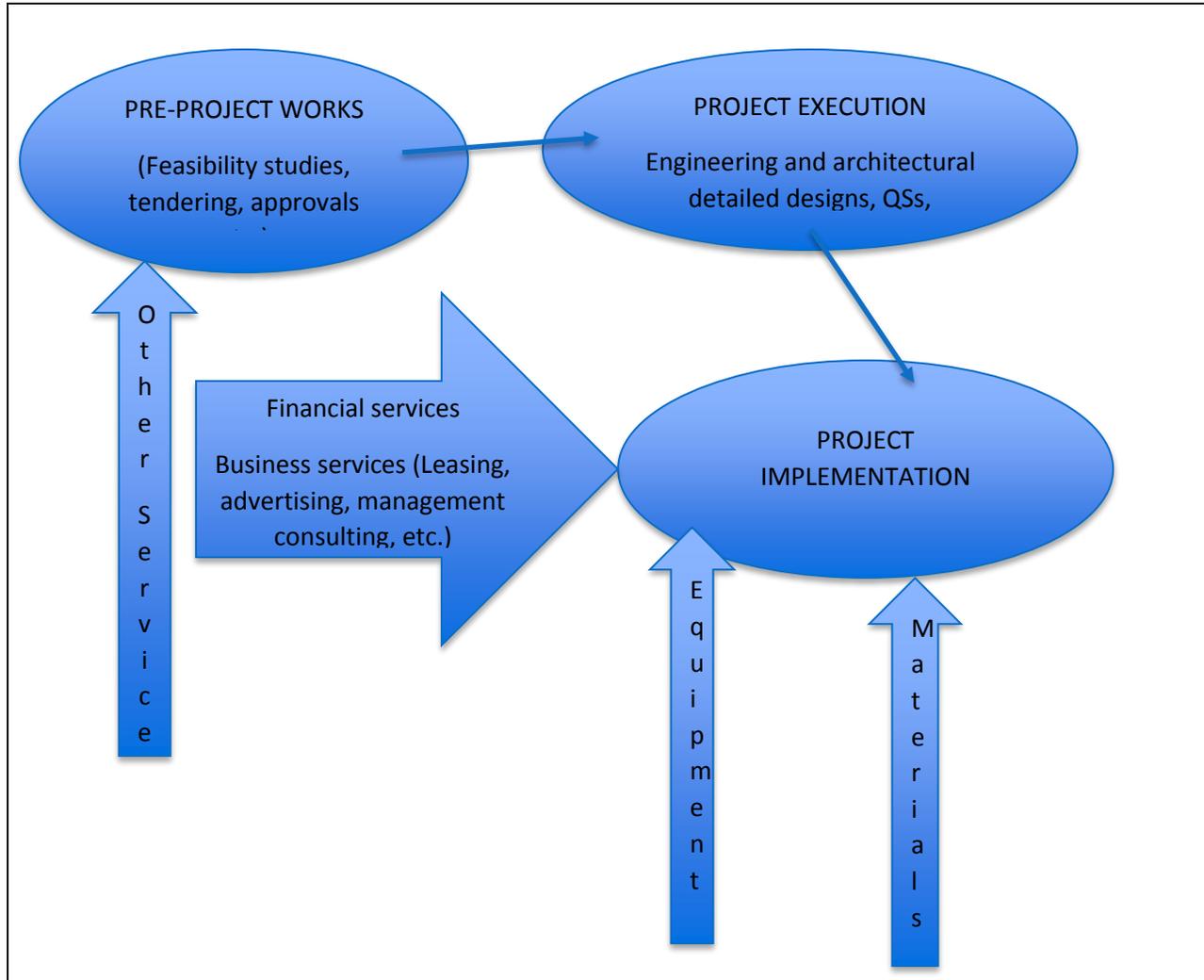
The Construction and Related Engineering Services sector is a complex and broad sector which is not easy to define. It comprises of a wide range of activities, sub-sectors and operators. From an activity perspective, this sector can be viewed as consisting of three distinct phases, viz:

- i. The pre -design phase including services such as advisory architectural, engineering, geo spatial services, feasibility studies, environmental and social impact assessment, etc.
- ii. The “design phase” including services such as engineering and architectural services; consulting by other professionals; conceptual design; detailed design; and, supervision. This phase is driven by knowledge intensive licensed professionals.
- iii. The “physical construction phase” which includes site preparation; civil works; building; and procurement. This phase is driven by a combination of both highly skilled professionals, skilled and semi-skilled workers.

The features and services of the design phase of the construction sector tend to spill-over into the physical construction phase. Thus, the services in phase two and phase three are delivered in an integrated manner to develop and deliver a project. There are other services sectors and economic activities that support the construction sector including the financial sector, the distribution sector, business sector (other professional services, leasing, advertising, real estate services and management consulting), in addition to the broad manufacturing sector which supplies construction materials and equipment.

⁸⁶ This conceptual understanding of the construction sector is based on the coverage of construction service activities in the W/120, UN CPC and the International Standard Industrial Classification of All Economic Activities).

Figure 1: The Construction Industry Process Chain



Thus, under World Trade Organization (WTO) Sectoral Classification List W/120, the construction industry is an amalgamation of select professional services and construction services as illustrated in Table 1.

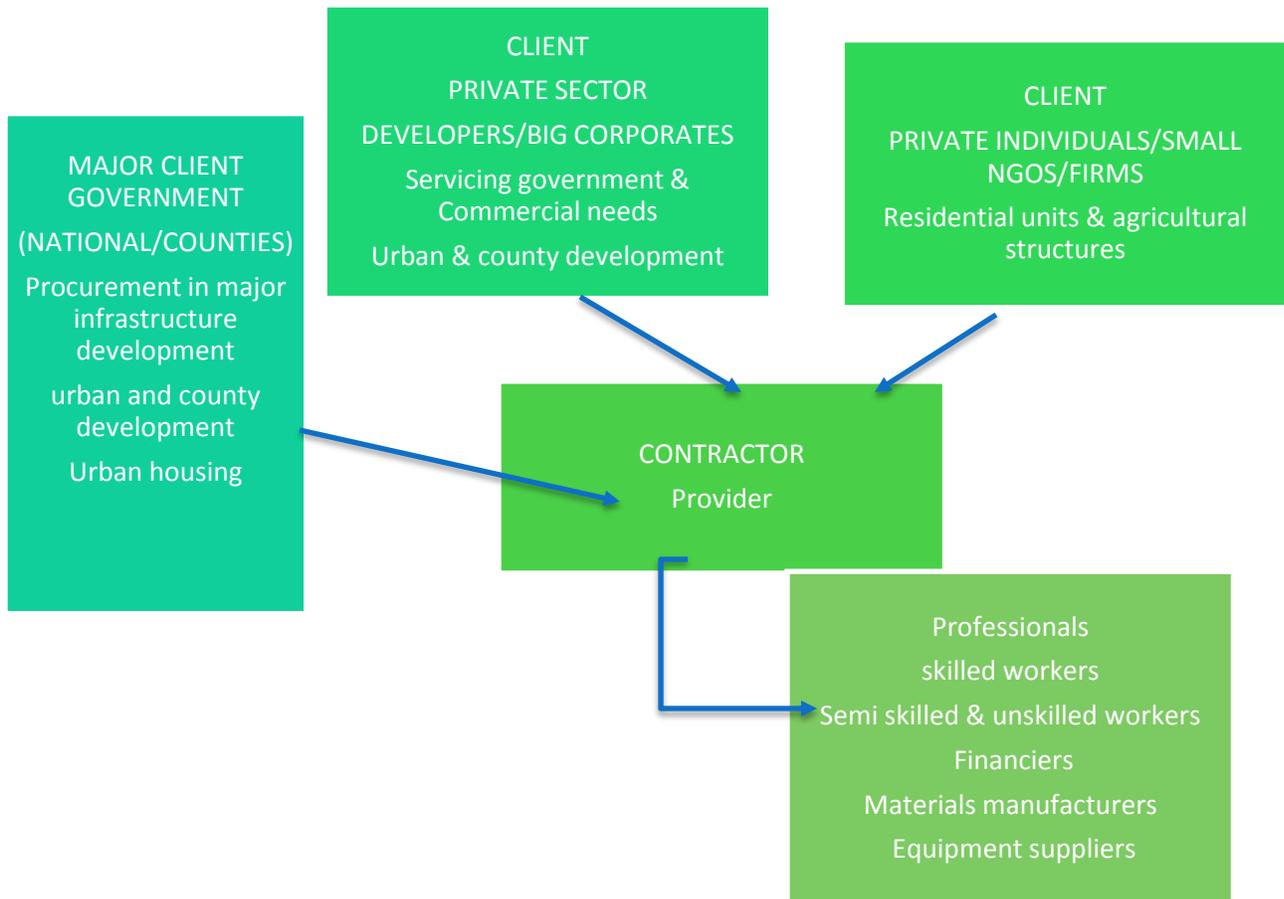
Table 1: Classification of Construction & Related Engineering Sector

Professional services (& technical workers)	Construction Services
<ul style="list-style-type: none"> • Architectural Services (CPC 8671) • Engineering Services (CPC 8672) • Integrated Engineering Services (CPC 8673) • Urban Planning and landscape architectural services (CPC 8674) • Other emerging professionals (construction managers, etc.) • Skilled & semi-skilled workers 	<ul style="list-style-type: none"> • General construction work for buildings (CPC 512) • General construction work for civil engineering (CPC 513) • Installation and assembly work (CPC 514 + 516) • Building completion and finishing work (CPC 517) • Other (CPC 511 + 515 +518)

Generally, the construction industry comprises of multiple players and operators including:

- a. Companies, firms and individuals working as consultants (engineers; architects, designers, quantity surveyors, land surveyors, construction managers, etc.);
- b. Main contractors and sub-contractors;
- c. Material and component producers;
- d. Plant and equipment manufacturers, suppliers and repairers;
- e. Financiers, including development partners;
- f. The government (national and county), which is involved in the industry as the biggest client, financier, regulator and operator; and,
- g. The private sector, including developers and individuals as clients.

Figure 2: Players and Operators in the Construction Industry



From the illustration above, it is apparent that the interactions of the wide range of operators/service providers and clients are varied and complex. Projects undertaken could include: Construction of new or renovation of residential and commercial buildings; or Civil engineering works such as roads, ports, airports, telecommunications, electricity, pipelines, water, sewerage, energy, etc. The main activities in such projects are executed by major contractors under the supervision of architects, with the support of other professionals including quantity surveyors, structural, electrical and mechanical engineers, designers, planners and project managers. Matching these complex commercial interactions in the construction sector between different players, phases, subsectors and offshoot areas with their trade jargon is a complicated process. This report will not delve into the intricate details of these interactions.

Table 2 provide a comparison of commercial and trade interactions in the construction sector. In this table the author attempts to indicate the modes of supply in which various construction services at different phases of a construction project can be supplied and the corresponding UNCPC classification.

Table 2: Commercial and Trade Interactions in the Construction Sector

Project phase	Activity	Corresponding mode of supply	Corresponding CPC Classification
Pre-design	Advisory architectural, engineering, geospatial, valuation services Pre-feasibility studies Environmental and social impact assessment studies	Modes 1, 3 & 4	Architectural Services (CPC 8671 (UNCPC 2: 8321)) Engineering Services (CPC 8672) Valuation services Geo spatial services Environmental assessment services Physical planning services Real estate services (CPC 821 & 822)
Design	Conceptual assessments, feasibility studies, decisions on site, type of structure, financing, selection of contractor, approval of official plans and permissions	Modes 1, 3 & 4	Same as above
Implementation	Physical construction of structure (residential or non-residential); Civil engineering works (infrastructure); and, installation e.g. Plumbing, wiring, building completion work eg. Plastering, painting,	Modes 3& 4	Construction and related engineering services (CPC 511 to 518)
Post implementation	Maintenance & repair	Modes 1, 3 & 4	All above

Source: Constructed by the author from multiple sources

Construction Sector in Kenya

Economic Profile of Sector

According to the National Economic Survey 2016,⁸⁷ the building and construction sector is thriving. In 2015, the Kenyan construction sector was valued at USD 3.53 Billion. KNBS reported that the sector grew by 13.6% in 2015 compared to the 13.1% growth the sector posted in 2014. According to Kenya Economic Report, 2017 this industry grew by 9.2% and contributed 8.2% of Kenya's GDP. This is notable contribution compared to 5.5% contribution in 2013. The sector is expected to grow at an average compound annual growth rate of 6.8% to 2020,⁸⁸ while in 2017, the sector growth is projected at 13%. The growth of this sector is largely due to increased spending on implementation of mega infrastructure and energy flagship projects under Vision 2030.⁸⁹

The Economic Survey 2016 reported that approximately 148,000 people are formally employed in the domestic building and construction industry. In 2017, employment in the sector grew by 11.4%. There is a host of informally employed people in this sector which is dominated by semi-skilled and unskilled workers. According to a survey conducted by National Construction Survey in 2014, this sector has over 511,676 workers employed as skilled, semi-skilled and unskilled artisans.⁹⁰ As at 2014, unskilled workers and semi-skilled workers accounted for 42% and 33% of the construction workers respectively. Skilled workers accounted for only 25% of the workforce. In 2017, NCA indicated that trained workers account for only 17% of workers in this sector.

In 2015, the total wage payment in the industry was Kshs 58.9 Billion, with private sector contributing Kshs 50.3 Billion and public sector Kshs 8.6 Billion.

Source: National Economic Survey, 2016

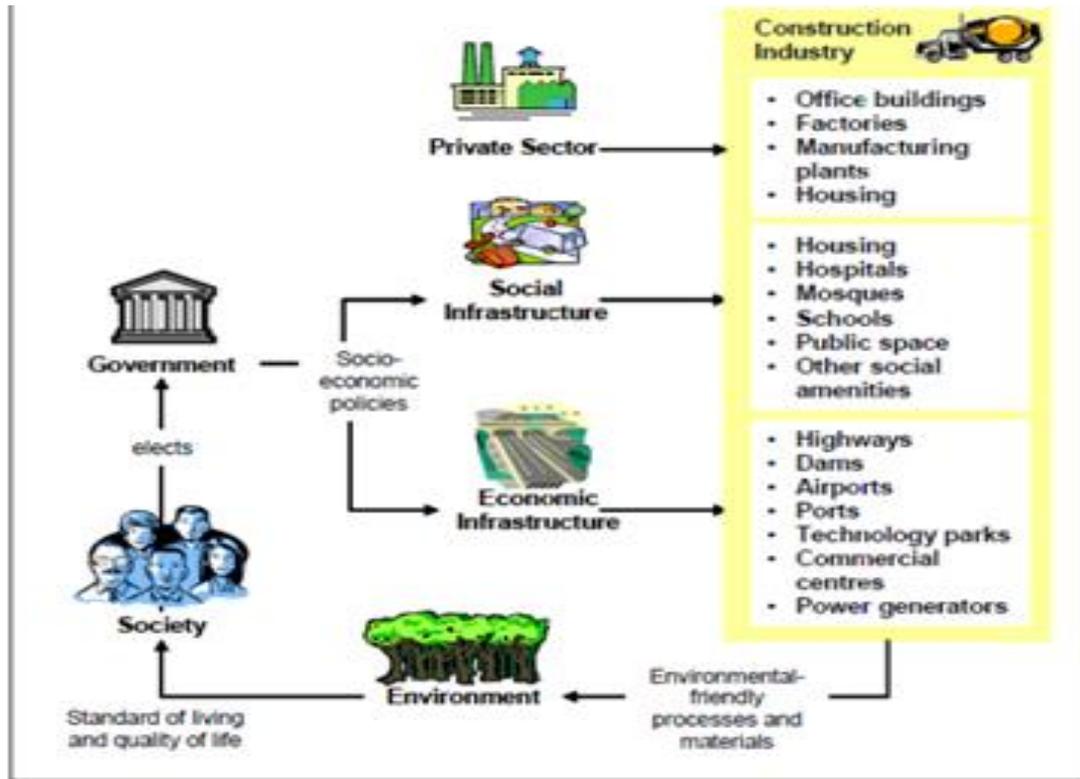
⁸⁷ A publication of the Kenya National Bureau of Statistics (KNBS).

⁸⁸ See Sweden Business, The infrastructure sector in Kenya, 2017 available at <http://www.business-sweden.se/contentassets/466e482333344482a94fe47af3b5dec5/factpack---infrastructure-sector-in-kenya---2017.pdf>.

⁸⁹ According to KNBS, the total proposed development expenditure on roads increased by 79.2 per cent, thus increasing the index of government expenditure on roads from 263.4 in 2014 to 386.7 in 2015. by the government and improved construction activities from private sector. Notable projects include the Northern Corridor Transport Improvement Project (NCTIP) and the Lamu Port and Lamu Southern Sudan-Ethiopian Transport Corridor (LAPSSET). These projects have attracted immense attention and are bound to spur investments from around the world.

⁹⁰ See Construction Industry Capacity Survey, July 2014, NCA.

Figure 3: Construction Sector as an Enabler of Government’s Socio-Economic Policies



Source: Project Management Files

The construction industry is critical to national wealth creation as it acts as a catalyst for, and it has multiplier effects to the economy. It is also an enabler of many industries and sectors including manufacturing, education sector, health sector, professional services, real estate services, financial services, transport services, ICTs, among many others.

Table 3: Construction Sector Value Chain

Primary	Inception	Design	Tender	Construct	Operate and maintain	Client
Support services/Industries	Building materials					
	Tooling & Equipment					
	Finance and insurance					
	Utilities and Transportation					
	Human Resources					
	Information, communication and Technology					
	Regulation and enforcement					
Research and Development						

Drivers of Growth for the Construction Industry in Kenya

According to Construction Industry Report 2017,⁹¹ 11 of the 43 major infrastructure projects in East Africa are being or have been undertaken in Kenya. These mega-projects include the US\$3.8 billion Mombasa – Nairobi Railway Project, the US\$2.1bn Tatu City Project, the US\$1 billion Lamu Port Berths Project and the US\$900m Lake Turkana Wind Power Project. Further, according to Ministry of Industry, Trade and Cooperatives, as at 2015, an estimated USD 55.6 billion in investment into infrastructure development for Kenya was planned. Most of this budget would focus on telecommunications and power generation infrastructure.⁹² The private sector is also involved in multiple construction projects. This section summarizes the following factors as being the key drivers of the thriving construction industry:

1. The huge deficit in infrastructure including rail, roads and ports present a significant case for continuing growth in the building and construction sector. For instance, 30% of Kenya's road network requires rehabilitation or reconstruction. This is especially true for counties where a total of 2327 kilometers of roads in 30 counties is being undertaken, while an additional 2,500 kilometers was to be launched by August 2017.⁹³ According to industry reports, the construction sector is expected to grow at an average compound annual growth rate of 6.8% to 2020. As at 2015, an estimated USD 5.14 billion had been dedicated to roads projects investment in Kenya.⁹⁴
2. Demand for housing continues to grow with role players estimating that more than 210,000 new residential units need to be built annually to keep pace with Kenya's expanding population. The establishment of counties under the Constitution 2010 has been instrumental in soaring urbanization and housing demand across the country. For instance:
 - In the office market, new accommodations have been let at a steady rate and Grade A office rents have increased. Some observers opine that Kenya has a deficit of 350,000 square metres commercial office space and the demand is expected to rise over the next 5 years.
 - In the retail market, Nairobi continues to be home to ultra-modern shopping malls such as Two River, Galleria Shopping Mall and Greenspan. However, it is

⁹¹ Available at <https://www.prnewswire.com/news-releases/the-construction-industry-in-kenya-2017-300489641.html>.

⁹² See <http://www.industrialization.go.ke/index.php/media-center/blog/238-elevated-investment-of-55-6-in-infrastructure-development-anticipated-for-kenya>.

⁹³ See Construction Business Daily January 30, 2017 'We will reject your bids, minister warns Kenyans road contractors', available at <http://www.constructionkenya.com/2905/kenya-contractors-workmanship/>.

⁹⁴ See <http://www.industrialization.go.ke/index.php/media-center/blog/238-elevated-investment-of-55-6-in-infrastructure-development-anticipated-for-kenya>.

- worth mentioning that foot traffic in these malls has experienced a significant decline in the last one year.
- Most counties in the country are developing industrial parks and zones and installing relevant ICT, energy and water infrastructure to attract investors in the counties.
 - Residential markets have experience a greater demand for houses in gated compounds, while apartments have seen a greater demand than single stand-alone homes. The current trend is to develop out of town integrated communities, targeting mainly the middle class.
 - From the tourism sector, international brands such as Movenpick, Mantis and Marriot have plans to enter the market in the future. This is bound to drive demand for luxury hotels and related establishments.
3. Demand for industrial space is forecasted to grow by 5.1% annually, which means international logistics companies launching operations in Kenya will be competing for available space. Recent surveys⁹⁵ indicate that starting 2018, the demand for industrial space in East Africa will grow faster than any other region in Africa. This presents an opportunity for warehouses development boom. Some of the prime logistics hubs currently underway in the emerging nodes⁹⁶ include Tatu City Industrial and Logistics Park in Kiambu County, Nairobi Gateway Logistics Park on Mombasa Road, Infinity Industrial Park on the Northern Bypass and Tilisi Logistics Park on Nairobi-Nakuru Highway.
 4. With crude oil production in the Great Rift Valley set to commence in the first half of 2017, many analysts predict that the country is on the cusp of an unprecedented construction boom.⁹⁷ This is in addition to the construction of geothermal and wind power generation plants in various counties including Turkana, Elgeyo Marakwet, Nyandarua, Nakuru and Kitui.

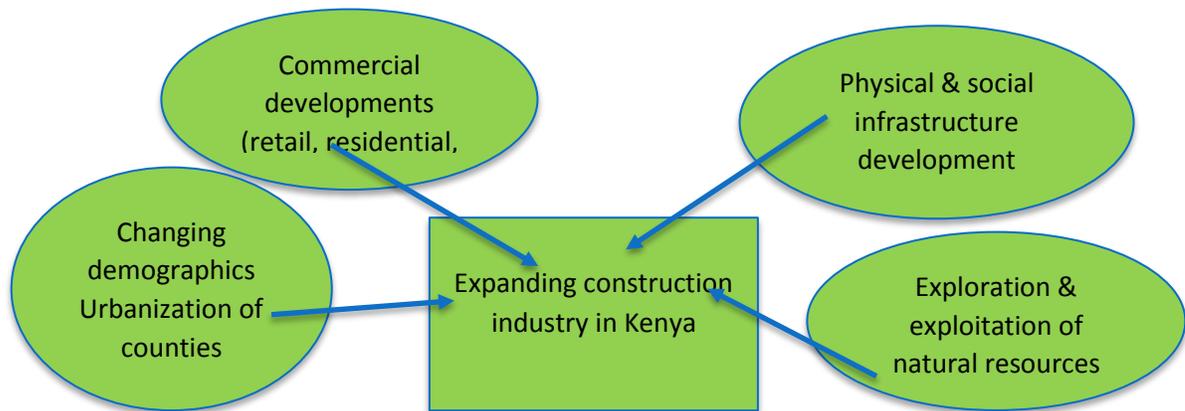
A notable development in this sector is the emergence of Public Private Partnerships (PPPs) such as concessions and Build Operate Transfer (BOT) contracts, which facilitate private participation in infrastructure and service development and release pressure on government budgets, by linking procurement and the private sector returns to long term service provisions and maintenance of projects.

⁹⁵ See Britam Asset Managers Report of 2017. Also see 2017 study by JLL, a global commercial real estate firm.

⁹⁶ Most warehouses in Kenya are situated in Nairobi, Mombasa and Kisumu with major nodes located on Mombasa road and Baba Ndogo.

⁹⁷ <https://www.reportbuyer.com/product/4886925/the-construction-industry-in-kenya-2017.html>

Figure 4: Drivers of growth in Kenya's Construction Sector



Market Structure and Key Players of Kenya's Construction Sector

Kenya's construction sector is structured in a manner wherein all the main players are interconnected. Table 3 illustrates the typical construction industry value chain globally. Players operating in this sector range from indigenous micro-enterprises to foreign multinational civil engineering and construction giants. Although building and construction contractors are required to be registered with the National Construction Authority (NCA), a significant number of unregistered contractors operate informally, especially in the when providing services to individual clients.

Accurate information on the structure and ownership of the construction sector players in Kenya is difficult to come by due to the scarcity of statistics and the sensitive nature of the procurement segment of this sector. However, what is clear in Kenya is that government spending, related to infrastructure development has been the biggest driver of the sector, with the government as the major client. Kenya also has a sizeable segment of private developers that have become increasingly important clients in real estate development, industrial/commercial development and recreational/leisure related construction services.

Contractors range from indigenous micro-enterprises to foreign multinational civil engineering and construction giants. It is notable that most contractors are small and medium enterprises accounting for a total of 79% with NCA5 11%, NCA6 22%, NCA7 31% and NCA8 15%. Large and well-established contractors account for 21% with NCA4 category

National Construction Authority Act No.41 of 2011 (the "Act") established the National Construction Authority ("NCA") to oversee the construction industry in Kenya. The Act requires that any person carrying out the business of a construction contractor be registered with the NCA.

at 13%, NCA3 category at 4%, NCA2 2% and NCA1 3%.⁹⁸ However, building and construction contractors are required to be registered with the National Construction Authority (NCA), the statutory body mandated with the regulation of the construction industry. However, a significant number of unregistered contractors continue to operate informally. There are eight categories of contractor's registration ranging from NCA1 (Highest) to NCA8 (Lowest).⁹⁹

The main classes of work include Roads, Water, Building, Electrical and Mechanical.¹⁰⁰ In Kenya, most of the contractors undertake more than one class of work. Contractors also have different specialization, e.g. plumbing, joinery, painting, structured cabling, access control, air conditioning, etc.

NCA has eight categories of contracts ranging in monetary value from unlimited value contracts (Category 1 contract) to contracts valued for only Ksh. 20 million

According to a survey conducted by NCA in 2014,¹⁰¹ there are over 13,700 registered contractors, with over 22,400 licenses in the above classes of work. Building works have the highest proportion of licensed contractors at 43, followed by Roads at 34%. Water and electrical works have proportions of 10% and 9% respectively. Mechanical has a 3%. There are few women contractors with only 7% own construction firms.

71% of the construction firms are owned by men. 21% have joint ownership of both men and women. Women owned contractor firms account for only 7%.

Source: NCA Report

Globalization of the Kenyan economy has impacted the construction industry with the sector experiencing a surging influence of foreign construction companies. It is worth mentioning that most of the large and well-established firms are foreign, with Chinese firms taking a huge slice of the cake. In fact, there are claims that more than 75% of lucrative government construction contracts undertaken in Kenya are performed by Chinese companies, a trend that has triggered alarm

⁹⁸ National Construction Authority.

⁹⁹ See National Construction Authority.

¹⁰⁰ See Classes of Contract Works, Third Schedule to the NCA Act, 2011

¹⁰¹ Construction Industry Capacity Survey: Capacity Status Report on Skills, equipment, capacity and financing, July 2014.

and protests among local construction companies.¹⁰² Other key competitors for this space are from Japan, India, Egypt and South Africa.

From the perspective of supply of construction materials, African countries including Egypt, DRC and South Africa are a main source of building materials for Kenyan construction industry.¹⁰³ China and India are also a major source of imports for materials that are either lacking in Kenya, or where the prices are more favorable.

It is important for Kenya to grow and expand its manufacturing capacity for affordable and reliable construction materials with a view to enhancing the development of a variety of goods that are currently lacking locally, or whose costs in the local market are uneconomical to contractors. In addition, Kenya should deepen its commitments in the transport sector to facilitate transport of materials and equipment within the COMESA region.

Further, Kenya should facilitate growth of energy, ICT, real estate and related professional services sectors as their accessibility, affordability and dependability are key infrastructural and facilitative factors in enhancing the continued growth of the construction sector in Kenya.

During the sixth Tokyo International Conference on African Development (TICAD VI) hosted by Kenya in 2016, multiple infrastructure development firms from Japan expressed interest to establish operations in Kenya. They include JFE Engineering Corporation, Nippon Signal Co Ltd, Toyota Tsusho Corporation, Kubota Corporation and Toray Industries, an information technology manufacturing company.

Ongoing infrastructure projects being undertaken by Japanese companies in Kenya include the construction of a connection bridge in front of the Nairobi train station by JFE Engineering Corporation, improvement of water supply system in Embu by Konoike Construction Company Limited and a green toilet system project in Naivasha by LIXIL Corporation.

Source: The Business Daily, 30 August 2016¹⁰⁴

Skills Linked to the Construction Sector

The construction sector requires many professionals and specialists including: Architects; Quantity surveyors; Surveyors (other); Designers; Building services engineers (MEP); Civil and structural engineers; Planners (town planners); and, Project managers. Other

¹⁰² See Construction Business Review available at <http://www.constructionkenya.com/2905/kenyan-contractors-fight-off-chinese-builders-in-court/>. Also See Business Review 30th January 2017 at <http://www.constructionkenya.com/2905/kenya-contractors-workmanship/>

¹⁰³ With hard wood, including mvule and mahogany, being imported from DRC.

¹⁰⁴ Available at <http://www.businessdailyafrica.com/Transport-engineering-firms-top-list-of-Japanese-companies/1248928-3363274-bq1ctn/>.

professionals include environmentalists, fabricators, financial analysts, material suppliers who are multi-disciplinary in nature.

Kenya has well trained and highly qualified professionals including engineers, architects, quantity surveyors, planners, geo spatial, environmental scientists and assessors, social scientists, project managers and designers. Most Kenyan professionals are well recognized in the EAC and COMESA regions, and they sometimes service multiple construction projects within the continent. In the COMESA region, Kenyan professionals serving this sector have indicated that they have existing and unexplored export potential to the following countries: DRC, Ethiopia, Comoros, Mauritius, Eritrea, Malawi, Rwanda, Southern Sudan, Uganda, Zambia and Zimbabwe.

However, there has been concerns of shortages of professionals in highly specialized areas, especially in the civil engineering discipline especially in infrastructure projects in energy, rail, roads, ports and telecommunication. Thus, many recent and ongoing government funded projects including SGR, JKIA expansion, expansion of Mombasa port, etc have in many instances used foreign experts mainly from China and Japan. Zimbabwean firms are also key players in Kenya's construction industry, especially in the fast food franchising. However, it is worth noting that in all construction contracts where expatriates are hired as experts, NCA Regulation 16(3) requires transfer of knowledge and technology to locals within a stipulated timeframe. However, some contractors, mostly from China and India, have gained notoriety for importing unskilled labor and raw materials from their home countries. South African and Egyptian professionals have also penetrated the Kenyan professional market through buy- outs of local firms.

In addition to these shortages, most local engineering and related construction services consulting firms are small and need to become bigger to be competitive on economies of scale. This can be achieved through partnerships that would result in greater skill pool and financial muscle enabling them

The Engineers Board of Kenya (EBK) and the Public Procurement Oversight Authority (PPOA) should be vigilant on foreign companies who come into the country to work and ensure that the local content requirements in the Procurement and disposal act and the engineers act are adhered to.

Source: Stakeholders, 2017

take on complex works and realize economies of scale. Collaborations with foreign firms should be embraced as a way of building capacity of the local firms with the view of gradually replacing the foreign companies. Having bigger local companies with clear

organization structures and a robust business continuance strategy is important for the development of engineering and related construction services in Kenya.¹⁰⁵

Further, it is notable that over 80% of Kenya's local contractors are SMEs. This implies that they have insufficient technical and financial capabilities to enjoy large economies of scale in production. It is therefore important for Kenya to develop favorable policies which will spur access to affordable financial solutions, plant and equipment by small scale contractors.

According to the Construction Industry Survey Report, Kenya's construction sector relies on semi-skilled and unskilled workers, with unskilled laborers accounting for 42% of the employed labor force within the sector. NCA indicates that only 17% of workers in the construction sector have undergone formal training. Women are under-represented in this sector, while the youth (aged between 25-35 years) constitute most of construction workers. NCA is currently working on the development of occupational standards for the construction industry whereby 59 trades have been identified.

Categories of construction workers

Site Supervisor: A tradesman with relevant formal technical training, and is currently working as a site supervisor.

Skilled Construction Worker: A tradesman with relevant formal technical training, or has not gone through formal technical training but has more than 10 years of working experience in his trade of specialization.

Semi-Skilled Construction Worker: A tradesman with no formal technical training in his/her field of specialization, and has experience of less than 10 years.

Source: NCA website

It is worth mentioning that there have been technological changes in the industry, notably the increasing use of environment-friendly technologies. This has led to an increased need for skills' training for workers, professionals and managers to adapt to such changes.

Key Constrains and Challenges Affecting the Potential of Kenya in the Construction Sector

1. The construction sector experiences shortages of skills in key areas such as machine operators, aluminium fabricators, painters, interior specialist artisans and supervisors. In 2017, the NCA indicates that only 17% of workers in the construction sector have undergone formal training. This is in addition to shortages of professionals in highly specialized areas, especially in the civil engineering discipline in infrastructure projects such as energy, rail, roads, ports and telecommunication.

¹⁰⁵ See remarks by Eng. James N. Mwangi –Association of Consulting Engineers of Kenya (ACEK), then Chairperson during FIDIC-GAMA Annual Conference in 2015, available at <http://www.kenyaengineer.co.ke/2016-05-28-20-43-28/latest-news/item/250-collaborate-with-international-firms-to-grow-capacity-and-become-bigger>.

Skills shortages in the Construction Sector

SKILLS	% OF AVAILABLE WORKFORCE
Plumbers	24
Electrician	23
Welders	13
Masons	12
Carpenters	10
Painters	10
Machine/plant operators	2
Interior specialist artisans	2
Aluminium fabricators	1
Site supervisors	1

Source: Author's own formulation from NCA Report of 2014

2. Lack of financing and capital shortages are major challenges facing entrepreneurs in the construction sector. It is notable that over 80% of Kenya's contractors are SMEs and SMMEs which implies that they have insufficient technical and financial capabilities to enjoy large economies of scale in production. Traditionally, most contractors have relied on expensive credit financing through banks and other credit sources, including shylocks.¹⁰⁶

Access to finance enables contractors to access loans, financial guarantees, performance and bid bonds, which in turn enable them to secure big construction projects. For small local contractors, lack of access to finance during preconstruction phase disqualifies nascent contractors from meeting guarantee and performance bond requirements. During the construction phase, lack of access to credit leads to cash-flow problems and incomplete work. Consequently, even where local construction sector operators could avail themselves of existing preference policies under the PPOA, they were unable to do so due to lack of the financial capacity.
3. Since financing is a key determinant to securing the equipment needed to keep their businesses running, most contractors in Kenya rely on leased or hired equipment as they do not have sufficient capital to purchase their own.
4. Safety is an ongoing challenge for the construction sector. It is notable that construction by nature is inherently dangerous, thus posing a high degree of hazard and risk. Consequently, accidents increase the direct construction costs of small contractors such as insurance (e.g. workmen' compensation), medical costs, while some costs are indirect e.g. time lost.
5. Fraud, compromised standards and unethical practices continue to pose a serious threat to the construction sector. These occurs in instances where there is use of

¹⁰⁶ However, with CBK controlling interest rates, the cost of financing was expected to go down.

inferior materials or sub-standard materials/mixtures, e.g. use of undersize steel bars, wrong concrete mixed, etc., resulting into accidents, and in some cases fatalities. Some professionals have been known to collude with contractors at the expense of their clients.

6. There are few women contractors with only 7% owning construction firms.

Key Strengths and Opportunities for Kenya's Construction Sector

1. Despite the issues identified above, one of the key strengths of Kenya's construction sector is the existence of goodwill and support from the government and other construction industry players including the banking and insurance sub sectors of the broader financial sector.
2. The construction sector enjoys availability of local construction materials, although some contractors still opt for imported materials from China, India, Egypt and South Africa.
3. Further, Kenya has a well-trained pool of professionals to support the construction sector, and export to construction sectors of EAC Partner States and various COMESA member states including Malawi, Rwanda, Southern Sudan, Zambia and Zimbabwe. This is in addition to a readily available youthful population who accounts for 84% of the workforce in the industry. This provides an excellent opportunity for the industry to grow, while presenting an exciting opportunity for innovative people with skills and capabilities, who have not traditionally had access to well-paying jobs.
4. The existence of a vibrant PPP regulatory framework presents multiple opportunities for the private sector to participate in ongoing lucrative infrastructure development projects. It is notable that in line with Vision 2013, the Kenyan government has approved 59 construction projects¹⁰⁷ covering various sub sectors such as housing, roads, energy, etc, to be executed under the PPP framework.
5. The inclusion of local content requirement in Kenya's regulatory framework for professional services and for mode three establishment has ensured the formation of joint ventures between local entrepreneurs and foreign investors wishing to enter the Kenyan market successfully. This is in addition to the fact that the government tendering process under the PPOA continue to be transparent, although there is room for improvement. Consequently, this has given a boost to local construction companies, thus providing business opportunities for financial institutions that can offer credit and insurance services to the joint ventures.

¹⁰⁷ These include Standard Gauge Railway, Lamu Port Soth Sudan Ethiopi Transport (LAPSSSET), Wind Power Project in Northern Kenya and Turkana, Lamu Pipeline, etc.

6. Owing to a deficit in residential and commercial buildings in the country (currently NCA indicates the housing deficits at 300,000 units in urban areas and 250,000 in rural areas), the potential of the construction sector is big.

Potential Areas of Trade Interest for Kenya: Import and Export

From the on start, it is important to point out that in big construction projects, Kenyan contractors are largely sub contracted by major international construction firms from United Kingdom, China, France, Japan, etc. who bag multi- million projects. Secondly, it is worth mentioning that no contractors from COMESA member countries have won any of the big infrastructure projects in Kenya.¹⁰⁸

Within the EAC and COMESA region, Kenya is a major exporter of professional services related to construction sector including engineers, architects, surveyors, designers, geospatial, planners, real estate practitioners. The National Construction Authority is of the view that Kenyan professional services have a competitive edge in pre-design and design stages of construction projects. However, Kenya lacks high level professional skills required at the implementation level of major projects, in addition to experiencing shortages of sophisticated construction materials. This is especially the case for upstream activities for petroleum and gas, and the construction of necessary infrastructure, including gas transportation pipelines, where Kenya has been importing professionals from Egypt, South Africa, China and Eretria. Kenya has thus identified several construction-related areas as areas of scarcity including:

- Highly skilled professional services (surveyors, materials engineers/technicians/technologist, electronic engineering technicians); and,
- Semi -skilled occupations machine operators, aluminum fabricators, painters, interior specialist artisans and supervisors.

Stakeholders are of the view that Kenya should consider liberalizing relevant professional services to facilitate skills transfer and exchange of construction technologies from more advanced economies especially in complex infrastructural projects on energy, telecommunication, roads, rails, sea ports and airports. This will facilitate the development of the energy, transport and ICT sectors and facilitate growth for Kenyan professionals who already have potential in exporting professional services, while enhancing the development of various goods and services that are currently lacking in the local market. This is in line with the National Construction Act.

¹⁰⁸ Information obtained from NCA during stakeholders' consultations held in October 2017

Further, policies should be developed to facilitate synergies and linkages between academic research and private sector industry players with a view to addressing existing gaps in knowledge and expertise, while facilitating the development of new products and services.

Enhancing Kenya's Export Potential in The Construction Sector

1. There is need to address the shortage and improve skills through curricula development and development of standards. The curriculum for training should be developed through collaboration between the private sector, regulators and the training institutions to ensure relevance of training and skills in time and place.
2. There should be efforts to harmonize the standards of such training across the various TVET institution in Kenya, and within the EAC and COMESA member states. It is worth noting that currently, the National Construction Authority is working on developing occupational standards for 59 trades that have been identified.¹⁰⁹
3. The national government, working closely with county governments and financial sector players need to develop favorable policies that would facilitate access to affordable and timely financial solutions, plant and equipment for local contractors who are mostly small and uncompetitive. Special solutions should be developed for women who have minimal participation in this male dominated sector.
4. Stakeholders indicated that there is need for the national government in collaboration with the regulator to enhance protection of local construction and professional firms from dominance of foreign construction firms that are large, competitive and have economies of scale. This can be achieved through strict enforcement on Local Content regulations on use of locally produced construction materials¹¹⁰, goods and services, thus promoting local construction industry players through deliberate consumption of locally available goods and services, while facilitating knowledge and technology transfer to Kenyan workers in situations where joint ventures are inevitable. However, it is worth noting that in some instances, these efforts are already in place. For example, the NCA Regulations (2014) require that all foreign firms must sub contract 30% of their contracts to local contractors, while ensuring transfer of skills to local construction workers.

Regulatory and Administrative Framework for the Construction Sector in Kenya (See annex)

Globally, the construction sector is one of the most highly regulated sectors. This is because the sector has a diversity of operators, regulatory bodies, regulatory policies, interlinkages with the national economy and other economic sectors.

¹⁰⁹ The list of these trades was not available at the time of writing this paper

¹¹⁰ See restrictions on importation of cement and steel for the construction of Standard Gauge Railway.

Subject matter	Relevant regulatory frameworks
Sector specific	<ul style="list-style-type: none"> • Building regulations • Technical standards • Land use
Environment	<ul style="list-style-type: none"> • Impact assessment • Environmental compliance
Investment	<ul style="list-style-type: none"> • Business licences • Foreign Direct Investment • Joint venture procedures • PPP regimes
Labor	<ul style="list-style-type: none"> • Employment procedures • Immigration • OSHA • Training, Qualifications & certification • Skilled & unskilled workers
Procurement	<ul style="list-style-type: none"> • National & county regulations • Private sector procedures • Related regulations
Other issues	<ul style="list-style-type: none"> • Competition, • Dispute settlement, etc

Regulating Professionals and Other Workers in the Sector

As already under the Business Services Sector, Professional Services Sub sector of this report covering professional services, suppliers of professional services including architects, engineers and quantity surveyors etc. are regulated by statutorily established bodies/boards, under their respective sets of laws and regulations.

Registration of Contractors – Market access regulations

In Kenya, ministry in charge of Public Works is the custodian of construction works. The National Construction Authority (NCA) established under the NCA Act No. 41 of 2011, and the attendant Regulations has the mandate of regulating, registering and categorizing contractors, and ensure their development.

Section 18 of NCA Act and Regulation 12 of NCA Regulations lay down the criteria for registration of a foreign contractor in Kenya as follows:

1. The contractor intends to be in Kenya only for the sole purpose of carrying out the specific works or projects for which it has been contracted and for which the sum payable is not less than the sum prescribed by the NCA board for NCA-1 works or project;
2. Proof of plant, equipment and machines holding;
3. The contractor has obtained a certificate of compliance from the Registrar of Companies showing that immediately prior to entering Kenya it was trading as a contractor; and,
4. The contractor has lodged an affidavit with the NCA board to the effect that, once the contracted works are completed and the defects liability or maintenance period

has elapsed, it shall wind up business and not engage itself in construction business in Kenya ("Pre-Registration Requirements").

Mode 3 Restrictions

a. NCA Regulation 16(1) requires that:

- At least 30% of the value of the work is subcontracted, or, in the case of a joint venture at least 30% must be Kenyan owned.
- Under Regulation 16(4), for large projects, e.g. energy projects, where local contractors are unable to raise the requisite 30% equity capital in the joint venture, NCA may grant a waiver or give concessions to facilitate gradual compliance.
- In line with Regulation 16(2), any profits derived from the construction works carried out by the joint venture must be split based on this ownership arrangement.

This shareholding requirement came as a boom to local firms such as Civicon, Kirinyaga Construction, S.S Mehta, Nyoro Construction, Ongata Works, Talewa Road Contractors, and Fountain Technologies, who have in the past 10 years struggled to win big ticket deals.

b. Schedule of projects a firm is undertaking, with details of cost and completion date. The contractor is required to lodge an affidavit with the NCA board to the effect that, once the contracted works are completed and the defects liability or maintenance period has elapsed, it shall wind up business and not engage itself in construction business in Kenya ("Pre-Registration Requirements").

Mode 4 restrictions

- c. NCA Regulation 16(3) provides for need to seek NCA's approval to employ expatriates: The regulations impose restrictions on the type of employees that can be employed by a joint venture. See Section 16 (3), "*the employees of the joint venture to which this regulation applies shall be competitively recruited from the local labour market, and recruitment or employment of foreign technical or skilled workers on such contract shall only be done with the approval of the Authority where such skills are not available locally.*" This is aimed at boosting local contractors and enhance skills and technology transfer.
- d. Submission of concrete proposals on skills and technology transfer - Regardless of whether a foreign contractor subcontracts a part of its works or enters into a JVA with a local firm or person, as part of its registration application, the foreign

contractor must provide an undertaking to the NCA that it will transfer technical skills which are not available locally to its local firm or person. However, the NCA determines the way this transfer of skills should be done.

Government procurement restrictions

Under Section 12 of NCA Act, a foreign contractor is only eligible to register for category one NCA -1 works or projects worth not less than (i.e. a building contract above Kenya Shillings 500 million) whereas local contractors are eligible to register for all categories of contracts. There exists a restriction of state funded projects of below KES 1 Billion to local contractors. The local contractor can offer a minority stake to foreign firms.

Land ownership restrictions

Under the Constitution of Kenya, 2010, the Land Act, 2012 and the Land Registration Act, a foreign firm or individual can own land/property in Kenya, subject to the following limitations.

1. Article 65 of the Constitution of Kenya restricts ownership to a 99 years leasehold. A foreigner is not allowed to own a free hold title.
 - To hold land through a company, the Constitution defines a Kenyan company as an entity that is owned by one or more Kenyan citizens. A company with one or more foreign shareholders is regarded as foreign, and as such cannot own free hold land.
 - Article 8(1) of the Constitution states that any freehold land owned by a foreigner is to revert to the government, and the same will be granted a 99-year leased to the foreigner on a peppercorn rent.

Environmental Requirements

Under the Environment (Impact Assessment and Audit) (Amendment) Regulations, 2016, all project including low, medium and high-risk projects must undergo an environmental impact assessment and obtain an Environmental Impact Assessment License after paying a licence fee equivalent to 0.1% of project value.

In addition, under section 58(2) of the Environmental Management and Co-ordination Act, 1999, all high-risk projects, including energy infrastructure, telecommunications, housing construction and hydro carbon projects, are required to submit environmental impact assessment study reports. These are nondiscriminatory requirements.

Taxation requirements

As at 2017, the corporate income tax rate is 30% for local companies, with foreign companies taxed at 37.5%. To encourage investment in housing development, the income

tax for companies that develop more than 400 units annually has been reduced to 15%, subject to approval by the Cabinet Secretary in charge of housing.

Necessary Policy and Regulatory Reforms

- a. Strict enforcement of restrictions of entry into the domestic construction industry.
- b. Enforcement on the local content requirements on use of locally produced goods and services.
- c. Empowering the regulator to ensure strict enforcement of construction regulations and standards, while addressing the overlapping mandate on supervision, especially at the county levels.
- d. There is need to automate registration processes and create a “one stop shop” approval systems.
- e. Reforms are required to enhance quality in the construction industry.
- f. Minimizing time overruns in approval seeking processes.

Annex: Matrix of Regulatory Framework of Construction Sector

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
SECTOR-SPECIFIC COMMITMENTS											
3. CONSTRUCTION AND RELATED ENGINEERING SERVICES											
General construction work for buildings	No commitments as at August 2017	No commitments as at August 2017	No commitments as at August 2017	NIL	Requirement for annual licence to operate in Kenya (non-discriminatory)	Requirement for Registration (non-discriminatory) Requirement for registration of contractors under NCA-1 category (as set out in the Third Schedule of National Construction Authority Regulation, 2014) is open to both local and foreign contractors while registrations that fall between NCA-2 to NCA-8 is restricted to local contractors only (discriminatory)	The ratio of ownership of a joint venture for construction works between a local firm and a foreign firm must be at least thirty percent for the local firm.	National Construction Authority Act No. 41 Of 2011 National Construction Authority Regulations, 2014	National Construction Authority Act Section 15 - Requirement for registration “(1) A person shall not carry on the business of a contractor unless the person is registered by the Board under this Act. (2) A person seeking registration under subsection (1) shall, in the case of a firm, be eligible for registration if at least one of the partners or directors of the firm possesses such technical qualifications, skills or experience as the Board may from time to time prescribe. (3) Any person who	NIL	National Construction Authority – Established at Section 3 of National Construction Authority Act No. 41 of 2011. Its mandate include, inter alia, to oversee the construction industry and coordinate its development in Kenya. Engineers Board of Kenya - established under the Engineers, Act, 2011. Its mandate include inter alia, the registration of engineers and engineering

									<p>contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding one million shillings, or to imprisonment for a term not exceeding three years or to both, and in the case of a continuing offence, to a fine not exceeding one hundred thousand shillings for every day or part thereof during which the offence continues.</p> <p><i>National Construction Authority Regulations, 2014 Section 6 - Exemption from registration for local contractors</i></p> <p>“Any skilled construction worker or construction site supervisor carrying out construction works specified in the proviso to</p>	<p>consulting firms in Kenya and setting of engineering standards in Kenya.</p> <p>Architectural Association of Kenya – the association is registered under the Societies Act and brings together professionals from private and public and academia. Its mandate include, inter alia, coordinating the activities of professionals concerned with building and natural environment in Kenya to promote professional integrity.</p>
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									<p>section 16(1) of the Act shall be exempted from registration as a contractor.</p> <p><i>National Construction Authority Regulations, 2014 Section 9 - Restriction</i></p> <p>“(1) Registration of contractors under NCA-1 category shall be open to both local and foreign contractors. (2) Any registrations that fall between NCA-2 to NCA-8 as set out in the Third Schedule of the Regulations shall be restricted to local contractors only.”</p> <p><i>National Construction Authority Regulations, 2014 Section 12 - Registration of foreign contractors</i></p>	
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									<p>“(1) Subject to section 18 of the Act, a foreign person or firm shall be eligible for registration as a contractor on application to the Authority and payment of the prescribed fees.</p> <p>(2) Where a foreign firm applies under this regulation to undertake construction works or project under category NCA-1, such firm shall demonstrate to the Authority its capacity for such works.</p> <p>(3) The application under paragraph (1) shall be accompanied by—</p> <p>(a) the applicant’s financial statements as at the date of the application;</p> <p>(b) detailed information on the value of construction works or projects done and</p>	
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									<p>completed locally in other jurisdictions;</p> <p>(c) proof of plant, equipment and machines holding;</p> <p>(d) an undertaking in writing that the foreign person or firm—</p> <p>(i) shall subcontract or enter into a joint venture with a local person or local firm for not less than thirty percent of the value of the contract work for which temporary registration is sought;</p> <p>(ii) shall transfer technical skills not available locally to a local person or firm in such manner as the Authority may determine from time to time;</p> <p>(e) any other requirement that the Board may determine from time to time (4) A registration under this regulation shall—</p>		
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									<p>(a) be valid for the period of the construction works contract or project in question; (b) where applicable be renewable every calendar year, failure to which the registration shall stand cancelled by the Board.”</p> <p><i>National Construction Authority Regulations, 2014 Section 13 - Application for renewal</i></p> <p>“Application for renewal of the licence shall be submitted to the Authority in writing at least thirty days before the expiry of such licence.”</p> <p><i>National Construction Authority Regulations, 2014 Section 14 - Continuous</i></p>		
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									<p>Professional Development</p> <p>“In each year during which a contractor holds a licence, the contractor or, in the case of a firm or company, the partner or director who possesses technical qualifications, skills or experience shall attend at least one Continuous Professional Development event recognized by the Authority and the Authority shall consider the attendances while determining an application to renew or upgrade the Contractor.”</p> <p><i>National Construction Authority Regulations, 2014 Section 16 -</i> Ration of ownership of joint ventures</p>	
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									<p>“(1) The ratio of ownership of a joint venture for construction works between a local firm and a foreign firm shall be at least thirty percent for the local firm.</p> <p>(2) The profits of the construction works shall be shared in line with the arrangements set out in paragraph (1).</p> <p>(3) The employees of the joint venture to which this regulation applies shall be competitively recruited from the local labour market, and recruitment or employment of foreign technical or skilled workers on such contract shall only be done with the approval of the Authority where such skills are not available locally.</p> <p>(4) The Authority may give such exemption on this regulation as the</p>		
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									Board may deem appropriate.”		
General construction work for civil engineering	No commitments as at August 2017	No commitments as at August 2017	No commitments as at August 2017	NIL	Requirement for annual licence to operate in Kenya (non-discriminatory)	Requirement for Registration (non-discriminatory) Requirement for registration of contractors under NCA-1 category (as set out in the Third Schedule of National Construction Authority Regulation, 2014) is open to both local and foreign contractors while registrations that fall between NCA-2 to NCA-8 is restricted to local contractors only (discriminatory)	The ratio of ownership of a joint venture for construction works between a local firm and a foreign firm must be at least thirty percent for the local firm.	National Construction Authority Act No. 41 Of 2011 National Construction Authority Regulations, 2014	National Construction Authority Act Section 15 - Requirement for registration “(1) A person shall not carry on the business of a contractor unless the person is registered by the Board under this Act. (2) A person seeking registration under subsection (1) shall, in the case of a firm, be eligible for registration if at least one of the partners or directors of the firm possesses such technical qualifications, skills or experience as the Board may from time to time prescribe. (3) Any person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding	NIL	National Construction Authority – Established at Section 3 of National Construction Authority Act No. 41 of 2011. Its mandate include, inter alia, to oversee the construction industry and coordinate its development in Kenya. Engineers Board of Kenya - established under the Engineers, Act, 2011. Its mandate include inter alia, the registration of engineers and engineering consulting firms in Kenya and setting of engineering standards in Kenya.

									<p>one million shillings, or to imprisonment for a term not exceeding three years or to both, and in the case of a continuing offence, to a fine not exceeding one hundred thousand shillings for every day or part thereof during which the offence continues.</p> <p><i>National Construction Authority Regulations, 2014 Section 6 - Exemption from registration for local contractors</i></p> <p>“Any skilled construction worker or construction site supervisor carrying out construction works specified in the proviso to section 16(1) of the Act shall be exempted from registration as a contractor.</p>		<p>Architectural Association of Kenya – the association is registered under the Societies Act and brings together professionals from private and public and academia. Its mandate include, inter alia, coordinating the activities of professionals concerned with building and natural environment in Kenya to promote professional integrity.</p>
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									<p><i>National Construction Authority Regulations, 2014 Section 9 - Restriction</i></p> <p>“(1) Registration of contractors under NCA-1 category shall be open to both local and foreign contractors. (2) Any registrations that fall between NCA-2 to NCA-8 as set out in the Third Schedule of the Regulations shall be restricted to local contractors only.”</p> <p><i>National Construction Authority Regulations, 2014 Section 12 - Registration of foreign contractors</i></p> <p>“(1) Subject to section 18 of the Act, a foreign person or firm shall be eligible for registration as a contractor on</p>	
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									<p>application to the Authority and payment of the prescribed fees.</p> <p>(2) Where a foreign firm applies under this regulation to undertake construction works or project under category NCA-1, such firm shall demonstrate to the Authority its capacity for such works.</p> <p>(3) The application under paragraph (1) shall be accompanied by—</p> <p>(a) the applicant’s financial statements as at the date of the application;</p> <p>(b) detailed information on the value of construction works or projects done and completed locally in other jurisdictions;</p> <p>(c) proof of plant, equipment and machines holding;</p>	
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									<p>(d) an undertaking in writing that the foreign person or firm—</p> <p>(i) shall subcontract or enter into a joint venture with a local person or local firm for not less than thirty percent of the value of the contract work for which temporary registration is sought;</p> <p>(ii) shall transfer technical skills not available locally to a local person or firm in such manner as the Authority may determine from time to time;</p> <p>(e) any other requirement that the Board may determine from time to time (4) A registration under this regulation shall—</p> <p>(a) be valid for the period of the construction works contract or project in question;</p>		
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									<p>(b) where applicable be renewable every calendar year, failure to which the registration shall stand cancelled by the Board.”</p> <p><i>National Construction Authority Regulations, 2014 Section 13 - Application for renewal</i></p> <p>“Application for renewal of the licence shall be submitted to the Authority in writing at least thirty days before the expiry of such licence.”</p> <p><i>National Construction Authority Regulations, 2014 Section 14 - Continuous Professional Development</i></p> <p>“In each year during which a contractor holds a</p>	
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									<p>licence, the contractor or, in the case of a firm or company, the partner or director who possesses technical qualifications, skills or experience shall attend at least one Continuous Professional Development event recognized by the Authority and the Authority shall consider the attendances while determining an application to renew or upgrade the Contractor.”</p> <p><i>National Construction Authority Regulations, 2014 Section 16 - Ratio of ownership of joint ventures</i></p> <p>“(1) The ratio of ownership of a joint venture for construction works between a local firm and a foreign firm shall</p>	
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									<p>be at least thirty percent for the local firm.</p> <p>(2) The profits of the construction works shall be shared in line with the arrangements set out in paragraph (1).</p> <p>(3) The employees of the joint venture to which this regulation applies shall be competitively recruited from the local labour market, and recruitment or employment of foreign technical or skilled workers on such contract shall only be done with the approval of the Authority where such skills are not available locally.</p> <p>(4) The Authority may give such exemption on this regulation as the Board may deem appropriate.”</p>		
Installation and assembly work	No commitments as at	No commitments as at August 2017	No commitments as at August 2017	NIL	NIL	NIL	NIL	NIL	NIL	NIL	NIL

	August 2017										
Building completion and finishing work	No commitments as at August 2017	Requirement for annual licence to operate in Kenya (non-discriminatory)	Requirement for Registration (non-discriminatory) Requirement for registration of contractors under NCA-1 category (as set out in the Third Schedule of National Construction Authority Regulation, 2014) is open to both local and foreign contractors while registrations that fall between NCA-2 to NCA-8 is restricted to local contractors only (discriminatory)	The ratio of ownership of a joint venture for construction works between a local firm and a foreign firm must be at least thirty percent for the local firm.	National Construction Authority Act No. 41 Of 2011 National Construction Authority Regulations, 2014	National Construction Authority Act Section 15 - Requirement for registration “(1) A person shall not carry on the business of a contractor unless the person is registered by the Board under this Act. (2) A person seeking registration under subsection (1) shall, in the case of a firm, be eligible for registration if at least one of the partners or directors of the firm possesses such technical qualifications, skills or experience as the Board may from time to time prescribe. (3) Any person who contravenes subsection (1) commits an offence and shall be liable on conviction to a fine not exceeding	NIL	National Construction Authority – Established at Section 3 of National Construction Authority Act No. 41 of 2011. Its mandate include, inter alia, to oversee the construction industry and coordinate its development in Kenya. Engineers Board of Kenya - established under the Engineers, Act, 2011. Its mandate include inter alia, the registration of engineers and engineering consulting firms in Kenya and setting of engineering standards in Kenya.			

									<p>one million shillings, or to imprisonment for a term not exceeding three years or to both, and in the case of a continuing offence, to a fine not exceeding one hundred thousand shillings for every day or part thereof during which the offence continues.</p> <p><i>National Construction Authority Regulations, 2014 Section 6 - Exemption from registration for local contractors</i></p> <p>“Any skilled construction worker or construction site supervisor carrying out construction works specified in the proviso to section 16(1) of the Act shall be exempted from registration as a contractor.</p>	<p>Architectural Association of Kenya – the association is registered under the Societies Act and brings together professionals from private and public and academia. Its mandate include, inter alia, coordinating the activities of professionals concerned with building and natural environment in Kenya to promote professional integrity.</p>
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									<p><i>National Construction Authority Regulations, 2014 Section 9 - Restriction</i></p> <p>“(1) Registration of contractors under NCA-1 category shall be open to both local and foreign contractors. (2) Any registrations that fall between NCA-2 to NCA-8 as set out in the Third Schedule of the Regulations shall be restricted to local contractors only.”</p> <p><i>National Construction Authority Regulations, 2014 Section 12 - Registration of foreign contractors</i></p> <p>“(1) Subject to section 18 of the Act, a foreign person or firm shall be eligible for registration as a contractor on</p>	
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									<p>application to the Authority and payment of the prescribed fees.</p> <p>(2) Where a foreign firm applies under this regulation to undertake construction works or project under category NCA-1, such firm shall demonstrate to the Authority its capacity for such works.</p> <p>(3) The application under paragraph (1) shall be accompanied by—</p> <p>(a) the applicant’s financial statements as at the date of the application;</p> <p>(b) detailed information on the value of construction works or projects done and completed locally in other jurisdictions;</p> <p>(c) proof of plant, equipment and machines holding;</p>		
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									<p>(d) an undertaking in writing that the foreign person or firm—</p> <p>(i) shall subcontract or enter into a joint venture with a local person or local firm for not less than thirty percent of the value of the contract work for which temporary registration is sought;</p> <p>(ii) shall transfer technical skills not available locally to a local person or firm in such manner as the Authority may determine from time to time;</p> <p>(e) any other requirement that the Board may determine from time to time (4) A registration under this regulation shall—</p> <p>(a) be valid for the period of the construction works contract or project in question;</p>		
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									<p>(b) where applicable be renewable every calendar year, failure to which the registration shall stand cancelled by the Board.”</p> <p><i>National Construction Authority Regulations, 2014 Section 13 - Application for renewal</i></p> <p>“Application for renewal of the licence shall be submitted to the Authority in writing at least thirty days before the expiry of such licence.”</p> <p><i>National Construction Authority Regulations, 2014 Section 14 - Continuous Professional Development</i></p> <p>“In each year during which a contractor holds a</p>	
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									<p>licence, the contractor or, in the case of a firm or company, the partner or director who possesses technical qualifications, skills or experience shall attend at least one Continuous Professional Development event recognized by the Authority and the Authority shall consider the attendances while determining an application to renew or upgrade the Contractor.”</p> <p><i>National Construction Authority Regulations, 2014 Section 16 - Ratio of ownership of joint ventures</i></p> <p>“(1) The ratio of ownership of a joint venture for construction works between a local firm and a foreign firm shall</p>	
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									<p>be at least thirty percent for the local firm.</p> <p>(2) The profits of the construction works shall be shared in line with the arrangements set out in paragraph (1).</p> <p>(3) The employees of the joint venture to which this regulation applies shall be competitively recruited from the local labour market, and recruitment or employment of foreign technical or skilled workers on such contract shall only be done with the approval of the Authority where such skills are not available locally.</p> <p>(4) The Authority may give such exemption on this regulation as the Board may deem appropriate.”</p>		
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PART 3: ENERGY SECTOR

Overview of Energy Sector and Related Services

Energy plays an important role in all national economies, as it is one of the key drivers of economic development.¹¹¹ Its availability or lack of it affects the quality of life and national security of a country. It is thus accurate to say that the provision of adequate, affordable and reliable energy services is essential for economic welfare, eradication of poverty, infrastructure development, growth of health services, commerce, communication, education and other economic activities. In fact, energy availability and consumption is so important that the magnitude of energy consumed per capita is one of the key indicators of modernization and progress of a country.¹¹²

In the past, due to its public good characteristics, energy-related services were mostly supplied by state-owned monopolies and the involvement of the private sector was limited. Since the 1990s, the sector has undergone substantial reforms and liberalization in many countries, including Kenya, and now private players have an important role in the growth and development of this sector. Privatization led to the emergence of global players in energy services and enhanced trade in energy services.¹¹³

According to UNCTAD, the energy sector is probably the biggest business in the world economy, with a turnover of at least USD 1.7 to USD 2 trillion a year.¹¹⁴ In 2001, the World Energy Council estimated global investment in energy between 1990 and 2020 would total some US\$ 30 trillion at 1992 prices. Fast forward to 2017, the World Energy Council in its Energy Issues Monitor¹¹⁵ stated that: a) Primary energy demand growth worldwide will continue to slow down and peak before 2030; b) Demand for electricity will double "making it the new oil; c) Phenomenal wind and solar energy growth will continue at an unprecedented rate; and, d) Demand for coal and oil could create stranded resources, instead of assets, worldwide.

¹¹¹ Energy Services in International Trade: Development Implications, Note by the UNCTAD secretariat, 2001.

Available at <http://www.ogj.com/articles/print/volume-115/issue-4b/general-interest/world-energy-council-report-identifies-2017-s-global-issues-trends.html>.

¹¹² See Trade in energy services: India and GATS, Working Paper Number 231, Arpita Mukherjee, 2009. Kenya National Energy Policy 2016 has also recognized this as a fact.

¹¹³ World Energy Assessment: Energy and the Challenge of Sustainability, United Nations Development Program, United Nations Department of Economic and Social Affairs, World Energy Council, New York, 2000.

¹¹⁴ Energy Services in International Trade: Development Implications, Note by the UNCTAD secretariat, 2001.

Available at <http://www.ogj.com/articles/print/volume-115/issue-4b/general-interest/world-energy-council-report-identifies-2017-s-global-issues-trends.html>.

In 2001, UNCTAD estimated the total investment requirement for energy-supply infrastructure worldwide at USD 16 trillion in the next 30 years. In 2017, OECD estimated the global infrastructure investment needs for the next 13 years at USD 6.3 trillion to support growth and development in the energy sector, taking climate issues in consideration.¹¹⁶

However, until recently, governments worldwide considered the sector too crucial to be left to market forces. In the last two decades, most countries have been unbundling vertically integrated energy systems accompanied by part or full transfer of ownership and management of formerly state-owned energy enterprises to the private sector.¹¹⁷ The introduction of competition and privatization of previously state owned enterprises, especially in the downstream segments of natural gas and electricity, has led to the externalization of previously integrated services - such as energy transmission and distribution - and the demand for new services to take advantage of the opportunities of a freer market for energy trading in interrelated chain of energy activities, for example, the operation of power pools, the provision of continuous information on energy prices, energy trading and brokering, and energy management. Additional services have emerged related to greenhouse gas emissions reductions and trading of emission rights.¹¹⁸

Energy services are required at each step of the energy value chain from the location of the potential energy source to its distribution to the final consumer. This constitutes the value added in the energy chain as follows:

- The first stage are the upstream services such as exploration, extraction, drilling, derrick building and other construction services. These are identified in the General Agreement on Trade in Services W/120 under “*services incidental to mining, rendered on a fee or contract basis at oil and gas fields*”).
- The second stage relates to the transportation of energy. In some cases, this is an undifferentiated segment of maritime transport, but in other cases, it is specific to the energy sector. This is identified in the General Agreement on Trade in Services W/120 under the category of “*transportation via pipeline of crude or refined petroleum and petroleum products and of natural gas*”.

¹¹⁶ See OECD, Technical Notes on Estimates of Infrastructure Investment Needs, July 2017 available at <https://www.oecd.org/env/cc/g20-climate/Technical-note-estimates-of-infrastructure-investment-needs.pdf>.

¹¹⁷ Energy Services in International Trade: Development Implications, Note by the UNCTAD secretariat, 2001.

Available at <http://www.ogj.com/articles/print/volume-115/issue-4b/general-interest/world-energy-council-report-identifies-2017-s-global-issues-trends.html>.

¹¹⁸ See Energy Services in International Trade: Development Implications, Note by the UNCTAD secretariat, 2001.

Available at <http://www.ogj.com/articles/print/volume-115/issue-4b/general-interest/world-energy-council-report-identifies-2017-s-global-issues-trends.html>

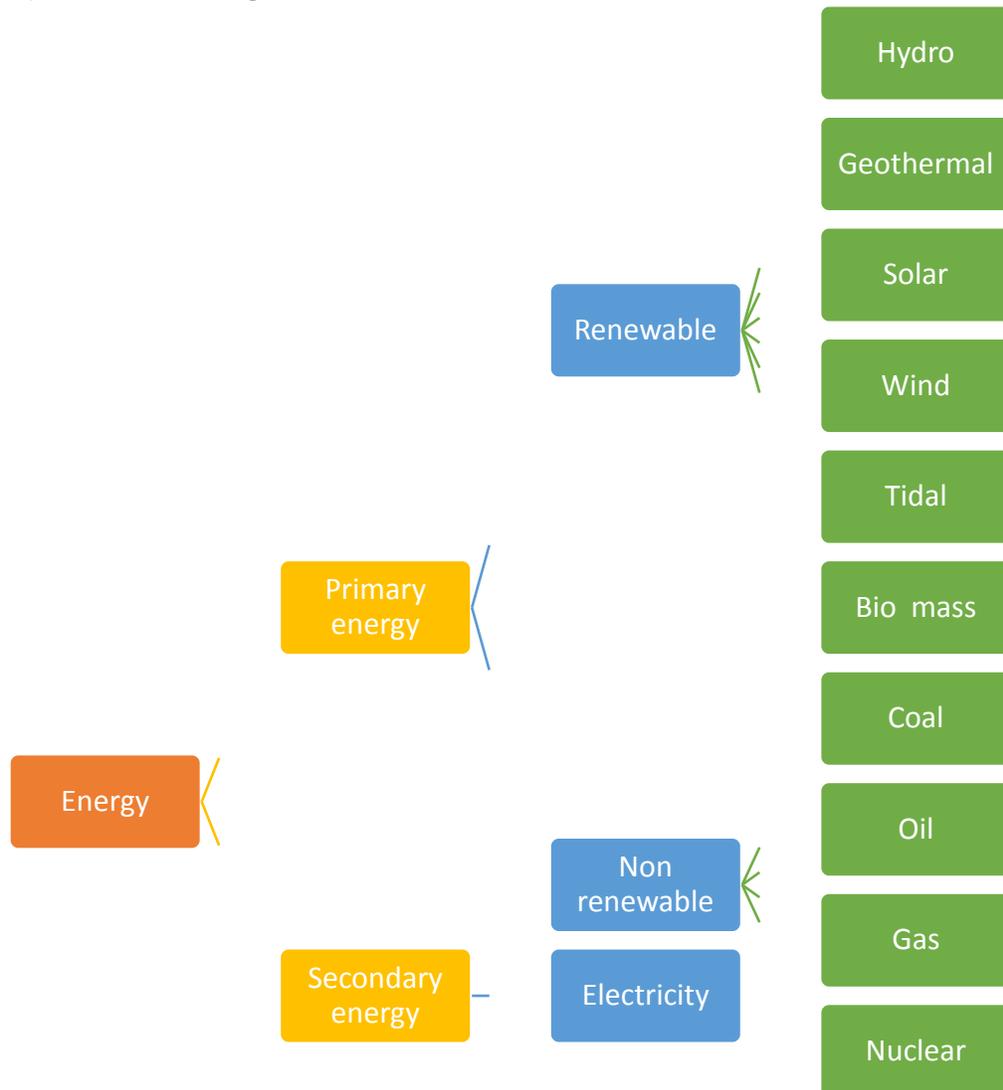
- The third stage relates to the downstream activities constituting the services involved in delivering energy to the final consumer. These are identified in the General Agreement on Trade in Services W/120 under the category “*services incidental to energy distribution*”), which refers to “*transmission and distribution services on a fee or contract basis of electricity, gaseous fuels and steam and hot water to household, industrial, commercial and other users*”.

Classification and Coverage of Energy Sector

Energy can be broadly classified under two categories namely:

- Primary energy: This is contained in raw/fossil fuels such as coal, oil, and natural gas. This can be further divided into Renewable or Non-renewable.
- Secondary energy: This is the more useable form to which primary energy may be converted, such as electricity from gas or coal.

Figure 1: A snapshot of the energy sector



Under the WTO, there is no clear definition of energy services. This is largely due to the fact that in defining energy services, there is no clear distinction between energy goods and services.¹¹⁹ Some energy products such as oil and solid fuels, which can be easily stored, are considered as goods, while others such as electricity have characteristics of both goods and services. Electricity

The difficulty in definition and segregation is because the energy sector has traditionally been dominated by state-owned vertically integrated utilities which performed all energy-related activities, namely, production, transport and distribution of energy product, leaving little room for competition.

Source: WTO

may be considered as a good in the sense that it is manufactured through the process of materially transforming fuels into electrons and a service in the sense that it cannot be stored and must be produced and consumed simultaneously.¹²⁰

The WTO “Services Sectoral Classification List” (document MTN.GNS/W/120) does not include a separate comprehensive entry for energy services. Although the United Nations Provisional Central Product Classification (UNPCPC) does not list energy services as a separate category, its Annex I provides a compendium of energy related products listed under different headings in the CPC, including energy-related services. Rather, what are considered energy services appear in the W/120 with other generic services, such as business services, construction, distribution and transportation. An exception is represented by 11(G)(a) “pipeline transportation of fuels,” which is listed as a separate sub-sector of the broad transport services. Several entries in broad Business services, under sub sector “Other business services” cover energy related services, including: (e) technical testing and analysis services; (h) services incidental to mining; (j) services incidental to energy distribution; (m) related scientific and technical consulting services; (n) maintenance and repair of equipment. Additionally, important energy services cut across existing sectoral classifications. Architectural and engineering services, scientific and technical consulting

¹¹⁹ This is because the energy sector has traditionally been dominated by state-owned vertically integrated utilities which performed all energy-related activities, namely, production, transmission and distribution.

¹²⁰ WTO Background Note by Secretariat on Energy Services, 1998, available at https://www.google.com/search?q=WTO+explanatory+paper+on+Energy+Services+1998&og=WTO+explanatory+paper+on+Energy+Services+1998&gs_l=psy-ab.3...2077.16034.0.16932.45.38.0.0.0.0.488.6800.3-15j4.19.0....0...1.1.64.psy-ab..26.15.5246...0j0i131k1j35i39k1j0i131i67k1j0i20k1j0i67k1j0i22i30k1j33i160k1j33i21k1.BQ4r0F9HktU.

The Background Notes indicates that in spite of the element of uncertainty regarding electricity, it seems generally accepted that the production of primary and secondary energy do not constitute services subject to the GATS, but result in goods, whose trade is subject to the GATT, as the production service is incorporated in the value of the good produced.

services, construction services, wholesale and retail trade services with respect to fuels and energy equipment, transportation services and several business and financial services are, among others, the subsectors and sectors that might be relevant to the energy sector.¹²¹

The WTO¹²² Services Sectoral Classification List explicitly identifies three specific energy-related activities as separate subsectors. Two entries are related to petroleum and gas, while the third specific entry relates to downstream activities for gas and electricity.

1. The first entry is “Transportation of fuel” under the broad category of Transport Services. The CPC describes it as “transportation via pipeline of crude or refined petroleum and petroleum products and of natural gas” (subclass 71310).
2. The second entry is “services incidental to mining”, which falls under the category of “Other Business Services” and relates to upstream activities for oil and gas. The CPC describes it as “services rendered on a fee or contract basis at oil and gas fields, e.g. drilling services, derrick building, repair and dismantling services, oil and gas well casings cementing services” (Division 88). However, mineral prospecting services, oil and gas field exploration and seismic and geological surveying services are excluded from this Division and are classified under “Geological, geophysical and other scientific prospecting services” (subclass 86751), under “Related scientific and technical consulting services” (class 8675).
3. The third specific entry relates to downstream activities for gas and electricity: “Services Incidental to Energy Distribution” (CPC 88700), under “Other Business Services”. It refers to “transmission and distribution services on a fee or contract basis of electricity, gaseous fuels and steam and hot water to household, industrial, commercial and other users”.

¹²¹ According to GATS, transportation and distribution of energy constitute services if they are provided independently. There are also other services that intervene in the energy value added chain (from production to resale to consumers) including construction, engineering, and consulting services. These services are defined as energy related services, rather than energy services.

¹²² The Secretariat Note on Energy Services, issued by the Council for Trade in Services of the World Trade Organization (S/C/W/311, 12 January 2010).

Table 1: Energy services under the GATS W/120 Classification

W/120 Sector	Broad	Sub sector	Energy services
Business services		Professional services	<ul style="list-style-type: none"> • Engineering services (CPC 8672) • Integrated engineering services (CPC 8673)
		Research and development services	<ul style="list-style-type: none"> • Research and experimental development services on natural sciences and engineering and technology for casting, metal, machinery, electricity, communications, vessels, aircraft, civil engineering, construction, information, etc. (CPC 85103)
		Other business services	<ul style="list-style-type: none"> • Management consulting services (CPC 865) • Services related to management consulting (CPC 866) • Technical testing and analysis services (CPC 8676 partial) • Services incidental to mining¹²³ (CPC 883) • Site preparation work for mining (CPC 5115) • Services incidental to energy distribution (CPC 887) • Related scientific and technical consulting services (CPC 8675) • Maintenance and repair of equipment (CPC 633)
Construction & related engineering services		General construction work for civil engineering	<ul style="list-style-type: none"> • Construction work for civil engineering for long-distance pipelines, for local pipelines, for mining (CPC 5134 - 5136)
		Other	<ul style="list-style-type: none"> • Renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator (CPC 518)
Distribution services		Commission agents' services	<ul style="list-style-type: none"> • Commission agents' services – sales of fuels on a fee or contract basis (CPC
		Wholesale trade services	<ul style="list-style-type: none"> • Wholesale trade in services of solid, liquid and gaseous fuels and related products (excluding electricity and town gas) (CPC 62271)
		Retailing services	<ul style="list-style-type: none"> • Retailing services of fuel oil, bottled gas, coal and wood (CPC 63297)
Transport		Pipeline transport	<ul style="list-style-type: none"> • Transportation of fuel (CPC 7131)

Source: Author's own construction from the WTO Services Sectoral Classification List

¹²³ Note: Services incidental to mining cover services such as drilling services, derrick building, repair and dismantling services, oil and gas well casings cementing services, which are rendered on a fee or contract basis at oil and gas fields.

International Trade in Energy Services

Energy services can be traded through Mode 1 (cross-border trade), Mode 3 (commercial presence) and 4 (movement of natural persons). Mode 1 is of relevance particularly for on-line trading and brokering services and some professional services which can be delivered by mail or electronically, such as consulting and legal services. It also covers services related to the cross-border transmission of oil, electricity and gas through pipelines and interconnected grids. Mode 3 is of paramount importance since it covers all different forms of foreign commercial presence pursued through the Public Private Partnership framework such as Build Own, Operate and Transfer (BOOT), Build, Operate and Transfer (BOT) and Build Own, Operate (BOO). Mode 4 (movement of natural persons) is important since it covers skilled professionals who deliver technical and managerial services, while also including semi- skilled technicians working in construction firms involved in civil works and other supporting services.

Characteristic barriers in the energy services sector include:

- Nationality and residency requirements;
- Restrictions on foreign investment;
- Economic Needs Tests (ENTs);
- Existence of exclusive rights and monopolies;
- Inability to provide cross border electronic information and transactions;
- Discriminatory treatment of foreign providers;
- Restrictions on the legal forms of doing business;
- Arbitrary business and licensing requirements; and,
- Requirement for local content on equipment/workers/materials.

Table 2: Examples of modes of supplying energy services

Activity	Corresponding mode of supply
On-line trading and brokering services; Cross-border transmission of electricity and gas through pipelines and interconnected grids.	Mode 1
Skilled professionals who deliver technical and managerial services - Engineers, management consultants, lawyers, researchers, etc. for testing, construction and upgrading of facilities, grids and other relevant infrastructure	Mode 1, 3 & 4
Movement of semi-skilled and unskilled personnel needed by construction firms for site preparation, construction and upgrading of facilities, grids and other relevant infrastructure	Mode 3 & 4
Build, Operate, Transfer (BOT) and Build, Own, Operate and Transfer (BOOT) systems.	Mode 3 & 4
Independent Power Producer (IPP) system	Mode 3 & 4

The Energy Sector in Kenya

Under Vision 2030, Kenya's Economic Blueprint, Kenya aims to become a "newly industrialized, middle-income" country. Vision 2030 recognizes the energy sector as a key

infrastructural enabler to reach this goal. This is in line with the Sustainable Development Goal for energy which recognizes that sustainable, competitive, affordable and reliable energy for all citizens is a key component of social and economic growth.

Kenya has witnessed tremendous economic growth over the previous decade from the year 2007 to 2017. Average annual GDP growth rates have stood at about 5%, with the main economic drivers being agriculture, wholesale and retail trade, and transport and communication which contributed 17.6%, 15.2% and 10.8% respectively in 2013 (Economic Survey, 2013). During this period Kenya implemented bold economic and structural reforms as elaborated by the national economic plan known as the Economic Recovery Strategy (ERS) covering the 2003-2007 period. Kenya National Bureau of Statistics indicates that the Kenyan economy grew by 4.6%, 5.7%, 5.3% and 5.6% in 2012, 2013, 2014 and 2015.¹²⁴ Kenya's economy is projected to grow at 13% by the end of 2017, a rate higher than the Sub-Saharan Africa (SSA) average. The sectors driving this growth in Kenya include agriculture, mining and quarrying, construction, accommodation and restaurants, finance and insurance, wholesale and retail trade, and transport and storage. These sectors are high consumers of energy.

According to the Energy Regulatory Commission (ERC) and Kenya Economic Report 2016, Kenya consumes a mix of renewable energy (hydro, wind, solar, geothermal and cogeneration) and non-renewable energy (coal and petroleum products). Biomass fuel accounts for 69%, petroleum accounts for 22%, while electricity accounts for 9%. This has been a cause for concern for the government, and as such, the government is currently actively trying to change this equation through attracting private investors, and promoting renewable energy.¹²⁵

¹²⁴ It is notable that a slowdown in economic growth that was experienced in 2014 was reversed in 2015, which recorded a growth rate of 5.6 per cent compared to 5.3 per cent in 2014

¹²⁵ See Economic Outlook 2016, The story behind the numbers, Deloitte Touche Tohmatsu Limited, July 2016. The analysis states that “.....*For a country that is looking to make leaps in development, this backward and rural energy composition is a cause of concern for the government.*”

The Kenya Economic Report 2016 indicates that the expenditure on energy and petroleum in Kenya has been increasing, while the absorption capacity has been declining. The rural electrification initiative¹²⁶ has boosted electricity accessibility in the rural and remote counties in Kenya. This has been complimented by investment in renewable energy by the government and private sector players. However, it is notable that the prices of electricity have remained high when compared to other countries such as Ghana, Rwanda and South Africa¹²⁷ reducing Kenya's competitiveness as an investment destination, in comparison to Ethiopia and Rwanda. This is not withstanding the fact that currently Kenya has excess supply of electricity, but this is likely to be outstripped by 65% potential demand from agriculture and manufacturing sectors.¹²⁸ Kenya depends heavily on petroleum products, but there are attempts to substitute petroleum fuels with biofuels.¹²⁹

Renewable energy is a fast-developing sector in Kenya. Private technology company such as Powerhive entered the market in 2015. It has partnered with utilities and independent power producers to provide access to productive, affordable, and reliable microgrid electricity for millions of rural homes and businesses around the globe. This partnership has set them on an ambitious journey to set up solar sites in some counties that are off the grid. For example, they supplied over 100 homes in Kisii supplied with clean energy.

Source: HIVOS

¹²⁶ Under the Rural Electrification Authority.

¹²⁷ See Economic Outlook 2016. Also see Situational Analysis of Energy Industry, Policy and Strategy for Kenya, 20115, Institute of Economic Affairs, which is of the view that the high cost of energy is one of the biggest bottlenecks to economic activity in the country. Kenya continues to lose out on foreign direct investments partly because of this problem, with considerable penalties on socio-economic development. In 2005, studies by KIPPRA indicated that the cost of electricity in Kenya is four times that of South Africa, the country's main competitor in the region, and more than three times that of China.

¹²⁸ The Kenya Economic Report 2016 states that there is need for the government to enhance the implementation of the 5,000+ MW power plan to meet this potential demand.

¹²⁹ This requires a delicate balance between production of food and that of fuel.

Key Sources of Energy in Kenya

Biomass

Biomass, in the form of wood fuel and charcoal, is used extensively in rural areas, mostly by poor households for cooking and heating. It is estimated that 80% of the population relies on biomass, which converts to approximately 3.5 million tonnes of wood fuel per year. The supply is at 1.5 million tonnes per year. However, it is important to state that accurate figures are near-impossible to obtain since biomass exists mainly in the informal sector. This has led to excessive deforestation and destruction of animal habitat, which has thus also adversely affected Kenya's tourism and agriculture sectors. Kenya's overreliance on biomass as a source of energy is perpetuated by poor rural electrification, which the government Last Mile Connectivity Program is focused on improving.¹³⁰ The Federation of Universities of Applied Sciences states that Kenya has increased its effective grid from 1700 MW in 2015 to 2200 MW in 2016. The government of Kenya planned to increase electricity capacity to 5,000 MW by the end of 2016, while increasing connectivity to the national grid from 28% (an 8% increase from 2015) to 65% by 2022.¹³¹ It is notable that United Nation Sustainable Development Goal (SDG) 7 is "Access to affordable, reliable, sustainable and modern energy for all." The UN-backed Sustainable Energy For All initiative insists that without access to affordable, reliable sustainable and modern energy for all, it will be impossible to deliver on other SDGs by 2030.¹³²

Access to "affordable, reliable sustainable and modern energy for all" is the 7th Sustainable Development Goal adopted in September 2015. This goal indirectly participates in other goals, VIZ: Goal 1: End poverty in all its forms everywhere; Goal 8: Promote inclusive and sustainable economic growth, employment and decent work for all.

Source: UNSDG

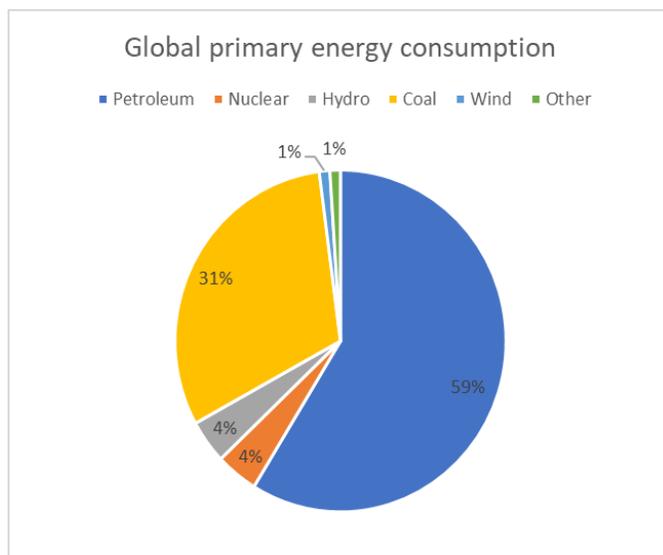
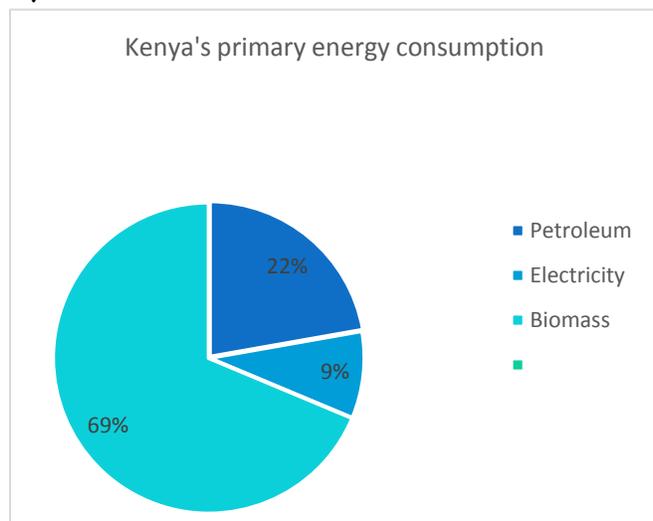
¹³⁰ See Kenya Last Mile Connectivity Project at <https://www.afdb.org/en/projects-and-operations/project-portfolio/p-ke-fa0-010/>. The Last Mile Connectivity Project aims to support the Government's initiatives of ensuring increased electricity access to Kenyans. The existing distribution transformers shall be exploited to the maximum through extension of low voltage network to reach households lying within transformers protections distance. In addition, a new distribution system will be installed to increase new customer connections.

¹³¹ See Economic Outlook 2016, The story behind the numbers, Deloitte Touche Tohmatsu Limited, July 2016, and Powerfull Partnership Presentation available at https://www.slideshare.net/linksoft-ea/power-full-partnership-ppt?next_slideshow=1.

¹³² The 17 Sustainable Development Goals 2015 -2030 which replaced the previously titled Millennium Development Goals are available at <http://una-gp.org/the-sustainable-development-goals-2015-2030/>

Petroleum and Coal

Petroleum is the most important form of modern primary energy, not only for Kenya, but globally. According to the 2016 Kenya National Energy Policy, as at 2014, petroleum accounted for about 22% of the total primary energy consumed in Kenya. Coal provided about 1% of the primary energy consumed, mainly by cement manufacturers. Currently, Kenya imports 100% of its petroleum needs. At the economic growth rate of 10% desired in order to achieve Vision 2030, it is projected consumption will reach to 12 million MT by 2030.¹³³



In 2015, petroleum accounted for 30% of Kenya’s annual imports at approximately Kshs 350 Billion, with approximately Kshs 70 Billion paid in taxes from petroleum products annually.¹³⁴

Electricity

Electricity in Kenya is generated from geothermal (47% of consumption), hydropower (39%), thermal (13%) and wind (0.4%). Kenya’s current installed electricity capacity is estimated at 2.4GW, 1.5GW of which is grid-connected and 500MW of which has come online since mid-2014.¹³⁵ Hydro has been the main source of production in terms of installed capacities. However, due to unpredictable weather patterns, the government has

¹³³ See National Oil projections of 26th October 2015 when the consumption was 4.5 million MT.

¹³⁴ See Sumaya Hassan, CEO of National Oil, An Overview of Oil and Gas Industry in Kenya, Mindspeak Forum, October 2015, available at <http://www.rich.co.ke/rcfrbs/docs/Sumayya%20Presentation%20on%20the%20Petroleum%20Sector%20and%20Opportunities.pdf>.

¹³⁵ Since hydropower accounts for a large percentage of this capacity and is reliant on unpredictable weather conditions, the frequency of power outages is high at 33% (compared to an average of 1% for Mexico, China and South Africa). The cost of energy in Kenya is also high at US\$0.150 per kWh, almost four times the cost of energy in South Africa (US\$0.040).

given greater focus to wind, thermal and geothermal generation in its 2016 National Energy Policy. Indeed, the Kenyan government planned to raise total installed capacity to 6,762MW by 2017 of which 55% would consist of thermal, and 32% of geothermal.

Large and medium companies are the largest consumers, consuming about twice as much power as domestic consumers. Despite increasing installed capacity, the demand for power in Kenya has been rising at a faster pace than supply, while the consumption of electricity per consumer is decreasing. This may be attributable to inadequate expansion of the network that connects individuals with low demand for electricity, or unmatched demand due to slow increase in generation compared to rise in consumers.

Market Structure and Liberalization of the Energy Sector in Kenya

Key sector players and institutional structure



Source: Energy Regulatory Commission

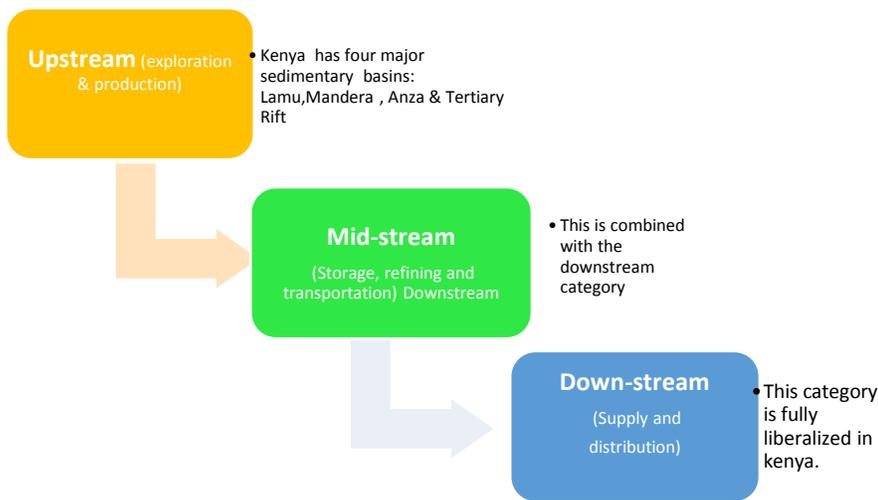
Petroleum and Coal Sector

The petroleum industry is broadly divided into three segments namely: Upstream segment (exploration and production), mid-stream segment (storage, refining and transportation) and downstream segment (supply and distribution).

The upstream segment primarily involves the processes of exploration, development and

production of crude oil and natural gas. The midstream segment involves processes around storage, refining and transportation of the crude oil into consumable oil and gas products. There is only one refinery in Kenya today which is the Kenya Petroleum Refineries Limited located in Mombasa, but it is currently shut down. The downstream segment involves the process by which refined products are made available to the consumers through supply and distribution e.g. at industries and petrol stations. There is a fairly well-developed network of transport pipelines, storage and retail outlets in Kenya today with a multiplicity of players. Kenya imports 100% of its petroleum needs

Snapshot of the Petroleum and Coal Sector



Source: Author's own construction from the Kenya National Energy Policy 2015

Upstream Segment

The upstream industry is arguably the most complex of all the oil and gas business sectors. As illustrated in figure xx below, it is highly capital-intensive, highly risky, and highly regulated. Upstream investments are high-risk, given that results of every well drilled are unpredictable. Additional risk arises from safety and environmental issues.

Characteristics of Upstream Segment



Economically exploitable oil deposits were discovered in Turkana County in 2012, followed by the discovery of gas in Wajir County in May 2014. There have also been discoveries of commercial quantities of petroleum in neighboring Uganda. In Kenya, the national government spearheads the acquisition of primary technical data in the exploration blocks so as to attract oil and gas exploration companies. By January 2015, a total of 70 exploratory wells had been drilled.¹³⁶

By 2015, Kenya had licensed 41 blocks to oil exploration and production companies (OIEPs). Between 2012 and 2015, 38 wells have been drilled. Africa Oil and its partner Tullow Oil, who have drilled 34 wells (out of the 70) have in the past indicated that they may be able to start

Lokichar Basin in Kenya has been confirmed as a major oil province.....This presents a promising outlook for oil and gas exploration and production.

Source: NOCK, 2015

small-scale production of crude oil, transported by road and rail to the Kenyan port of Mombasa. Private oil exploration and production companies continue to show increased interest in Kenya's and Uganda's petroleum upstream activities, despite the drop in global oil prices. However, low oil prices and Uganda's recent decision to withdraw support from Kenya, and partner with Tanzania instead, in the construction of a port and transport corridor known as LAPSET (the Lamu Port and South Sudan Ethiopia Transport) may impede Kenya's establishment as a major oil exporter.

Table 3: Oil exploration and production companies licensed in Kenya

1. Tullow Oil Corporation	13. A-Z Petroleum
2. Anadarko	14. CAMAC Energy
3. BG Group	15. Rift Energy
4. Ophir/Dominion	16. Imara Energy Corp
5. Vanoil Resources	17. CEPESA
6. Africa Oil Corporation	18. Milio International
7. Zarara	19. Adamantine Energy Ltd
8. FAR/Flow Energy	20. Lamu Oil Exploration
9. Lion Petroleum	21. Total Exploration & Production Kenya B.V.
10. NOCK	22. ENI Spa
11. Simba	
12. Afren	

Source: National Energy Policy 2016

¹³⁶Kenya National Energy Policy 2015

In summary therefore, the upstream segment is all about wells: where to locate them; how deep and how far to drill them; and how to design, construct, operate and manage them to deliver the greatest possible return on investment with the lightest, safest and smallest operational footprint.

- Exploration services involve use of seismic methods to evaluate where and how to prove a drilling prospect, high-speed computers and advanced, 3D, visual interpretation theaters.
- Drilling services include well design, drilling rig operation and process, and related technologies. Other services include formation evaluation, logging, and measurement while drilling (MWD).
- Well completion involves bringing the production on line with advanced downhole equipment applications, downhole monitoring and automated well control equipment.
- Production services involve application of various physical and chemical processes to increase the amount of oil or gas that can be extracted from a field, and removing contaminants to get ready for sale.
- Offshore construction contractors provide design and construction of platforms, drilling rigs and sub-surface well completion equipment.

Source: EKT Interactive

Drivers of Petroleum Exploration Activities in Kenya

1. Discovery of oil in Turkana County in 2012, and the discovery of gas in Wajir County in May 2014.
2. Creation of basin by basin data packages by the Government.
3. Existence of an attractive legal, regulatory framework, fiscal and acceptable risk-reward balance.
4. Intensive promotion activities by the Government.
5. Discoveries of commercial quantities of petroleum in neighboring Uganda.
6. Major discoveries of natural gas offshore Mozambique and Tanzania which have similar geological setup as offshore Kenya.
7. Increased world demand for natural gas.

Following the discovery of oil, Kenya is looking at developing facilities and infrastructure to support the oil industry. This presents numerous trade in services opportunities for Kenyan services suppliers, and in other economic activities including manufacturing.

According to Tullow Oil,¹³⁷ Phase 1 of the Lokichar development is expected to cost approximately USD 5Billion. This cost does not include the cost of constructing a crude pipeline. Works and manpower requirements for this project are as follows: -

- Between 4000 to 6000 personnel required (excluding export pipeline & marine terminal workforce)
- 1 x CPF with production capacity of 75,000 to 100,000 bopd
- 300 to 500 wells to be sunk (including injection wells)
- Construction of between 35 to 50 well pads, depending on the number of wells per pad.
- Construction of approximately 170 km of infield flow lines.

¹³⁷ See <https://www.tullowoil.com/Media/docs/default-source/operations/tullow-kenya-profile.pdf?sfvrsn=2>.

- Approximately 900 km of export pipeline, with a specialized heating system to keep the crude oil flowing to be built. This will be the longest heated pipeline in the world.
- Construction of a marine export terminal
- Approximately 85 km of infield roads to be built
- Potential upgrade of 200 km of national roads
- Approximately 500, 000 tonnes of waste materials will be produced. This presents massive opportunities for waste management firms and the transport sector
- Transportation of approximately 2 million tonnes of materials.¹³⁸

In engaging of upstream activities, Kenyan laws requires exploration firms to work with Kenyan enterprises as part of local content entrenchment. The ERC is of the view that the entry of private oil exploration and production companies into Kenya has positively impacted Kenya's upstream activities with Kenya acquiring high quality data due to deployment of modern data. Further, Kenyan companies have been exposed to modern technology, while the country has acquired technologies such as 3D Seismic and Full Tensor Gradiometry (FTG).

Trade in Services Opportunities Presented by the Upstream Segment

Oil exploration and production of petroleum and the related construction of infrastructure and deployment of advanced technology presents massive trade in services opportunities for Kenya across various service sectors including:

- Finance, especially banking and insurance sub sectors;
- Logistics;
- Professional services - engineering and related services, legal, geologists, environmentalists, consultants in specialized fields;
- Construction, welding and fabrication;
- Supply of heavy machinery and lifting equipment;
- Service and maintenance yards;
- Accommodation, restaurants, entertainment and camp services;
- Health services;
- Education and training services, etc.

For instance, the oilfield services sector of the upstream segment consists of companies that build the infrastructure and provide the specialized equipment, services and skills needed for exploring, drilling, testing, producing, maintaining and reclaiming crude oil and natural gas wells. Generally, oilfield services is a multi-billion dollar global industry. Numerous companies in this sector are among the world's largest. Others are smaller, regional, or independent businesses that have also developed cutting-edge technologies.¹³⁹

¹³⁸ Which is the equivalent to approximately four Burj Khalifa Towers or 24 Golden Gate Bridges or 200 Eiffel Towers.

¹³⁹ See EKT Interactive Lessons.

Services in the upstream oil and gas industry in Kenya can be classified according to the following criteria: Specialist Services; Direct Services; and, Indirect Services Specialist.

- a) **Services Specialist:** These services usually require heavy investment, adherence to strict standards to safeguard safety in operations and high technical expertise in the technology and labor skills used. The labor used in the provision of specialist services are required to have long global experience working in the oil and gas industry. To keep up with technological requirements large spending in research and development is also a characteristic. These services are not widely available in Kenya are therefore provided by international service companies. These services include, for example, drilling services, well services, rig hire, seismic acquisition, etc.
- b) **Direct services** These are services that directly complement the specialist services allowing the specialists to focus on their primary technical activities. These services require less technical specialization than the specialist services but also require strict compliance to safety and operational standards. Provision of these services also requires significant capital investment. Some of these services are available in Kenya and are provided by international and local companies. Examples of these type of services include: field and camp construction, infield transport and logistics, civil works as well as mechanical and electrical services, environmental services (EIAs), site preparation, and provision of construction materials, among others.
- c) **Indirect services:** These services are peripheral services to both specialist and direct services. They are much less specialized in terms of the level of technical expertise and labor skills required compared to the above two types. Also, the level of capital investments needed is substantially lower. These services are widely available and well serviced in Kenya, and are mainly offered by local and regional companies.

Thus, opportunities exist for:

1. Skilled professionals who deliver technical, advisory and managerial services for testing, construction and upgrading of facilities, grids and other relevant infrastructure (e.g. Engineers, geotechnical engineers, geologists, management consultants, lawyers, researchers, etc.).
2. Contractors in civil works, who employ semi-skilled and unskilled personnel needed for site preparation and construction, etc.
3. SME firms that provide support services to major civil contractors involved in exploration and construction projects.
4. Project finance, legal and insurance services.

Kenya Electricity Generation Company (Kengen) announced diversification efforts from its core business of electricity generation, to offering consultancy services for players in geothermal, mining as well as oil in Kenya and the region. In announcing these plans, the company stated that “*We will be bidding to do more jobs be it in oil, geothermal or other areas that are in line with our expertise. We have three powerful rigs that can drill up to four kilometres below the ground and a team of skilled personnel that is unmatched in the region.*”¹⁴⁰

Challenges of the Upstream Segment

- Exploration and production companies experience an acute shortage of locals with expertise and knowledge in the oil and gas sectors. This continues to be a major barrier to investment.
- Insecurity issues posed by terrorism along the Kenya Somalia border adds a complicated dimension to challenges of attracting and retaining investment in the energy sector.
- Further security challenges are posed by local communities agitating for fair representation in the development process of the oil fields.
- Territorial boundaries’ disputes between Kenya and Somalia also compromise licensing of new blocks off the Kenyan Coast thus derailing the pace of offshore oil prospecting.

Midstream Segment

As its name implies, the midstream segment encompasses facilities and processes that sit between the upstream and downstream segments. Activities in this can include processing, fractionation, distribution, storage, marketing and transportation of crude oil and natural gas. In most cases, oil and gas reserves are not located in the same geographic location as refining assets and consumption regions. Transportation is therefore a big part of midstream activities, and include using pipelines, trucking fleets, tanker ships, and rail cars.

The midstream segment is separated from upstream and downstream activities because it is considered a low risk, regulated type of business. It does not fit the risk profile or asset complexity of the other segments of the oil and gas industry. As shown in the midstream characteristics chart, success in this segment depends on many external forces including:

- Upstream operations continuous delivery of reserves;
- Refinery margins that encourage refined product production;

¹⁴⁰ See KenGen to set up subsidiary to focus on additional revenue opportunities, available at <http://www.thinkgeoenergy.com/kengen-to-set-up-subsidiary-to-focus-on-additional-revenue-opportunities/>. Also see KenGen to set up subsidiary to grow revenue from non-core business, available at <https://www.standardmedia.co.ke/business/article/2000221191/kengen-to-set-up-subsidiary-to-grow-revenue-from-non-core-business>.

- Health of the downstream, natural gas, and petrochemical industry markets;
- Natural gas price levels; and,
- Political sentiment for pipeline expansion and “not in my backyard” hurdles.

Characteristics of Midstream Activities

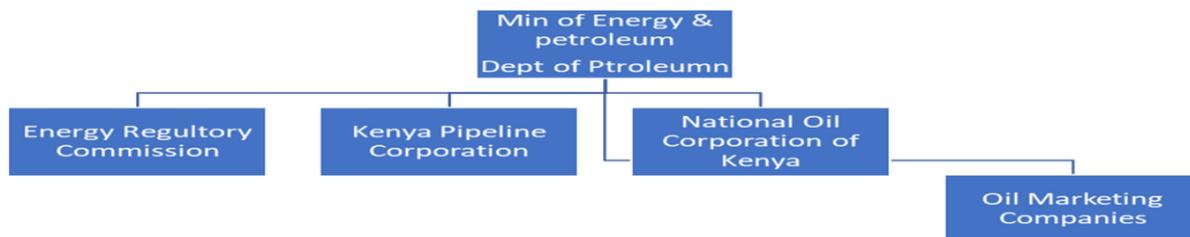


ERC provides the licensing and other regulatory aspects in this segment. KPC has bulk storage and transportation of the products, while NOCK provides stability in the supply and pricing through participation across the value chain.

Downstream Segment

Processing, transporting and selling refined products made from crude oil is the business of the downstream segment of the oil and gas industry. Key downstream business sectors include:

- Oil refining;
- Supply and trading; and,
- Product marketing and retail.



As at 2015, there were over 60 registered oil marketing companies (OMCs) in Kenya. The top ten OMCs including National Oil control approximately 77% of the market. Mombasa refinery is currently shut.

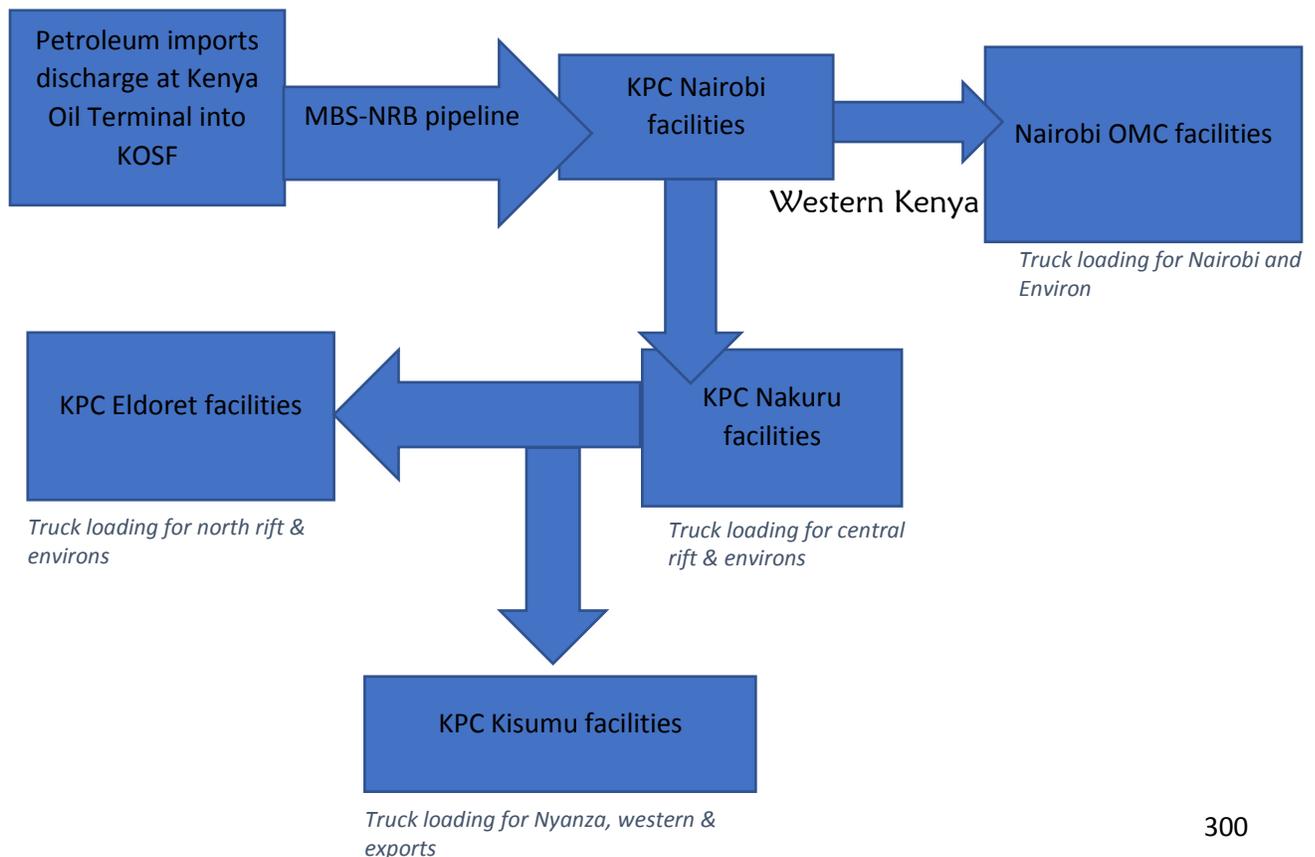
Currently, the only facilities in the country are a 70,000-barrels-per-day refinery in Mombasa and a pipeline transporting oil from Mombasa to the south-western part of the country via Nairobi. The government is finalizing its acquisition of a 50% stake in the refinery (previously held by India’s Essar Energy), giving the

government 100% control, and is now looking at whether it should upgrade it to prepare for the production of crude oil next year, or convert it into an oil storage facility. The refinery has not been operational since 2013, after plans for a US\$1.2bn upgrade were abandoned on the advice of consultants, who said it was not viable.

Usually, OMCs submit monthly requirements of imports per product which are then consolidated by the Supply Coordinator. There is a tender called by the Ministry of Energy every third or fourth week of the month, after which the winning bidder is mandated to supply product requirement for the month of the tender. The winner imports the products, and the winning bidder is mandated to supply product requirement for the month of the tender.



Distribution value chain



However, the Kenya Energy Policy 2015 indicates that downstream segment is faced by various challenges including:

- Inadequate and aged petroleum infrastructure – providing maximum 10 days of operational stocks cover;
- Lack of strategic petroleum stocks;
- Petroleum infrastructure is concentrated only on the southern part of the country leading to massive trucking of products;
- Inadequate retail petrol station outlets- Kenya has only 1,600 stations to serve a population of 44 million Kenyans. This is approximately equivalent to, South Africa’s Gauteng province alone with an area of 18,178KM2 and population of 10 million.
- Low per capita consumption of LPG due to LP infrastructure challenges in Kenya. Only 9% of Kenyans use LPG gas accounting for 78 MT actual consumption. This is low in comparison to the latent/unrealized demand of 200MT.

Trade in Services Opportunities Presented by Downstream Activities

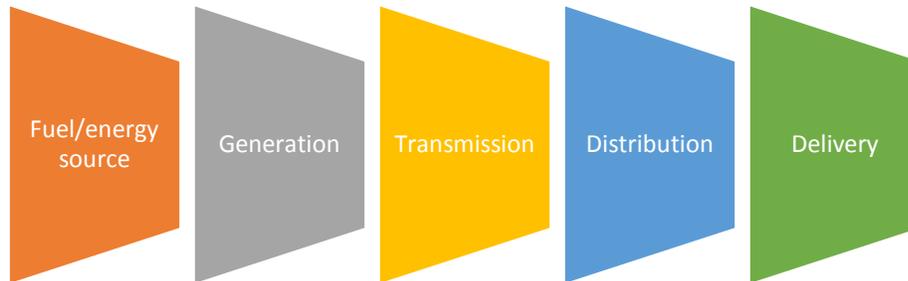
The above challenges notwithstanding, the downstream petroleum sub sector presents tremendous entrepreneurship opportunities for investors, especially the youth and women, from other sectors including ICT innovations, transport, retail, and manufacturing, as follows: -

- Repair and maintenance services for boda bodas and tuk tuks;
- Investments in micro grids e.g. solar panels on canopies;
- Development of clean biomass cooking stoves, solar products and related technology;
- Development of applications related to prepaid fuels cards;
- Stations dealerships and alternative smaller fueling and LPG filling stations especially in the rural counties (local franchising);

To increase LPG penetration by 3 million households will provide business opportunities for between 2,500 to 4,000 youth groups across the country.

- Developing technological applications to curb illegal refilling of gas cylinders.

Electricity Sector



Electricity in Kenya is generated from geothermal (47% of consumption), hydropower (39%), thermal (13%) and wind (0.4%). Kenya's current installed electricity capacity is estimated at 2.4GW, 1.5GW of which is grid-connected and 500MW of which has come online since mid-2014.¹⁴¹ Hydro has been the main source of production in terms of installed capacities. However, due to unpredictable weather patterns, the government has given greater focus to wind, thermal and geothermal generation in its 2016 National Energy Policy. Indeed, the Kenyan government planned to raise total installed capacity to 6,762MW by 2017 of which 55% would consist of thermal and 32% of geothermal. Electricity production in 2015 was 869 ktoe with 36.4 per cent of it generated from fossil fuels, 26.6 per cent from hydro and 32.4 per cent from geothermal sources.

In 2012/2013, electricity consumption reached 6,581GWh, increasing by 73% from 2007/8.¹⁴² By 2015, electricity consumption reached 8532 MW.¹⁴³ Large and medium companies are the largest consumers, consuming about twice as much power as domestic consumers. Despite increasing installed capacity, the demand for power in Kenya has been rising at a faster pace than supply, while the consumption of electricity per consumer is decreasing. This may be attributable to inadequate expansion of the network that connects individuals with low demand for electricity, or unmatched demand due to slow increase in generation compared to rise in consumers.

¹⁴¹ Since hydropower accounts for a large percentage of this capacity and is reliant on unpredictable weather conditions, the frequency of power outages is high at 33% (compared to an average of 1% for Mexico, China and South Africa). The cost of energy in Kenya is also high at US\$0.150 per kWh, almost four times the cost of energy in South Africa (US\$0.040).

¹⁴² See Situational Analysis of Energy Industry, Policy and Strategy for Kenya, 2015, Institute of Economic Affairs.

¹⁴³

Whilst electricity generation in Kenya is still almost entirely operated by state-owned companies or companies in which the government is the principal shareholder, the participation of independent power producers (IPPs) is growing. There are approximately ten IPPs in operation, and they account for about 28% of the country's installed capacity.¹⁴⁴ One of the key components of the Kenyan government's energy strategy is a strong emphasis on the participation of private investors in the development of the electricity sector, so the current trend is likely to continue, at least in the medium term. However, there are concerns about the low efficiency of power production by IPPs.

Independent Power Producers (IPPs) are private investors in the power sector involved in generation either on a large scale or in renewable energy projects under the Feed-in-Tariff Policy. IPPs currently contribute about 28% to the country's installed capacity.

Table 4: Independent Power Producers (IPPs) in Kenya

Company	Capacity in MWs
Iberafrica 108	108
Tsavo	74
Mumias (cogeneration)	26
OrPower 4 Geothermal	110
Rabai Diesel	90
Thika Diesel	87
Gulf Diesel	80
Imenti FiT Hydro	0.3
Gikira FiT Hydro	0.5
Aggreko (Emergency plant)	30
Total	606

Source: Energy Regulatory Commission

The cost of the current plan of electrification is estimated at US\$1.3billion over the next three to five years, highlighting the need for private investors in the sector. However, the number of IPPs interested in investing is low and those that indicate interest demand high generation tariffs, government guarantees and letters of credit covering several months of payment for both capital and energy charges.

Kenya also imports electricity from Uganda (accounting for 95% of power imports) and Ethiopia, but has cut its power imports by more than half following the injection of geothermal power to the national grid. Data from the ERC indicates that Kenya imported 27.97 million kWh in the first half of 2015, following the injection of 280MW of

¹⁴⁴ Up from 11% in 2008.

geothermal power to the national grid, down from 57.91 million kWh in the same period in 2014.

Electricity in Kenya is generated from hydro, thermal, geothermal and wind. Installed capacities amounted 1,766.4MW in 2013 for a total generation of 8,045GWh. Although hydro remains the main source of production in terms of installed capacities, the fact that it is quite unreliable pushed the government to favour wind, thermal and geothermal generation in its current plans for the sector. Indeed, the Kenyan government have planned to raise total installed capacity to 6,762MW by 2017 of which 55% would consist of thermal and 32% of geothermal. Geothermal generation appears to be very attractive as it presents the highest efficiency rate and does not rely on any combustible energy sources that need to be imported. Moreover, it is a renewable source of energy, which has no sizable adverse effects on the environment.

Drivers of Investment in the Electricity Sub Sector

1. Limited access to electricity in remote areas, especially the sparsely populated northern region where less than 6% of households are connected to the national electricity grid.
2. Power outages are still common due to inadequate transmission and distribution technologies.
3. Most of Kenya's primary energy consumption (68%) is derived from biomass, with more than 90% of rural households using this form of energy, mainly for cooking

Renewable Energy

Kenya's energy mix is changing significantly due to the government's deliberate efforts to reduce over-reliance on climate-vulnerable hydropower and the expensive and dirty diesel generators through diversification of energy sources.

Globally, the advances in the market of renewable or green energy (wind or solar power, biofuels), the fastest growing subsector in the global energy mix, show good prospects for the expansion of the supply and demand of alternative energy, being also encouraged by the increasing concerns about environment protection, energy security and independence.

Geothermal, wind, gas turbines and coal are projected at featuring prominently in Kenya's generation mix by 2019.¹⁴⁵ Currently, the renewable energy power generation is only 5% of its total potential. Significant potential exists for power generation from wind, solar, geothermal and hydro resources. For example, the updated Least Cost Power Development Plan for Kenya and the Development of Power Generation and Transmission

¹⁴⁵ See National Energy Policy 2015.

Master Plan, Long Term Plan 2015-2035¹⁴⁶ indicate that the wind¹⁴⁷ and solar power will be the alternative to geothermal power in Kenya.¹⁴⁸

Wheeling of the additional electricity will require substantial investment in grid rehabilitation and expansion. The existing transmission system capacity is severely constrained especially during peak hours. The LCPDP recommends the development of approximately 10,345km of transmission lines over the 20 years period 2011-2031 to address these constraints, which are expected to be exacerbated by additional generation and growing demand. The grid expansion, whose construction costs are estimated at US\$ 91,000/km of 132kV line, US\$ 320,000/km of both 220kV and 400kV lines, is projected to require €3.3 billion over a 20-year period.

Geothermal power features prominently in the optimal development program (proposed in LCPDP) and it is expected to surpass the current hydropower dominance in the generation mix by 2030. The plan leans strongly on the development of geothermal energy as the favored generation source to meet projected demand and its capacity is expected to expand from the current 290 MW to 5,530 MW by year 2030 (equivalent to 26% of the system peak demand). The second renewable source mentioned in the plan is wind power, which is expected to form 9% of the total generation capacity with hydro lagging behind at 5%.

Nuclear power is also included in the future plans for power generation in Kenya. This is the idea behind the formation of the Kenya Nuclear Electricity Board (KNEB). According to the country's plans, nuclear energy will contribute 19% of total power in 2030, making it the second largest power source after geothermal. The first 1000 MWe nuclear unit is expected online around 2022, with additional units in 2026, 2029 and 2031, to yield a combined capacity of 4000 MWe.¹⁴⁹

Key Changes in the Energy Situation in Kenya that are Impacting the Energy Sector

The first solar power system with a power purchase agreement (PPA) to supply electricity to the grid under the current feed-in-tariff was realised in 2015 in the shape of a 600kW project at Strathmore Business School in Nairobi.

¹⁴⁶ Available at <https://drive.google.com/file/d/0BzIXeOCfPBCEb1VHcVFBX2k4R2c/vie>.

¹⁴⁷ For example, wind power capacity could reach almost 2500MW by 2035, more than the currently installed total capacity in the Kenyan system and more than 50% of the total technical wind potential.

¹⁴⁸ This would satisfy the demand for more energy in Kenya. For example, projected energy demand was expected to increase from 7,296 GWh in 2010 to 22,695 GWh in 2019 and 91,946 GWh in 2030. These projections are based on an array of planned infrastructural, mining and manufacturing projects including the standard gauge railway line, the establishment of a steel smelting plant in Meru, Konza Techno city and several other major energy intensive undertakings.

¹⁴⁹ This seems a daunting task given the high investment costs. It is unlikely that nuclear power will be integrated in the energy mix in the middle or even long run

While Kenya's decision to unbundle its power delivery process and separate generation, transmission and distribution responsibilities will allow diversification in the energy sector, it has made the negotiation of PPAs by IPPs more difficult, not only due to push-back from the off-taker, but also because the requisite transmission and distribution infrastructure needs to be put in place simultaneously to avoid a situation where a generation facility becomes a stranded asset.¹⁵⁰

Challenges of Investing in Renewable Energy in Kenya¹⁵¹

The investment in renewable energy technology in Kenya has been on the rise, but investors are of the view that pace of investment would have been higher were the conditions favorable to potential investors. Some of the key challenges to investment in this sub sector include:

1. Inadequate feed-in-tariffs. The Renewable Energy Feed in Tariff policy was implemented in 2009 after a four years' process, and is targeted at promoting the uptake of renewable energy sources in the economy. At the same time the energy market opened up to private investors. While this policy has increased investor confidence, it is a general view that the rates are still not at a cost-reflecting level yet. For instance, developers of two of the three large wind projects in the country contend that the wind energy tariff would be viable only on sites with constant high wind speeds and the solar tariffs are too low to attract financing.
2. The REFIT policy only allows for RE plants connected to the main grid, except for solar mini grids. The latter are included in the policy because of their suitability for remote arid/semi-arid areas. The cost of connection to the main grid, an expensive undertaking, is borne by the developer with a view to recovering the same in the negotiated tariff, thereby increasing the negotiation process even further. Grid inadequacies have been cited as key barriers to deployment of grid-tied RE sources in Kenya.
3. A large portion of the national grid is old and dilapidated, requiring a major overhaul and rehabilitation to take up additional capacity. Therefore, lack of grid capacity to absorb additional production capacity, hampers investment as most of the RE's are site specific.
4. The process of negotiating PPAs with KPLC is very lengthy and often requires specially qualified lawyers of which there are only a few in Kenya. KPLC's capacity to drive these negotiations is also lacking and in some cases, developers have had to bear the cost of hiring qualified international lawyers to represent KPLC in the negotiation hence negating the principle of impartiality.

¹⁵⁰ Interview with the Tsavo Energy.

¹⁵¹ These challenges have been taken from The Dutch Energy Research Paper for Investors, 2016.

5. Financing of RE projects in the country is also viewed by many as a major hurdle. Finding long term financing at favorable interest rates is difficult. Local financing institutions lack knowledge in the sector and as such view RE as a high-risk sector as compared to their traditional customer base e.g. construction. Only two local banks have proven interest in the sector and even this is biased against smaller projects.
6. Lack of expertise and technical capacity in the sector compounds difficulties in investing in RE in the country. There is a void in the education component of renewable energy. There is lack of expertise in conducting bankable feasibility studies thus increasing risk for investors and make debt financing less likely. The sector lacks adequate technical support in as far as oversight and management is concerned, and many community projects have derailed during operation due to a lack of skilled personnel.
7. A number of stakeholders interviewed in the course of this study view the complexities surrounding land tenure as a major obstacle. Accessibility to land for development of renewable energy is compounded by, among other reasons, the over-fragmentation of land parcels in some areas which makes it difficult to negotiate with the many land owners especially for way leaves for evacuation lines. Underhand dealings coupled with community dependence on land for their livelihood for which they do not have legal tenure results in conflicts with communities, a situation that has been known to kill projects.
8. Lack of standardization in the sector is a gap requiring immediate attention in order to limit flow of non-standard renewable energy technologies in the market that not only inhibit market penetration of quality products, but also erodes consumer confidence in renewable energy. There is need to develop standards for solar, even though the testing and certification would require a well-equipped laboratory which are lacking in the country.

Key developments in National Government Strategy and Approach in Renewable Energy

The Second Medium Plan 2013–2017 of Kenya Vision 2030 has identified energy as one of the infrastructure enablers for Kenya’s transformation into “*a newly-industrializing, middle-income country providing a high quality of life to all its citizens in a clean and secure environment*”. Access to competitively-priced, reliable, quality, safe and sustainable energy is essential for achievement of this economic vision. Some of the strategies in place to achieve this include:-

1. The establishment of a 20-year feed-in-tariff for renewable resources established, in addition to zero rating of export duty and removal of VAT on renewable equipment is aimed at by the government is aimed at facilitating growth of renewable energy at a utility scale, commercial and industrial (C&I) scale, and as an off-grid solution. It is worth mentioning that although hydropower accounts for a

substantial proportion of energy production in Kenya, its unreliability due to climate change and unreliable weather patterns has pushed the government to favour wind, thermal and geothermal generation in its current plans for the energy sector. Indeed, the Kenyan government has planned to raise total installed capacity to 6,762MW by 2017, most of which will be produced by geothermal and thermal. By 2031, geothermal energy is intended to be the main contributor to the grid, followed by nuclear.¹⁵² The Least-Cost Power Development Plan 2013–33 has set an ambitious target to raise installed electricity capacity to 22.7GW by 2033.

2. The government has also formulated strategies whose objectives are to rapidly expand installed electricity capacity, expand and upgrade the transmission and distribution networks, and develop renewable sources of energy such as geothermal, solar, wind, biomass and small hydro power, among others. For example: -

- The VAT (Amendment) Act 2014 provides that certain solar products will be exempted from VAT. This is an effort by the government to encourage investment, particularly in the field of on-grid generation.
- Ongoing focus in the electricity market has centered on connecting more of Kenya's population to the grid, of which it is estimated 50% currently have access. Notably KETRACO is currently constructing 27 lines (over 4,000 KM) of high-voltage transmission lines. Costing US\$1.3 Billion over the next five years, the project will make affordable electricity readily accessible to a significant number of Kenyans who were previously not connected to the grid.¹⁵³ .
- In its focus to address weak power transmission and distribution infrastructure due to limited investments in power system upgrading, the government is engaged in an intensive Rural Electrification Program in partnership with its development partners, including the government of France.

Trade in Services Opportunities in the Renewable Energy Sector

Consultations with stakeholders confirmed what desktop research found: that in Kenya, Uganda and the wider EAC and COMESA region, there are many opportunities for investment in wind and solar electricity generation, in addition to exploration of oil and gas, and expansion of geothermal generation. Further, opportunities exist for implementation of grid extension projects, in addition to the development of smaller stand-alone grids, and the development of mega oil and gas transportation infrastructure.

¹⁵² In line with this strategy, geothermal capacity nearly doubled between 2008 and 2013

¹⁵³ Are there efforts being made to develop infrastructure enabling the importing and exporting of electricity on a significant scale?

The above investment opportunities in the energy sector present multiple opportunities for trade in energy services as discussed below:

1. Installation and maintenance of solar home systems with integrated appliances are a key services market in Kenya and the wide EAC and COMESA region.¹⁵⁴ This has been boosted by ERC regulations and requirement for certification of solar lanterns. Kenya should focus on developing its human capacity of certified installers of solar PV systems to address incidences of faulty systems. It is notable two Kenyan universities have on offer courses for solar PV technicians and about 300 new technicians enter the market annually.¹⁵⁵
2. Energy auditing of installed solar heaters: The Energy (Solar Water Heating) Regulations, 2012 make it mandatory to install solar water heaters for SMEs and households that consume over 100 liters of water per day. In relation to the construction sector, all new buildings are required to install solar water heaters, and have them audited every three years. Old buildings are required to comply by May 2017. Further, there is increased use of solar heating by Kenya's horticultural industry. Stakeholders indicated that the human resource and technical capacity in energy auditing in Kenya does not match the need created by the existing regulations. As such, there are multiple opportunities for consultants with excellent expertise in energy audit, addition to opportunities for Kenyan universities and relevant institutions to develop training courses and modules in energy audits.
3. The generation of geothermal energy in the greater Rift Valley region presents multiple opportunities for the construction services sector, complimented by relevant professional services necessary in exploration, drilling and construction of relevant energy generation infrastructure.¹⁵⁶
4. Kenya is seeking to become the regional oil transit hub by upgrading and building new infrastructure. In this line, Kenya Pipeline Corporation (KPC) has already commenced the construction of a new fuel pipeline to replace the old one linking Mombasa to Nairobi. This is in addition to the plans to construct

On 23rd October 2017, the Ministry of Energy signed the joint development study agreement with Tullow Oil, Africa Oil and Maersk Oil that form the consortium that will develop the 820-kilometer crude oil pipeline, to be completed in 2021.

Source: Business Daily, The Standard, 25th October 2017

¹⁵⁴ The Energy Digest 2016.

¹⁵⁵ The assembly of Solar Panels is done in Naivasha by Ubbink (EA) Ltd

¹⁵⁶ Although the government created the Geothermal Development Company (GDC) to take away the first risks in exploration and drilling, after which private sector investors are to be licensed to explore and drill the various seek licences to explore and drill.

the Lamu Port-South Sudan-Ethiopia Transport corridor (LAPSSET) which will feature among other things construction of a port with 32 berths in Lamu, 800km of refined oil pipelines from Lamu-Isiolo, Isiolo-Southern Sudan, and Isiolo-Ethiopia; and 820km crude oil pipeline.¹⁵⁷ A 120,000-bbl/d oil refinery at the new Lamu port is one of the other feature projects of LAPSSET.¹⁵⁸ For example, the development of the crude oil pipeline implies utilization of various services including high end engineering, designing, standards, cost estimation and environmental assessment by various professionals, some which skills Kenya lacks or have a shortage in. The project will require local content for professional services, workers and materials, all which many represent trade in services opportunities for Kenyan professional firms, individual consultants, contractors, as well as employment for workers, as other trade opportunities for manufacturers and suppliers of building materials, etc.

5. Manufacture and installation of biogas systems, which have gained momentum in Kenya after 2009, present numerous opportunities for utilization of professional services e.g. in engineering, tubular technology, environmental assessment and services necessary for manufacturing. However, the development of biogas market is constrained by access to financial means for farmers. There are investment opportunities to open biogas factories in Kenya, implying many employment opportunities, opportunities in construction and professional services.
6. With the country focusing on wind as an alternative source of energy, construction of wind parks, wind towers, turbines and electricity infrastructure present major opportunities for trade in construction services, professional services, business services, environmental services, transport and logistics services and in some instances trade in tourism, entertainment and retail services. The construction wind towers require highly specialized steel constructions, which Kenya lacks and needs to import. Further, the transport of 45meter wind turbine blades requires specialized transport experience. The assembly on the spot requires the construction of a service road and high cranes able to lift the turbine and blades up to over 100 meters sometimes. Most of these highly specialized services are missing in Kenya, which implies the need to import and build technical of local firms and professionals.
7. Some stakeholders see grid extension as possible investment areas. Such projects could be real extensions of transmission lines or the connection of wind parks to the main grid. Currently, electricity transmission in Kenya is done by Kenya Electricity Transmission Company (KETRACO) which plans, designs, builds and maintains electricity transmission and distribution lines and associated substations.

¹⁵⁷ Kenya signed the joint development study agreement on 23rd October 2017.

¹⁵⁸ See Kenya's Vision 2030 flagship projects.

Rural Electrification Authority undertakes electrification of rural areas concentrating on schools, health centers and other rural institutions.

Trade in Services Opportunities in Other Sectors Arising from Investment in Renewable Energy in Kenya

Investment in renewable energy in Kenya presents various trade in services opportunities in numerous services sectors including:

1. The financial services sector: The biggest barrier to investing in renewable energy is access to finance, equity and lending for project developers. This is mainly because although Kenyan banks are sophisticated, they continue to pursue profits in known markets with low risks. Most financial institutions in Kenya are not familiar with renewable energy and energy efficiency sub sectors, which makes them reluctant to enter these areas which require expensive financing. With the current and anticipated growth in the renewable energy technologies in Kenya, investment opportunities exist in Kenya for the development of inventive and innovative financing instruments. Foreign banks including French and Dutch banks have in the past taken this space by funding renewable energy and energy efficiency projects in Kenya.¹⁵⁹
2. Research services in conducting energy studies and scientific cooperation: The energy efficiency goals contemplated by the energy regulatory framework for both industries and households require energy audits. Kenya has a shortage of energy auditors, and institutions offering energy audit courses and training trainers.¹⁶⁰ Efforts have been made by some universities to fill these gaps by conducting energy studies, in some cases with the support of international bodies, for example, the Fraunhofer Institute which is related to Strathmore's SERC. Further, certification of energy products and labelling of renewable energy products presents research opportunities, in addition to the establishment of testing laboratories for the renewable energy products, technologies and services introduced into the Kenyan market.
3. Kenya does not have any energy service companies offering operation and maintenance services to the technologies that accompany the renewable energy projects. As such, there is a high proportion of technical failures resulting in

¹⁵⁹ For example, starting 2011, the French AFD partnered with the Kenya Association of Manufacturers(KAM) to fund renewable energy projects. KAM would perform the due diligence while the bank applies its lending mechanisms. This fund realized nine projects valued at approximately USD \$30 million at interest rates of between 4.1 to 5.6%. This effectively addressed the main financial barriers in Kenya. However, a similar initiative by the IFC using a similar approach was not as successful.

¹⁶⁰ Currently, Jomo Kenyatta University of Agriculture and Technology and Strathmore University offer courses. KAM CEEC organizes energy audit courses.

decommissioning of the equipment in hydro, solar, biogas projects. This is an area where Kenya can welcome foreign investors, and pursue knowledge and technology transfer.

4. There is a void in the education component of renewable energy. The demand for experienced and top-talent exists in the renewable energy industry in Kenya and within the EAC and COMESA regions, with renewable energy firms recognizing that the only way to be competitive depends on their talent acquisition. In Kenya, Africa, and globally, renewable energy firms are finding out that the demand for qualified professionals often heavily outweigh supply. This is partly because there is a shortage of training programs on renewable energy, both at institutions of higher learning and at corporate/firm levels. Further, most professionals who are working in the renewable energy sector did not start their careers in this sector. This means that they often have to retrain and retool. The challenge in the retraining is the absence of wide selection of training programs for different levels and interests.

It is important to mention that the Energy Policy 2015 has recognized the need for research, development and linkages with academia, in addition human resource capacity development and enhancement to ensure development of Kenya's energy sector. This will address some of the key challenges afflicting Kenya's capacity in the energy sector including:

- Inadequate development of local skills and know-how in the exploitation of natural resources and infrastructure development;
- Inadequate research, development, innovations and demonstration in the energy and petroleum sector;
- Inadequate funding for research, design and development;
- Inadequate promotion of local content development in the energy and petroleum sector; and,
- Weak linkages between the energy and petroleum sector and academia.

Therefore, at the national level, policy and sectoral efforts should therefore focus on addressing the above challenges, while ensuring enforcement of existing regulatory requirements for collaboration between foreign investors in the energy and petroleum sector and the local investors.

Further, the National Energy Policy 2015 states that “all energy and petroleum resources found in Kenya belong to all citizens of the country and need to be exploited, developed and managed in a manner that benefits all Kenyans.” As such, Kenya has developed policies to capture and retain value created from energy and petroleum resources so as to stimulate employment, entrepreneurship, value addition, diversification, transfer of technology and knowledge across the value chain and economy. However, the

policy notes that there is inadequate development of local skills and know-how in the exploitation of natural resources and infrastructure development. Kenya has/will need to finalize the development of proposed comprehensive legislation to ensure technology and knowledge transfer, express requirements for collaboration between foreign investors in the energy and petroleum sector and the local investors, prioritization of utilization of locally available goods, services and human resource.

Capacity building initiatives in Kenya's energy sector

Kenya signed a nuclear power deal with China in 2015 which will enable Kenya to obtain expertise from China by way of training and skills development, and technical support in areas such as site selection for Kenya's nuclear power plants and feasibility studies. Kenya has also signed nuclear power cooperation agreements with Russia and Slovakia.

In September 2016, Kenya signed a partnership agreement with three top South Korean nuclear power entities, which will help Kenya to obtain important knowledge and expertise from Korea, the world's fifth-biggest user of nuclear power. This will enable capacity building, specialized training and skills development, as well as technical support for its intended nuclear power program. As part of the partnership, 16 Kenyan students have been enrolled over the past three years at the Korea Electric Power Corporation International Nuclear Graduate School to undertake Masters Degree courses in nuclear power engineering.

Kenya plans to set up its first nuclear power plant with a capacity of 1,000MW by 2027. This is expected to rise to a total of 4,000MW by 2033, making nuclear energy a key component of the Kenyan energy mix.

Proposed Negotiating Strategy for Energy Services in COMESA Region

As a starting point, it is important to note that the energy sector consists a chain of interrelated activities. As such, a supplier of energy services may need market access in a number of relevant services sectors in order to supply his/her/its service adequately.

Trade in energy services is an important component of Kenya's trade and FDI inflows. Kenya needs foreign investment, sophisticated skills, technical knowhow and best management practices in the energy sector to ensure growth in the energy sector, especially in upstream oil and gas exploration and production, and mining. Kenyan professionals, construction and real estate service firms and individuals have ventured in the energy sector. In fact, Kenya has a comparative advantage in providing well qualified, albeit few, professionals in engineering and related construction services including architects, land and quantity surveyors, planners, geologists, etc. It also has a few qualified and experienced professional firms and individuals providing energy related consultancy services.

Services in the upstream oil and gas industry in Kenya under three categories: Specialist Services; Direct Services; and, Indirect Services Specialist.

Services Specialist: These services usually require heavy investment, adherence to strict standards to safeguard safety in operations and high technical expertise in the technology and labor skills used. The labor used in the provision of specialist services are required to have long global experience working in the oil and gas industry. To keep up with technological requirements large spending in research and development is also a characteristic. These services are not widely available in Kenya are therefore provided by international service

companies. These services include, for example, drilling services, well services, rig hire, seismic acquisition, etc.

Direct services: These are services that directly complement the specialist services allowing the specialists to focus on their primary technical activities. These services require less technical specialization than the specialist services but also require strict compliance to safety and operational standards. Provision of these services also requires significant capital investment. Some of these services are available in Kenya and are provided by international and local companies. Examples of these types of services include: field and camp construction, infield transport and logistics, civil works as well as mechanical and electrical services, environmental services (EIAs), site preparation, and provision of construction materials, among others.

Indirect services: These services are peripheral services to both specialist and direct services. They are much less specialized in terms of the level of technical expertise and labor skills required compared to the above two types. Also, the level of capital investments needed is substantially lower. These services are widely available and well serviced in Kenya, and are mainly offered by local and regional companies.

Further, there are few legal experts and firms proficient in negotiating complex energy related contracts. Collaboration with internationally renowned companies, firms or individuals would not only make the domestic firms locally competitive, but also enable them to establish presence in other EAC, COMESA and African countries. It is no wonder that some of the stakeholders have pointed out that Kenya has been utilizing foreign technologies and finance models in most services related to gas and oil upstream activities. To address these deficiencies and dependencies, the African Development Bank has in the past stressed on the urgent need for African countries, including Kenya to strengthen their capacity to put them a position to identify, prepare, develop and negotiate bankable Public Private Partnership (PPP) projects in this sector, while exploring innovative ways to attract investments to fast-track universal access to power. Where such arrangements are entered into, the parties to a PPP need to be represented by experts who have relevant skills to ensure that the negotiating parties understand and minimize their exposure to risk.¹⁶¹

Kenya needs to have experts who are equipped with the appropriate skills to negotiate PPPs. Currently, there is a shortage of such legal experts, economists, financial and related energy consultants with these requisite skills. It is worth mentioning that the International Project Financing Association (IPFA) has been conducting seminars and workshops across the world, including in Kenya, to educate energy experts and investors on mega projects investment in Africa. Some of the challenges that investors face while investing in such

¹⁶¹ See PPP Experts Equipped to promote bankable energy projects available at <http://www.kenyaengineer.co.ke/2016-05-28-20-43-28/latest-news/item/74-ppp-experts-equipped-to-promote-bankable-energy-projects>, where Maude Vallée, Principal Legal Counsel at the African Legal Support Facility (ALSF) expounds on this aspect.

projects include security, way leaf access and inadequate infrastructure development. In 2013, Kenya established a unit under Ministry of National Treasury to handle PPP project¹⁶²

In light of the foregoing deficiencies, it is recommended that:

- Kenya should focus on making commitment in Business Services, focusing on professional services required in upstream oil and gas services. This should be guided by the current shortages in Kenya due to inadequate development of local skills and technical know-how in the exploitation of natural resources and infrastructure development. The liberalization of these services should also complement the liberalization of Construction and Related Engineering services especially in civil engineering works.
- Other areas of liberalization focus should be real estate services, management consulting, scientific and technical consulting and services incidental to mining.
- A similar approach should be taken in research and development services to address inadequate research, development and demonstration in the energy sector, especially the renewable energy sub sector. Kenya should consider scheduling these sub sectors, subject to existence of relevant regulatory frameworks, especially the proposed laws that are yet to be enacted.

However, a challenge is posed by the fact that these proposed sectors have not been scheduled by Kenya in its schedules of commitment under the EAC CMP. It is worth mentioning that there are ongoing efforts to revise Kenya's schedules of commitments under the EAC, but such revision remains unofficial until such time when they are formally adopted. As such, at this stage, Kenya can only proceed on the basis of its existing schedules of commitment at the EAC and WTO in determining its level of liberalization in COMESA. It is important to state that Kenya's level of liberalization in COMESA should not be deeper, or in conflict with its commitments in the EAC. Going forward, and before the commencement of negotiations at the COMESA, it will be important for EAC to convene a meeting to discuss how energy sector liberalization should be handled at the EAC level, seeing that Tanzania is not a member of COMESA.

¹⁶²See PPP Experts Equipped to promote bankable energy projects available at <http://www.kenyaengineer.co.ke/2016-05-28-20-43-28/latest-news/item/74-ppp-experts-equipped-to-promote-bankable-energy-projects>.

Kenya's EAC and WTO Liberalization Commitments

W/120 Broad Sector	Sub sector	Energy services	Under EAC	Under WTO
Business services	Professional services	Engineering services (CPC 8672)	Advisory and consultative engineering services (CPC 86721)	Nil
		Integrated engineering services (CPC 8673)	Nil	Nil
	Research and development services	Research and experimental development services on natural sciences and engineering and technology for casting, metal, machinery, electricity, communications, vessels, aircraft, civil engineering, construction, information, etc. (CPC 85103)	Research and experimental development services on natural sciences (UNCPC 851)	Nil
	Other business services	Management consulting services (CPC 865)	Nil	Nil
		Services related to management consulting (CPC 866)	Nil	Nil
		Technical testing and analysis services (CPC 8676 partial)	Nil	Nil
		Services incidental to mining (CPC 883)	Nil	Nil
		Site preparation work for mining (CPC 5115)	Nil	Nil
		Services incidental to energy distribution (CPC 887)	Nil	Nil
		Related scientific and technical consulting services (CPC 8675)	Nil	Nil
Maintenance and repair of equipment (CPC 633)		Nil	Nil	
Construction & related engineering services	General construction work for civil engineering	Construction work for civil engineering for long-distance pipelines, for local pipelines, for mining (CPC 5134 - 5136)	Nil	
	Other	Renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator (CPC 518)	Nil	
Distribution services	Commission agents' services	Commission agents' services – sales of fuels on a fee or contract basis (CPC 621)	Commission Agent Services (CPC 621)	Nil
	Wholesale trade services	Wholesale trade in services of solid, liquid and gaseous fuels and related products (excluding	Wholesale Trade	Nil

		electricity and town gas) (CPC 62271)	Services (CPC 622)	
	Retailing services	Retailing services of fuel oil, bottled gas, coal and wood (CPC 63297)	Nil	Nil
Transport	Pipeline transport	Transportation of fuel (CPC 7131)	Nil	Nil

Liberalization in these broad sectors by Kenya will encourage other COMESA member states to open up similar sectors without being overly protective, while allowing market access for skills and expertise that are lacking in Kenya. This will create market for Kenyan firms and individual service suppliers, while creating opportunities for technology transfer and collaboration with regionally renowned companies, firms or individuals service suppliers, thus enabling Kenyan service suppliers to competitively venture into COMESA member states markets, in addition to the larger African continent, and global markets.

Since most service sectors including business services related to the energy sector have been unilaterally liberalized, it would not be difficult for Kenya to liberalize at the COMESA level. The only challenge with the deep commitments suggested here is that they may end up being deeper than those made by Kenya at the EAC level. However, it is worth mentioning that Kenya has revised its EAC schedules of commitments, proposing to make deeper and comprehensive commitments.

Stakeholders were not clear on whether Kenya should schedule commitments in distribution services, that is, wholesale trade in services of solid, liquid and gaseous fuels and related products (excluding electricity and town gas). It is notable that this sub sector as relates to energy sector is substantially liberalized, but has restrictions in the form of price controls and geographical coverage (CONFIRM WITH ERC). At present, wholesale trade services of solid, liquid and gaseous fuels and related products (excluding electricity) is liberalized in Kenya. At the EAC level, the broad wholesale trade services sub sector is liberalized. As such, Kenya should consider scheduling distribution services, but with existing restrictions for market access and national treatment.

Stakeholders were of the view that Kenya should not to undertake commitments in pipeline transportation services due to security concerns and sensitivity of such an infrastructure.

Kenya has export potential in professional services and consultancy services in the energy sector to all COMESA member states, and most African countries. These are widely offered on a project by project basis and in some cases, they require physical presence. Mode 4 is therefore an important mode of supplying professional services. Professionals supplying services under mode 4 face various barriers related to market access, national treatment

and domestic regulations in markets of export interest. It is worth noting that countries hardly schedule any sector specific mode 4 commitments in the energy sector.

Lack of information and transparency in the bidding process of energy projects in COMESA and other African countries presents a major barrier to Kenyan service suppliers who might be interested to export energy services to COMESA countries. However, this research cannot enumerate all trade barriers in countries of export interest to Kenya as this would need specific research in the export destinations to evaluate the barriers, including the regulatory frameworks of individual COMESA member states, or AU member states.

To strengthen its services export capacity, Kenya should focus on strengthening the supply capacity of other service sectors that constitute or compliment the energy sector. For example, in the engineering professional sector, Kenya should encourage the development of capacity and expertise by local firms and promote partnerships with foreign firms that are willing to transfer technology, train personnel and share their design and project control systems with local firms. Further, encourage the split of major projects into several 'easy to handle' packages to enable local firms who lack finance and large human resource pools to participate or to be part of joint ventures. This will enable Kenyan engineering firms to diversify their activities, while venturing into other industrial sectors

As a starting point of the negotiation process in 2018, it will be important for the COMESA Secretariat to develop a checklist of services related to or comprising the energy sector. This will ensure that member states are on the same page as relates to the depth and coverage of the sector, while acting as an aide memoire during scheduling and actual negotiations.

Regulatory and Administrative Framework (See Annex)

Key players and institutional arrangement of the energy sector

Institution	Statutory instrument	Mandate
Ministry of Energy and Petroleum	The Constitution of Kenya, 2010	Formulation and articulation of energy and petroleum policies to provide an enabling environment for all stakeholders. Planning, training of manpower and mobilization of financial resources
Energy Regulatory Commission	Energy Act, 2006	Established as an energy sector regulator under the Energy Act, 2006, with responsibility for economic and technical regulation of electric power, renewable energy, and downstream petroleum sub-sectors. Its functions also include tariff setting, review, licensing, enforcement, dispute settlement and approval of power purchase and network service contracts
Energy Tribunal	Section 108 of the Energy Act, 2006	To hear appeals against the decisions of ERC. It has jurisdiction to hear and determine all matters referred to it relating to the energy sector.
Kenya Power		With a government shareholding of 50.1% and private shareholding of 49.9% as at June 2014, Kenya Power purchases electrical energy in bulk from KenGen and other power producers and carries out transmission, distribution, supply and retail of electric power.
Kenya Electricity Generating Company Limited (KenGen)		It is state Corporation with GoK shareholding of 70% and private shareholding of 30% as at June 2014. It generates electric power, currently producing the bulk of electricity consumed in the country by utilizing various sources including hydro, geothermal, thermal and wind to generate electricity.
Rural Electrification Authority (REA)	Section 66 of the Energy Act of 2006	Extending electricity supply to rural areas, managing the rural electrification fund, mobilizing resources for rural electrification and promoting the development and use of renewable energy.
Geothermal Development Authority	Sessional paper No. 4 of 2004 and the Energy Act No.12 of 2006	This is a 100% state-owned company established by the Government of Kenya as a Special Purpose Vehicle for the development of geothermal resources in Kenya.
Kenya Electricity Transmission Company Limited (KETRACO)		This is a GoK wholly owned company responsible for the development, maintenance and operation of the national transmission grid network. Also responsible for facilitating regional power trade through its transmission network
Independent Power Producers		Private companies which generate power and sell electricity in bulk to KPLC. As at November 2014 there were nine IPPs in operation as listed below and accounted for about 24% of the country's installed capacity

Kenya Pipeline Company		This is a State Corporation with 100% GoK ownership whose main business is storage, transportation and handling of refined petroleum products in the country
National Oil Corporation Limited		NOCK is a wholly owned state corporation mandated to stabilize the petroleum supply market by participating in all aspects of the petroleum industry namely upstream, mid-stream and downstream activities.
Kenya Nuclear Electricity Board (KNEB)		Charged with the mandate of spearheading and fast-tracking development of nuclear electricity generation in order to enhance the production of affordable and reliable electricity
Centre for Energy Efficiency and Conservation (CEEC)		The Centre was established jointly by GoK and the Kenya Association of Manufacturers to champion energy efficiency and conservation efforts in Kenya.
Oil Marketing Companies (OMCs)		OMCs are local and international companies licensed to undertake the importation, storage, wholesale, export and retail of petroleum products.
Petroleum Institute of East Africa (PIEA)		The Institute is a voluntary membership institution patronised by among others the major oil companies. It plays a key role in capacity building and awareness creation in the petroleum subsector
Oil Exploration and Production Companies (OIEPs)		These are local and international companies licensed to undertake exploration and production of oil and gas
Kenya Revenue Authority (KRA)		KRA is responsible for collection of taxes from energy and petroleum related transactions in line with relevant laws and regulations.
National Environmental Management Authority (NEMA)		NEMA is responsible for enforcement of environmental laws and regulations
County governments Kenya	The Constitution of Kenya	
Kenya Association of Manufacturers - CEEC	Established vide a MoU between KAM and the Ministry of Energy & Petroleum	
Kenya Bureau of Standards (KEBS)		

Existing Policies, Laws and Regulations

National policy	<ul style="list-style-type: none"> • The Energy Policy 2015
Acts of Parliament	<ul style="list-style-type: none"> • Energy Act, No. 12 of 2006 • Mining Act 201 • Geothermal Resources Act • Natural Resources (Classes of Transactions Subject to Ratification) Act
Electricity Regulations	<ul style="list-style-type: none"> • The Electrical Power (Electrical Installation Work) Rules 2006 • The Energy (Complaints and Disputes Resolutions) Regulations, 2006 • The Energy (Electricity Licensing) Regulations, 2006
Renewable Energy Regulations	<ul style="list-style-type: none"> • The Energy Policy Register 2017 • The Energy (Appliances' Energy Performance & Labelling) Regulations, 2016 • The Draft Energy (Improved Biomass Cookstoves) Regulations
Petroleum Regulations	<ul style="list-style-type: none"> • The Petroleum (Amendment) Rules 2000 Ln 31 • The Petroleum (Amendment) Rules 2002 Ln 64 • The Petroleum (Amendment – No. 2) Rules 2003 Ln 197 • The Energy (Gasohol Blending) Regulations 2010 • The Energy (Petroleum Regulation Levy) Regulations, 2008 • Petroleum (Exploration and Production) Regulations of 1984
Mining Regulations	<ul style="list-style-type: none"> • Mining (Local Equity Participation) Regulations

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR											
SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
ENERGY SERVICES											
Other services not included elsewhere ¹⁶³	NIL	NIL	NIL	<p>Bilateral Agreement between South Korea and Kenya on Electric Power and Nuclear Energy Development.</p> <p>Bilateral Agreement between Nigeria and Kenya on Oil and Gas</p>	<p>Only a company registered in Kenya under the Companies Act may enter into a petroleum agreement with the government.</p> <p>Artisanal Mining Licence only granted to citizens of Kenya</p> <p>Must have a licence to undertake mining activities</p> <p>Skills transfer to Kenyan citizens is a</p>	<p>Requirement of approval to search for geothermal resources (non-discriminatory)</p> <p>Requirement of a License to extract geothermal resources (non-discriminatory)</p> <p>Requirement of a license and or permit to generate import or export, transmit or distribute electrical energy and supply electrical energy to consumers (non-discriminatory)</p>		<p>Geothermal Resources Act No.12 of 1982</p> <p>Geothermal Resources Regulations 1990</p> <p>Energy Act No.12 Of 2006</p> <p>Petroleum (Exploration and Production) Act Chapter 308 of the Laws of Kenya</p> <p>Petroleum (Exploration and Production) Regulations of 1984</p> <p>National Energy</p>	<p><i>Geothermal Resources Act Section 5 – Unauthorised use of geothermal resources prohibited</i></p> <p>“Notwithstanding anything to the contrary in any written law or instrument of title, no person shall sink a bore, tap or take and use or apply geothermal resources for any purpose unless he is first granted an authority or license under this Act”.</p> <p><i>Geothermal Resources Act Section 6(1) – Minister to authorize search of geothermal resources.</i></p>		<p>Ministry of Energy and Petroleum established to facilitate transmission of clean, sustainable, affordable, reliable and secure energy services for national development while protecting the environment</p> <p>Energy Regulatory Commission established by section 4(1) of the Energy Act to , among other functions, regulate the importation, exportation,</p>

¹⁶³There is currently no specific energy services section in the WTO Classification List (W/120). Energy services are an amalgamation of various activities from the broad services sectors including business services, construction and related engineering services, distribution services and transport services. Members States can also therefore utilize the Scheduling Guidelines (S/L/92) which provide sufficient flexibility.

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR											
SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
					<p>condition for the grant of mining rights.</p> <p>There are requirements with regard to employment of Kenyan citizens and use of services offered by members of the community and Kenyan businesses.</p> <p>Must be a company incorporated in Kenya to acquire mineral rights, other than artisanal mining rights.</p> <p>Local Equity participation of 35% as a</p>	<p>Requirement of a license to undertake petroleum business (non-discriminatory)</p> <p>Requirement of a license to construct a pipeline, refinery, bulk storage facility or retail dispensing site (non-discriminatory)</p> <p>Requirement of a license to undertake electrical installation work (non-discriminatory)</p> <p>Approval of Government required to undertake petroleum activities (non-discriminatory)</p>		<p>Petroleum Policy 2015</p> <p>Natural Resources (Classes of Transactions Subject to Ratification) Act No. 41 of 2016</p> <p>Mining Act No. 12 of 2016</p> <p>Mining 9Prescription of Royalties on Minerals) Regulation 2013</p> <p>Mining (Local Equity Participation) Regulations 2012</p>	<p>“For the purposes of and subject to this Act, the Minister may authorize any person (including a public officer), in writing, to make surveys, investigations, tests and measurements in search of geothermal resources and for that purpose the authorized person may—</p> <p>(a) enter upon any land specified in the authority with such assistants, gear, appliances, and equipment as he thinks fit;</p> <p>(b) sink any bore on the land;</p> <p>(c) make geological surveys and geophysical surveys on the land; and</p> <p>(d) generally do all things necessary in connection with the survey,</p>		<p>generation, transmission, distribution, supply and use of electrical energy; importation, exportation, transportation, refining, storage and sale of petroleum and petroleum products; and production, distribution, supply and use of renewable and other forms of energy; and</p> <p>Energy Tribunal established by Section 108 of the Energy Act to consider appeals of the decisions of the Energy Regulatory Commission.</p>

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR											
SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
					<p>condition of every mining licence</p>	<p>Non-exclusive petroleum permit required to obtain geological information through prospecting or carrying out geological and geophysical surveys (non-discriminatory)</p> <p>Fees payable for petroleum agreement and exploration permit (non-discriminatory)</p> <p>Requirement of ratification of certain natural resources transactions (non-discriminatory)</p> <p>Requirement of licence for mining activities (non-discriminatory)</p>			<p>investigation, test or measurement”.</p> <p><i>Geothermal Resources Act Section 7 (1) – Minister may grant a geothermal resources licence</i> “The Minister may, on application being made to him in respect of any land, grant a licence (to be known as a “geothermal resources licence”) over part or the whole of a geothermal resources area under such terms and conditions as he may determine”.</p> <p><i>Geothermal Resources Act Section 21 – Charges payable for extraction of geothermal</i></p>		<p>Ministry of Mining established via executive order No.2 of 2013 to undertake such functions aimed at enhancing growth of the mining sector in the country.</p> <p>Mineral Rights Board established by Section 30(1) of the Mining Act to , inter alia, advise and give recommendations to the Cabinet Secretary on issues such as grant, renew, retention, suspension, rejection, revocation, assignment, trading, tendering or transfer of</p>

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR											
SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
						Requirement to pay fees/charges to acquire mining rights (non-discriminatory) Payment of prescribed royalty (non-discriminatory)			<p><i>resources for certain purposes</i> “The Minister shall levy the prescribed fees, rentals and royalties for the extraction of geothermal resources for industrial or commercial purposes and for any other purposes which may be determined by the Minister”.</p> <p><i>Geothermal Resources Act Section 22 – Offences</i> “(1) Every person who sinks any bore or who extracts, takes, uses or applies geothermal resources in contravention of this Act shall be guilty of an offence. (2) Every person who removes, damages, destroys</p>		mineral rights agreements.

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>or otherwise interferes with any survey pegs or beacons placed on the ground in connection with any survey lawfully carried on under this Act or any valve or instrument being used in connection with any such survey or with any bore shall be guilty of an offence”.</p> <p><i>Energy Act Section 27(1,2 and 5) – Requirements for a license or permit</i></p> <p>“(1) Subject to the provisions of this Act, a license or licenses as the case maybe, shall be required for the—</p> <p>(a) generation, importation or exportation, transmission or distribution of</p>		

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR											
SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>electrical energy; or (b) supply of electrical energy to consumers: Provided that for undertakings involving a capacity not exceeding 3,000 kW, the provisions of subsections (2), (3) and (4) shall apply. (2) A permit shall be required in respect of all undertakings— (a) intended for the supply of electrical energy to other persons or consumers; and (b) with a generating plant of over 1000 kW intended for own use. (5) A person who contravenes the provisions of this section commits an offence and shall, on conviction, be liable to—</p>		

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR											
SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>(a) in the case of contravention of subsection (1) a fine not exceeding two million shillings, or to a maximum term of imprisonment of two years, or to both; and</p> <p>(b) in the case of contravention of subsections (2), (3) and (4), a fine not exceeding one million shillings, or to a maximum term of imprisonment of one year, or to both”</p> <p><i>Energy Act Section 38 (1 and 2) – Electrical installation</i></p> <p>“(1) A person shall not carry out any electrical installation work unless the person is licensed by the Commission as an electrician or an electrical contractor.</p>		

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR											
SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>(2) To be licensed by the Commission as an electrical contractor a person must</p> <p>—</p> <p>(a) be a licensed electrician registered under the Institute of Engineers of Kenya; or</p> <p>(b) have in his employment, a licensed electrician”.</p> <p><i>Energy Act Section 43 (1,2 and 3) – Contracts for bulk supply of electrical energy</i></p> <p>“(1) All contracts for the sale of electrical energy, transmission or distribution services, between and among licensees, and between licensees and large retail consumers shall be submitted to the Commission for</p>		

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR											
SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>approval before execution.</p> <p>(2) An application for approval of a contract under subsection (1) shall be in such form and submitted to the Commission in such manner, as the Minister may, in regulations prescribe.</p> <p>(3) In considering a contract under subsection (1), the Commission shall—</p> <p>(a) ensure that the rates or tariffs established in the contract are just and reasonable;</p> <p>(b) satisfy itself that the application meets the minimum requirements as prescribed by the Minister in the regulations under this Act; and</p> <p>(c) take into account any other issues</p>		

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR											
SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>which may have a bearing on the operations of the undertakings”.</p> <p><i>Energy Act Section 80 – License for petroleum business</i></p> <p>“(1) A person shall not conduct a business of importation, refining, exportation, wholesale, retail, storage or transportation of petroleum, except under and in accordance with the terms and conditions of a valid licence.</p> <p>(2) A licensee shall not sell petroleum to a person for the purpose of exportation or for resale in Kenya unless that person has a valid exporters or retail licence</p>		

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR											
SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>under this Act. (3) A person shall not use a vehicle for the purpose of transporting petroleum unless there is in force, in respect of that vehicle, a valid petroleum permit issued under this Act.</p> <p>(4) No person shall drive a vehicle, or engage a driver, for the purpose of transporting petroleum unless such driver is certified for that purpose in accordance with this Act.</p> <p>(5) A person who contravenes this section commits an offence and shall, on conviction, be liable to a fine not exceeding one million shillings, or to a maximum term of imprisonment of</p>		

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>one year, or to both”.</p> <p><i>Energy Act Section 90 (1) – Construction permits</i></p> <p>“Any person intending to construct a pipeline, refinery, bulk storage facility or retail dispensing site shall, before commencing such construction, apply in writing to the Commission for a permit to do so”.</p> <p><i>Energy Act Section 92 – Exemption from the requirement for a permit</i></p> <p>“Notwithstanding any other provision of this Act—</p> <p>(a) emergency works for the construction of a pipeline, may be executed</p>		

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR											
SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									without any authorisation by the Commission: Provided that as soon as is reasonably practicable and in any event not later than sixty days after the works have commenced or have been executed, the owner of the pipeline shall inform the Commission in writing of the works executed attaching copies of detailed construction drawings of such construction works and the route taken or intended to be taken by the pipeline; (b) no permit shall be required for the construction of a pipeline within a storage depot, a pipeline facility or refinery”.		

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR											
SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p><i>Petroleum (Exploration and Production) Act Section 4 (1,2 and 3 – Petroleum operations</i></p> <p>“(1) No person shall engage in any petroleum operations in Kenya without having previously obtained the permission of the Minister in such manner, in such form and on such terms as are prescribed by this Act and by regulations made thereunder.</p> <p>(2) All petroleum operations shall be conducted in accordance with the provisions of this Act, the regulations made thereunder and the terms and conditions of a petroleum agreement.</p> <p>(3) The Government may</p>		

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>conduct petroleum operations either— (a) through an oil company established by the Government to conduct those operations; or (b) through contractors in accordance with petroleum agreements; or (c) in such other manner as may be necessary or appropriate”.</p> <p><i>Petroleum (Exploration and Production) Act</i> Section 5 – Power of the Minister “(1) The Minister may, on behalf of the Government, negotiate, enter into and sign petroleum agreements with a contractor and petroleum agreements shall, subject to the provisions of this</p>		

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/ POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>Act, be in the prescribed form. (2) For the purpose of obtaining geological information, the Minister may grant non-exclusive exploration permits, in respect of areas specified therein, under which a person may enter upon an area and prospect and carry out geological and geophysical surveys. (3) The Minister— (a) shall make available model petroleum agreements to potential contractors as a basis for the negotiation for petroleum agreements; (b) shall negotiate petroleum agreements with potential contractors by</p>		

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/ POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>such procedures as secure the most favourable conditions for the Government, except that the Minister may cause any investigations, negotiations or consultations to be made or carried out as he considers necessary before entering into a petroleum agreement and may reject any application made by a potential contractor if satisfied that the rejection is in the best interest of the Government;</p> <p>(c) shall supervise petroleum operations carried out under a petroleum agreement;</p> <p>(d) may take any action, decision, or give any permission or consent or</p>		

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR											
SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>exercise any other control as may be necessary or desirable for the purposes of this Act or the regulations made thereunder.</p> <p>(4) The powers of the Minister under this Act to sign or revoke a petroleum agreement shall be exercised by him or a person specially authorized by him in writing”.</p> <p><i>Petroleum (Exploration and Production) Regulations of 1984</i></p> <p><i>Regulation 2(2)</i></p> <p>“(2) No person other than a company incorporated or registered in Kenya under the Companies Act (Cap. 486) may enter into a</p>		

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR											
SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>petroleum agreement with the Government”.</p> <p><i>Petroleum (Exploration and Production) Regulations of 1984</i></p> <p><i>Regulation 7 – Fees</i></p> <p>“The fees and other payments payable under or by virtue of a petroleum agreement or an exploration permit shall be as determined by the Minister from time to time”.</p> <p><i>Natural Resources (Classes of Transactions Subject to Ratification) Act</i></p> <p><i>Section 4 – Classes of transactions</i></p> <p>“(1) The classes of transactions set out in the Schedule are</p>		

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR											
SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>subject to ratification by Parliament pursuant to Article 71 of the Constitution”.</p> <p>(2) Notwithstanding subsection (1), the following classes of transactions shall not be subject to ratification by Parliament—</p> <p>(a) subject to paragraph (e), the grant of a concession or right to exploit a natural resource through a permit, licence or other authorization issued in accordance with the requirements of national or county government legislation;</p> <p>(b) the grant of a concession or right by a private person to exploit a natural resource through an</p>		

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR											
SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>agreement or a contract;</p> <p>(c) the grant of a concession or right to exploit a natural resource for scientific research, educational or other non-commercial purposes unless the exploitation involves taking the natural resource or an portion of it outside of the jurisdiction of Kenya;</p> <p>(d) the exploitation of a natural resource by a Kenyan national for subsistence purposes in circumstances in which the law does not require that a permit, licence or other authorization be obtained; and</p> <p>(e) the exploitation of a natural resource in quantities falling below a</p>		

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR											
SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>threshold prescribed by the Cabinet Secretary by notice in the Gazette or below a threshold specified in the Schedule to the Act”.</p> <p><i>Natural Resources (Classes of Transactions Subject to Ratification) Act - Schedule - Classes of Transactions subject to Ratification</i></p> <p>“Crude oil and natural gas – Authorization to extract crude oil or natural gas. Minerals – Mineral agreements with a threshold of US\$ 500 million...”.</p> <p><i>Mining Act Section 10- Restrictions on</i></p>		

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR											
SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p><i>the acquisition of mineral rights.</i></p> <p>“A person shall not search for, prospect or mine any mineral, mineral deposit or tailings in Kenya unless that person has been granted a permit or licence in accordance with this Act”.</p> <p><i>Mining Act Section 11 (2, 3 and 5) – Acquisition or Rights in Minerals</i></p> <p>“(2) A mineral right may be granted to or be held by a company which - is registered and established in Kenya; has not commenced voluntary winding up pursuant to the Companies Act; is not subject to winding up by a court pursuant to</p>		

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR											
SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>the Companies Act; or is not in liquidation. (3) Subject to subsection (2), the directors of the company shall be required to demonstrate the required technical capacity, expertise, experience and financial capacity (5) In this section the word "established" means that the company is operating in the registered office subject to the provisions of the Companies Act; and in operation within Kenya”.</p> <p><i>Mining Act Section 32 (3) – Categories of mining rights</i> “(3) The following licences and permits may be granted for a mineral right under this Act to authorise</p>		

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR											
SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>a mineral right holder to engage in— (a) large scale operations which shall include - a reconnaissance licence; a prospecting licence; a retention licence; a mining licence; or (b) small scale operations, which shall include - a prospecting permit; or a mining permit”.</p> <p><i>Mining Act Section 46 (1,2, and 3) – Employment and Training of Kenyans</i></p> <p>“(1) To ensure skills transfer to and capacity building for the citizens, the holder of a mineral right shall submit to the Cabinet Secretary a detailed programme for the recruitment and training of citizens of Kenya in a manner as may be</p>		

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR											
SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>prescribed by the Cabinet Secretary. The submission and approval of the programme under subsection (1) shall be a condition for the grant of mineral right. The Cabinet Secretary shall make regulations to provide for the replacement of expatriates, the number of years such expatriates shall serve and provide for collaboration and linkage with universities and research institutions to train citizens”.</p> <p><i>Mining Act Section 47 – Preference in Employment</i> “47. (1) The holder of a mineral right shall give Preference to</p>		

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR											
SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									members of the community and citizens of Kenya. (2) In the case of a large scale operation, the holder of a mineral right shall - conduct training programmes for the benefit of employees; undertake capacity building for the employees; only engage non-citizen technical experts in accordance with such local standards for registration as may be prescribed in the relevant law; work towards replacing technical non-citizen employees with Kenyans, within such reasonable period as may be prescribed by the Cabinet Secretary; provide a linkage with the universities for purposes of research and		

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR											
SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>environmental management; where applicable and necessary facilitate and carry out social responsible investment for the local communities; and implement a community development agreement as may be prescribed in Regulations”.</p> <p><i>Mining Act Section 48 – Government Participation in Mining License</i> “48. (1) Where a mineral right is for a large scale operation, the State shall acquire ten percent free carried interest in the share capital of the right in respect of which financial contribution shall not be paid by the State. The provisions of subsection (1) shall</p>		

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR											
SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>apply to large scale mining operations and to mining operations relating to strategic minerals.</p> <p>Subsection (1) shall not preclude the State from any other or further participation in mining and operations which shall be agreed with the holder at arm's length. The Cabinet Secretary shall make regulations.”</p> <p><i>Mining Act Section 50- Preference for Local Products</i></p> <p>“The holder of a mineral right shall, in the conduct of prospecting, mining, processing, refining and treatment operations, transport or any other dealings in minerals give</p>		

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR

SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>preference to the maximum extent possible - to materials and products made in Kenya; to services offered by members of the community and Kenyan citizens; and to companies or businesses owned by Kenyan citizens”.</p> <p><i>Mining Act Section 117 (1) – Mineral Agreement</i> “(1) The Cabinet Secretary in consultation with the National Treasury may enter into a mineral agreement with the holder of a mining licence where the proposed investment exceeds five hundred million United States dollars”.</p>		

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR											
SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p><i>Mineral Act Section 158 – Disposal of minerals</i></p> <p>“(1) A person shall not dispose of minerals, whether for sampling, assay, analysis or otherwise except with the written consent of the Cabinet Secretary; where the person is the holder of a mineral right, in accordance with the conditions of the mineral right; where the person is the holder of a mineral dealer's licence or a diamond dealer's licence in accordance with the conditions of the licence; or in any other case, as otherwise permitted by or under this Act. (2) No title to minerals shall pass in any case where a person disposes of minerals otherwise</p>		

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR											
SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>than in accordance with subsection (1)".</p> <p><i>Mining Act Section 165 – Dealings in diamonds</i></p> <p>“(1) A person shall not deal in diamonds, as either principal or agent unless the person has obtained a diamond dealer's licence.</p> <p>Notwithstanding subsection (1), the holder of a mineral right may deal in diamonds lawfully acquired in accordance with the terms and conditions of a mineral right. Subsection (1) shall not apply to any person lawfully entitled to carry on the business of a banker”.</p>		

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR											
SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p><i>Mining Act Section 170 – Mines Support</i> “(1) A person or company shall provide any mine support services subject to being issued with a licence by the Cabinet Secretary, upon recommendation of the Mineral Rights Board. (2) The Cabinet Secretary shall prescribe Regulations to give effect to this section”.</p> <p><i>Mining Act Section 171 (1 and 2) – Export of Minerals</i> “(1) A person shall not export a mineral otherwise than in accordance with an export permit granted by the Cabinet Secretary. (2) The holder of— (a) a mineral right;</p>		

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR											
SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p>(b) a mineral dealer's licence; or (c) a diamond dealer's licence, may apply to the Director of Mines for an export permit in the prescribed form”.</p> <p><i>Mining Act Section 172- Import of minerals</i> “Where a person imports minerals, the person shall make a declaration at the point of entry in the prescribed form”.</p> <p><i>Mining Act Section 182 – Fees</i> “(1) An applicant or a holder of a mineral right, a mineral dealer's licence; or a diamond dealer's licence, shall pay such fees or charges and at such time as may be prescribed, by notice in the</p>		

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR											
SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									Gazette. (2) The prescribed fees may include - application filing fees; report filing fees; fees for access to geological data; and fees for access to public registers. (3) The prescribed charges may include annual charges payable upon grant of the relevant mineral right, mineral dealer's permit or diamond dealer's licence. (4) The prescribed charges shall be payable annually for the duration of the mineral right, mineral dealer's permit or diamond dealer's licence. (5) All fees and charges payable under this Act shall be demanded and recovered in the same manner as a civil debt".		

REGULATORY AND ADMINISTRATIVE FRAMEWORK – ENERGY SECTOR											
SECTOR AS PER WTO W/ 120	WTO	EAC	COMESA	BILATERAL ARRANGEMENTS	MARKET ACCESS RESTRICTIONS	NATIONAL TREATMENT RESTRICTIONS	OTHER RESTRICTIONS	ORIGIN OF MEASURE (ACT/REGULATION/POLICY)	SPECIFIC PROVISION	OTHER MEASURES (ADMINISTRATIVE PRACTICE)	INSTITUTIONAL ARRANGEMENT
									<p><i>Mining Act Section 183 (1)- Royalties</i> “(1) The holder of a mineral right shall pay royalty to the State in respect of the various mineral classes won by virtue of the mineral right”.</p> <p><i>Mining (Local Equity Participation) Regulations – Regulation 3</i> “It shall be a condition of every mining license that the mineral right in respect of which the license is issued shall have a component of local equity participation amounting to at least thirty five (35%) of the mineral right”.</p>		

Tax exemptions in Energy Sector

The Kenyan government has granted various tax exemptions in order to encourage investment in the energy sector for the purpose of lowering the cost of energy. For example, in June 2015, the Cabinet Secretary for the National Treasury issued Legal Notice 91 of 2015 which exempts interest on loans advanced from foreign sources from tax, provided the funds are utilized for investing in infrastructure. Additionally, Legal Notice No. 106 of 2015 (also issued in June 2015) granted an exemption from stamp duty on the registration of security documents relating to loans from foreign sources utilised in investing in infrastructure.

The Cabinet Secretary for the National Treasury also granted an exemption from withholding tax on payments made to a non-resident person for services rendered under a PPA in Legal Notice 165 of 2015, issued in August 2015. Withholding tax is normally charged at the rate of 15% on interest and 20% on management/professional fees when paid to a non-resident person and in the absence of a double tax treaty.

Challenges of Existing Regulatory and Administrative Framework

Unfortunately, investors in the energy sector in Kenya have to deal with a lack of coordination between national government regulators and local authorities and a bewildering array of existing and proposed legislation governing access, enforcement of standards, and permits, including the Environmental Management and Coordination Act, the Water Act, the Forests Act, the Wildlife Conservation and Management Act, the Community Land Act 2014 and the Natural Resources Benefit Sharing Bill 2014.

Proposed Legislations (Bills) and Regulations

Despite the potential and appeal of Kenya's resources and opportunities in trade in energy services, the energy sector is afflicted by outdated and overlapping legislation and regulations, the unclear mandate of national and county governments, and contradictory policy frameworks.

In 2015, the Ministry of Energy and Petroleum released an updated National Energy and Petroleum Policy featuring a proposed new regulatory agency and coordination structure for upstream petroleum production, coal, renewable energy and framework legislation on natural resources revenue management, which will include the creation of a sovereign wealth fund. The Draft National Energy and Petroleum Policy notes the need to review Kenya's existing feed-in-tariff policy and adjust it upwards to enable sustainable returns from various projects and emerging technologies.

Alongside the 2015 draft policy, the Energy Bill 2015 and the Petroleum (Exploration Development and Production) Bill 2015 were published. Both bills are intended to align the current regulatory framework in the energy sector to the devolved structure of government outlined in the Constitution, and implement the recommendations contained in the 2015 draft policy. If enacted, the Energy Bill will repeal the Energy Act, 2006 and

the Geothermal Resources Act, while consolidating the regulation of electricity and renewable energy under one framework. The draft Petroleum (Exploration Development and Production) Bill 2015 is meant to update the regulatory framework established under the Petroleum (Exploration and Production) Act, establishing a new Upstream Petroleum Regulatory Authority and providing the terms of a new model production-sharing contract.

A. Energy Bill 2015

Alongside the 2015 draft policy, the Energy Bill 2015 has been developed to align the current regulatory framework in the energy sector to the devolved structure of government outlined in the Constitution, and implement the recommendations contained in the 2015 draft policy. If enacted, the Energy Bill will repeal the Energy Act, 2006 and the Geothermal Resources Act, while consolidating the regulation of electricity and renewable energy under one framework. The proposed legislation brings together all legislations dealing with energy except upstream petroleum activities which shall be catered for in the proposed Petroleum (Exploration, Development and Production) Bill, 2015 discussed below. The Energy Bill has been passed by the National Assembly and the Senate, and forwarded to the President for assent. The President however refused to assent the bill to law and stated, in the memorandum explaining his refusal to assent, *inter alia* that the clause on compensation for outages needs to be revised. The bill is currently at the Energy Committee of the Parliament and Senate for consideration of the recommendations by the President.

The bill covers renewable energy, geothermal resources, midstream and downstream petroleum, downstream coal and electrical energy. More particularly, the bill provides for:

1. Geothermal resources

The requirement of a licence to extract geothermal resources; payment of royalty for the geothermal resources extracted; liability of the licensee for loss, damage or injury to any person or property resulting from the licensee's works or operations, whether as a result of negligence or otherwise; and conditions upon which wells shall be closed;

2. Midstream and Downstream petroleum business

The requirement for a license for petroleum business in the midstream and downstream; that licenses for upstream and downstream activities in the petroleum sector shall be accompanied by environmental liability policy; requirement of a permit to construct a pipeline, refinery, bulk storage facility, retail dispensing site, centralized gas reticulation system or designated parking place for petroleum tankers, before commencing such construction; and requirement of a person engaged in petroleum business to comply with the applicable environmental, health and safety laws.

3. Production of energy from coal

The requirement of a license or permit to carry out the production of energy from coal; requirement of a permit before construction of a facility that produces energy using coal; and requirement of a person engaged in production of energy utilising coal to comply with the applicable environmental, health and safety laws.

4. Electrical Energy

The requirement of a license to carry out the generation, exportation, importation, transmission, distribution and retail supply of electricity; transfer of the respective licence; suspension or revocation of the licence; and replacement of a license.

The bill also establishes various institutions such as the Energy Regulatory Commission; Energy and Petroleum Tribunal; and Nuclear Power and Energy Agency.

More notably, the bill gives further provisions on energy efficiency and conservation. It takes into consideration the role of both the national and county governments in energy efficiency and conservation and therefore provides for the powers of a county government in relation to ensuring efficient use of energy and its conservation. This is not in the current Act governing the sector.

The bill also introduces local content requirements for all investors undertaking any work provided for under the bill. In this regard, investors are required to prepare and submit an annual and long term local content plan that corresponds to the investor's work program. The plan must include:

- a. First consideration is given to services provided within the County and goods manufactured in the country where the goods meet the relevant specifications as prescribed by the Kenya Bureau of Standards or in absence of a Kenyan standard any other internationally acceptable standards;
- b. Qualified and skilled Kenyans are given first consideration with respect to employment at all levels of the value chain; and
- c. Adequate provision is made for the training of Kenyans on the job.

The plan must also include other issues such as research and development and technology transfer.

Minimum requirements for local content in the local content plans shall be set by the Energy Regulatory Commission established under the bill.

B. Energy (Local Content) Regulations, 2014

It provides obligations for licensee, contractor or its sub-contractor with regard to local content requirements proposed in the Energy Bill as discussed above.

It also establishes the Local Content Development and Monitoring Unit to monitor, coordinate and implement the provisions of the Energy (Local Content) Regulations. The regulations provide that a licensee, contractor or its sub-contractor, or any other entity carrying out operations in the energy subsector must

ensure that the local content is a component of their operational energy activities. Hence, Kenyans citizens must be given the first consideration for employment and training in any operations executed by a licensee, the contractor or its sub-contractor, or any other entity in energy activities. Further first consideration must be given to services provided from within Kenya, to goods manufactured in Kenya, to locally available goods and Kenyans citizens subject to the fulfilment of the conditions specified in the Regulations.

In addition, it provides that non-indigenous Kenyan companies that intend to provide goods and services to licensees, contractors or sub-contractors within the country must incorporate a joint venture company or any other business arrangement with an indigenous Kenyan company where the indigenous Kenyan company is granted an equity or contract value participation of at least ten percent (10%). A licensee, contractor or its sub-contractor, or any other entity, must before the commencement of energy activities submit a plan to the Commission specifying:

- a) The role and responsibilities of the indigenous Kenyan company;
- b) The equity participation or contract value of the indigenous Kenyan company; and
- c) The strategy for the transfer of technology and know-how to the indigenous Kenyan company.

In the application for any license, permit or interest and before carrying out any energy activity in Kenya, a licensee must submit a Local Content Plan to the Commission demonstrating compliance with the Kenyan Local Content requirements of the Regulations. The licensee must also ensure that its contractors or sub-contractor or any other entities it engages in any energy activity submit a Local Content Plan to the licensee for further submission to the Commission demonstrating compliance with the Kenyan Local Content requirements of the Regulations.

The licensee should ensure that the local content plan submitted specifies that:

- a) First consideration shall be given to services provided within the country and goods manufactured in the country where the goods meet the specifications of the energy sector as established by-the Kenya Bureau of Standards or by other internationally acceptable standards;
- b) Qualified Kenyans shall be given first consideration with respect to employment; and
- c) Adequate provision is made for the training of Kenyans on the job.

The local content plan should have sub-plans which give more details on the above items and other items. The sub-plans include:-

- a) An Employment, Training and Succession Plan;
- b) A Research and Development Plan;
- c) A Technology Transfer Plan;
- d) A Legal Services Plan; and

e) A Financial and Insurance Services Plan

The regulation also gives guidelines with regard to the bidding process by license holders. A licensee, contractor or its sub-contractors, or any other entity must establish and implement a bidding process for the acquisition of goods, works and services that gives preference to indigenous Kenyan companies. Further, where an indigenous Kenyan company has the capacity to execute goods, works and services, the indigenous Kenyan company cannot be disqualified exclusively on the basis that it is not the lowest financial bidder. In the event that during the evaluation bids are adjudged to be equal, the bid containing the highest level of local content must be selected.

Where non indigenous Kenyan company is contracted to provide goods and services to a licensee, contractor, subcontractor, or any other entity, that non indigenous Kenyan company must incorporate a company and operate it from Kenya and provide the goods and services in association with an indigenous Kenyan company, where practicable. With regard to training and skills transfer, the licensee must demonstrate the efforts it has made and procedures adopted to accelerate training of Kenyans in its bi-annual report. In addition, the licensee must provide a succession plan for employment positions held by non-Kenyan's to ensure that the minimum local content requirements specified in the regulations are met.

Technology transfer is also provided for in detail. The Licensee must furnish the commission with a technology transfer plan that must include a programme of planned initiatives aimed at promoting the effective transfer of technologies from the licensee, contractor or its sub-contractor, or any other entity to an indigenous Kenyan company, established centres of excellence or citizens. The licensee contractor or its sub-contractor, or any other entity engaged in energy activities should facilitate technology transfer as regards the formation of joint ventures, partnering of licensing agreements between indigenous Kenyan companies or citizens and foreign contractors and service companies or supply companies.

On the issue of insurance, the licensee, contractor or its sub-contractor, or any other entity engaged in energy activities in the country must comply with all insurance laws and regulations. In addition, the insurable risks relating to energy activities in the country shall be insured through Kenyan insurance companies or a Kenyan brokerage firm or where applicable, a reinsurance broker.

With regard to legal services, the licensee, contractor and its sub-contractor, or any other entity engaged in energy activities that requires legal services in the country must retain only the services of a Kenyan legal practitioner or a firm of Kenyan legal practitioners whose principal office is located in the country. This requirement is similar for financial services.

With regard to financial services, a licensee, contractor or its sub-contractors, or any other entity engaged in energy activities must maintain a bank account with a Kenyan bank and transact business through banks in the country.

The regulations also provide for local content requirement for different services and the specific levels to be achieved for the duration of the licence. Some of the services are engineering services, well drilling services for geothermal, research and development, transportation, supply and disposal, health, safety and environment, information technology, and marine related services.

	Item	Start	50% of duration	75% of duration
1.	Goods and services	30%	60%	80%
2.	Recruitment and training			
(a)	Management staff	30%	40% - 60%	70% - 80%
(b)	Technical core staff	20%	40% - 60%	70% - 80%
(c)	Other staff	70%	90%	100%

C. Petroleum (Exploration, Development and Production) Bill, 2015

The Bill was passed by the National Assembly and the Senate and forwarded to the president for assent. The President however refused to assent the bill to law and stated, in the memorandum explaining his refusal to assent, *inter alia* that revenues local communities would get should be reduced and the amount should not exceed a quarter of the amount allocated to the county government by Parliament in a financial year on the basis of equitable development of natural resources. The bill is currently at the Energy Committee of the Parliament and Senate for consideration of the recommendations by the President

The draft Petroleum (Exploration Development and Production) Bill 2015 is meant to update the regulatory framework established under the Petroleum (Exploration and Production) Act, establishing a new Upstream Petroleum Regulatory Authority and providing the terms of a new model production-sharing contract. It provides for the requirement of a permit such as non-exclusive exploration permit, operational permit, production permit and petroleum agreement to undertake upstream petroleum operations; fees payable to undertake different activities; sharing of profits derived from upstream petroleum operations; and model production sharing agreements. Further, it proposes the establishment of institutions such as the National Upstream Petroleum Advisory Committee to be advising the cabinet secretary during the negotiation of and entering into petroleum agreements as well as suspension, revocation or termination of the agreements; and the Upstream Petroleum Regulatory Authority that will be responsible for, *inter alia*, monitoring and regulating upstream operations.

D. Petroleum Exploration, Development and Production (Local Content) Regulations, 2014

Just like the regulations for local content for energy activities discussed above, it provides for local content requirements for a contractor or its sub-contractor, licensee, or any other entity carrying out upstream petroleum operations; establishment of Local Content Development and Monitoring Unit to monitor, coordinate and implement the provisions of the Petroleum Exploration, Development and Production (Local Content) Regulations, 2014; contents of local content plan; review of local content plan; minimum local content levels; submission of technology transfer reports; requirements for submitting local content performance reports; establishment of a Common Qualification System and its objects; and local content monitoring.

E. Local Content Bill 2016

It is a Senate Bill and has gone through the first and second reading. The bill covers local content issues for the entire extractive sector. The purpose of the bill is to promote the maximisation of value-addition and the creation of employment opportunities in the extractive industry value chain through the use of local expertise, goods, services, businesses and financing and their retention in the country; provide a framework for the- establishment of a monitoring, evaluation and reporting system in the implementation of this Act; development of indigenous skills across the extractive industry value chain; and application of the mechanism of local content by an operator under this Act; enhance the participation of local persons in extractive industry value chain; facilitate the development of a competitive, capable and sustainable labour force; enhance local ownership and use of local assets and services in the extractive industry; and maximise value addition through local content development and local participation in extractive industry operations.

The issues covered in the bill mirror those in the regulations discussed above.

Recent Jurisprudence on the Energy Sector

Judicial decisions in the energy sector in the last three years have brought to the fore land disputes that typically accompany energy development efforts due to the clashing rights of stakeholders.

Parkire Stephen Munkasio & 14 others (suing on their own behalf and behalf of their families and all the members of the Maasai community living on land reference no.8396 (i.r 11977) situated in Kedong) v Kedong Ranch Limited & 8 others [2015] Eklr : The Maasai community, a pastoral community that has communal ownership of land, has been affected by geothermal resource exploration activities, which have seen them displaced and evicted from land which they have occupied for generations. The community, through representatives, have taken court action. In some cases, the courts have refused to uphold Maasai claims to land based on the fact that the land is ancestral and that they have been in occupation of it since birth, stating unequivocally that in so far as the right to property is concerned, occupation is immaterial, and they must demonstrate that they have a right over the property, which may then be protected.

In the Matter of the Mui Coal Basin Local Community [2015] Eklr: Oil exploration in Turkana and coal exploration in the Mui Basin have also seen protests from local communities. The courts have not been able to lay down clear requirements for involving the community in energy projects, stating that “*it is not possible to come up with an arithmetic formula or litmus test for categorically determining when a Court can conclude there was adequate public participation.*”

Republic v National Land Commission & 3 others Ex-Parte Vivo Energy Kenya Limited (Formerly B.P Kenya Limited) [2015] eKLR. - The protection of foreign investors and foreign oil companies has also been highlighted in recent court decisions. This was evident in the quashing of a gazettelement compulsorily acquiring the property held by an oil company, by the National Land Commission. The Kenyan courts continue to enforce the provisions of the different instruments regulating the energy sector, maintaining a balance between public policy, investor interest and individual rights.

HCIG-Energy Investment Co. Ltd and Liketh Investment Kenya Limited (HCIG Consortium) v Ministry of Energy & Petroleum Contracting Authority & 5 others [2014] Eklr: -This case brought to the fore the confusion arising the existence of mutiple legislation and administrative bodies, which has also led to situations where the High Court assumes jurisdiction in matters, notwithstanding the existence of an administrative body specifically set up to deal with such matters or other bodies mandated by statute to handle the relevant complaints. This reflects either a lacuna in the powers given to that body, and/or a gap in the regulations.

PART 4: KENYA’S PROPOSED OFFER FOR COMESA TRADE IN SERVICES NEGOTIATIONS: PHASE 2

KENYA’S OFFER FOR COMESA TRADE IN SERVICES NEGOTIATIONS

Modes of supply: 1) Cross-border supply 2) Consumption abroad 3) Commercial presence 4) Presence of natural persons

Sector or sub-Sector	Limitations on Market Access	Limitations on National Treatment
I. HORIZONTAL COMMITMENTS		
All sectors included in this schedule	<p>3) Commercial presence requires that foreign service providers incorporate or establish the business locally.</p> <p>4) Unbound, except for: Intra-corporate Transferees: Personnel sent from the headquarters in the home country to do temporary work in a subsidiary in Kenya.</p> <p>Each company may be allowed to bring six expatriates, subject to clear evidence that the skills are not available in Kenya. They must have at least two-year prior employment in the home country. Allowed to stay for two years that can be extended – CONFIRM TIMEFRAME WITH IMMIGRATION/ERB</p> <p>Business Visitors: Personnel employed by a service company abroad that enters Kenya to conduct business meetings or setting up</p>	<p>3) Resident firms taxed at 30% and Non-Resident 37.5%.</p> <p>A foreign entity is not allowed to own a free hold title. They may only acquire land on a leasehold basis.</p> <p>4) None for intra-corporate transferees and business visitors</p>

Sector or sub-Sector	Limitations on Market Access	Limitations on National Treatment
	<p>establishment cannot be engaged in the direct provision of services. Access is subject to the condition that representatives of such services suppliers:</p> <ul style="list-style-type: none"> • Will not be engaged in making direct sales to the general public or in supplying services themselves. • Will not receive remuneration from a source located in the host Partner State. • Entry for persons in this category shall be for a period of not more than 90 continuous days continuous in any 12-month period. 	
II. SECTOR-SPECIFIC COMMITMENTS		
1. BUSINESS SERVICES		
A. Professional Services		
Architectural Services (8671)	1)None 2)None 3) None 4) Unbound, except as indicated in the horizontal section	1) None 2)None 3)None 4) Unbound, except as indicated in the horizontal section
Engineering services (8672)	1)None 2)None 3) Unbound. Requirement for joint venture with a local having at least 51% shareholding.	1)None 2)None 3)Unbound except as indicated in the horizontal section

Sector or sub-Sector	Limitations on Market Access	Limitations on National Treatment
	4) Unbound, except as indicated in the horizontal section	4) Unbound, except as indicated in the horizontal section
Integrated engineering services (8673)	1)None 2)None 3) Unbound. Requirement for a joint venture where at least 51% shareholding must be owned by a Kenyan. 4) Unbound, except as indicated in the horizontal section	1)None 2) None 3)Unbound except as indicated in the horizontal section 4) Unbound, except as indicated in the horizontal section
Engineering related scientific and technical consulting (8675)	1)None 2)None 3) Unbound. Requirement for a joint venture where at least 51% shareholding must be owned by a Kenyan. 4) Unbound, except as indicated in the horizontal section	1)None 2) None 3)Unbound except as indicated in the horizontal section 4) Unbound, except as indicated in the horizontal section
B. Computer and Related Services		
Consultancy services related to installation of computer hardware (841)	1) None 2)None 3)Unbound, except as indicated in the horizontal section 4) Unbound, except as indicated in the horizontal section	1) None 2)None 3)Unbound, except as indicated in the horizontal section 4)Unbound, except as indicated in the horizontal section
Software implementation services (842)	1) None 2)None 3)Unbound, except as indicated in the horizontal section 4) Unbound, except as indicated in the horizontal section.	1) None 2)None 3)Unbound, except as indicated in the horizontal section 4) Unbound, except as indicated in the horizontal section

Sector or sub-Sector	Limitations on Market Access	Limitations on National Treatment
C. Research and Development Services¹⁶⁴		
Research and Development Services on natural sciences (851)	1) None 2)None 3)Unbound, except as indicated in the horizontal section 4) Unbound, except as indicated in the horizontal section	1) None 2)None 3)Unbound, except as indicated in the horizontal section 4) Unbound, except as indicated in the horizontal section
D. Rental/Leasing Service without Operators		
Relating to Aircraft (83104)	1)None 2)None 3)None 4)Unbound, except as indicated in the horizontal section	1)None 2)None 3)None 4)Unbound, except as indicated in the horizontal section
Relating to other transport equipment (83101 + 83102 + 83105)	1)None 2)None 3)None 4)Unbound, except as indicated in the horizontal section	1)None 2)None 3)None 4)Unbound, except as indicated in the horizontal section

¹⁶⁴ Research and development services consisting in scientific progress achieved in the various fields of natural or social sciences in the three areas of R&D, i.e. basic research, applied research and experimental development. R&D services are subdivided into groups, classes and subclasses according to the sciences to which the R&D services relate.

Sector or sub-Sector	Limitations on Market Access	Limitations on National Treatment
Relating to other machinery and equipment (83106 to 83109)	1)None 2)None 3)None 4)Unbound, except as indicated in the horizontal section	1)None 2)None 3)None 4)Unbound, except as indicated in the horizontal section
3. CONSTRUCTION AND RELATED ENGINEERING SERVICES		
B. General Construction Work for Civil Engineering		
Construction Work for Civil Engineering (5131+5134+5135+5234+5136+ to 5137)	1)None 2)None 3)Unbound, except the requirement for a joint venture where at least 30% shareholding must be owned by a Kenyan. 4)Unbound, Unbound, except as indicated in the horizontal section.	1)None 2)None 3) Unbound, except that contract must be valued above Kenya Shillings 500. At least 30% of the value of the work must be subcontracted to an indigenous Kenyan firm. Foreign service suppliers must offer on-the-job training for national employees. 4) Unbound, except as indicated in the horizontal section. Skilled foreign employees are required to provide training to locals.
E. Rental/Leasing with Operator		
Renting services related to equipment for construction or demolition of buildings or civil engineering works, with operator (5180)	1)None 2)None 3)Unbound except as indicated in the horizontal section. 4)Unbound, Unbound, except as indicated in the horizontal section.	1)None 2)None 3) Unbound, except as indicated in the horizontal section. Foreign service supplier must offer on-the-job training for national employees.

Sector or sub-Sector	Limitations on Market Access	Limitations on National Treatment
		4) Unbound, except as indicated in the horizontal section. Skilled foreign employees are required to provide training to locals.
12. ENERGY SERVICES SECTOR		
Management consulting services (8650)	1) None 2) None 3) Unbound, except as indicated in the horizontal section. 4) Unbound, except as indicated in the horizontal section	1) None 2) None 3) Unbound, except as indicated in the horizontal section. Foreign service supplier must offer on-the-job training for national employees. 4) Unbound, except as indicated in the horizontal section. Skilled foreign employees are required to provide training to locals.
Services incidental to energy distribution (8870)	1) None 2) None 3) Unbound, except as indicated in the horizontal section. 4) Unbound, except as indicated in the horizontal section	1) None 2) None 3) Unbound, except as indicated in the horizontal section. Foreign service supplier must offer on-the-job training for national employees. 4) Unbound, except as indicated in the horizontal section. Skilled foreign employees are required to provide training to locals.
Services incidental to mining (8830)	1) None 2) None 3) Unbound, except the requirement for at least 35% equity participation by locals. 4) Unbound, except as indicated in the horizontal section	1) None 2) None 3) Unbound, except as indicated in the horizontal section. 4) Unbound, except as indicated in the horizontal section.

Sector or sub-Sector	Limitations on Market Access	Limitations on National Treatment
Related scientific and technical consulting services	1) None 2) None 3) Unbound, except as indicated in the horizontal section. 4) Unbound, except as indicated in the horizontal section	1) None 2) None 3) Unbound, except as indicated in the horizontal section. Foreign service supplier must offer on-the-job training for national employees. 4) Unbound, except as indicated in the horizontal section. Skilled foreign employees are required to provide training to locals.
Construction work for civil engineering services	1) None 2) None 3) Unbound, except the requirement for a joint venture where at least 30% shareholding must be owned by a Kenyan. 4) Unbound, Unbound, except as indicated in the horizontal section.	1) None 2) None 3) Unbound, except that contract must be valued above Kenya Shillings 500. At least 30% of the value of the work must be subcontracted to an indigenous Kenyan firm. Foreign service suppliers must offer on-the-job training for national employees. 4) Unbound, except as indicated in the horizontal section. Skilled foreign employees are required to provide training to locals.
Whole sale trade services	1) None 2) None 3) Unbound, except as indicated in the horizontal section 4) Unbound, except as indicated in the horizontal section	1) None 2) None 3) Unbound, except as indicated in the horizontal section 4) Unbound, except as indicated in the horizontal section

Bibliography

Advocates' (Marketing and Advertising) Rules 2014, available at <http://ilawkenya.com/wp-content/uploads/2014/02/THEADVOCATES-MARKETING-ADVERTISING-RULES-2014-2.pdf>

African Development Bank, Kenya- Last Mile Connectivity Project, July 2014. Available at <https://www.afdb.org/en/projects-and-operations/project-portfolio/p-ke-fa0-010/>

Classes of Contract Works, Third Schedule to the NCA Act, 2011. Available at http://nca.go.ke/new/website-content/uploads/2017/05/nationalconstructionauthorityact__2011-2.pdf

Construction Industry Capacity Survey: Capacity Status Report on Skills, Equipment, Capacity and Financing, July 2014. Available at <http://nca.go.ke/new/website-content/uploads/2017/05/Construction-Industry-Survey-Report-2014.pdf>

EAC, Veterinary Services in the EAC - A Report prepared to facilitate MRA Negotiations for Veterinary Professionals, Arusha, United Republic of Tanzania, 2015. Available at http://www.rr-africa.oie.int/docspdf/en/2015/V5_EAC.pdf

Economic Outlook 2016, *The story behind the numbers*, Deloitte Touche Tohmatsu Limited, July 2016.

Financial Times, Big Global firm trying to get a foothold in Kenya, available at <https://www.ft.com/content/e4eb1eb4-9f06-3dbd-bcb7-dec321dff9a4>

<http://una-gp.org/the-sustainable-development-goals-2015-2030/>
Kenya Economic Survey 2016 available at <https://www.knbs.or.ke/economic-survey-2016-2/>

Kenya Economic Survey 2017 available at <https://www.knbs.or.ke/download/economic-survey-2017/>

Kenya Engineer (2016) “*Collaborate with International Firms to Grow Capacity and Become Bigger*”, Kenyan Engineer on 26th May 2016 Available at <http://www.kenyaengineer.co.ke/2016-05-28-20-43-28/latest-news/item/250-collaborate-with-international-firms-to-grow-capacity-and-become-bigger>.

Kenya National Energy Policy 2015 available at http://www.erc.go.ke/images/docs/National_Energy_Petroleum_Policy_August_2015.pdf

Kenya Veterinary Board website available at <http://kenyavetboard.or.ke/>

Kenya's Vision 2030 flagship projects, available at <http://www.vision2030.go.ke/flagship-projects/>

Knight Frank. Kenya Market Update- 1st Half 2017. Nairobi, 2017. Available at <http://content.knightfrank.com/research/1362/documents/en/kenya-market-update-1st-half-2017-5028.pdf>

Law society of Kenya Website available at <http://www.lsk.or.ke/>

Mariana Mirabile, Virginie Marchal and Richard Baron, "Technical Notes on Estimates of Infrastructure Investment Needs", July 2017. Available at <https://www.oecd.org/env/cc/g20-climate/Technical-note-estimates-of-infrastructure-investment-needs.pdf>.

Ministry of Industry, Trade and Cooperatives, "*Elevated Investment of \$55.6 Billion in Infrastructure Development Anticipated for Kenya*" available at <http://www.industrialization.go.ke/index.php/media-center/blog/238-elevated-investment-of-55-6-in-infrastructure-development-anticipated-for-kenya>.

National Science Board. Research & Development, Innovation, and the Science and Engineering Workforce: A Companion to Science and Engineering Indicators 2012, Arlington, VA: National Science Foundation (NSB-12-03) 2012. Available at <https://www.nsf.gov/nsb/publications/2012/nsb1203.pdf>Saez

Nora Dihel, Ana M. Fernandes, Aaditya Mattoo Developing Professional Services in Africa through Regional Integration, 2010, available at http://www.uneca.org/sites/default/files/uploaded-documents/AEC/2010/Papers/session_i.1.3_1_developing_profesional_services_in_africa_through_regional_integration.pdf

Nora Dihel, Ana M. Fernandes, Aaditya Mattoo, Towards a Regional Integration of Professional Services in Southern Africa, 2010. Available at <http://siteresources.worldbank.org/INTAFRREGTOPTRADE/Resources/10SouthernAfricaProfessionalServicesREDESIGN.pdf>

Nora Dihel, Ana, Margarida Fernandes, Richard Gicho, John Kashangaki and Nicholas Strychacz, Can Kenya Become a Global Exporter of Business Services? May, 2011, Available at

http://siteresources.worldbank.org/INTAFRREGTOPTRADE/Resources/Can_Kenya_become_global_exporter_business_services_31May.pdf

PR Newswire, “The Construction Industry in Kenya 2017”, July 17 2017, Available at <https://www.prnewswire.com/news-releases/the-construction-industry-in-kenya-2017-300489641.html>.

Report Buyer, “*The Construction Industry in Kenya 2017*”, available at <https://www.reportbuyer.com/product/4886925/the-construction-industry-in-kenya-2017.html>

S, Mackenna M, Hoffman B, Valuing Trade in Services, The Africa Competitiveness Report, 2015

The Energy Digest 2016. Available at <http://kerea.org/the-energy-digest-kenyas-premier-renewable-energy-magazine/>

The Global Information Technology Report, 2011 available at <http://reports.weforum.org/global-information-technology-2011/>

The Global Information Technology Report, 2012 available at http://www3.weforum.org/docs/Global_IT_Report_2012.pdf

The Global Information Technology Report, 2013 available at http://www3.weforum.org/docs/WEF_GITR_Report_2013.pdf

The Swedish Trade & Invest Council, “The Infrastructure Sector in Kenya, 2017 Fact-Pack”, Business Sweden 2017. Available <http://www.business-sweden.se/contentassets/466e482333344482a94fe47af3b5dec5/factpack---infrastructure-sector-in-kenya---2017.pdf>.

Trade in energy services: India and GATS, Working Paper Number 231, Arpita Mukherjee, 2009. Kenya. Available at <http://icrier.org/pdf/WorkingPaper231.pdf>

Tullow Kenya Profile, Tullow in Kenya, 2014 available at <https://www.tullowoil.com/Media/docs/default-source/operations/tullow-kenya-profile.pdf?sfvrsn=2>

World Energy Assessment: Energy and the Challenge of Sustainability, United Nations Development Program, United Nations Department of Economic and Social Affairs, World Energy Council, New York, 2000. Available at <http://www.undp.org/content/undp/en/home/librarypage/environment->

energy/sustainable_energy/world_energy_assessmentenergyandthechallengeofsustainability.html

World Trade Organization Website available at https://www.wto.org/english/thewto_e/coher_e/wto_oecd_e.htm

World Trade organization, “Energy Services Background Note by the Secretariat”, 1998. Available at https://www.google.com/search?q=WTO+explanatory+paper+on+Energy+Services+1998&oq=WTO+explanatory+paper+on+Energy+Services+1998&gs_l=psy-ab.3...2077.16034.0.16932.45.38.0.0.0.488.6800.3-15j4.19.0...0...1.1.64.psy-ab..26.15.5246...0j0i131k1j35i39k1j0i131i67k1j0i20k1j0i67k1j0i22i30k1j33i160k1j33i21k1.BQ4r0F9HktU

World Trade organization, “Energy Services Background Note by the Secretariat”, 12 January 2010. Available at https://docs.wto.org/dol2fe/Pages/FE_Search/FE_S_S009-DP.aspx?language=E&CatalogueIdList=71392,101348,89886,89967,65821,40192&CurrentCatalogueIdIndex=1&FullTextHash=&HasEnglishRecord=True&HasFrenchRecord=True&HasSpanishRecord=True

Newspaper Articles

Igadwah, Lynet (2016) ‘Transport, Engineering Firms Top List Of 11 Japanese Companies Eyeing Kenya’ Business Daily on 30th August 2016. Available at <http://www.businessdailyafrica.com/Transport-engineering-firms-top-list-of-Japanese-companies/1248928-3363274-bq1ctn/>.

Hassan Sumaya, CEO of National Oil, An Overview of Oil and Gas Industry in Kenya, Mindspeak Forum, October 2015, available at <http://www.rich.co.ke/rcfrbs/docs/Sumayya%20Presentation%20on%20the%20Petroleum%20Sector%20and%20Opportunities.pdf>.

Kamau Macharia “ KenGen to set up subsidiary to grow revenue from non-core business, Standard Digital, October 2016 available at <https://www.standardmedia.co.ke/business/article/2000221191/kengen-to-set-up-subsidiary-to-grow-revenue-from-non-core-business>.

Kenya engineer PPP experts equipped to promote bankable energy projects, May 2016, available at <http://www.kenyaengineer.co.ke/2016-05-28-20-43-28/latest-news/item/74-ppp-experts-equipped-to-promote-bankable-energy-projects>

Lugaria Peter (2017) ‘ *We will reject your bids, minister warns Kenyans road contractors*’, Construction Kenya, January 30, 2017 Available at <http://www.constructionkenya.com/2905/kenya-contractors-workmanship/>

Onyanga-Omara Jane, “U.S. Tech Firms Turn to Africa-based developers”, USA TODAY, 31st October 2016. Available at <https://www.usatoday.com/story/tech/2016/10/31/us-tech-firms-turn-africa-based-developers/92281922/>

Richter Alexander, “KenGen to set up subsidiary to focus on additional revenue opportunities” THINKGEOENERGY November 2017. Available at <http://www.thinkgeoenergy.com/kengen-to-set-up-subsidiary-to-focus-on-additional-revenue-opportunities/>.

Senelwa, Kennedy (2015) “Chinese firm to buy 5,250 tonnes of steel for railways” The EastAfrican, 2nd May 2015. Available at <http://www.theeastafrican.co.ke/business/Chinese-firm-to-buy-5-250-tonnes-of-steel-for-railways/2560-2704210-136bdq7/index.html>

Snow Nick, *World Energy Council Report Identifies 2017's Global Issues Trends*, Oil and Gas Journal, 17th April 2017. Available at <http://www.ogj.com/articles/print/volume-115/issue-4b/general-interest/world-energy-council-report-identifies-2017-s-global-issues-trends.html>.

Thuku, Wahome, “Foreign Lawyers to Work in Kenya” Standard Digital, Nairobi February 3rd 2014. Available at <https://www.standardmedia.co.ke/article/2000103789/foreign-lawyers-to-work-in-kenya>

Acts and Regulations

Accountants Act No. 15 of 2008

Architects and Quantity Surveyors Act Chapter 525 of the Laws of Kenya

Civil Aviation Act, 2013

Clinical Officers (Training, Registration and Licensing) Act Chapter 260

Companies Act No. 17 of 2015

Energy Act Chapter 314 Laws of Kenya

Energy Act, No. 12 of 2006

Engineering Technology Act No. 23 of 2016

Estate Agents Act Chapter 533 of the Laws of Kenya.
Fisheries Management And Development Act No. 35 Of 2016
Foreign Investments Protection Act Chapter 518 Laws of Kenya
Forest Conservation And Management Act No. 34 of 2016
Geothermal Resources Act No. 12 of 1982
Income Tax Act Cap 470
Income Tax Act Cap. 470 Tax Procedures Act No. 29 of 2015
Kenya Engineering Technicians and Technologists Act of 2016
Kenya Maritime Authority Act No. 5 of 2006.
Kenya Revenue Authority Act No.2 of 1995
Land Act 2012
Land Registration Act
Land Registration Act No. 3 of 2012
Medical Practitioners and Dentist Act, Cap 253 of the Laws of Kenya
Merchant Shipping Act No. 4 of 2009
Micro and Small Enterprises Act No. 55 of 2012
Mining Act 2016
Mining Act No. 12 of 2016.
National Construction Authority Act No. 41 of 2011
National Construction Authority Act No. 41 Of 2011
Natural Resources (Classes of Transactions Subject to Ratification) Act of 2016
Nurses Act, Cap 257 Laws of Kenya
Nutritionists and Dieticians Act No. 18 of 2007
Petroleum (Exploration and Production) Act Chapter 308
Physical Planners Registration Board Act No.3 of 1996
Physical Planning Act Cap 286 laws of Kenya

Physiotherapists Act No. 20 of 2014
Science Technology and Innovation Act No. 28 of 2013
Science, Technology, and Innovation Act, No 28 of 2013
Survey Act Cap 299 Laws of Kenya
The Accountants Act, Cap 531 of the laws of Kenya
The Constitution of Kenya, 2010
The Engineers Act No. 43 of 2011
The Special Economic Zones Act, 2015
Veterinary Surgeons and Veterinary Paraprofessionals Act No. 29 of 2011.

Regulations

Advocates' (Marketing and Advertising) Rules 2014
Energy (Local Content) Regulations, 2014
Environmental (Impact Assessment and Audit) Amendment Regulations 2016
Geothermal Resources Regulations of 1990
Kenya Citizens and Immigration Regulations of 2012
Kenya Citizens and Immigration Regulations, 2012
Medical Practitioners and Dentists (Inspections and Licensing) Rules 2014
Mining (Local Equity Participation) Regulations 2012
Mining (Local Equity Participation) Regulations 2012
Mining (Prescription of Royalties on Minerals) Regulation 2013
National Construction Authority Regulations, 2014
National Energy Petroleum Policy 2015
Petroleum (Exploration and Production) Regulations of 1984

Petroleum Exploration, Development and Production (Local Content) Regulations, 2014

Private Security Regulation Act No. 13 Of 2016

The Civil Aviation (Air Operator Certification and Administration) Regulations, 2013.

The Draft Energy (Improved Biomass Cook Stoves) Regulations, 2013

The Electrical Power (Electrical Installation Work) Rules 2006

The Energy (Appliances' Energy Performance & Labelling) Regulations, 2016

The Energy (Complaints and Disputes Resolutions) Regulations, 2006

The Energy (Electricity Licensing) Regulations, 2006

The Energy (Gasohol Blending) Regulations 2010

The Energy (Petroleum Regulation Levy) Regulations, 2008

The Energy Policy Register 2017

Draft Bills

Local Content Bill 2016

Energy Bill 2015

Petroleum (Exploration Development and Production) Bill 2015

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