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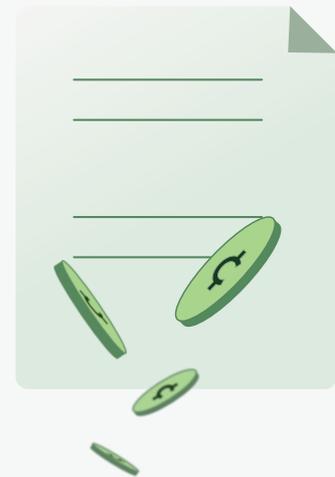
# Kenya Corporate & Commercial Legal Landscape

2025 REVIEW AND 2026 OUTLOOK

## Overview

The corporate and commercial environment in Kenya in 2025 was defined by execution catching up with policy. Legislative reforms that had been signalled for several years began to translate into transactions, enforcement activity, and capital deployment. Businesses operated in a more structured but less forgiving environment, where regulatory compliance, transaction design, and governance discipline directly affected deal timing, pricing, and viability.

Government policy emphasised market liberalisation, fiscal consolidation, and transparency, while deeper integration with EAC, COMESA, and AfCFTA frameworks strengthened cross-border investment pathways. At the same time, heightened scrutiny of public assets, tax compliance, and financial markets signalled a more structured and predictable business environment.



## Macro and Regulatory Context

Policy direction remained clear: fiscal consolidation, alignment with regional trade regimes, and improved governance of both public and private actors. Financial sector reforms, particularly the phased increase in minimum core capital for banks and mortgage finance companies, accelerated consolidation and recapitalisation in the banking industry. At the corporate level, enhanced AML, beneficial ownership, and governance obligations reshaped board responsibilities, compliance costs, and transaction risk allocation. ESG considerations continued to crystallize from aspirational commitments to deal-critical requirements influencing financing terms and investor appetite.

## 2025: KEY DEVELOPMENTS SHAPING CORPORATE & COMMERCIAL LEGAL LANDSCAPE

### Mergers and Acquisitions

- **Financial services consolidation:** Banks and insurance firms pursued mergers and recapitalisations to meet higher minimum capital thresholds. For example, the Business Laws (Amendment) Act of 2024 mandate a phased increase in minimum core capital for banks and mortgage finance companies from KES 1 billion to KES 10 billion by 2029.
- **Deal structures and financing:** Completion accounts, earn-outs, minority investments with governance rights, and local/DFI co-investments were widely used to bridge valuation gaps and manage regulatory scrutiny.
- **Regulatory mapping:** Early engagement with CAK, EAC, COMESA, CBK, CMA, and IRA was critical, with ESG, tax, and governance compliance increasingly influencing transaction timing and structure.
- **Sectoral trends:** Active sectors included fintech, renewables, logistics, consumer goods, and tech-driven services, supported by Nairobi's digital ecosystem and regional integration.

### Privatization and Public Asset Transactions

- **Privatization Act 2025:** Replacing the 2005 Act, the new law established the Privatization Authority to oversee divestitures with parliamentary approval, public participation, and independent valuations. Methods include IPOs, public tenders, and PPPs. This was after the government had failed to restart the privatization push through the Privatization Act 2023 that was declared unconstitutional by the courts.
- **Flagship IPOs:** The Kenya Pipeline Company (KPC) IPO opened in January 2026 and is expected to close by March 2026, offering up to 65% of shares to private investors at KES 9 per share, effectively valuing the company at KES 163.6 billion. The Government seeks to raise over KES 100 billion from the transaction. Other state corporations may follow under the gazetted privatization programme.

- **Infrastructure Investment:** Towards the end of 2025, the Cabinet approved the establishment of a national infrastructure fund and a sovereign wealth fund designed to attract institutional capital domestically and internationally for strategic infrastructure projects.
- **Structured Market Financing:** The Talanta Stadium project was financed through a landmark asset-backed security on the Nairobi Securities Exchange, illustrating the emergence of capital-markets-led funding models for large-scale public infrastructure.

## Regional Trade and Market Access

- **AGOA Extension:** After the African Growth and Opportunity Act expired on 30 September 2025, the U.S. Congress re-authorized duty-free access to the U.S. market retroactively from that date through 31 December 2026, providing short-term certainty for export-oriented SMEs in apparel, horticulture, and services that fuels approximately KES 60 billion in annual exports amid earlier uncertainty over renewal.
- **African Continental Free Trade Area (AfCFTA):** In 2025, AfCFTA's implementation advanced from planning toward actual usage with the AfCFTA Guided Trade Initiative, Kenya became a key partner in pilot trading, as Ethiopia began exporting under the AfCFTA framework with Kenya as its first destination, signalling practical intra-African trade movement. This improved market access for Kenyan businesses despite ongoing non-tariff and infrastructure challenges African trade movement.

## Competition & Antitrust

- **Kenya Competition Filings:** During FY2023/24 reported in 2025, the Competition Authority of Kenya (CAK) handled 107 merger-related matters, including domestic notifications, cross-border transactions under COMESA, and advisory opinions. Of these, 22 met the statutory threshold for full review under the Competition Act, 36 were cross-border notifications via COMESA, 18 fell below the review threshold, five determined not to qualify as mergers, and 25 were advisory opinions on proposed transactions. CAK continued sectoral oversight through market inquiries and investigations, such as the Animal Feed Market Inquiry Report, responding to concerns about restrictive practices in key value chains.

- **COMESA Competition & Consumer Protection Regulations 2025:** Effective December 2025, the regulations overhaul the 2004 framework, strengthening cross-border competition rules, targeting anti-competitive practices and consumer harms, and harmonizing standards across member states as regional commerce grows. This was achieved through clearer definitions of prohibited conduct, expanded investigative powers, and coordinated enforcement mechanisms among member states including Kenya.
- **East African Community Competition Authority (EACCA):** After years of planning, EACCA's regional merger control regime became operational on 1 November 2025, enabling it to review cross-border mergers and monitor anti-competitive conduct through a one-stop regional system that harmonizes competition rules and reduces duplicate filings across EAC Partner States.

## Tax Environment

Finance Act 2025 enacted on 26<sup>th</sup> June 2025, introduced wide-ranging changes to tax law that have direct implications for businesses: -ranging changes to tax law that have direct implications for business

- **Finance Act 2025:** Introduced key reforms including the Advance Pricing Agreement (APA) regime for transfer pricing certainty, limits on tax loss carry forwards, expansion of VAT on digital services by non-resident suppliers, and clarification of the Significant Economic Presence Tax (SEPT).
- **Tax Administration:** The Kenya Revenue Authority (KRA) continued modernising tax administration by enhancing digital systems and compliance mechanisms. eTIMS was expanded to improve VAT integrity and fraud detection, while the Electronic Rental Income Tax System (eRITS) rolled out to support landlords in filing and paying Monthly Rental Income tax. KRA also introduced iTax system upgrades, including stricter Tax Compliance Certificate eligibility and automated payment plans, and announced that from 01 January 2026 income and expenses declared in tax returns will be validated against eTIMS and other digital data sources to improve accuracy and compliance.
- **Tax Dispute Resolution:** The tax dispute resolution framework continued to evolve. KRA's use of Alternative Dispute Resolution (ADR) and independent reviews helped unlock substantial revenue through settlements and litigation outcomes, reflecting expanded mechanisms for resolving tax disputes efficiently.

| <i>Theme</i>                                      | <i>Expectation</i>  | <i>Strategic Implication</i>   |
|---|---|--|
| <b>M&amp;A</b>                                    | Continued deal activity driven by privatizations, sector consolidation, and foreign investment; Active CAK and regional (COMESA/EACCA) oversight.   | Early engagement with regulators, robust ESG and governance compliance, and careful deal structuring will increase certainty and value capture.                                      |
| <b>Privatization &amp; Strategic Investment</b>   | Further state divestitures and infrastructure PPPs will expand opportunities for private investors e.g. for state corporations already earmarked on 15 <sup>th</sup> October 2025 Gazetted privatization programme. | Companies should map stakeholders, conduct rigorous due diligence, and position early to participate meaningfully in privatizations and strategic infrastructure projects.           |
| <b>Tax &amp; Regulatory Certainty</b>             | Finance Bill 2026 expected to reduce taxes for low-income earners, refine digital taxation, transfer pricing rules, and virtual asset guidance.   | Active participation in Finance Bill consultations, early assessment of digital and cross-border tax obligations, and planning for APAs can mitigate risk and optimize tax outcomes. |
| <b>Digital Transformation &amp; AI Governance</b> | Expansion of licensed virtual asset providers; regulatory guidance on AI adoption; ongoing fintech and data protection rules.   | Implement robust risk, compliance, and governance frameworks for digital platforms, crypto, and AI; monitor emerging legislation to remain ahead of regulatory changes.              |
| <b>Regional Trade &amp; Market Access</b>         | Greater use of AfCFTA, COMESA, and EAC frameworks; cross-border trade compliance remains critical.  | Leverage regional trade agreements for market expansion while ensuring compliance with harmonized competition, consumer protection, and reporting rules.                             |

| <i>Theme</i>                                       | <i>Expectation</i>   | <i>Strategic Implication</i>   |
|--|--|--|
| <b>Capital Markets &amp; Infrastructure Growth</b> | Launch of sovereign and infrastructure funds; broader IPO and secondary listing activity.            | Early engagement with fund managers and regulators; structure investments to align with strategic national projects and governance expectations. |
| <b>ESG &amp; Climate-linked Investment</b>         | Sustainability-linked policies and incentives increasingly shape financing and governance standards. | Integrate ESG considerations into investment, financing, and corporate strategies to attract capital and meet investor expectations.             |
| <b>Corporate Governance &amp; Compliance</b>       | Ongoing focus on AML/CFT, beneficial ownership transparency, and technology oversight.               | Boards and executives must embed regulatory compliance, ESG, and emerging technology oversight into corporate strategy and reporting.            |

## Conclusion

As the 2026 calendar turns, it promises both complexity and opportunity in Kenya. Success will hinge on proactive engagement with policymakers, early alignment with regional and domestic frameworks, careful risk management, and an ability to integrate regulatory, technological, and ESG considerations into corporate strategy. Organizations that anticipate policy shifts, adopt emerging digital and ESG frameworks, and actively participate in shaping regulatory developments will be best placed to capitalize on Kenya's dynamic commercial landscape.

## ABOUT KN

KN Law LLP is a boutique corporate and commercial law firm operating from Nairobi, Kenya, with a regional reach across multiple jurisdictions and with a liaison office in London. We have selected the very top lawyers in their respective fields, each with unique experience and demonstrated expertise, to make up a well-rounded team that works together and with our clients. Our proven experience and proficiency in providing legal advisory to local and multi-national corporations and high-net worth individuals is the core of our practice. We offer innovative, efficient and practical legal solutions through our team of highly trained, skilled and expert lawyers. Our brief is simple: to ensure that our service offering not only meets clients' expectations, but continually surpasses them.

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