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Doing Business in Kenya

DRAFT LOCAL CONTENT BILL 2025

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KENYA CONTEMPLATING IMPOSING LOCAL CONTENT QUOTAS

Kenya is considering introducing local content quotas for foreign companies operating in the country. While previous efforts to promote local value chains have been policy-based, the draft Local Content Bill seeks to introduce enforceable obligations backed by significant financial and criminal sanctions. It proposes to give affected businesses at least one year to plan for compliance.

Which businesses will it affect?

Foreign companies which are incorporated and controlled from outside Kenya, and are majority owned by non-citizens will need to make their procurement and staffing plans compliant. It is intended this will benefit entirely or mostly citizen-owned locally incorporated companies through increased opportunities and knowledge transfer.

What are local content quotas?

Foreign companies doing business in Kenya will be obligated to add value to the country's economy by locally sourcing goods, services, and staff. The current draft law only applies quotas to the agricultural sector, and select services — financial, construction, transport, warehousing and logistics, and security.

The proposed quotas are:

- ❖ **Goods:** 60% of goods procured by foreign companies must be locally manufactured goods provided they meet standards prescribed by the government. Agricultural produce required as raw material must be entirely locally sourced.
- ❖ **Services:** for select services, foreign companies must source at least 60% from local companies provided they meet prescribed standards. The services currently targeted include construction, financial, insurance, transport and logistics, warehousing, and security services. The cabinet secretary for trade may add other service categories.
- ❖ **Labour:** a foreign company must employ Kenyan citizens at all organizational levels, and Kenyans should be at least 80% of its workforce.
- ❖ **Knowledge transfer:** where local suppliers do not meet required standards, foreign companies will be obligated to provide technical and capacity-building support to enable compliance.

Transitionally, foreign companies will be allowed to run out existing contracts, after which they will be expected to restructure their procurement frameworks and staffing plans to comply.

Non-compliance will be a prosecutable offence carrying the risk a minimum fine of KES 100 million (~USD 775,000) for the offending company and at least a one (1) year jailtime for a convicted CEO. This marks a significant departure from previous policy-based local content plans to statutory enforcement with direct personal criminal exposure.

Anticipated Challenges

- ❖ **Structural and Sectoral Constraints:** a uniform 60% sourcing threshold may present operational challenges in highly technical or capital intensive sectors where domestic capacity remains limited.
- ❖ **Agricultural Supply Realities:** the 100% agricultural sourcing requirement may prove challenging due to supply chain limitations, quality assurance standards, and export commitments particularly for produce and food processing companies.
- ❖ **Workforce Practicalities:** the 80% localisation requirement does not distinguish between technical and non-technical roles and currently lacks a phased implementation framework. Specialised and emergent sectors reliant on expatriate expertise may face short-term skills constraints.
- ❖ **Proportionality of Criminal Penalties:** personal criminal liability raises serious concerns of proportionality especially as the current draft is unclear whether this is a strict liability offence.
- ❖ **Trade and Investment Law Exposure:** mandatory local content measures often attract scrutiny from trade and investment partners, and regional and global trade organizations. Regulatory predictability and proportionality will be key to mitigating dispute risk.
- ❖ **Delegated Legislative Authority:** the draft grants the cabinet secretary broad powers to introduce new categories of services, new local content requirements, and set standards for local goods and services. As regulations are meant to implement laws rather than expand them, we expect attempts to expand obligations beyond what the primary law provides may be challenged in court.

- ❖ **Enforcement:** local content mandates are often policy based as statutory based mandates can be difficult to enforce consistently and predictably. This coupled with the lack of a phased implementation framework and a ‘comply or explain’ approach will predictably make compliance a headache for many foreign businesses.

Opportunities and Strategic Positives

Despite its anticipated challenges, the Bill presents potential structural benefits. Localisation mandates can accelerate the development and competitiveness of domestic value chains, reduce long-term supply chain vulnerabilities, and deepen linkages between foreign investment and local enterprise.

Capacity building obligations can foster technology transfer for sustainable industrial growth. Workforce localisation may further strengthen Kenya’s talent base, enhancing long-term attractiveness and productivity. As for investors with extended investment horizons, alignment with national industrial policy objectives may also strengthen regulatory goodwill and social licence to operate.

The proposed local content framework signals a decisive policy shift toward statutory localisation and embedded investment. While the fixed percentage thresholds and stringent penalties introduce material compliance and governance risks, the regime also reflects a broader developmental strategy aimed at strengthening domestic industry and workforce participation.

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