Kenya Repeals Mandatory Local Shareholding Requirement, Improving the Ease of Investing in East Africa

SUCCESS STORY

In Brief

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Starting January 1, 2017, foreign firms registering in Kenya will no longer have to cede at least 30 percent of their shareholdings to a "Kenyan citizen by birth". The new Finance Act 2016, signed into law by Kenyan President Uhuru Kenyatta on September 20, 2016, repeals a portion of the Companies Act of 2015, which contained the investment-limiting measures.

"Mandating local equity participation poses several problems if the foreign investor does not find an appropriate local equity partner. The act was restricting foreign investment into Kenya's $60 billion economy, the largest in the region," said Alfred K'Ombudo, Common Market Protocol Coordinator for the USAID East Africa Trade and Investment Hub.

The USAID East Africa Trade and Investment Hub (the Hub), working in partnership with the region's private sector, provided the evidence-based research to support advocacy for amendment of the specific investment-limiting section of the Companies Act of 2015. The section, 975 (2) (b) of the Companies (Amendment) Act, restricted the free movement of capital by requiring that a Kenyan citizen have at least a 30 percent shareholding of any foreign company in Kenya. The section contradicted Kenya's commitments under the East African Community (EAC) Common Market Protocol, which calls for the free movement of goods, labor, service and capital.

The Hub and its partners, notably the Kenya Private Sector Alliance, the Tanzania Private Sector Federation and the Private Sector Federation Rwanda, are helping Kenya and all EAC Partner States to identify laws that contradict the Common Market Protocol and have an adverse effect on trade and investment in the region. Once the Hub identifies a retrogressive measure, it composes a reform memorandum that explains the issue, identifies the key parties for effecting reform, and provides a concise legal draft for an amendment. It then circulates this memorandum among its partners and the private sector, and urges those partners and influential CEOs to advocate for the removal of the retrogressive law.

The Hub's advocacy support for compliance with the EAC Common Market Protocol reflects its overall objective of boosting trade and investment in East Africa, as outlined in the U.S. presidential initiative Trade Africa. Passage of the Finance Act 2016, which revokes the 30 percent shareholding measure, shows the positive results that Hub advocacy can effect.

To prevent future investment- and trade-limiting measures, the Hub is also proposing a "common market test," which would screen proposed bills for measures inconsistent with the EAC Common Market Protocol before they reach the floor of the House. The Hub recently addressed Kenya's Speaker, Leaders of Majority and Minority and several MPs on this matter at a Hub-sponsored meeting and is in the process of drawing up a reform memorandum for consideration by MPs.

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Kenya has made marked progress in improving the ease of doing business in recent years. This year, Kenya climbed 21 places in the World Bank Group's Doing Business Index; it was the third most reformed country for the second year in a row. By adhering to commitments made under the EAC Common Market Protocol, the ease of doing business in Kenya, and the region, will continue to climb.