

JULY 2025



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LEGAL ALERT



**Empowering Kenyan Micro-, Small and Medium
Sized Enterprises: A Legal Reflection on MSMEs**



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Background

Micro, Small and Medium Sized Enterprises (“**MSMEs**”) are touted as the foundational block of global economy. Indeed, MSMEs play a critical role in acceleration of sustainable growth and innovation in developed and developing economies around the world. To create awareness and highlight the crucial contribution of MSMEs in propelling economic growth, spurring technological innovation and expansion of the job economy globally, the United Nations General Assembly on April 2017 via resolution (**A/RES/71/279**) designated June 27th as MSME day.

The MSME day is dedicated to the recognition and uplifting of businesses that form the backbone of global and local economies. This demonstrates the important role MSMEs play in enhancing technological innovation, expanding the economic empowerment space for women, youth and vulnerable groups, enhancing technological innovation, entrenching entrepreneurship culture and mitigation of job creation crisis especially in developing countries like Kenya.

With this perspective as our backdrop, then it is important to appreciate the thinking that informed the theme of this year’s MSME day - **enhancing the role of Micro-Small and Medium-sized Enterprises (MSMEs) as drivers of Sustainable Growth and Innovation**.

This year’s theme highlights the role of MSMEs as conduits of accelerating sustainable growth and innovation, the theme resonates with the imperative need to create an environment that supports MSMEs to effectively perform their roles, both those in the

formal and informal economic sectors and demonstrates MSMEs potential, in pursuit of achieving the United Nations Sustainable Development Goals (**SDGs**). This, therefore, reinforces the need to create legislative and policy frameworks that are primarily tailored to empower MSMEs and accentuate their role is critical.

This begs the question, how has the role of MSMEs been enhanced in Kenya through legislative and policy frameworks?

Policy and Legislatives Interventions for MSMEs in Kenya

Policy Interventions

In Kenya, MSMEs are without any equivocation the bedrock of the economy. According to data from the Ministry of Co-operatives and Micro, Small and Medium Enterprises (MSMEs), MSMEs contribute to about 30% of Kenya’s Gross Domestic Product (**GDP**), and account for over 90% of business enterprises in the private sector and 93% of the total labour market. These statistics lends credence to the pivotal role MSMEs play in economic development in Kenya, it underscores the importance of pursuing legislative, policy and institutional initiatives that are specifically tailored to enhance the role of MSMEs in pursuit of achieving sustainable growth and innovation.

Kenya has been on trajectory of formulating policy interventions that were designed to enhance the role of MSMEs. A case in point is the **Sessional Paper No. 10 of 1965 on African Socialism and its application to planning in Kenya**, which was a conceptual framework that led to establishments of Kenya Industrial Estates (**KIE**). KIEs primary role was to



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afford promotion of indigenous enterprises through funding and capacity building of MSMEs. The upshot of this was mushrooming of MSMEs in Kenya.

Since then, Kenya has formulated various policies interventions which focus on entrenching recognition of the critical role of MSMEs in spurring economic development in Kenya. The country has had policy papers that assign priority in creation of an enabling business environment for MSMEs in Kenya, through expanding access to funding in the Jua Kali sector, policy interventions that are heavily inclined towards formulating initiatives that enhance inclusion of MSMEs in public procurement, with the objective of creating availability of markets for MSMEs products or services.

On innovation, [Sessional Paper No. 2 of 2005 on Development of Micro and Small Enterprises for Wealth and Employment Creation for Poverty Reduction](#) outlined a policy framework that encouraged research with the aim of entrenching uptake of innovation, to enable MSMEs in Kenya scale their share of export and domestic markets in the country. Additionally, on 27th June 2021, the government launched [Sessional Paper No. 05 of 2020 on Kenya Micro and Small Enterprises Policy for Promoting Micro and Small Enterprises \(MSEs\) for Wealth and Employment Creation](#). This policy framework focuses on technological advancement in the MSEs sphere in Kenya, with the aim of facilitating growth and development of MSEs that can compete efficiently, with their peers in the region and across the world.

The current policy framework [Micro, Small](#)

[Enterprise \(MSE\) 2020 Policy](#) was formulated with the foresight to address the following challenges that are afflicting MSMEs in Kenya: expanding MSMEs access to the domestic and global market, implementation of programs that are tailored to develop the MSME sector and improving the ease of access to affordable and decent infrastructures among other challenges. Addressing these challenges will have the twin objective of promoting sustainable growth and promoting innovation in line with this year's theme.

Currently, the State Department for Micro, Small and Medium Enterprises (MSMEs) Development is embarking on consultative process and conducting public participation forums across the country for the draft [MSME Policy 2025](#), which will review the MSME Policy 2020 and propose various amendments to the Medium and Small Enterprises Act, CAP 499C.

In summary, despite the bottlenecks that MSMEs face such as inhibited financial inclusion, poor work conditions, global funding issues, supply chain bottlenecks and political tensions that disrupt business, it is clear that there is an enabling legislative and policy framework in place, designed to enhance the role of MSMEs in sustainable growth and innovation.

Legislative Interventions

Legislative and regulatory support are critical in enhancing the performance of MSMEs to undertake their roles efficiently and effectively while being able to mitigate the various challenges they are faced with.

Kenya has created a legislative environment where



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MSMEs can sustainably operate with the necessary legal intervention required to assist them navigate the numerous legal and economic challenges at their various stages of their development.

The Impact of the Regulatory Landscape on MSMEs in Kenya

Regulatory compliance is a major challenge for various MSMEs. This process requires the registration and formalization of business entities including entity incorporation, registration of the relevant operational licenses at a governmental and sectoral level.

Excessive regulatory compliance requirements can be a hindrance to the growth and development of MSMEs in Kenya. The multi-layered compliance requirements have the effect of inhibiting the pace of development of enterprises and frustrating the achievement of sustainable growth and innovation. This buttresses the need for legislation and policy that are designed to ease of compliance for MSMEs.

For instance, if an MSME is required to comply with multiple licensing requirements during registration, their competitiveness in the domestic, regional or even global market are inhibited. The need to simplify compliance requirements for MSMEs, cannot be underscored adequately.

However, there have been concerted efforts to ease compliance requirements especially from the MSME perspective.

i) | The Effect of Unified Business Permit (UBP) in expanding the ease of compliance by MSMEs

County governments have implemented the uptake of a Unified Business Permit (**UBP**) as opposed to multiple business permits, to mitigate against the complexity of navigating compliance requirements by MSMEs.

The use of UBP is a marked departure and reprieve for MSMEs, as previously they had to seek multiple permits with respect to a single entity. The UBP eases compliance of registration of MSMEs by consolidating various permits into a single permit.

The attendant effect of this is that it simplifies business permits registration processes by MSMEs and affords convenience in application of permits. This boosts the functioning of MSMEs and their competitiveness and has the ripple effect of enhancing the role of MSMEs, in attaining sustainable growth and innovation.

ii) | Various tax laws changes that afford MSMEs latitude to meet tax obligations

For many MSMEs, especially those operating in the informal or semi-formal sectors, navigating the tax landscape can be daunting and confusing.

However, Kenya has implemented tax changes with the objective of improving tax obligations compliance by MSMEs operating in Kenya, thereby creating a tax environment that is good for development of MSMEs.

In consideration of the fact that the bulk of MSMEs operate in the informal sector without access to formal accounting. For example, Turn Over Tax (**TOT**) was introduced to facilitate payment of taxes



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by small business, whose annual turnover is between KES1,000,000 – KES 25,000,000.

TOT simplifies tax compliance for MSMEs, which has the attendant effect of encouraging compliance among MSMEs which previously struggled to navigate complex tax obligations.

Additionally, the Kenya Revenue Authority (**KRA**) in effort to enhance tax compliance by MSMEs, recently launched the Micro & Small Taxpayers (**MST**) department. This Department addresses challenges that MSMEs face in complying with their tax obligations, while pursuing the objective of leveraging digital tools in payment of taxes and simplifying tax compliance by MSMEs, while also providing customized tax assistance to MSMEs.

iii) | Robust Intellectual Property (IP) laws afford MSMEs Global Competitive Edge

While MSMEs in Kenya continue to innovate and develop original brands, products and software, many do so without taking the necessary steps to secure their intellectual property rights for example, trademarks, patents, copyrights, or trade secret protection. This oversight can result in the loss of competitive advantage or exposure to intellectual property theft and infringement. Having robust intellectual property laws guarantee brand differentiation of products produced by MSMEs and which affords them a competitive edge in the global market.

iv) | Data Protection

Regardless of their size of operation, MSMEs are required to comply with the Data Protection Act,

CAP 411C, Laws of Kenya. This is particularly critical for businesses engaging in e-commerce or operating digital platforms that collect or process personal data online. Consequently, failure to comply with data privacy obligations can result in regulatory sanctions and erode consumer trust altogether.

v) | Access to Finance

While Kenya has pioneered innovative funding platforms such as mobile-based microfinance and fintech innovation, many businesses are unable to fully benefit from them due to the lack of comprehensive legal documentation.

Financing agreements are often inadequately structured, with unclear repayment terms, limited collateral frameworks, or ambiguous shareholder arrangements in equity funding scenarios. Such gaps can potentially deter investors, and lead to contractual disputes.

Conclusion

The 2025 MSME Day reminds us that MSMEs are thriving and reshaping Kenya's economic future. With supportive legal frameworks and collaborative partnerships, Kenyan MSMEs can continue to drive innovation, foster inclusion, and promote sustainable growth.

At Oraro & Company Advocates we celebrate the resilience and creativity of MSMEs and renew our commitment to providing the legal expertise they need to succeed. We continue to work with entrepreneurs to ensure that they have the opportunity and support to turn their concepts into thriving businesses that uplift families, communities, and the nation at large.

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This alert is for informational purposes only and should not be considered or interpreted as legal advice. If you have any questions or require clarification, please feel free to contact the authors Pamella Ager, Managing Partner(pamella@oraro.co.ke) and Anna Kandu, Senior Associate (anna@oraro.co.ke) – or your usual contact at our firm for legal guidance. Special thanks to Pupil Julius Kimulu for his contributions.



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