

## ENSafrica Uganda in brief

Welcome to the first issue of **ENSafrica's Uganda in brief**, focusing on the latest legal and regulatory updates across Uganda's corporate commercial and banking and finance industries.

### corporate and commercial

- **Contracting with the government: Parliament of Uganda issues directives on the controversial coffee agreement between the Government of Uganda and Uganda Vinci Coffee Company Limited.**
  - On 18 May 2022, the Parliamentary Standing Committee on Tourism, Trade and Industry recommended that government terminate the agreement with Vinci Coffee Company on the grounds that the agreement violates the constitution and several other laws of Uganda. In 2015, the Government of Uganda entered into an agreement with the company for the setup of a plant to add value to Ugandan coffee by making products including soluble coffee.
  - Under the agreement, government gave the company several tax and other incentives and undertook to take reasonable measures ensure that the company had an ample supply of quality coffee.
- **Insolvency: The High Court of Uganda highlights rights of secured creditors in insolvency proceedings**
  - In the recent case of *Bank of India (U) Ltd Vs NC Beverages Limited & Uganda Revenue Authority* ("URA"), the High Court reaffirmed the protection accorded to secured creditors by the Insolvency Act, 2011 against preferential creditors in respect to the assets charged by the secured creditor. In this case, the High Court faulted the URA for seizing and disposing of assets that were subject to a registered charge.
- **Doing business in Uganda: The High Court issues a decision requiring foreign partnerships to register in Uganda in order to conduct business in the country**
  - The High Court, in the recent decision of *Vantage Mezzanine Fund II Partnership Vs Uganda Registration Services Bureau and others*, declined to grant standing to sue to a South African partnership on grounds that it did not register in Uganda under Ugandan law. Vantage Mezzanine Fund had lent over USD10-million to a Ugandan business and was seeking to enforce recovery. The decision is under review but appears flawed.
- **Non-governmental organisations: High Court overturns the decision of the National Bureau for Non-Governmental Organisations ("NGO Bureau") to indefinitely suspend an NGO's permit**
  - The High Court has ruled, in the case of *Chapter Four Uganda Vs National Bureau of Non-Governmental Organisations*, that the actions of the NGO Bureau to indefinitely and without a specific timeframe suspend an NGO's

permit to operate and to halt all its transactions were irregular, unreasonable, illegal and not rationally justified. The High Court ruling follows an application by an NGO Chapter Four Uganda, challenging the NGO Bureau's decision to indefinitely suspend its permit to operate for not submitting its annual returns or furnishing information to the NGO Bureau as required under the law.

- The court held that whereas the NGO Bureau has the power to suspend an NGO, the bureau cannot indefinitely suspend an NGO's permit. The power to suspend must be checked with a timeframe or definite period within which the suspension must end.

## banking and finance

- **Stamp duty tax: amendments to the Stamp Duty Act, 2014 in relation to financing transactions**
  - The Stamp Duty (Amendment) Act 2022 waived the stamp duty payable on various security documents including:
    - Item No. 6- Stamp duty payable on the execution of agreements relating to deposits of title-deeds and pawn pledges; and
    - Item No. 56- Stamp duty payable on the execution of instruments relating to security bonds or mortgage deeds executed by way of security for the due execution of an office, or to account for money or other property received by virtue of a security bond or mortgage deed executed by surety to secure a loan or credit facility
  - The stamp duty payable on these agreements was previously at 1% of the total value of the transaction. The amendment will reduce the cost of accessing credit by borrowers intending to rely on such security arrangements as security for financing.
- **Pensions: The Uganda Retirement Benefits Regulatory Authority passes regulations allowing savers to assign a portion of their savings to mortgages and housing loans**
  - The Uganda Retirement Benefits Regulatory Authority recently passed the Uganda Retirement Benefits Regulatory Authority (Assignment of Retirement Benefits for Mortgages and Loans) Regulations, 2022 which allows a member of a retirement benefits scheme to assign up to 50% of their accrued benefits to secure a mortgage or loan for purchasing a residential house.
  - The effect of these regulations is that borrowers can now use part of their pension savings as collateral for mortgages and housing loans.
- **Tax: *Kansai Plascon Uganda v Uganda Revenue Authority* (TAT Application 64 of 2020)**
  - The Tax Appeals Tribunal delivered a ruling dealing with the voluntary disclosure under Uganda's tax regime. The voluntary disclosure provisions introduced in 2019 were yet to be adjudicated on. The ruling details the steps required for a taxpayer to make a voluntary disclosure to the tax body.
- **Construction contracts and performance bonds: (*AC Yafeng v Registered Trustees of Living Word Assembly Church* (Misc Application 1 of 2021))**

- The Commercial Court has delivered a sterling ruling on the duty of an issuer of a performance security (bond) and whether court may stay the honouring of such performance security. The decision clarifies that a performance security is usually an independent obligation of the issuer and a dispute between the parties to the underlying contract is not sufficient ground to prevent the issuer from honouring a demand made on the security.
- This decision has already been followed in another Commercial Court decision (*DFCU Bank v Polat Yol Yapi* (Misc Application No. 217 of 2022)).
- **Regulation of Financial Institutions: *CBL (In receivership) v Sudhir Ruparelia & Anor* (SCCA No. 7 of 2020)**
  - The Supreme Court delivered a ruling in a protracted insolvency dispute involving Crane Bank (In Receivership) and Sudhir Ruperalia. The court held that the receivership had ended after 12 months by operation of law. The implication is that the management of the CBL reverted to the shareholder after 20 January 2018.

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