



# COMMERCIAL/ BUSINESS LAW PRACTICE GROUP

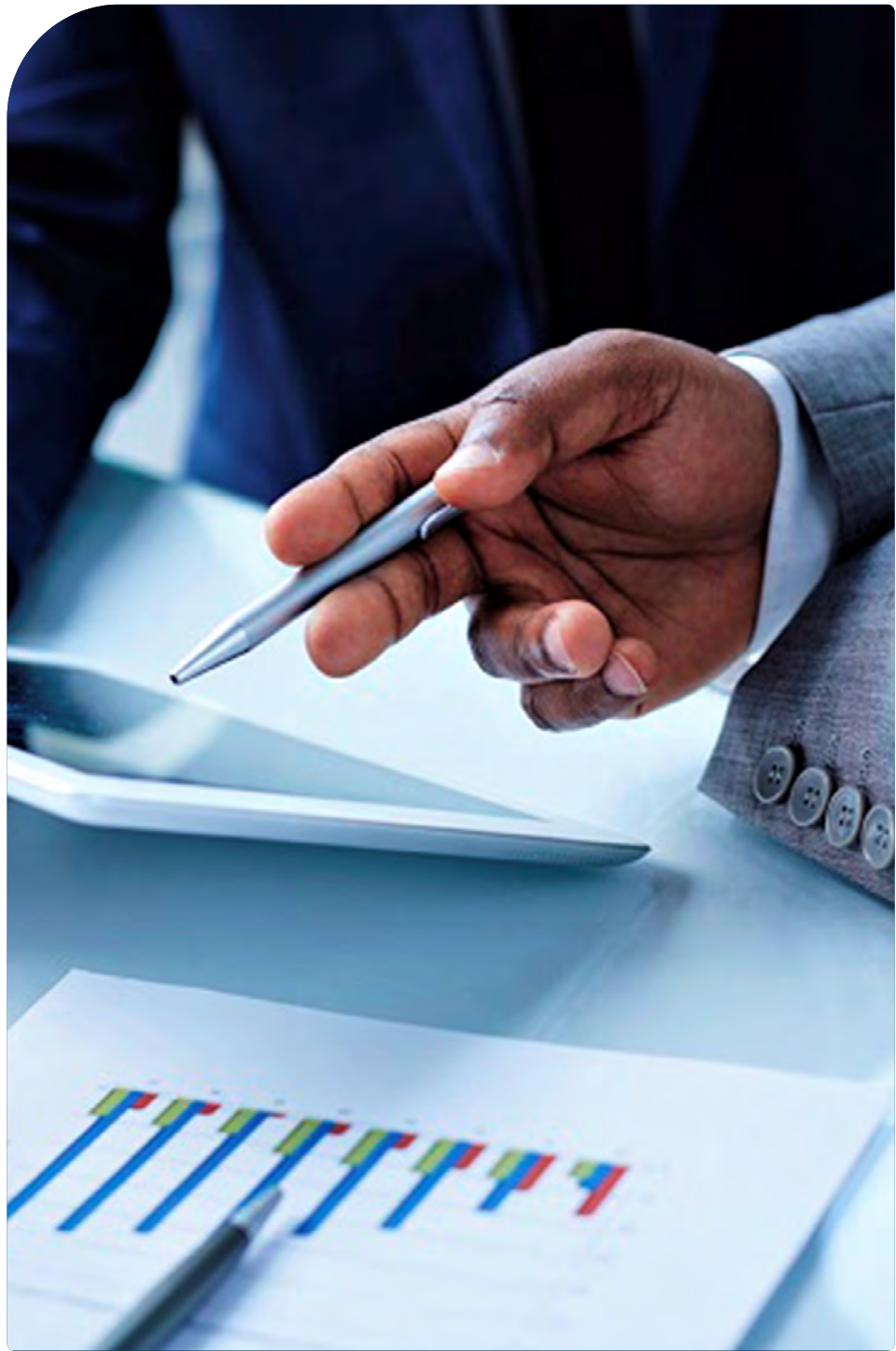
NAIROBI

MOMBASA

KAMPALA

DAR ES SALAAM

KIGALI



# OUR PRESENCE



## **Head Office, Nairobi:**

I&M Bank House, 7th Floor  
2nd Ngong Avenue  
P.O. Box 22588 - 00505 | Nairobi, Kenya  
Tel: +254 20 221 0978 | +254 20 221 1077  
Cell: +254 716 209 673  
Email: law@cmadvocates.com

## **Mombasa Office:**

Links Plaza 4th Floor  
Links Road, Nyali  
P.O. Box 90056 - 80100 | Mombasa, Kenya  
Tel: +254 41 447 0758 | +254 41 447 0548  
Cell: +254 746 995 283  
Email: mombasaoffice@cmadvocates.com

## **Tanzania Office:**

Oyster Pearl Galleria, 7th Floor  
370 off Chole Road  
Oysterbay Peninsula  
P.O. Box 77044 | Dar es Salaam, Tanzania  
Tel: +255 713 411 721 | +255 654 702 304  
+255 682 495 603  
Email: law@cymbellattorneys.com

## **Uganda Office:**

Plot 49, Ntinda Rd,  
Rovis Apartments, First Floor  
Tel: +256 776 739 643  
Email: law@cymbelladvocates.com

## **Rwanda Office:**

Kigali Heights Building,  
West Wing, Third Floor  
Tel: +250 252 580 152  
Email: law@cmadvocates.rw

# THE FIRM

At CM Advocates LLP, we pride ourselves on being able to provide our clients with consistently timely, high quality, innovative and commercially relevant legal advice. Since technical know-how is not adequate, we constantly seek to build excellent working relationships with our clients and clearly understand their businesses and the realities and imperatives they face. Our strategy is to build teams that are specific to our clients' needs and also combine specialist legal skills, industry experience and practical know-how.

Our focus is getting to the core of our clients' legal needs, creating and adding value to them; by delivering timely, innovative and commercially-sound advice and legal solutions. We have set up robust systems to ensure consistently high quality out-put in every assignment we undertake and we are uncompromising in our quality control. Moreover, we always seek to protect our clients' interests, mitigate their risks and create superior outcomes for them.

Our achievements for clients are made possible by our professional team of technically and commercially brilliant lawyers led by our Managing Partner at the fore front of every transaction, who are singularly focused on their clients' success. In other words, our pride is to make you succeed in your business or project.

We have a culture of professionalism, team work and respect, where talented professionals with different views, experiences and backgrounds can thrive. To remain on the cutting edge, we put extra emphasis on continuous learning, knowledge sharing and peer reviews. This has enabled the Firm to carve a niche for itself in the existing as well as new and emerging branches of law. The Firm's local and international clientele cuts across various sectors of our economy like financial services, real estate development, manufacturing, telecommunication, agribusiness, tourism and hospitality, energy and mining.

# OUR PRACTICE AREAS

1. Anti-Bribery & Anti-Corruption
2. Asset Tracing & Recovery
3. Aviation Law
4. Capital Markets
5. Charities and Not-for-Profit Organizations (NPOs)
- 6. Commercial/Business Law**
7. Construction & Infrastructure Law Unit
8. Corporate Law
9. Cyber Security, Privacy & Data Protection
10. Debt Recovery, Restructuring & Insolvency
11. Dispute Resolution
12. Employment, Labour Relations and Immigration Law Advisory
13. Energy, Mining & Extractive Industries
14. Entertainment & Sports Law
15. Family Law, Estate Planning & Probate Administration
16. Forensics & Investigations, Risk & Compliance
17. IP & TMT ( Telecommunications, Media & Technology)
18. Lobbyist & Policy Practice
19. Multi-lateral Organizations. Foreign Embassies & Consultants
20. Non-Compete, Non-Solicit & Trade Secret Practices
21. Private Equity & Venture Capitalist
22. Real Estate, Banking & Finance
23. Shipping, Logistics & Admiralty Law
24. Start-ups & Small & Medium Sized Enterprises
25. Tax Law Advisory

# COMMERCIAL/ BUSINESS LAW

Commercial law (also known as business law), which is an omnibus phrase for a range of legal services designed to support businesses in making money from their products and services, is indispensable in everyday business activities.

CM Advocates LLP (CM Advocates) is a multi-disciplinary commercial law firm that specializes in advising on and drafting a wide variety of agreements that businesses enter into on a daily basis.

Clients choose CM Advocates to benefit from the firm's commercial awareness and multi-disciplinary skills, as well as the firm's previous experience and ability to engage, document, and negotiate a deal that meets clients' objectives and appropriately mitigates their risk

We appreciate that a number of technical, legal, regulatory, financial, commercial, or operational issues hamper good commercial transactions. It is therefore critical that the client has a commercially aware legal team that is experienced and focused on resolving those issues to help drive the proposed transaction to fruition.

Our results-oriented nature enables us to prioritize our clients' goals and desired objectives. We are therefore always keen to ensure that we provide value-driven legal guidance on the processes, obligations, risks and

business-related issues, which enables our clients to achieve their goals, maximize on profits and minimize risks.

Along with advising on commercial arrangements, often times, the challenge is to simply determine the best approach to helping two or more parties achieve their intended objectives. Along with our counterparts **Corporate Law Team, Labour, Employment and Immigration Law Team and Tax Law Team**, we regularly advise on such matters, including the choice of special purpose vehicle (i.e., a corporate body or a contractual structure); how to document key deliverables or issues, such as governance; sharing and developing intellectual property; taxation issues, regulatory requirements and potential liability. We partner with clients to give the venture the highest chance of success and help parties understand the transaction's tax, human resource, competition and other statutory compliance considerations.

At CM Advocates, we aim to deliver the highest quality of service possible for our clients. We therefore focus on the following specialist areas:

## **1. COMMERCIAL CONTRACTS AND COLLABORATIONS**

Corporates and individuals deal with a myriad of

relationships and contracts that bind them to their suppliers, customers, franchisors, licensors, distributors and other critical business partners. Invariably, a successful commercial contract allows the parties thereto to align their business interests and generate long-term value for all parties to the transaction.

At CM Advocates, our Commercial Contracts Practice helps structure these relationships and guide clients through the complexities to ensure their contracts provide the necessary framework for success.

Our ‘can -do approach’ and through understanding our client’s business covering the full spectrum of business law issues enables us provide support and advice that is practical and reflects commercial reality. We identify obstacles early in a commercial transaction and provides pragmatic, and often innovative solutions before such issues arise. Where the commercial contracts involve technical issues, ours team will include other specialists like tax, labour and employment, intellectual property and IT specialists.

In negotiating commercial contracts and collaborations, our business savvy lawyers invariably play an essential role of ensuring parties do not unconsciously revert to a “zero-sum” mindset and lose sight of the need for critical compromises that are indispensable in ensuring a successful outcome or a mutually beneficial contractual arrangement.

We usually advise purchasers and suppliers on full spectrum of commercial contracts — from sale of goods or services agreements to complex, high value, strategically important alliances, collaborations, consortium, and joint venture

arrangements. We have a wealth of experience advising on a wide range of commercial contracts, including:

- distribution, franchising and agency arrangements;
- sourcing and procurement contracts;
- e-commerce, digital and business transformation;
- joint ventures and collaborations arrangements;
- international supply chain arrangements and logistics contracts;
- concessionaire and licensing arrangements;
- maintenance services contracts;
- manufacturing and fabrication agreements;

## **2. RESEARCH AND DEVELOPMENT (R&D) COLLABORATIONS; AND CONSULTANCY SERVICES.**

We represent clients in diverse sectors and industries, including but not limited to, utility companies, manufacturing concerns, consumer goods and retail, franchisors, logistics companies, infrastructure, telecoms, technology and hospitalities.

## **3. GOVERNMENT CONTRACTS**

Contracting with any government entity can be very advantageous in creating more opportunities for a business but it can also present risks and challenges. The laws and regulations governing government contracts vary to an extent from the laws applicable to ordinary contracts.

Our Government Contracts professional team of

experts have in-depth substantive knowledge, work closely with government entities and regulators, and therefore understand how the government entities interpret rules and regulations and how they apply the same to contractors.

We offer practical and effective legal guidance in dealing with Government Contracts and also provide our clients with strategic guidance and support throughout the entire life cycle of government contracts from the time the client identifies an opportunity to contract with the Government and approach us through to the bidding process, compliance with regulatory requirements, negotiations of the contacts, perfection process and enforcement. We advise our clients on terminations processes requirements, dispute resolutions or litigations arising out of government contracts and other contractual arrangements. Our teams highly regarded negotiation skills also help in ensuring that clients are able to maintain good working relationships with government entities for future posterity's sake.

Our areas of work include: -

- legal advisory on the procurement laws and procedures;
- negotiations and preparations of government contracts;
- drafting and review of concessionaire agreements;
- legal opinion on the validity and enforcement of government contracts;
- due diligence reviews on government contracts or guarantees;
- legal advisory on legal and regulatory compliance and audits;
- disputes related to government contracts; and

- handling regulatory issues including financing arrangements or guarantees involving government entities.

#### **4. AGENCY, DISTRIBUTION AND FRANCHISING**

CM Advocates has a dedicated team of professionals with practical and technical expertise and a wealth of experience in handling any type of legal and commercial issues relating to agency; franchising and distributorship businesses. We understand all aspects of agency, distributorship and franchising businesses and offer legal advice on issues such as agency law, contract law, intellectual property, internet and technology, quality control, risk management, consumer protection, competition law, import/-export laws, data protection, non-disclosure, employment, sector analysis, negotiation, drafting, reviewing, termination or enforcement of agreements.

We work seamlessly with our litigation department who have unparalleled reputation in successful litigation of disputes arising out of franchise, agency and distributorship arrangements.

Our areas of work include:

- negotiation, drafting or review of franchise, agency or distributorship agreements;
- intellectual property rights registrations, renewals, or protection.
- due diligence and advisory on requisite regulatory approvals and licenses;
- legal advisory on trademark availability, software protection, all intellectual property rights protection, enforcement of trademark rights and trademark

infringement disputes;

- tax advisory and structuring;
- negotiation or preparation of suitable commercial leases or licenses; and
- dispute resolutions.

## **5. TELECOMMUNICATION, MEDIA AND TECHNOLOGY (TMT)**

Our TMT team has an in-depth understanding of the framework for the regulation of the telecommunication sector and of the commercial and technological aspects of telecommunication, media and technology. We pride ourselves on our understanding of the sector, and place great emphasis on maintaining proximity to the industry, with our partners having worked in the sector at service provider levels. Through this proximity, we are able to anticipate and advise our clients on industry changes.

Our team regularly advises and represents local and international clients in a broad range of issues including but not limited to telecommunications law and regulatory practice, media law, internet and e-commerce transactional advice, financial technology (Fintech), legal advisory services, tax consulting, intellectual property advisory and protection and related matters.

We work with multi-media, telecommunications and web-based companies to navigate emerging intellectual property rights issues in new media and online technologies and assists entities with their online activities by crafting policies and agreements for use of the website, user generated content, and personal data, as well as formulating internal compliance procedures and audits relevant for these technologies.

### **(i) Telecommunications**

We offer a full spectrum of legal advice on the licensing and regulation as well as transactional advice of telecommunication operators. We also advise them on, inter alia, on competition (anti-trust) law matters, gaming laws, mergers and acquisition, project financing, infrastructure sharing, taxation, employment matters, competition issues, intellectual property matters and dispute resolution.

The firm also has a wide experience in drafting agreements and contracts essential to the ordinary course of the telecommunication business including system and supply contracts, interconnection agreements, agreements for the sale, leasing and sharing of switches and other equipment, distribution agreements, branded Reseller/Mobile Virtual Network Operator (MVNO) agreements, co-location and infrastructure sharing agreements, distributorship agreements, dealership agreements, franchising agreements, telephony service agreements, aggregator agreements, sponsorship agreements and cross-border mobile commerce agreements.

The Firm also advises private equity clients intending to invest in or purchase government-owned telecommunications companies in Kenya on a broad range of corporate, tax, regulatory, securities, intellectual property, competition, consumer protection regime and related issues that arise from such matters.

### **(ii) Media Law**

We have practical experience on advising publishers, broadcasters, online content providers, outdoor advertising companies, reporters, film makers, authors, and other key players in the media industry on a wide range of



contentious and non-contentious issues including but not limited to publishing rights, content acquisition, pre-publication rights clearance, intellectual property law matters, licensing and regulation matters, data management rights and privacy matters.

We have also been involved in drafting and review of publishing agreements, endorsements agreements, arts and music rights recording agreements, non-disclosure agreements, royalty agreements, non-competition agreements etc.

We also advise and provide representation to clients on contentious matters including libel and defamation, invasion of privacy and related claims.

### **(iii) Technology**

Our firm provides strategic advice and guidance to help clients navigate the ever-changing technology market. We advise clients on a full spectrum of regulatory, transactional, compliance, legislative, taxation, corporate and financial transactions enforcement and litigation issues.

We have an unparalleled combination of experience in cutting-edge legal issues relating to information technology, financial technology, gaming and betting, internet and electronic commerce, life science and biomed (healthcare, medical and pharmaceutical inventions), and other technology intensive services.

Our range of services include; reviewing, drafting and negotiation on IP and ICT based agreements related, inter alia, to procurement, technology procurement, technology development, escrow arrangements, outsourcing,

manufacturing, media, web, software, franchise, publishing, distribution, licensing, hosting, co-location, data and content management and service level agreements.

We also offer legal advice in relation to internet use (advertisement, e-commerce, sector-specific legislation in banking, insurance and medical care and other sectors).

In relation to technology, the firm also offers legal advisory services on a full range areas including:-

#### **(a) Fintech**

Fintech is the intersection of finance and technology and one of the most challenging and fastest-growing segments in the financial services sector. We provide our clients with innovative and strategic guidance in navigating through the legal and regulatory issues. We offer guidance in identifying opportunities, licensing requirements and preparations for compliance procedures.

We help our clients identify legal risks and understand the regulatory compliance issues within which their technologies operate.

Our fintech team comprises lawyers with expertise in various areas of law from tax, private equity, commercial, intellectual property, banking and finance, competition, data protection and cyber security, anti-money-laundering and anti-bribery, corporate governance, compliance and investigations.

Our services include -

- financial services regulations;
- capital markets regulations;

- debt and equity financing;
- intellectual property;
- data privacy and cyber security;
- anti-money laundering and Know Your Customer (KYC) rules;
- information technology;
- legal compliance audits and remediation;
- legal advisory on regulatory approvals and regulatory compliance;
- lobbying for regulatory measures;
- dispute resolution; and
- competition and consumer protection.

### **(b) Blockchain**

In Kenya, there is no comprehensive law governing blockchain but there are various pieces of legislation that address different aspects of blockchain transactions. Nevertheless, Kenya is one of the leading countries in terms of cryptocurrency holdings and blockchain related technologies. At CM Advocates, we are ready to offer packaged solutions or separate tools that will help your business in the era of the rising blockchain world. We develop tailor made solutions specifically for each of our client's requirements and we are always there to adapt to a rapidly changing and developing industry. Our field of expertise lies in areas of legal consulting, regulatory compliance and approvals, technology and intellectual property related matters.

### **(c) Technology Procurement, Development and Licensing**

Technology has evolved to become an essential part of many businesses. The evolution of technology has created opportunities and challenges in the same measure.

At CM Advocates, we assist clients on legal and

commercial issues that arise in connection with the protection, acquisition, exploitation and use of technology related assets.

Our areas of focus include -

- negotiation, development, drafting, review and implementation of technology development agreements, technology acquisition agreements, licensing agreements, joint ventures agreements, and other contractual agreements;
- privacy policies and terms of use;
- intellectual property;
- e-commerce;
- outsourcing;
- procurement;
- joint ventures;
- technology transactions; and
- telecommunications.

## **6. CONSUMER PROTECTION, COMPETITION AND ANTITRUST PRACTICE**

In Kenya, we have a robust Consumer Protection, Competition and Antitrust legal regime, which is underpinned in Article 46 of the Constitution. The main pieces of legislation are Consumer Protection Act and Competition Act. These laws are buttressed by various pieces of legislation as well as common law tort of product liability relating to negligence.

As rules on consumer protection, competition and antitrust keep changing, companies face new challenges and risks. Non-compliance attracts serious consequences like financial penalties, criminal liability, litigation, difficulty-closing deals, and reputational damage. We have a deep understanding of the

interplay between law, economics and our clients' commercial strategies, and are there to provide practical and strategic advice so that our clients can achieve their commercial objectives whilst ensuring compliance with consumer protection and competition laws. We assist our clients with risk-based, practical strategies to help meet their commercial objectives, safeguard their commercial interests and, in some cases, challenge the anti-competitive behaviour of others.

CM Advocates Consumer Protection, Competition and Antitrust Practice team has a successful record in resolving complex and ground breaking competition issues - from merger control and other regulatory investigations to enforcement actions and private litigation and appeals.

Our team covers the full range of consumer protection, competition and antitrust issues including authorizations and notifications, merger control, cartels and other anti-competitive conduct or agreements, abuse of dominance/market power, market/sector investigations, unconscionable conduct competition and consumer protection litigation, judicial reviews and appeals, public procurement and trade law. We advise clients across the spectrum, from industry incumbents to new market entrants.

We regularly represent clients before the Competition Authority of Kenya, the Standards Tribunal and the Competition Tribunal.

Our practice covers the following areas:

- advisory and compliance
- market conduct counseling
- mergers and joint ventures counselling

- market/sector investigations, competition litigation, judicial reviews and appeals

#### **(a) Advisory and Compliance**

Our team advises a diverse client base that includes large listed companies and privately held companies on diverse consumer protection issues as well as competition and antitrust issues. We regularly advise board members and senior management on strategic business and policy issues as well as providing competition law, consumer law and regulatory advice to legal teams on transactions, dealings with the Competition Authority of Kenya and other regulators, compliance and day-to-day issues.

We have practical experience dealing with issues affecting manufacturing concerns, trade associations, telecommunication and media companies as well as utilities companies.

Our work includes offering compliance advisory on matters related to unconscionable conduct matters, consumer protection requirements, distribution arrangements, licensing agreements, agency business reviews, merger analysis, litigation risk assessment as well as interface between intellectual property, competition and antitrust laws.

#### **(b) Market Conduct Counseling**

Besides mergers, competition and antitrust laws also regulate the ordinary-course; day-to-day operations of all legitimate businesses, covering, inter alia, distribution, pricing, information exchanges, and trade association activities. In this regards, businesses need to know the “do's and don't” in their engagement or joint activities with competitors. These also need to watch out for unilateral business decisions that may

infringe on the competition and antitrust laws. Our team regularly advises businesses on all aspects of competition and antitrust compliance including:

- Offering legal opinions on consumer protection, competition and antitrust laws compliance matters;
- Creating antitrust compliance programs for businesses, including competition and antitrust laws training for employees, especially those in sales and trading preparation or review of competition policy;
- Trade-association membership and activities;
- Intellectual property settlements and disputes, including licensing agreements;
- Distribution questions;
- Exchange of information amongst undertakings;
- Exclusive dealing or territories;
- Tying arrangements;
- Loyalty discounts and other discount models;
- Resale Price Maintenance (“RPM”);
- Joint buying and selling operations.

Antitrust law affects both large and small companies, and it is important to obtain accurate competition and antitrust counseling to protect your business. Many interactions with competitors (even innocent ones) have the potential to be mischaracterized as possible antitrust violations. For example, merely following “accepted industry standards,” or engaging in trade association activities, are two areas that can—and have—created problems for businesses of all sizes, unless they followed antitrust safeguards.

Even unilateral actions (like some individual

pricing decisions, including price discrimination, individual “Resale Price Maintenance” programs, or individual discounting claims) can expose a company to liability from antitrust agencies or private plaintiffs.

We offer counseling and guidance to help our clients navigate antitrust icebergs that could affect their business. We regularly develop antitrust compliance programs for companies, joint ventures (including joint buying and marketing ventures), and trade associations.

### **(c) Merger and Joint Venture Counseling and Filings**

Our main practice in merger counseling involves individuals and companies that simply make passive equity investments or exercise options in other companies in Kenya or regionally. Such investments or options will invariably triggers the requirements for notification or applying for consent or exemption with the Competition Authority or other regional competition authorities.

Such Merger and Acquisition filings are normally based on the combined holdings that a buyer will have in the target after the proposed transaction. This includes what is about to be purchased, combined with all existing holdings in the same target company. Invariably, the existing holdings are measured not only by the existing shareholding of a specific buyer, but by the collective holdings of the entire control group to which the buyer belongs.

We recommend that companies and executives involved in investments establish a competition/antitrust compliance policy for purposes of ensuring compliance.

The second area of our merger and joint venture advisory and counselling involve collaboration or joint venture between undertakings. Increasingly, in the modern competitive environment, more companies collaborate with others, including, sometimes, their competitors, in an effort to become more efficient and reduce costs. The ultimate form of collaboration is a full-scale merger. Nevertheless, many companies choose limited collaborations in the form of joint ventures. Both activities are legal but might also trigger competition and antitrust issues.

The competition and antitrust laws questions in mergers or joint ventures are whether the collaborations will create or enhance market power, affect prices, reduce output, or lower innovation. Merely the sharing of sensitive information at the wrong time could create competition and antitrust problems and trigger Competition Authority investigations. Our lawyers have experience with hundreds of mergers ranging from small local mergers to regional or global transactions and always strive to give each matters the proper level of analysis and attention and guide and advise the client as appropriate.

Depending on its complexity, a merger or joint venture review could have few or many components, including:

- advising on information-sharing limits in due diligence;
- where necessary, conducting investigations into the target's competition and antitrust problems that may be revealed in due diligence;
- analyzing the competitive effect of the proposed merger or joint venture;
- devising, where necessary, possible

remedies including structural (divestitures) and behavioral (consent agreements) to ensure clearance (or, to avoid later competition and antitrust problems if no clearance is required);

- considering the transaction's vertical as well as horizontal impacts;
- designing transition and integration-planning activities.

**(d) Market/Sector Investigations and Competition Litigation**

Our team has wide experience dealing with contentious matters such as investigations, enforcement proceedings and litigation by authorities including Kenya Bureau of Standards, competition litigation and appeals before the High Court and Competition Appeal Tribunal as well as alternative dispute resolution and judicial review proceedings. Our experience include helping clients negotiate for settlement under the Competition Authority's leniency program, representing parties in civil damages proceedings as well as in criminal investigations under the Competition Act as well as other product liability and consumer protection legislation. We have also represented clients in high-profile investigations by Competition Authority of Kenya as well as other investigative agencies like Capital Markets Authority, Kenya Bureau of Standards, Directorate of Criminal Investigation as well as KRA.

**7. CYBER SECURITY, PRIVACY AND DATA PROTECTION**

We also offer legal advisory services in relation to privacy and data protection under the Kenyan Data Protection Act, 2019 as well as legal instruments like EU General Data Protection Regulation (GDPR), which is a benchmark for data

protection. In addition, there are other legislations, which apply to data protection and privacy including the Consumer Protection Act, the Media Act and the Kenya Information and Communications Act.

The Kenyan Data Protection Act, which was enacted on 8th November 2019, applies to data controllers and processors established or resident in or outside Kenya in so far as they process personal data while in Kenya or of data subjects located in Kenya. This law was enacted in accordance with the requirements of Article 31(c) and (d) of the Constitution of Kenya. Therefore, data protection and privacy has a constitutional underpinning.

At CM Advocates, our practice in cybersecurity, privacy and data protection focuses on internet sectors, e-Commerce and intellectual property, regulated industries (like telecom, financial, pharmaceutical, advertisement and gaming sectors) as well as public entities. We have expertise on contentious matters like data protection law-related claims of the individuals affected (such as employees' information claims) and data breaches as well as non-contentious matters including data protection contracts, cybersecurity and data management advisory, data protection audits and compliance projects. In addition to assisting clients in their response to regulator investigations, we advise on class action lawsuits and other claims that arise out of privacy violations and security breaches. In collaboration with our other teams, we also counsel clients on crosscutting issues including on labour and employment, consumer protection, competition law and product-based liability.

We can advise our clients at each stage of the

data lifecycle. At the first stage, we help our clients assess and reduce their privacy and security risks and comply with applicable laws. When developing new products and services or during marketing stage, we assist clients by advising on privacy and security at the outset to maximize the effectiveness of their offerings and avoid legal and regulatory pitfalls. We advise clients on complex issues associated with both personal and sensitive business data, including its collection, use, storage, disclosure, transfer and destruction. We guide and advise clients on legal compliance and business strategy relating to privacy and security risk management, cybersecurity and technology transactions.

Our areas of work include:

- Strategic regulatory compliance advice;
- Vendor management program development and implementation;
- Cybersecurity and privacy contract development and negotiation;
- Data protection programs development;
- Data protection, privacy and cybersecurity audits, compliance risk assessment and remediation;
- Cyber risk management and incident response;
- Privacy policies for organizations and their websites and mobile privacy issues;;
- M&A and technology transactions;
- Data security, privacy and technology regulatory response and litigation;
- Regulatory investigations by sector-specific regulators;
- Cross-border data flow requirements and solutions.

## 8. INTELLECTUAL PROPERTY

CM Advocates has a vibrant Intellectual Property and Internet Practice that offers clients comprehensive brand protection and advisory services on the protection of intellectual property rights.

The firm also advises its local and international clients on a broad range of issues relating to the acquisition, transfer and protection of their intellectual rights and is regularly involved in the preparation, review and negotiation of registered user, assignment and license agreements.

The firm also offers IP-specific legal compliance, audits, due diligence, restructuring and optimization of IP portfolios in relation to merger and acquisition transactions, IPO and other share deals.

Our services are categorized into the following five areas:

### (a) Intellectual Property Strategy:-

We offer comprehensive audit and strategy advice on the protection and utilization of intellectual property. This include assessment of the client's existing intellectual property assets, advice on its protection and commercialization.

In relation to IP protection, our services include:

- Searches, registration, assignment and renewal, change of name or address in respect of trademarks/service marks;
- Filing of patents and industrial designs, validity opinions and advice;
- Advising on and registration of copyright;
- Registration of plant breeders' rights including filing applications for grant of

such rights and liaising with the Kenya Plant Health Inspectorate Services (KEPHIS);

- Attending to local opposition and expungement proceedings;
- domain name searches, registrations and renewals; and
- Payment of annual maintenance fees on behalf of clients.

### (b) Intellectual Property Disputes:-

We guide clients in relation to the protection of their intellectual property including litigation and alternative disputes resolution mechanisms- always guided by achieving an effective and cost effective solution for the clients.

CM Advocates is involved in contentious intellectual property litigation matters and is involved in the filing and defending trademark opposition, expungement and infringement proceedings, passing off claims, copyright infringement and patent litigation before the Registrar of Trademarks, Intellectual Property Tribunal and the High court of Kenya.

### (c) IP Contracts, Licensing and Assignments

Upon registration of your intellectual property rights, we help clients make efficient use of or commercialize their intellectual property and innovations through intellectual property license and assignment agreements. The two agreements vary from each other and it is important that the person assigning or licensing the intellectual property rights understand the ramifications of each. It is equally important for the purchaser of the intellectual property rights to enter into the right type of agreement, which will enable the maximum utilization of the intellectual property rights.

At CM Advocates, we have vast experience and assist clients with the preparation of these complex agreements, which determine the manner in which third parties can use your intellectual property. Our team is highly regarded and trusted when it comes to negotiating, drafting, reviewing or dealing with intellectual property agreements.

Our areas of work include: -

- legal advisory on intellectual property rights assignments and license agreements;
- legal opinion on regulatory requirements and compliance;
- negotiations, review and drafting of intellectual property license and assignment agreements;
- legal advisory on perfection and enforcement of intellectual property license agreements and assignment agreements. we also advise on termination of license agreements; and
- dispute resolutions.

#### **(d) IP and Software Agreements**

The Software agreements grant the users the right to use the software while equally granting the software owners control of the manner in which the software is used.

CM Advocates advises clients on a variety of software related contracting issues. Clients benefit from our client centric approach, experience and ability to negotiate and draft software agreements that meet the client's business objectives in a way that minimizes risks and maximizes profits.

We advise software and hardware owners on the commercialization, protection, licensing and

exploitation of software, data and technology. The types of software licenses that we advise on include End User License Agreements, B2B Software Licenses as well as Free/Open-Source Licenses.

Our areas of work include -

- legal advisory on software development and licensing agreement related issues;
- software agreements;
- software outsourcing agreements;
- systems integration agreements;
- software installation agreements;
- software purchase agreements;
- software consulting agreements;
- data protection;
- legal advisory on intellectual property rights protection;
- non-compete, non-disclosure and confidentiality; and
- license agreements for deployed software, software as a service (saas), cloud computing, hosting, integration, support and maintenance, proof-of-concept and development.

#### **(e) IP And Internet**

The rise of the Internet has revolutionized the way that business is conducted and generated new business models. Social media, emails and phone apps are now the default method of communication for most people. Undoubtedly, this has ushered a novel legal landscape affecting the protection of intellectual property rights.

At CM Advocates, we guide our clients on how to protect their intellectual property online and how to handle issues that arise from convergence of digital media and technology. We usually advise on issues facing businesses with internet activities, such as:



- Domain names disputes, registrations and licensing;
- E-commerce;
- Logistics and distribution (digital and physical);
- Cybercrimes, defamation and data protection
- Labour and Employment;
- Digital taxation;
- Mergers, joint ventures and strategic alliances;
- Outsourcing transactions.

## **9. INTERNATIONAL TRADE LAW PRACTICE**

In an increasing globalized world, trade and commerce is now impacted or regulated by various bilateral, regional, continental or multilateral trade agreements or treaties. Such treaties or international laws are now part of laws of Kenya by virtue of Article 2(6) of the Constitution. It is therefore critical for business to be aware and compliant with both the domestic as well as these international laws.

In this regard, Kenya is a signatory and member of various regional and multilateral trade agreements like WTO, WIPO, EAC, and COMESA. Kenya has also entered into various bilateral trade agreements with various countries.

Moreover, Kenya has entered into an Economic Partnership Agreements (EPAs) with EU and more recently, with United Kingdom.

Kenya has also ratified the African Continental Free Trade Area (AfCFTA) which came into force on 30 May, 2019.

The objective of the AFCFTA is to create a single continental market for goods and services, with free movement of business, persons and investments, and thus pave the way for accelerating the establishment of the Continental Customs Union. It also aim at expanding intra African trade through better harmonization and coordination of trade liberalization and facilitation regimes and instruments across Regional Economic Communities (RECs) and across Africa in general. In addition, it seeks to resolve the challenges of multiple and overlapping memberships and expedite the regional and continental integration processes. Moreover, it aims at enhancing competitiveness at the industry and enterprise level through exploiting opportunities for scale production, continental market access and better reallocation of resources.

We also help clients to appreciate the implications and requirements of various bilateral, regional and international trade agreements that may affect their businesses.

Some of the services offered include:

- Assisting businesses to take advantage of increased trade and commerce opportunities presented by various bilateral, regional, continental and multilateral trade agreements;
- Help businesses navigating through various regulations and policy issues brought about by the applicable bilateral, regional and multilateral trade agreements;
- we advise on matter relating to taxation and customs laws such as classification, valuation, country-of-origin marking,

substantial transformation, preferential duty and drawback issues;

- Advise on environmental as well as Sanitary and Phytosanitary (SPS) measures and requirements;
- Handle compliance approvals or filing related to regional competition law regime on behalf of business doing business in various countries;
- We advise on dispute resolution mechanisms provided for under these previously mentioned trade agreements.