



**AFRICA LAW**  
PARTNERS



**Legal considerations for SMEs**

**March 2021**

# Who we are

- Africa Law Partners is a boutique corporate-commercial law firm with its seat in Nairobi, Kenya.
- Our grounding in local law enables us to appreciate any challenges faced in the structuring, implementation and litigation of corporate transactions in East Africa while still maintaining a global outlook.

- Africa Law Partners possesses a global footprint by being a member of an international network present in 5 continents and 75 countries.



# Practice Areas

- General Corporate Law
- Corporate Finance
- Tax Law
- Mergers and Acquisitions
- General and structured finance
- Islamic Finance
- Real Estate and Construction

- Intellectual Property
- Dispute Resolution
- Private Client
- Capital Markets
- Competition/Anti-trust
- Corporate governance
- Data protection and privacy
- Fintech
- Employment and labour law

# Relevant Experience

- Our Partners have advised on various transactions involving start-ups and SMEs such as:
  - advising BSP Fund on its acquisition of i-Hub – one of the largest incubation hubs in Africa that serve the tech community by connecting organizations and people, building market relevant solutions and being ahead of the curve of innovation;
  - Advising BSP Fund on the sale of its equity interest in i-Hub to ccHub;
  - Working with Metta, a Nairobi based innovation hub to provide trainings on various legal topics such as data protection;
  - Working with Melanin Kapital and GIZ to provide legal training to e-commerce start ups on regulatory compliance and structuring their operations;
  - Working with Melanin Kapital to provide legal advice to start-ups that formed part of the Tuungane Programme – an initiative that links start-ups to investors;
  - Advising ZanAfrica Foundation on how to structure its for profit and not for profit business as well as the tax implications of the various options available to them; and
  - Carrying out tax due diligence and structuring for various private equity transactions.



# The Team



**Samuel Kisuu**  
**Director, Africa Law Partners**

Samuel has advised multinational and national companies on their acquisition of local and foreign entities as well as ensuring the most efficient and lean tax outcomes for the clients as well as advising clients in matters regarding tax disputes.

Samuel has been involved in advising clients on tax disputes with the Kenya Revenue Authority, Cross-border VAT implications arising out of various agency agreements and advising offshore companies setting up a presence in Kenya on the tax implications of their intended operations. Samuel has also been involved in providing advice to lenders of funds regarding drafting and negotiating their facility agreements.

Samuel holds a Bachelor of Laws (LL.B.) Degree from Strathmore University, a certificate in International Tax Law and Transfer Pricing from the Chartered Institute of Taxation (UK) and a certificate in Entrepreneurship in Emerging Economies from the Harvard Business School.

# The Team

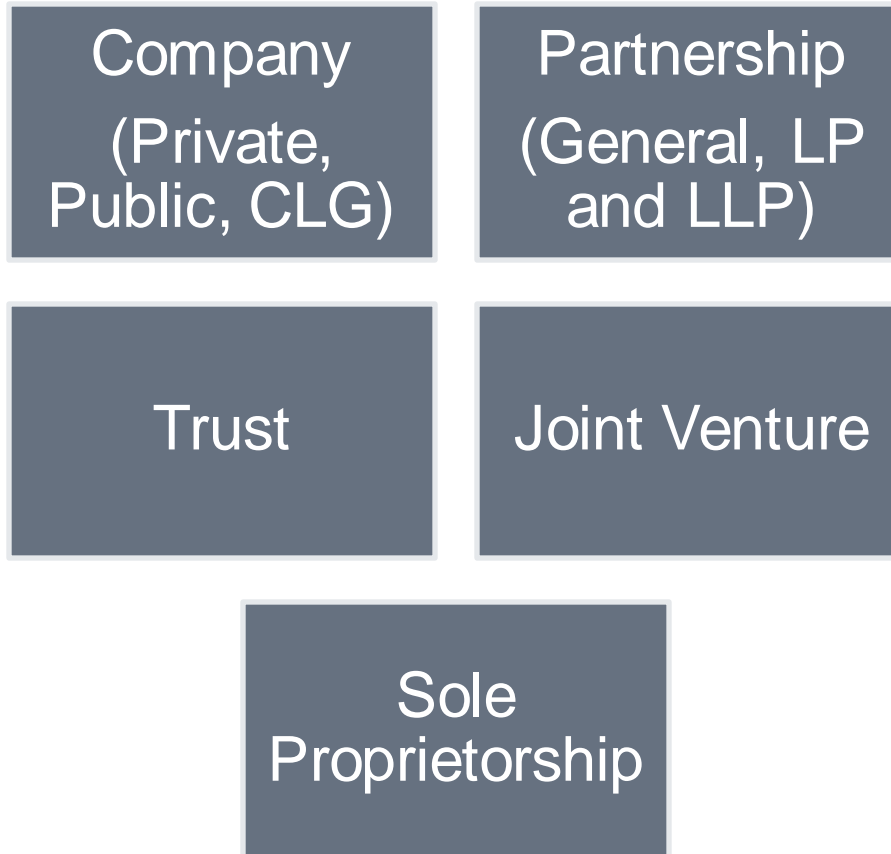


**Benedict Nzioki**  
**Partner, Africa Law Partners**

Benedict Munene Nzioki's key areas of specialisation are dispute resolution, corporate – commercial, estate planning, property development and competition law. He is also well versed in the law surrounding mergers and acquisitions and private equity funding.

Benedict has been involved personal wealth management, estate planning and succession matters on High Net Worth Individuals and families. He also advised on the development of one of the largest mixed-user developments in East & Central Africa. Benedict holds a Bachelor of Laws (LL.B.) (Hons.) Degree from Strathmore University and a Post Graduate Diploma in Law, from the Kenya School of Law, and is an Advocate of the High Court of Kenya as well as a CPA (1).

# Setting Up



# Intellectual Property

## ■ PATENTS

- A patent gives the owner the **exclusive rights** to prevent others from manufacturing, using or selling the protected invention in a given country. A patent is a legally enforceable right granted by the government in return for **disclosure of the invention to the public**.
- Geographical protection
- Average process timeline in Kenya is 2 years

## ■ Requirements to assess patentability:

- **Novelty** - the invention has not been publicly disclosed anywhere in the world;
- **Inventive step** - the invention must not be obvious to someone with knowledge and experience in the technological field of the invention; and
- **Industrial applicability** - the invention must be capable of being used in industry



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# Intellectual Property

## TRADEMARKS

- A Trade Mark is a sign which serves to ***distinguish the goods of an industrial or a commercial enterprise or a group of such enterprises***. The sign may consist of one or more distinctive works, letters, numbers, drawings or pictures, monograms, signatures, colours or combination of colours etc.
- The sign may consist also of combinations of any of the said elements. A Trade Mark can be a word, a symbol, a design, or a combination of these, used to ***distinguish*** the goods or services of one person or organization from those of others in the market place

## SERVICE MARKS

- A Service Mark is a sign which serves to distinguish services of an industrial or a commercial enterprise or a group of such enterprises.
- The sign may consist of either of the characteristics named above in trade marks

## Examples of trademarks



# Intellectual Property

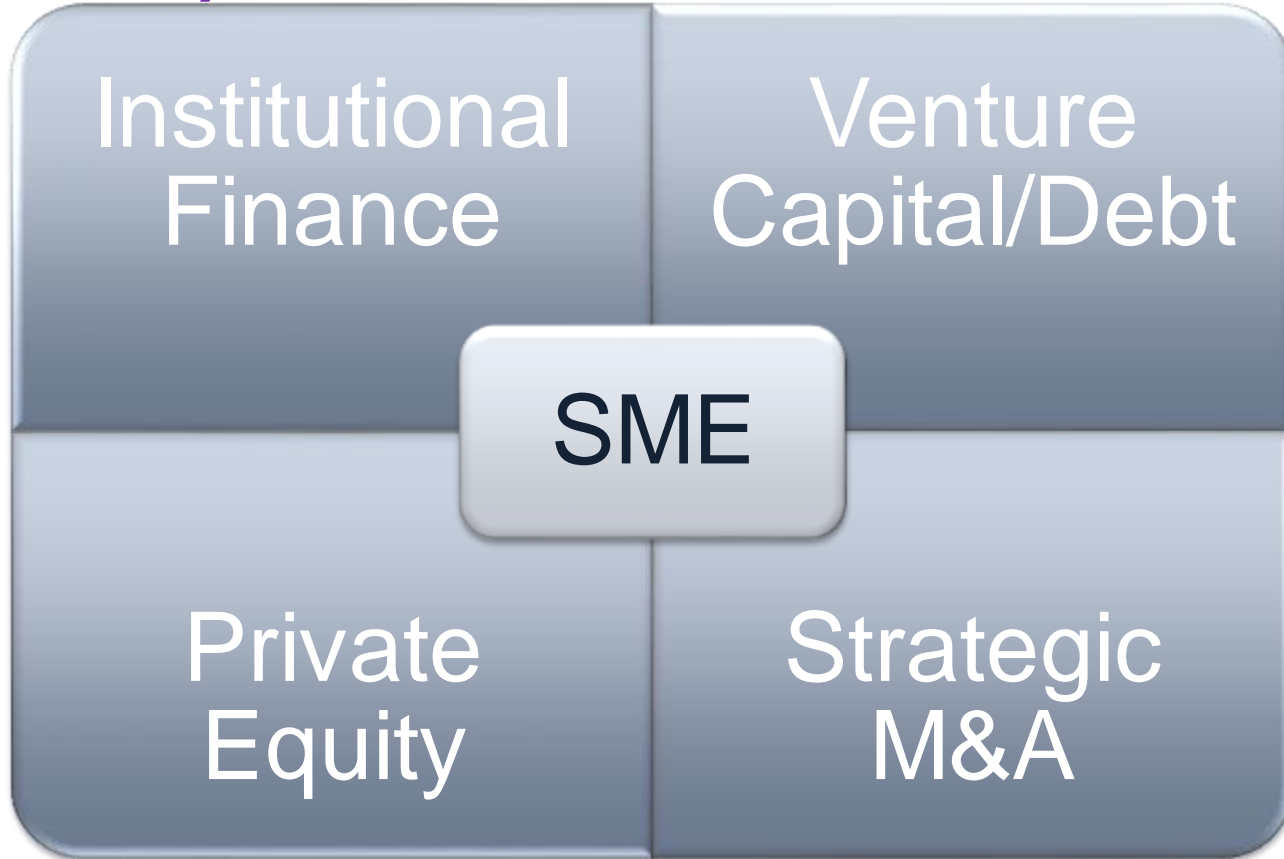
- **COPYRIGHT**

- Copyright protects the original expression of an idea that has been reduced to a ***tangible form*** and this includes transcript copies and copies made in the digital environment, from being copied without authority.
- It ***does not protect the concept or the idea***. It also does not protect symbols, titles, short phrases or factual information that may be contained in a copyright work

- Examples of copyright include:

- Literary works, including novels, instruction manuals, computer programs, song lyrics, newspaper articles and some types of database
- Musical works
- Artistic works, including paintings, engravings, photographs, sculptures, collages, architecture, technical drawings, diagrams, maps and logos
- Layouts or typographical arrangements used to publish a work, for a book for instance
- Recordings of a work, including sound and film
- Broadcasts of a work

# Financing (Sources)





# Financing (Road Map)

## Legal Basics prior to fundraising

- Corporate structure/governance – business vehicle, shareholders agreement; related party dealings
- Compliance – filing annual returns; licences; tax compliance
- Employment contracts
- Third-party relationships (suppliers, banks etc.)

## Legal Negotiations with investors

- Equity – share sale/subscription v debt (security?)
- Convertible instruments
- Decision making
- Non disclosures and non-circumvention
- Strategic objectives (more than money)
- Mode of exit for investors
- AML risks for secondary investors (emerging issues)



# Legal basics prior to fundraising

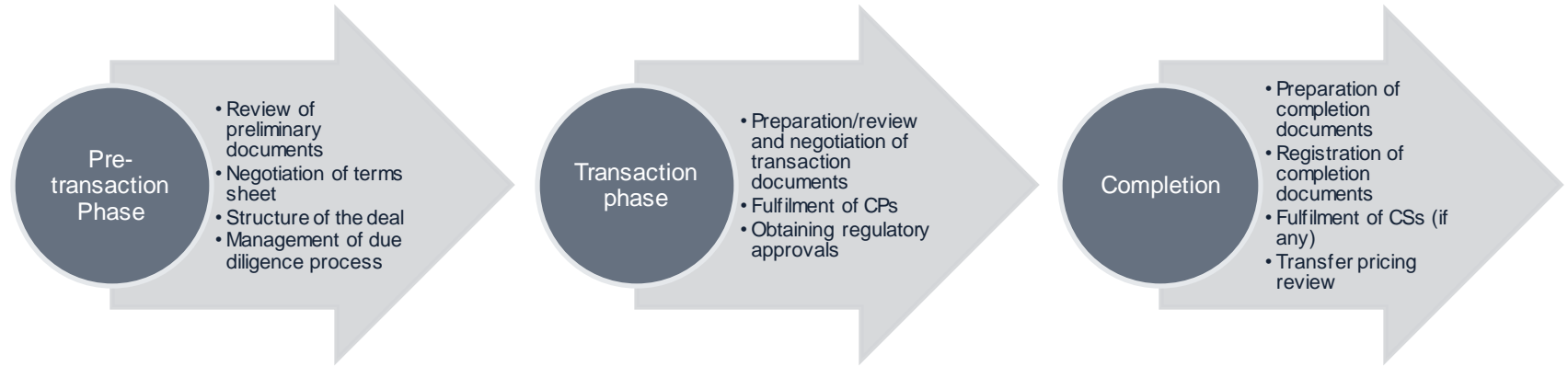
- Corporate structure
  - Shareholders agreement
  - Governance – directors, management structures
  - Related party dealings
- Compliance
  - Filing annual returns
  - Licences and permits
  - Tax compliance
- Contracts with third parties
  - Suppliers
  - Clients
  - Employees
  - Landlord
  - Financiers



A wide-angle photograph of the New York City skyline, viewed from across the water. The sky is filled with heavy, grey clouds, and several birds are captured in flight, scattered across the upper half of the frame. The buildings are a mix of modern glass skyscrapers and older, more traditional structures. The water in the foreground is calm and greyish-blue.

## Legal considerations in negotiation with investors

# General investment process



# Negotiation



vs



## ■ EQUITY TRANSACTIONS

- Share sale – cash out
- Share subscription – company benefits; dilution
- Call/put options
- Decision making

## ■ DEBT

- Security
- Less risky for investors
- Convertible debt



# Negotiation

## ■ CAUTION

- Non-disclosure Agreements
- Non-circumvention clauses
- Investee warranties

## ■ MORE THAN MONEY

- Strategy
- Skillset
- Exit plan of investor?
  - Pre-emption rights
  - Redemption / buyback
  - Share sale

Q&A

Swiss Cottages, No. 7, Ring Road, Riverside

P. O. Box: 58971-00100,

Nairobi, Kenya.

Tel: +254 713 743 124

[smk@africalawpartners.com](mailto:smk@africalawpartners.com)

[bn@africalawpartners.com](mailto:bn@africalawpartners.com)

