



# CONSTRUCTION & INFRASTRUCTURE 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

# CONSTRUCTION & INFRASTRUCTURE LAW

CM Advocates LLP walks with you in your construction journey from the construction project conception, design and planning, project procurement, project finance, project implementation and operation and maintenance.

Our aim is to provide you with the necessary advice and guidance necessary to successfully tackle all possible legal challenges that may arise in the construction and infrastructure development space. To successfully realize a project, while ensuring that it is both resource-efficient and economically sound, depends on the confident and timely handling of the wide-ranging realities of regulatory framework and fiscal regimes.

Many technical and legal challenges can and do arise in the field of construction. These invariably emanate, inter alia, from physical planning regime, site related issues, environmental regulations, the scope or magnitude of the project itself, contractual issues with the main contractors, sub-contractors and other consultants and the ever-changing regulatory framework and compliance regime.

Our team is here to work with you and your construction team to ensure that the complex procedures relating to land use and physical planning as well as environment laws do not

impede the progress of your projects. Likewise, our team is on-hand to provide their expert assistance in the accompanying areas of public procurement and related disputes or reviews, water and wastage management laws, labour and employment issues, tax law advisory, contracting issues as well contract management support.

We will also provide legal advice when it comes to working with potential business partners (like joint venturers, lenders and equity investors) to ensure the successful implementation of your project and achievement of the desired objectives. Together, we will ensure that you maximize the fullest potential of your business ideas.

We act for the various parties involved in the construction process including the property owners, the developer, contractors, sub-contractors, consultants like architect and engineers, quantity surveyors, project managers, investors, financiers as well as insurers.

The broad portfolio of our legal team ensures that we are able to provide you with a wide range of legal services that you may require, or that may arise, in a construction project. Our wide-range of legal knowledge allows us to employ our skill and proficiency in numerous legal spheres. These include, but is not limited to;

- Advising on construction projects procurement strategies (for private players) and on regulated procurement under the Public Procurement and Disposal Act, the Public Private Partnership Act and concessions
- under various statutes like the Kenya Airports Authority Act as well as handling any reviews or disputes arising therefrom
- Procuring and obtaining the requisite development, planning and environmental approvals and permits, and advising on such matters.
- Construction contracting including the drafting, review, negotiations and advising on standard form contract such as the Joint Building and Construction Council's (JBC) Standard Form Contract, the International Federation of Consulting Engineers (FIDIC) Conditions of Contract as well as bespoke contracts and sub-contracts including general contract management.
- Advisory to the various consultants involved in the construction industry (e.g., architects, engineering, quantity surveyors, clerk of works and project managers) on the drafting, review, negotiations on
- the letter of appointment or contract of engagement.
- Public construction law advisory including legal support when procuring development and environmental permits, licenses and approvals and when dealing with zoning regulations including change of users or extension of leasehold tenures, compliance with environmental regulations as well as handling related disputes or litigation

before, inter alia, the National Environmental Tribunal (NET) and the Environmental and Land Court.

- Construction financing and funding strategies advisory including PPPs, joint ventures, private equity finance as well as public finance fund raising.
- Employment and labour relations matters, tax and intellectual property (IP) issues;
- Insurance cover including contracts negotiation and disputes settlement;
- Land law including advising on land acquisition in relation to construction projects;
- Advising on Occupational Health and Safety (OHS) regulations as well as conducting general legal compliance checks or audits in relation to construction projects.
- Disputes & Claims Settlement including advising and handling all forms of disputes and claims settlement related to construction projects including litigation, arbitration, conciliation and mediation.

Our practice is structured in following practice areas: -

**Construction Law Advisory** – This includes dealing with all legal matters relating to construction and infrastructure development from projects conception, implementation and operationalization phases to handling of any legal challenges or disputes that may arise therefrom.

**Public Procurement & PPPs** – This cover public funded projects that are governed by the Public Procurement and Disposal Act, the Public

Private Partnership Act and other such regimes. We offer legal advisory and consultancy to bidders during the procurement stage as well as help the winning bidders in the negotiations and contracting stages. We also handle disputes arising therefrom before the Public Procurement Administrative Review Board, the PPP Tribunal as well as the Constitutional and Judicial Review Division of the High Court.

### ***Environmental and Planning Laws***

**Advisory** – We advise all aspect of land planning, environmental law compliance, water and waste management issues as well as on zoning and planning regulations. We also handle related disputes before the local County Government Planning Committees, the National Environmental Tribunal, the Water Appeal Tribunal and the Land and Environmental Court.

We have handled matters related to road and bridge constructions, airports, residential development as well as commercial developments like malls and office blocks. We also represent clients before Public Procurements and Review Board and the High Court. We also regularly act for appellants or respondents in matters before the National Environmental Tribunal as well as the Water Appeal Tribunal.

We have huge experience on property law matters including land sales or acquisitions, real estate joint venture agreements, preparation of property leases or licenses, preparation of concessionaire agreements as well as on land planning matters like applications for change of user or extension of leaseholds titles.

We also regularly advise clients on tax matters related to real estate development or

construction projects and related transactions.

**Infrastructure projects** – CM Advocates provides integrated legal support and solutions covering all areas of an infrastructure development project (be it airport, road, rail, port etc.), from the inception of a project, continuing through award of the project, financial close, design, investment, construction, operation and management.

We have a top tier dedicated team of lawyers and other professionals available to provide advice on all aspects and who are able to pool their experience and know-how as well as requisite resources to meet the project goals of a client. In addition to helping our clients manage risks through our strong understanding of regulatory issues, we also work with other teams at CM Advocates, including the real estate, environmental and planning laws, corporate/commercial, tax, banking and finance, competition law and dispute resolution teams to ensure that the advice that we offer relation to infrastructure projects is relevant, comprehensive and integrated.

In every project, we always help our clients to have a full appreciation of the relevant regulatory environment and to clearly identify, manage, minimize and allocate associated risks. We also advise project companies, sponsors, strategic investors and funds in shareholding and financing issues.

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Thereafter, we are able to incorporate our expertise in offering initial advice, undertaking



due diligence exercises, drafting and negotiating relevant contract documentation including, inter alia, design consultancy, construction, civil engineering, equipment supply and O&M contracts.

Deep knowledge of the infrastructure sector from an investor, lender, sponsor, contractor or government perspective;

Full commitment and immediate partner availability along with a highly experienced core team of lawyers from the relevant practice unit(s);

Our unique selling points are that we offer: -

- Deep knowledge of the infrastructure sector from an investor, lender, sponsor, contractor or government perspective;
- Full commitment and immediate partner availability along with a highly experienced core team of lawyers from the relevant practice unit(s);
- A committed team which will give the transaction its highest priority;
- A commercial and pragmatic approach.

The following briefly capture the entire gamut of services offered by CM Advocates LLP and its associates to clients in the infrastructure space:

- Compliance with all applicable laws such as project specific regulations, investment laws, procurement law, company law, taxes, developmental regulations, environmental regulations, labour, corporate, exchange control and other commercial laws.
- Due Diligence reviews and project health checks, covering transactional,

financial, environmental, tax and compliance related issues;

- Tax efficient structures to identify tax exposures and optimal tax structuring;
- Transactional documentation. Our experience is varied and includes the drafting, review and negotiation of: bidding documents; Concession Agreements, Implementation Agreements, and State Support Agreements; Financing Documentation including Loan Facility Agreements and Security and Contractual Comfort Agreements; Joint Venture, Share Subscription and Shareholders Agreements; Verification of title to underlying property, sale deeds, lease deeds and development agreements and other conveyance deeds in relation to acquisition of rights, interest or title in the underlying property; Engineering, Procurement and Construction contracts; Service Agreements and Consultancy Arrangements; Operation and Maintenance Contracts. Risk strategy advice and all aspects of risk allocation and management and the unique features of risk allocation.

## **1. ENERGY**

The firm has acquired relevant skills and developed wide networks in the local energy sector that enable it to advise local and international clients on diverse issues related to the oil and gas sectors, electricity production and sale in Kenya and related legal issues. The firm has the requisite expertise to advise international and local oil companies on legal issues relating to the Model Kenya Production Sharing Agreement, obtaining work permits and passes for its



employees and contractors and preparing or reviewing related technical, financing and production agreements.

We have assisted oil marketers in preparation of leases or licenses for petrol stations and represented them in preparation of fuel facility construction, acquisition or sharing agreements.

We have also been involved in carrying out a legal and compliance audit for one of the local major oil marketers leading to its ISO Certification. The firm also has experience in offering legal services and providing advisories relating to infrastructure projects in the sectors of power generation, industrial plants and oil, gas and other natural resource projects.

The firm has also acted for various local and international clients in the preparation of Private Public Partnership (PPP) agreements for various projects, including for the development of roads and aviation installations.

The firm has also been retained to carry out a legal and compliance audit for one of the main construction industry regulatory bodies in Kenya.

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## **2. MINING & INFRASTRUCTURE PROJECTS**

The firm also has experience in offering legal services and providing advisories relating to infrastructure projects in the sectors of power generation, industrial plants and oil, gas and

other natural resource projects. The firm has also acted for various local and international clients in the preparation of Private Public Partnership (PPP) agreements for various infrastructure projects, including for the development of roads and aviation installations. The firm has also been retained to carry out a legal and compliance audit for one of the main construction industry regulatory bodies in Kenya.

CM Advocates provides integrated legal support and solutions covering all areas of an infrastructure development project (be it airport, road, rail, port etc.), from the inception of a project, continuing through award of the project, financial close, design, investment, construction, operation and management.

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- ii). Due Diligence reviews and project health checks, covering transactional, financial, environmental, tax and compliance related issues;

iii). Tax efficient structures to identify tax exposures and optimal tax structuring;

iv). Transactional documentation. Our experience is varied and includes the drafting, review and negotiation of: bidding documents; Concession Agreements, Implementation Agreements, and State Support Agreements; Financing Documentation including Loan Facility Agreements and Security and Contractual Comfort Agreements; Joint Venture, Share Subscription and Shareholders Agreements; Verification of title to underlying property, sale deeds, lease deeds and development agreements and other conveyance deeds in relation to acquisition of rights, interest or title in the underlying property; Engineering, Procurement and Construction contracts; Service Agreements and Consultancy Arrangements; Operation and Maintenance Contracts. Risk strategy advice and all aspects of risk allocation and management and the unique features of risk allocation and management structures in both privately financed and state funded infrastructure transactions; and Resolution of disputes and litigation flowing from the projects.

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