ANJARWALLA & KHANNA

MEMBER PROFILE

Fayha Karimbux
Senior Associate

Roddy McKean
Director

Anjarwalla & Khanna has an established banking, finance, restructuring and insolvency practice and is considered to be one of the leading firms in the field.

AVCA speaks to Anjarwalla & Khanna about the importance of joining an alliance of corporate law firms across Africa and supporting financial institutions' compliance with ESG regulations.

NAME OF PROFESSIONAL SERVICES FIRM
Anjarwalla & Khanna

FIRM TYPE
Law Firm

Q: Could you tell us about the history of Anjarwalla and Khanna? What led to the firm's establishment?

Our story dates back to 1958 when we became an established firm in Kenya's costal region, Mombasa, with less than 10 employees. Our founder's vision when he formed the firm was to contribute to Africa's dignity and freedom, which resulted in his vital contribution to the independence movement.

That DNA remains with us, as we unite the continent through ALN, an integrated alliance of the preeminent full-service corporate law firms in 15 African countries and the UAE, regarded as one of Africa's institutions of distinction. We are flattered that many, including larger South African firms, have sought to replicate what we started. We are proud to be considered by the market as well as leading global directories, including Chambers and Partners and IFLR1000, as the largest and leading corporate law firm in Africa (outside South Africa), in addition to having won the African Law Firm of the Year, five times in eight years.

Our four offices in three countries, Kenya, Tanzania and UAE and close to 300 employees strive to be the change we want to see, combining on the ground excellence with global expertise, imbued with a belief, unique in the context of corporate law firms, that pushing the rule of law agenda is a vital part of our work.

Q: What makes Anjarwalla and Khanna unique from other law firms in Kenya?

ALN Kenya is a true African firm, with African roots, mandates and a global audience. We think different and break new ground and are bold enough to chart new waters. We have been intentional, are succeeding, and continue to strive further because we have a conviction inspired by the desire to improve how Africa is perceived – to demonstrate to the world that African lawyers can be considered just as professional, ethical and, committed to excellence as our global counterparts. Beyond the traditional full service offering, we provide clients with Forensics, Investigation and cyber-security services, Tax, and International Trade advice. Through our ALN Academy, our training/capacity building institute, we are deliberately improving the rule of law on the continent.

Q: Anjarwalla and Khanna is part of the Africa Legal Network (ALN). What is the importance of joining an alliance of corporate law firms across Africa?

In response to the market and as more clients asked us to take care of cross-border deals, in 2004 we founded ALN to give us the agility and expertise to operate locally and across the pan African business and economic environment. Our clients can call upon specialists that span the legal spectrum, and as Africa is propelled on to the world stage, ALN lawyers combine their global perspective with local expertise to help clients navigate new territories and capitalise on future opportunities.

Together, ALN firms provide clients with seamless practical and business-focused legal, advisory and transactional services across Africa. The alliance specialises in blending deep local knowledge and reach with sector-specific expertise, to successfully guide clients in navigating locally and across borders.

Q: In your view, how has Kenya's private capital legal landscape evolved in the past 5 years?

The investment sector in Kenya has seen significant growth and interest from across the world, in the past few years. A wide range of actors are contributing to the development of the ecosystem in Kenya. The country has overhauled its legal system in order to streamline the legal landscape and provide more favourable conditions to local and foreign investors doing business in East Africa's business hub.

In this regard, several legislative enactments have changed Kenya's business landscape. They were introduced with the aim of encouraging further investment and modernising business processes in the country. They include the Companies Act, the Business Registration Service Act, the Special Economic Zones Act, the Insolvency Act, the Companies and Insolvency Legislation (Consequential Amendments) Act, Finance Act Amendments, among others.

Private equity and venture capital funds ("PEVC funds") domiciled in Kenya, or that wish to raise funds in Kenya, are currently regulated by the Capital Markets Authority (the "CMA"). Recent amendments to the Capital Markets Act in 2020 expanded the remit of the CMA, enabling the CMA to licence, approve and regulate PEVC funds that indirectly have access to public funds in Kenya, with the aim of bringing PEVC funds that access public funds through public bodies and pension funds under the CMA's remit. The CMA does not currently regulate the investments made by PEVC funds themselves (assuming that they are not made into listed companies or entities specifically licenced by the CMA); however, such investments may fall under other industry-specific regulators in line with their respective statutes and regulations.

As a general premise, investment funds or other entities that pool funds from the public are regulated as collective investment schemes under the Capital Markets Act, and their general partner or other management entity must be licenced by the CMA as a fund manager. General partners or the management entities of PEVC funds that do not fit within the definition of a collective investment scheme remain regulated as either investment advisers or fund managers, depending on the size of the funds under their management.

Pension funds are only allowed to invest in certain specific asset classes, with the proportions of such assets prescribed under the Retirement Benefits (Individual Retirement Benefit Schemes) Regulations, 2000 and the Retirement Benefits (Occupational Retirement Benefit Schemes) Regulations, 2000. Under these regulations, pension funds may invest a maximum of 10% of their assets under management in PEVC funds.

In general, the CMA's mandate is to protect investments made by the wider public and specifically less knowledgeable or sophisticated investors who might invest in a collective investment scheme in reliance on a fund manager's expertise without necessarily having a full understanding of the associated risks. Drawing the line between investors who need protection and those who do not is inevitably more art than science, especially where offers often cut across corporates and individuals with different incomes and expertise, but a pension fund operating under its own pensions regulator should not be subject to the same regime. In seeking to define and draw the line between those investors who are sufficiently knowledgeable and those who require a regulator's protection, it is increasingly important for the CMA to work with stakeholders such as the East Africa Venture Capital Association and the African Venture Capital Association, as well as private sector groups to ensure that the development of the existing regulatory framework encourages investment while ensuring public protection when required.

In 2020, with the onset of the Covid-19 pandemic, Africa as a whole had a few advantages such as the spread of the pandemic reaching the Continent later than other regions across the world, as well as the continent's recent experience with deadly epidemic outbreaks and additionally, Governments in countries like Kenya were reasonably quick to react to the pandemic. For example, the Government of Kenya predominantly focussed its measures on reducing cash reserve ratios and monetary policy rates, introduced tax measures as well as industry specific packages. Like other countries on the continent, we saw a shift from deploying capital to risk mitigation policies for portfolio companies through value safeguarding solutions, such as assessing supply chains, revenue impacts, liquidity needs and value creation. With the shift, the pandemic moderately affected fund performance. This trend appears to have continued through 2021 and 2022.

In 2021, Kenya adopted regulations mandating disclosure of UBOs for entities registered in its jurisdiction. The UBO regulations are far-reaching their scope and have important operational and tax implications for portfolio companies and investments held by private equity and venture capital investors in the region.

Regulation of private equity and venture capital companies under the Finance Act 2020. The amendment gives Capital Markets Authority (CMA) the mandate to "license, approve and regulate private equity and venture capital companies that have access to public funds." It is noteworthy that prior to enactment of the Act, "registered venture capital companies" were regulated under the CMA Act.

Q: Could you shed some light on a transaction you have recently advised on?

Please see below two recent deals we have acted on. What is common with our transactions is that they cut across many countries. ALN Kenya has consistently been recognised for its Africa-wide work. We regularly act as lead counsel on significant deals involving multiple African countries. As evidenced by the few deals provided below. We are increasingly playing the role of a lead transaction counsel, including on transactions with no Kenyan law components. We are managing input from local firms based in Africa, acting as the primary contact for the client, leading the deal negotiations and being responsible for the transaction documentation. Accordingly, we are currently the only African firm, outside of South-Africa, ranked by Chambers Global for Africa-wide work. We have a specialised Private Equity team that advises on private equity and venture capital investments across the Continent. The team combines in-depth local knowledge with global experience that allows them to advise clients in an increasingly challenging business environment that demands innovative commercial and legal solutions.

Deal 1:

We acted for Leapfrog Investments, a private equity firm, in connection with its acquisition of approximately 24% of the shares in ICEA Lion Insurance Holdings from First Chartered Securities, the holding company of the ICEA group of companies which undertakes insurance business in Kenya, Uganda and Tanzania, including undertaking a due diligence on the ICEA group companies in Kenya, Uganda and Tanzania; reviewing and negotiating the various transaction documents including a Share Subscription and Purchase Agreement and Shareholders Agreement; advising on the regulatory approvals required pursuant to the transaction; assisting the client to procure competition approvals from the Competition Authority of Kenya and the Fair Competition Commission; assisting the client to apply for and obtain the approval of the Insurance Regulatory Authority and the Tanzania Insurance Regulatory Authority and making post-completion notifications to the Retirement Benefits Authority, the Capital Markets Authority in Kenya and Uganda and the Uganda Revenue Authority and assisting the client with fulfilling the completion conditions.

This transaction is significant as the partnership would support the ICEA Lion's strategy of diversification while focusing on growth, innovation, digitization, and product development to enhance operating synergies throughout its various operations.

Standard: Competition Authority of Kenya approves sale of ICEA Lion shares .

The Kenyan Wall Street: LeapFrog Africa to Acquire 24% Stake in ICEA Lion.

Deal 2:

We also acted as lead counsel for Actis and AutoXpress International, the shareholders in AutoXpress, an importer, distributor, and retailer of tyres, auto parts, and accessories with subsidiaries in Mauritius, Kenya, Uganda, Tanzania, and Rwanda, in connection with an auction sale through a bidding process and ultimate sale of Actis's stake in the Company to AfricInvest, including conducting a vendor legal due diligence and coordinating the legal due diligence process undertaken by the ALN firms that involved the Group's operations in Uganda, Tanzania, Rwanda, and holding companies in Mauritius, preparation and negotiation of pre-transaction documents, including Non-Disclosure Agreements and marketing materials, providing advice on the structure and approach to the sale process under either a bilateral or auction sale and drafting, reviewing, and negotiating the transaction documents (including a shareholders agreement with AfricInvest), negotiating warranty and indemnity insurance for the sale, and assisting in procuring third-party approvals, including anti-trust approvals.

The matter is an example of a large secondary buy-out which is a growing trend in our region.

Business Daily**:** AfricInvest, IFC acquire 36 percent stake in AutoXpress

AfricInvest.com: AfricInvest and IFC invest in AutoXpress

Africaglobalfunds.com: Actis exits AutoExpress to AfricInvest

Q: After 2021 being a record year for PE and VC funding in Africa, what major trends do you expect to see driving private investment on the continent, and more specifically in Kenya itself?

May 2022 is the first time in over a year that global VC funding has fallen under USD 40 billion, standing at USD 39 billion according to industry trends analytics company, Crunchbase. This is down 20% from USD 49 billion a year earlier in May 2021 and far below the USD 70 billion peak of November 2021. In the first quarter of 2022, the US and Asia both recorded 1% year-on-year declines in venture funding. Europe and Latin America saw growth of 33% and 35% respectively.

Africa though tells a different story. According to Africa-focused database The Big Deal, Africa was the only region to record three-digit growth in the first quarter of 2022, with venture funding up 150% to hit a record USD 1.8 billion compared to USD 730 million in the same period in 2021.

Kenya alone attracted more venture funding in the first three months of 2022 (USD 482 million) than it did in all of 2021 (USD 412 million).

Africa is defying global trends in VC funding. However, it is important to know that the current funding flowing to African startups is still a drop in the ocean as it represented just 1% of global venture funding in the first quarter of 2022 according to CB Insights State of the Venture Report of global venture funding.

Emerging trends show that while fintech remains the biggest draw for investors, an influx of startups offering similar financial services and vying for the same pool of customers has investors offering more scrutiny and stepping up their due diligence efforts. More attention is being paid by investors to start-ups operating in other sectors such as logistics, blockchain, education, and green energy. Blockchain start-ups in Africa, for instance, raised USD 91 million in the first quarter of 2022, representing eleven times growth compared to the first quarter of 2021.

Though things have slowed down in 2021, Kenya has been consistently punching above its weight when it comes to number of deals and amount raised. In 2019 and 2020, the country was ranking number 3 in terms of number of USD 1 million + deals signed on the continent, behind South Africa and Nigeria; in terms of total funding raised. 2021 tells a more contrasted story as the country dropped to number 4 in terms of number of USD 1 million + deals and number 5 in total amount raised.

Of the USD 182 million raised by start-ups in Kenya so far this year, nearly half (47%) belongs to agri-business start-ups (Gro Intelligence's USD 85 million deal in February.) Kenya is the only large ecosystem where the majority of funding is raised by female CEOs (59%) & gender-diverse founding teams this year. If smaller deals (USD 100 thousand -USD 1 million) are an indication of what is to come next, Kenya's place in the ecosystem should remain high: in 2021 so far, the country is second in terms of the number of such 'smaller' deals with 63 already, behind Nigeria (90), but ahead of Egypt (48) and South Africa (47).

What is almost certain is that African start-ups' share of global venture funding will continue to rise.

Q: As the focus on ESG matters continues to grow, how does Anjarwalla and Khanna support financial institutions' compliance with ESG regulations? How has the impact affected their lending decisions?

ESG issues have unprecedented importance for business. Strategic decision-making is driven by regulatory change, consumer and investor demand and a growing awareness among institutions, boards, employees and other stakeholders.

Our commitment as a firm is to drive long-term profits and maximise positive impact for our own stakeholders. Accordingly, we are well-versed in the various ESG frameworks, requirements, and developments and therefore assist financial institutions to assess whether their ESG programs comply with the current and changing regulatory and market dynamics.

We are ensuring that our clients conduct the appropriate due diligence prior to entering into ESG-based financial commitments; developing and implementing innovative structures and terms for green and sustainability-linked financings; advising on how to develop control systems and checks to ensure that compliance is maintained throughout the lifecycle of financed projects; reviewing clients' ESG reports to ensure compliance with ESG-related performance and operational requirements, including those with suppliers and vendors; and advising clients to manage environmental risk, compliance strategies, litigation and develop environmental programs to minimise liabilities.

Q: What value does AVCA bring to achieving your internal objectives?

ALN Kenya is privileged to have had a long-standing partnership with AVCA, which is positively transforming Africa through its continued contribution towards growth of investments into Africa by providing insights, expertise and thought leadership on doing business in the continent, which is part of our objective. We value being part of Africa's growth story in collaboration with AVCA.