The aftermath
Implications of the 8th Kenya Elections

All eyes on the result

The official results of the recently-concluded 2017 Kenyan elections have given the incumbent party a resounding victory. President Uhuru Kenyatta secured 54% compared to 44% for his longstanding rival Raila Odinga. Meanwhile, the Jubilee Party has gained a clear majority in both the Senate and the National assembly, with several of the independent winners and smaller parties leaning towards or affiliated with the incumbent administration.

However, the election results have been vocally contested by the opposition, which now plans to petition the outcome through the courts, alleging significant vote-rigging. While the elections were largely deemed to have been credible and transparent by international election observers, the opposition led by Odinga has cried foul, alleging that the Independent Electoral and Boundaries Commission (IEBC)’s electronic voter tallying system had been manipulated in favour of the incumbent, causing the electoral body to resolve to a manual tallying system which still saw Kenyatta as the winner.

In this piece, we explore the procedural, operational, political, governance and economic implications of the election aftermath on the business environment and the country at large.

Procedural scenarios and implications

Petitions

The deadline for petitions is 18 August (seven days after the announcement of the results). NASA has stated that it will file a petition through the courts contrary to its initial plan to seek the “court of public opinion” to try and ensure that Raila Odinga is sworn in as the next president. This had raised concerns of potentially destabilising mass mobilisation efforts.

NASA’s petition or any other petition by civil society is unlikely to be successful as a result of the detailed verification of the voter forms and the incumbent’s significant margin of victory. However, such a petition would push the swearing-in ceremony to the first week of September.

A wholesale rejection of the election by the Supreme Court is highly unlikely. This is due to the international community’s endorsement of the voting process and the overall results of the local, county, senate and national assembly elections point to a strong Jubilee Party win and a consolidation of power. Nevertheless, uncertainty will persist in the business environment until a verdict has been reached.

While NASA has opted to file a petition against the election results, if the party fails to lodge its petition on time, Kenyatta will likely be sworn in on 29 August. This could prompt either a final acceptance of defeat or a renewed contestation of the results outside
Upon his announcement as the winner of the presidential race, Kenyatta reached out to the opposition, asking Odinga and his team to work with the government to ensure the country’s stability and prosperity. In a bid to invigorate this ambition, Kenyatta’s administration also launched a back-to-work campaign urging Kenyans to return to work so as to reduce the mounting tensions caused by the opposition’s lack of cooperation.

So far, some levels of normalcy have returned, with the business community led by KEPSA and KNCCI showing their commitment to renewed investment by calling on private sector institutions and organisations to resume operations so as to increase investment flows into the country and avoid an economic slump. Even in the absence of these exhortations, most Kenyans have started returning to work since Friday of the elections week.

This emphasis on stability by both the Jubilee administration and the business community means there will be no significant period of uncertainty after the inauguration as the continuation of government will ensure broad policy stability and a resumption in outstanding legislative processes. The business community at large already has a broad working relationship with Kenyatta and his government, which will also help with relationship management in many instances, though we anticipate a fairly significant post-election shake-up in political office.

Focus on plugging the fiscal and budgetary gap

Although political continuity provides investors with some reassurances, plugging the widening fiscal and budgetary gap is likely to be a key priority for the government. This presents a risk to businesses. The government has yet to show a political will to conduct rigorous public-sector reform and spending efficiencies, which can be politically unpalatable. However, under pressure from lenders and needing to shore up public finances, it may look to a combination of spending cuts and tax rises to improve macro-economic stability. Given its majority in parliament, tax changes could face little political resistance and will require active engagement from the business community to ensure future investment is not compromised by over-zealous taxing of the private sector.

Contractual Stability

Political continuity is likely to ensure contractual stability for the vast majority of investors. The only possible exception to this rule will be contracts or agreements rushed through during the transition period during which time the absence of key appointees and institutional oversight structures such as parliament could be seen to compromise contract sanctity.
Political and Administrative Implications

Key in the next few weeks will be the new cabinet, new parliamentary committees (standing orders and parliamentary procedures have also been reviewed) as well as potential changes to the Permanent Secretaries (PSs), with a potential change at the helm of the Public Service being the most significant.

Appointments

Political power structures are expected to largely remain the same after President Kenyatta’s win. However, his political godfathers, financiers and allies are anticipated to have a say as advisors or will be compensated through potentially financially rewarding political appointments.

With Deputy President William Ruto eyeing the 2022 presidential elections, he will likely seek to consolidate more power and influence in government, particularly through his allies. While a majority of civil servants are likely to remain the same, some infighting between the Kenyatta and Ruto factions is expected, particularly over the leadership of the more politicised Treasury, Energy, Agriculture, Transport and Infrastructure, Land, Housing and Urban Development ministries.

Both party leaders will seek to pay their political debts to those who supported their campaign but have not already been rewarded with elected office. This is likely to create a more ethnically represented government, but would unlikely affect the core Kikuyu-Kalenjin dominance of the Jubilee government.

Senate and National Assembly

There is a big change in the composition of the National Assembly and the Senate. While both houses are expected to convene 30 days after the elections, the key committees will not likely be set up until much later in the year due to the horse-trading that precedes the committees’ composition. In both houses, Jubilee controls a majority, especially the National Assembly. This means that Jubilee will control the legislative agenda.

We expect the committees to be formed in September after the president is inaugurated and Parliament has convened a special sitting to allow the president to make a speech to parliament. The new standing orders will change the nature of many of the committees and some aspects of how parliament conducts its business. These committees will have a big say in directing the country’s policy agendas and given the clear majority held by Jubilee Party in both the Senate and National Assembly, it is likely that priority will be given to policies that promote the party’s manifesto and agenda.

Governance

Responding to perceptions of corruption and underperformance reflected in the electoral campaign, President Kenyatta will seek to address graft and weak governance. Some improvements are anticipated including changes to key parastatals and top civil servant positions. However, such moves will be little more than window-dressing and a concerted anti-corruption campaign capable of tackling graft and addressing institutional weaknesses which seem unlikely, in the absence of real commitment from the Judiciary, the EACC and the office of The DPP who are the independent institutions charged with addressing graft.
Economy and Infrastructure Development

Kenya’s macro-economy is likely to see Foreign Direct Investments bounce back. But Kenya still has a great deal of work to do to manage its fiscal deficit. Continued implementation of the large infrastructure plans including the Mombasa – Nairobi expressway, Special Economic Zones, Lamu coal plant, SGR phase 2 and 3 and Nairobi commuter rail is expected.

The government will have a tricky balancing act to perform due to the increased borrowing witnessed in the first term. This, coupled with lower than hoped-for economic growth and tax revenue, will give the government less fiscal manoeuvrability to fund all of its election promises and infrastructure financing plans will be tough to pull off.

Thus, we are likely to see the government more aggressively pursue PPP’s for infrastructure development and review the Interest Rate Cap as ways to stimulate the credit sector. We are also anticipating a more aggressive tax posture. Some taxes, especially VAT, Income and excise taxes are likely to be extended or enhanced alongside some import taxes which are usually an easy target for the government.

Oil production and construction of the pipeline will be taking place over the course of the next term. Enabling legislation meant to speed up the pace of development of infrastructure and the oil & gas sector can also be expected to be passed relatively swiftly by parliament.

Regional Issues

Issues in the region remain complex. The relationship with Tanzania still needs attention, with ongoing tension over the Tanga Oil pipeline and other recent trade disputes. Uganda will recalibrate and seek to reverse the deterioration of relations subsequent to the AUC chairperson elections. Somalia will remain the primary security challenge given its spill over impact, while the reconstruction of South Sudan as a geo political and economic stimulus imperative could re-emerge as a foreign policy priority for Kenya.