THE LEGAL FRAMEWORK OF THE OFFICE OF NOTARY IN RWANDA



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1. Introduction

In Rwanda like other jurisdictions, some documents require notarization for various reasons before their official use. Therefore, Rwanda also recognizes the notarial services and it has put in place the legal framework under which notaries operate.

The law no 017/2023 of 30/03/2023 amending law no 13bis/2014 of 21/05/2014 governing the office of notary defines a notary as a public official or any other person engaged in private practice authorized by the Minister, who is empowered to draw up deeds, receive deeds or act as witness to the signing thereof to make such deeds legally authentic and certify copies as being true copies of originals by virtue of powers conferred upon him or her by the law.[1]

The office of notaries was first introduced in Rwanda in 1953 with the adoption of Decree of 17/11/1953 relating to notarized acts. Since then, Rwanda had only public Notaries until 2014, when the law no 13bis/2014 of 21/05/2014 governing the office of notary was enacted to repeal the Decree of 17 November 1953 relating to notarized deeds and made some reforms regarding the office of notaries including but not limited to recognizing and regulating the private notaries.

Currently the office of notaries in Rwanda is governed by law no 13bis/2014 of 21/05/2014 governing the office of notary as amended to date. Apart from the amendments recently made by law no 017/2023 of 30/03/2023 amending law no 13bis/2014 of 21/05/2014 governing the office of notary, there are a lot of ministerial orders that govern the office of notaries along with the laws here above mentioned.

The most recent order that was published to implement law no 017/2023 of 30/03/2023 amending law no 13bis/2014 of 21/05/2014 governing the office of notary, is Ministerial Order n° 002/MOJ/AG/23 of 22/06/2023 determining modalities to practice the office of notary by private persons and modalities to provide notarial services by electronic means which was published on 23rd June 2023 with the objective of providing for modalities to provide the notarial services by electronic means among others.[2]

[1] Article 2 (f) of the law no 017/2023 of 30/03/2023 amending law no 13bis/2014 of 21/05/2014 governing the office of notary, *Official Gazette n° Special Bis of 30/03/2023*

[2] Ministerial Order n° 002/MOJ/AG/23 of 22/06/2023 determining modalities to practice the office of notary by private persons and modalities to provide notarial services by electronic means, *Official Gazette n° Special of 23/06/2023*

This article aims to discuss the legal framework of the office of notaries in Rwanda, hence helping our clients, partners, notaries, and the public at large to understand the functioning of the office of notary and its legal framework in general.

2. CATEGORIES OF NOTARIES IN RWANDA

In Rwanda, the law recognizes many categories of notaries as provided for under article 3 of the law no13bis/2014 of 21/05/2014 governing the Office of Notary. This article categorizes notaries into the following categories:

i. Civil servant in charge of the office of notary in the Ministry
ii. The Ambassador or the First Secretary of Embassy in the absence of the Ambassador;
iii. An officer in charge of the office of notary in the Government Service in charge of investment promotion;
iv. A District officer in charge of legal affairs;
v. A District officer at the Sector level in charge of complaints from the Public;
vi. The following officers in charge of land-related matters:

- **a.** Registrar of Land Titles;
- **b.** Deputy Registrar of Land Titles and an officer in charge of land registration and legal affairs within the land registration area in the absence of the Deputy Registrar;
- **c.** Head of the land office at the District level;
- **d.** Officer in charge of land at the Sector level

vii. Any other private person authorized by the Minister. [3]

The above mentioned categories can be grouped into two major categories which are public and private notaries as discussed in the following subsections.

[3] Article 3 of law no13bis/2014 of 21/05/2014 governing the Office of Notary, *Official Gazette no Special bis of 29/05/2014*

2.1. Public Notaries

Among the categories of notaries provided for under article 3 of the law no13bis/2014 of 21/05/20, there are six categories that fall under public notaries such as: the Civil servant in charge of the office of notary in the Ministry, the Ambassador or the First Secretary of Embassy in the absence of the Ambassador, an officer in charge of the

office of notary in the Government Service in charge of investment promotion, a District officer in charge of legal affairs, a District officer at the Sector level in charge of complaints from the Public, the officers in charge of land-related matters such as: Registrar of Land Titles, Deputy Registrar of Land Titles and an officer in charge of land registration and legal affairs within the land registration area in the absence of the Deputy Registrar and Head of the land office at the District level.

The public notaries existed in Rwanda since the first time Rwanda had the legislation that govern the office of notaries as it was first introduced in Rwanda in 1953 with the adoption of the decree of 17/11/1953 relating to notarized acts.[4] Since then, the officeof public notaries has been regulated by different binding legal instruments. Currently, the work of public notaries is governed by the law no 13bis/2014 of 21/05/2014 governing the office of notary as amended to date as well as other binding instruments.



2.2. Private Notaries

The Rwandan laws recognize the private notaries as per article 3 the law no13bis/2014 of 21/05/2014 governing the Office of Notary in Rwanda which lists the categories of notaries in Rwanda, among which point seven states "Any other private person authorized by the Minister".[5] Therefore, the private persons can be private notaries upon authorization by the Minister of Justice.

[4] Decree of 17/11/1953 relating to notarized acts
[5] Law no13bis/2014 of 21/05/2014 governing the Office of Notary (n[3]). article 3

The law no 017/2023 of 30/03/2023 amending law no 13bis/2014 of 21/05/2014 governing the office of notary provides for the requirements that a person who wants to practice as a private notary in Rwanda must satisfy. He or she must fulfil the following requirements:

(a) to be a Rwandan national;
(b) to be at least eighteen (18) years of age;
(c) to hold at least a bachelor's degree in law or its equivalent;
(d) not having been definitively sentenced to a term of imprisonment equal to or exceeding six months, unless such a conviction has been expunged as a result of amnesty or rehabilitation;

(e) not having been removed from office within the public service or private sector as a result of disciplinary breaches unless he or she has been rehabilitated;
(f) to have at least three years of professional experience in the field of Law;
(g) to be a person of integrity".[6]
Therefore, whoever who fulfills the above mentioned conditions, is eligible to practice in Rwanda as a private notary provided that he or she gets the authorization from the Ministry of Justice.

Moreover, after being authorized to practice as the private notary in Rwanda and before starting notarial function, a new private notary undergoes induction training. [7]

3. INCOMPATIBILITIES WITH OFFICE OF THE NOTARY

The office of notary is incompatible with the following offices:

- ✓ Judge
- ✓ Prosecutor
- ✓ court bailiff
- ✓ court registrar
- ✓ any other public or private office unless he/she is empowered to do so by the Minister. [8]

[6] Law no 017/2023 of 30/03/2023 amending law no 13bis/2014 of 21/05/2014 governing the office of notary (n[1]), article 3
[7] Ministerial Order n° 002/MOJ/AG/23 of 22/06/2023 determining modalities to practice the office of notary by private persons and modalities to provide notarial services by electronic means (n[2]), article 6
[8] Law no13bis/2014 of 21/05/2014 governing the Office of Notary (n[3]), article 5

As per the above provision, a person cannot practice as a notary and occupy any of the above positions at the same time.

4. COMPETENCES OF NOTARIES

4.1. Competences of a notary at the Ministry, District, Sector and that of a private notary

Article 9 of the law no 13bis/2014 of 21/05/2014 governing the office of notary provides that: "In exercising his duties, a notary at the Ministry, District, Sector and private notary shall have the following competences:

- ✓ Authentication of signatures;
- ✓ Certification of document authenticity;
- ✓ Certification of the conformity of a copy to the original;
- ✓ Issuance of copies of deeds they draw up;
- ✓ Certification of wills involving movable property and that of acts that nullify them drawn up by testators;
- ✓ Certification and authentication of complex deeds related to movable and immovable property;
- ✓ Issuance of other notarial deeds provided for by law."[9]

Apart from notaries at the Ministry, District, Sector and the private notaries, the above competences were also accorded to the notary at the Government Service in charge of investment promotion with the except the Certification of wills involving movable property and that of acts that nullify them drawn up by testators. [10]

4.2. Competences of a notary in land-related matters

The law provides for the competences accorded to the officer in charge of notarial duties in

[9] Law no13bis/2014 of 21/05/2014 governing the Office of Notary (n[3]), article 9
[10] Id., article 11

land-related matters. Those competences are the following:

- to certify and authenticate wills involving immovable property and deeds that nullify them drawn up by testators;
- to certify and authenticate contracts for transfer of land and other immovable property incorporated into soil through succession, donation, bequest, inheritance, easing, sale, land leasing, compensation, right-of-way, provision of a guarantee for the benefit of a third party;
- to certify and authenticate contracts relating to condominium agreements;
- to certify and authenticate other deeds related to land transfer provided for by law.[11]

4.3. Notarial competences of Ambassador and First Secretary of the Embassy

According to article 12 of the law regulating the office of notaries in Rwanda which clearly states that while exercising their duties as notaries, the Ambassador and the First Secretary of Embassy are charged with the following competences:

- authentication of deeds;
- authentication of signatures;
- certification of document authenticity;
- certification of the conformity of a copy to the original;
- issuance of copies of the deeds they have drawn up;
- issuance of other notarial deeds provided by Law.

However, before being used in Rwanda, deeds certified or authenticated by the Ambassador or the First Secretary of the Embassy shall be approved by the Ministry in charge of foreign affairs. [12]

[11] *Id.*, article 10
[12] Law no13bis/2014 of 21/05/2014 governing the Office of Notary (n[3]), article 12

5. MODALITIES FOR THE PROVISION OF NOTARIAL SERVICES

Traditionally, notarial services were rendered only when the beneficiary of the notarial services was physically present before the notary but with the changes introduced by the law no 017/2023 of 30/03/2023 amending law no 13bis/2014 of 21/05/2014 governing the office of notary, notarial services are currently provided either when the person requesting them is present before the notary or electronically. [13]

The Ministerial Order n° 002/MOJ/AG/23 of 22/06/2023 determining modalities to practice the office of notary by private persons and modalities to provide notarial services by electronic means was published in June 2023 to determine the modalities to provide the notarial services by electronic means.

It provide for the following modalities under which a notary may deliver notarial services by electronic means:

- ✓ to use audiovisual technology to deliver remote notarial services;
- ✓ to sign and stamp the documents to be notarized by electronic means;
- ✓ Other legitimate electronic means that can be used to deliver notarial services.[14]

Understandably, the list of modalities here above mentioned, does not exhaust all electronic means that can be used to render notarial services electronically. Therefore, the notaries can use any electronic means as long as they are legitimate. However, the above mentioned ministerial order does not define the legitimate electronic means, yet provision of notarial services electronically is a new element under Rwandan law. Therefore, it is not easy to establish that certain electronic means are legitimate while others are not legitimate, since legitimacy is established by the fact that certain thing is legal or not. So, the electronic means of provision of notarial services should be clearly stated to avoid any misinterpretation and confusion among the notaries and beneficiaries of notarial services.

Furthermore, it was not clarified whether each modality stipulated in article 24 of the above mentioned order, can apply to all notarial services. For example, it can be argued whether the service of authentication of signatures can be delivered using the second modality which reads

[13] Law no 017/2023 of 30/03/2023 amending law no 13bis/2014 of 21/05/2014 governing the office of notary (n^1), article 2
[14] Ministerial Order n° 002/MOJ/AG/23 of 22/06/2023 determining modalities to practice the office of notary by private persons and modalities to provide notarial services by electronic means (n^2), article 2

"*to sign and stamp the documents to be notarised by electronic means*". Understandably, authentication of signatures requires the notary to see the person signing, so that he she may authenticate the signature. Understandably, it needs at least the audiovisual technology.

Therefore, there is a need to clearly explain the modalities under which the notarial services can be rendered electronically as well as the notarial services that can be provided using each modality.

Article 29 of the Ministerial Order n° 002/MOJ/AG/23 of 22/06/2023 determining modalities to practice the office of notary by private persons and modalities to provide notarial services by electronic means stipulates that "*private notary attends trainings relating to the office of notary organised by the Ministry*".[15] Therefore, the ministry of justice should conduct more trainings with the notaries specifically for the provision of notarial services electronically, so that they can have clear understanding on how they should provide their services electronically.

6. BENEFICIARIES OF NOTARY SERVICES



Under Rwandan law, a private notary serves every person who seeks his or her services. However, he or she is not permitted to certify or authenticate his or her own document or that of his or her spouse, parent or relative in the direct or collateral line up to the fourth degree.

Furthermore, he or she can neither certify nor authenticate any document of a company, association, foundation or a cooperative in which he or she or any of the persons mentioned in the previous paragraph is a shareholder or member. Nor can he or she certify or authenticate any document in which he or she participated. [16]

7. THE PRIVATE LAND NOTARY IN RWANDA

Article 3 of the law no13bis/2014 of 21/05/2014 governing the Office of Notary states the

[15] *Id.*, article 29
[16] Ministerial Order n° 002/MOJ/AG/23 of 22/06/2023 determining modalities to practice the office of notary by private persons and modalities to provide notarial services by electronic means(n²), article 9

officers who are charged with the duty of working as public notary in the domain of land.[17] The private notary was not included among these persons who can exercise the land related notarial services. However, on 14th February 2022, National Land Authority (the former Rwanda Land Management and Use Authority) announced that private notaries had been invited to apply to start rendering the land notary services, if they meet certain requirements set by the institution.

On the same date, National Land Authority issued the Instruction of Registrar General of Land Titles no 685 of 14th February 2022 governing the services rendered by the private land notary.

Article 3 of the mentioned instructions provides for the competences of private land notary as the follows:

- to certify and authenticate wills involving immovable property and deeds that nullify them drawn up by testators;
- to certify and authenticate contracts for transfer of land and other immovable property incorporated into soil through succession, donation, bequest, inheritance, leasing, sale, land leasing, compensation, right-of-way, provision of a guarantee for the benefit of a third party;
- to certify and authenticate contracts relating to condominium agreements;
- to certify and authenticate other deeds related to land transfer provided for by law.[18]

According to article 4 of the Instruction of Registrar General of Land Titles no 685 of 14th February 2022 governing the services rendered by the private land notary, only notaries with three years' experience in the practice of notarial services are eligible to be private land notaries.[19]

8. NOTARIAL SERVICES INVOLVING A FOREIGN ELEMENT

The law provides for the procedure under which the notarial services that involve the foreign element are rendered.

[17] Article 3 of law no13bis/2014 of 21/05/2014 governing the Office of Notary (n[3])
[18] Article 3 of the Instruction of Registrar General of Land Titles no 685 of 14th February 2022 governing the services rendered by the private land notary
[19] *Id.*, article 4

The law permits the translation of a deed drawn in another language other than official languages used in Rwanda. This is provided under article 41 of the law no 13bis/2014 of 21/05/2014 governing the office of notary which stipulates that "*If a deed is drawn up in a foreign language other than official languages of Rwanda, a certified translation done by a professional translator shall be attached thereto upon request by the parties. The copy of the original document translated shall bear the same notary's signature and stamps as the deed itself.*"[20]

Furthermore, when a document is to be sent abroad, it is notified in accordance with article 13 of the law no 13bis/2014 of 21/05/2014 governing the office of notary which states that in case there are deeds that are meant for being sent abroad and which need to be certified by a notary, such documents shall be notarized by a notary at the Ministry, Government Service in charge of investment promotion and Registrar of Land Titles in accordance with their respective competence ratione materiae. [21]

Moreover, a deed notarized by a foreign notary has the same probative value as in the country where such a deed is drawn up. However a deed notarized by a foreign notary must be subjected to prior legalization by a diplomatic or consular representation in Rwanda of the country where such a deed is drawn up. When such a deed is legalized by a diplomatic or consular representation in Rwanda of the country where the deed isdrawn up, it is legalized by the competent services of the Ministry in charge of foreign affairs.

A deed notarized by a foreign notary that is not legalized as provided in previous paragraph is only accepted if so provided by law or by international instruments ratified by Rwanda.

A deed accompanied by an apostille issued by a competent authority of the contracting States of the Convention Abolishing the Requirement of Legalization for Foreign Public Documents, is accepted in Rwanda.

[20] Law No13 bis/2014 of 21/05/2014 governing the Office of Notary(n[3]), article 41
[21] *Id.*, article 13



In Rwanda, a deed notarized by a foreign notary has the same probative value as in the country where such a deed is drawn up.[22]

9. DOCUMENTS TO WHICH A NOTARY IS NOT AUTHORIZED TO APPEND HIS/HER SIGNATURE AND CIRCUMSTANCES UNDER WHICH THE NOTARY CAN BE SUED IN COURT FOR HIS/HER DECISION

In Rwanda, a notary is not authorized to append his/her signature to a document in case such a document is incompatible with laws. In such a case, a person whose document has been denied a notary signature on a document, has the right to be furnished with the reasons for such refusal upon his or her request in writing. [23]

There are also situations whereby the notary finds out that the document submitted to him or her, is not in conformity with truth. In that case, the notary has the right to refuse to return it to the owner. However, he or she must give him/her a written affidavit certifying that such a document is withheld and the notary submits it to relevant organs. [24]

The law also provides for the circumstances under which a notary can be sued in the court for the decision he/she made in his/her capacity as a notary. The following constitute grounds under which the owner of a document or any other interested person can file a court case against the decision of a notary:

- ✓ a person considers that the notarized document does not conform either to the truth or to the law;
- ✓ the owner of the document or any other interested person considers that there is no legal justification for refusal to notarize the document;
- ✓ the notary refuses to return the document to its owner. [25]

[22] Law no 017/2023 of 30/03/2023 amending law no 13bis/2014 of 21/05/2014 governing the office of notary (n[1]), article 6
[23] Law No13 bis/2014 of 21/05/2014 governing the Office of Notary(n[3]), article 42
[24] *Id.*, article 43
[25] Law No13 bis/2014 of 21/05/2014 governing the Office of Notary(n3), article 44

10. PERSONAL LIABILITY OF NOTARIES UNDER RWANDAN LAWS

Under Rwandan laws, the notaries are personally liable for the misconducts committed while discharging their notarial duties. However, the scope of the personal liability of private notaries is different from the one of public notaries. The difference lays in the protection accorded to the public notary which is not granted to the private notary in terms of liability.

Article 18 of the Notary law of 2014 stipulates that "*While performing his/her duties, a notary Public shall obtain legal assistance from Government, which shall assume his/her liability in accordance with the law. However, the Government shall not assume liability arising from the notary's misconduct committed deliberately or through negligence or for offenses of which a notary is convicted. A private notary shall be personally liable for any misconduct committed during the performance of his/her duties.*"[26]

This implies that the Government, being the employer of the notary public is liable for the misconduct of the notary public. The scope of the Government liability is however limited as it does not include the liability arising from the notary's misconduct committed deliberately or through negligence or for offenses of which a notary is convicted.

On the other hand, a private notary is personal liable for any misconduct committed while discharging his/he notarial duties regardless of how it was committed.

11. EFFECTS OF INFRINGING PROFESSIONAL ETHICS BY PRIVATE NOTARIES

In Rwanda, a private notary who infringes professional ethics is liable to a sanction.[27] The law provides for various disciplinary sanctions that can be imposed to the private notary who has infringed the professional ethics. The disciplinary sanctions provided for by the law are the following:

[26] Id.,article 18
[27] Ministerial Order n° 002/MOJ/AG/23 of 22/06/2023 determining modalities to practice the office of notary by private persons and modalities to provide notarial services by electronic means(n2), article 19

A. Disciplinary sanctions of the first category from the less severe to the most severe are as follows:

- ✓ warning;
- ✓ reprimand

B. Disciplinary sanctions of the second category from the less severe to the most severe are as follows:

- ✓ suspension for a maximum period of six months without exercising the office;
- ✓ dismissal. [28]

12. CONCLUSION

In a nutshell, the work of notaries in Rwanda is regulated as there is a legal framework under which the notaries operate. The laws as well as orders and instructions were put in place to determine the procedures and the requirements for being a notary, the competences and the liability of notaries as well as the sanctions against the notaries for their misconduct. In this article, the author has also discussed the crucial and important improvements made to the legal framework of the office of notaries in Rwanda including but not limited to the provision of notarial services electronically.

However, there are still some aspects that need to be improved including but not limited to the use of electronic means to render notarial services. The methods to be used should be made clear and understandable to the notaries and notarial service beneficiaries as the author has suggested in this paper. The notaries should also be trained to be familiar with the new modalities of rendering their services electronically, otherwise the improvement would change nothing in practice while it was introduced to make crucial changes in the provision of notarial services.

[28] *Id.*, article 20

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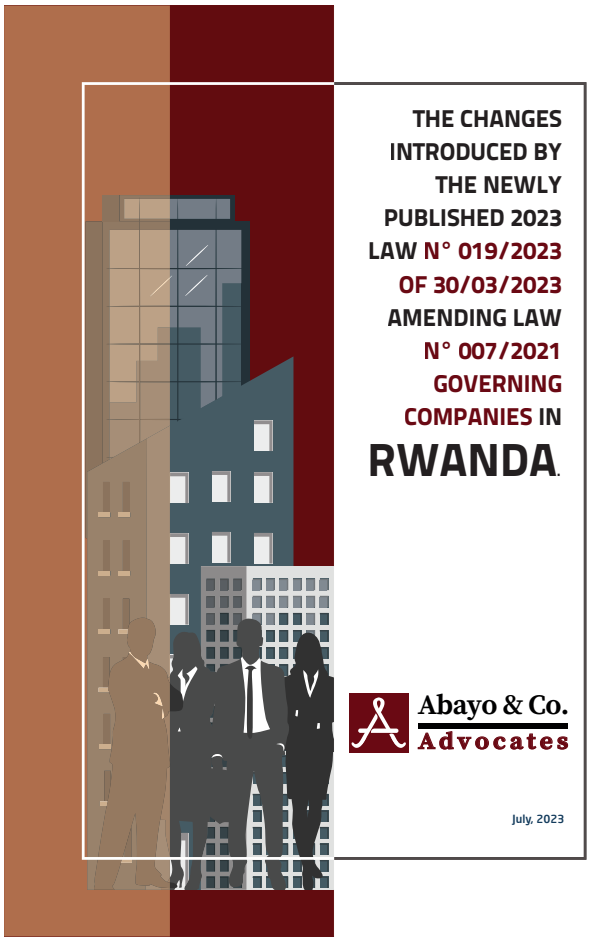
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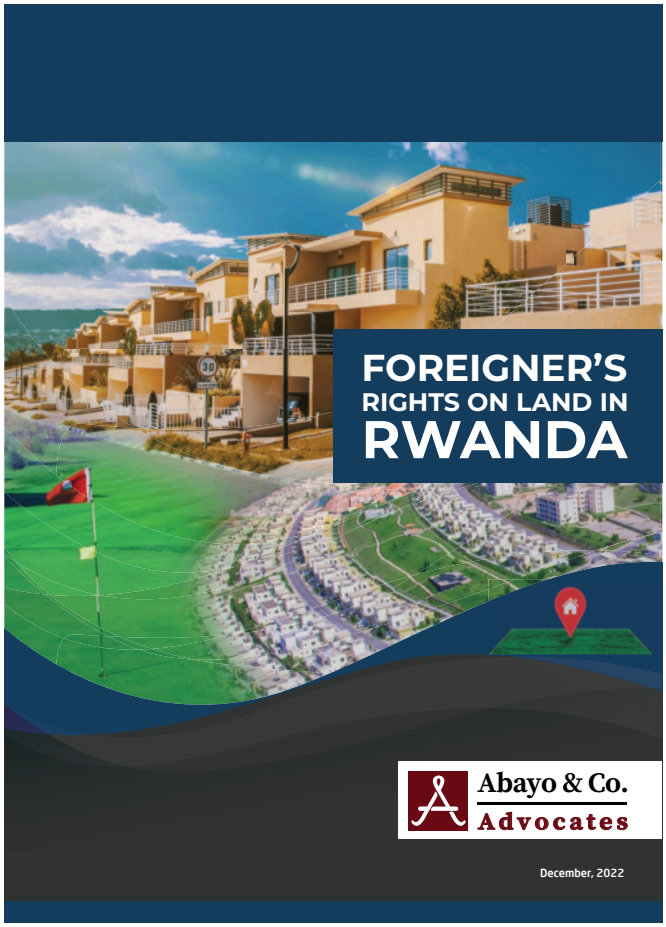
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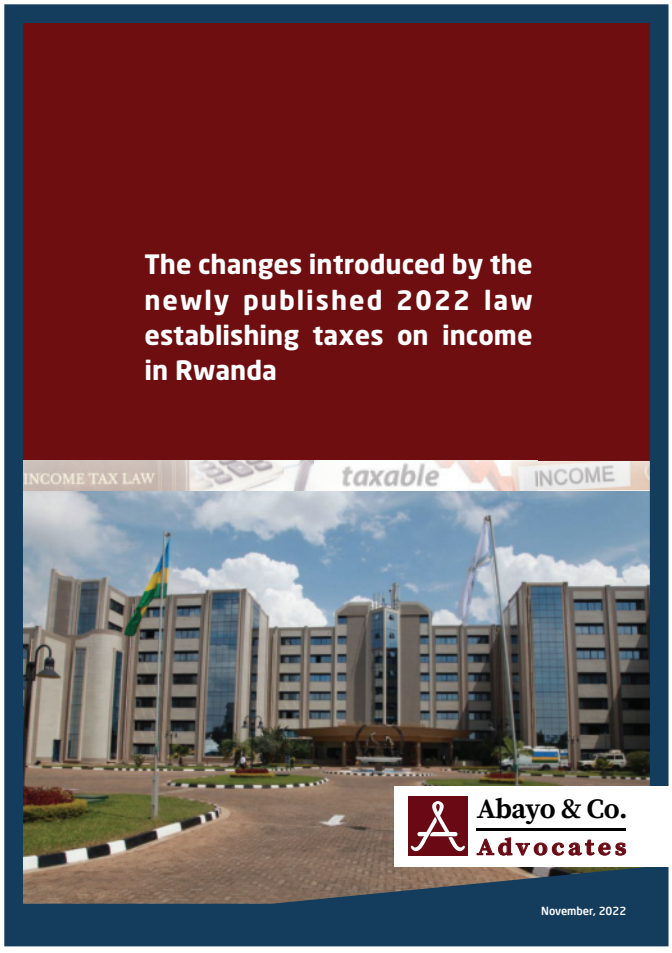
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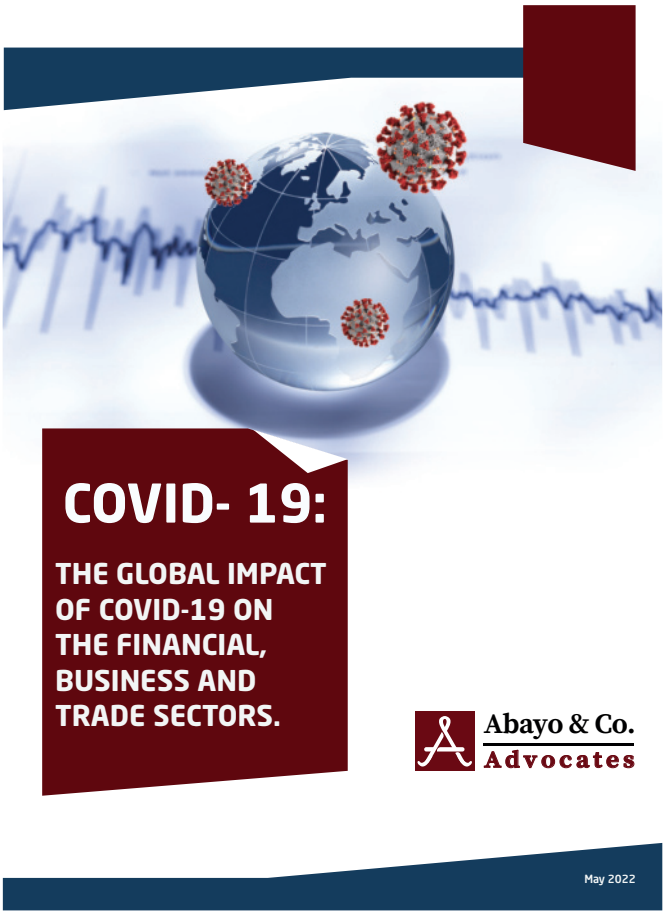
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