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MWEBESA LAW GROUP

Editor's Note October Edition

Welcome to the October edition of our newsletter.

Dear Esteemed Clients, Stakeholders and Readers,

The past week has been a reminder of just how swiftly the business environment in Tanzania can shift under the weight of national events. As the country navigated an election period marked by heightened tension, uncertainty, and episodes of unrest, many businesses and individuals were affected by disruptions ranging from slowed operations to restricted access to communication platforms. In some areas, the ripple effects were immediate and deeply felt, including delays in banking, logistics, cross-border trade, and legal communications.

To all our clients, colleagues, and readers who were affected during this period, we extend our sincere thoughts and solidarity. We know many of you faced delays in filings, stalled communications, suspended operations, and fractured connectivity with clients, partners, and family members. At the same time, we are encouraged by the resilience with which the private sector has responded. As stability returns and the digital and commercial environment normalizes, we are pleased to affirm that we are fully back online, onboard, and committed to supporting your legal and strategic needs with renewed presence and readiness.

In this month's edition, we unpack two key developments of both legal and commercial significance.
Our lead article offers a pragmatic yet critical look at Public-Private Partnerships (PPPs) in Tanzania, cutting through the policy optimism that typically surrounds PPP discourse and addressing what investors actually face: prolonged approval cycles, unclear revenue protections, misaligned risk allocation, and the widening gap between government ambition and investor confidence. With dozens of PPP projects currently stuck between feasibility and financial close, this piece provides an indispensable roadmap for private players looking to engage in infrastructure delivery without assuming unsustainable risk.

Our second article is a case digest of the recent Court of Appeal decision in Lakairo Industries Group Co. Ltd v. Kenafrica Industries Ltd, a pivotal ruling that settles a long-debated question of trademark enforceability in Tanzania. The Court reaffirmed that trademark rights are strictly territorial, meaning that ARIPO-registered or foreign-held marks are unenforceable unless directly registered under Tanzania's domestic statute. For regional brands, IP portfolio managers, and cross-border investors, the implications are immediate and unavoidable.

As always, we remain committed to being a timely and relevant resource in a rapidly evolving legal landscape, whether the challenge comes from the courts, the policy sphere, or the bandwidth that connects us.

Welcome back online, and welcome back to business.

Happy reading!

The Editorial Team

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PUBLIC-PRIVATE PARTNERSHIPS (PPPS) IN TANZANIA: INFRASTRUCTURE FINANCING, RISK ALLOCATION, INVESTOR EXPECTATIONS & REGULATORY PITFALLS

As Tanzania accelerates its ambitions to build out transport corridors, energy capacity, airports, markets, hospitals, and urban infrastructure, Public-Private Partnerships (PPPs) are emerging as a central mechanism to bridge the country's infrastructure financing deficit. As of May 2025, the Public-Private Partnership Centre (PPP Centre) lists 83 PPP projects across sectors including transport, energy, health, urban infrastructure and water supply. The government reports 80 strategic projects under PPP arrangements by April 2025. Furthermore, a 7.7% average annual growth is projected in the construction industry between 2026-2029 in part due to infrastructure funding flows.

Yet for many investors, the reality on the ground is one of unfinished deals, delayed approvals, and opaque risk allocation. While the PPP Act and related frameworks present Tanzania as an investment-friendly destination, the practical challenges of bankability, contract risk, institutional capacity, and regulatory delays continue to influence, and at times undermine the viability of PPP projects. The PPP Strategy for FY 2023–2024 itself acknowledges systemic bottlenecks in project preparation, capacity limitations within implementing agencies, and gaps in financing readiness. The result is a market defined by high-potential opportunities, but inconsistent delivery.

For investors, developers, financiers, and operators considering entry into Tanzania's PPP landscape, it is therefore essential to match commercial ambition with a measured understanding of the legal, regulatory, financial, and risk architecture that ultimately governs PPP structuring and execution.

1. Infrastructure financing: where the law meets the market

Tanzania's PPP ecosystem is governed by the **Public-Private Partnership Act, Cap. 103 R.E. 2019**, as amended; the **Public-Private Partnership Regulations 2020** (as amended in 2023); and coordinated by the **Public-Private Partnership Centre**, a government-established "one stop centre" responsible for promoting and coordinating PPP projects nationally.

The Act's scope is further complemented by the Government Loans, Guarantees and Grants Act (Cap. 134), Budget Act (Cap. 439), Tanzania Investment Act (Cap. 38), and sector-specific laws in energy, transport, land, and procurement.

On paper, this framework accommodates a variety of financing models, from User-Pay PPPs, to Government-Pay PPPs, and hybrids of the two. To understand why PPPs in Tanzania often struggle to reach financial close, it is critical to first understand how private investors are meant to earn revenue under these arrangements. In Tanzania, as in most developing economies, PPPs operate under two primary models: User-Pay PPPs and Government-Pay PPPs.

The User-Pay model, sometimes referred to as a commercial-revenue PPP, is one in which the private investor earns income directly from the users of the infrastructure or service. In this model, the investor builds, operates, and often finances the project, such as a toll road, port, airport terminal, or fiber-optic backbone, and then charges the public or businesses a tariff, toll, or usage fee. In return for investing capital, the investor is entitled to collect revenue over the project term, usually 20–30 years, to recover investment and secure profit. Crucially, in this model, the investor bears what is known as demand risk, meaning that if fewer users than expected utilize the asset, revenue drops and financial returns may be jeopardized. This is a material concern in Tanzania, where consumer affordability, competing routes, and political interference in tariff-setting can all undermine usage levels and cash flows.

Conversely, the Government-Pay model, also known as an availability-payment PPP, involves no direct charge to end users. Instead, the government pays the investor periodic fees, either monthly or annually based on the infrastructure being available and operating to the required standards. This model is common in hospitals, schools, power purchase agreements, and certain transport projects where revenue cannot realistically be recovered from users. In this arrangement, the State takes the demand risk, and the private investor's main concern becomes payment risk, whether the government will meet its long-term contractual payment obligations.

In practice, however, while the legal framework tolerates multiple PPP structures, few Tanzanian PPPs are genuinely bankable under current conditions. Revenue streams are often denominated in Tanzanian shillings while construction loans and equity investments are structured in dollars or euros, leaving investors exposed to real exchange rate depreciation without any government-backed hedging safeguards. Government-pays PPPs, where the off-taker is a ministry or parastatal, are handicapped by the lack of reliable sovereign guarantees or escrow mechanisms. Even projects intended to be self-sustaining through tariffs, such as transport and port concessions, lack contractual assurances around tariff indexation or minimum usage thresholds. Coupled with multi-agency approval timelines that often exceed three years, PPPs in Tanzania tend to lose investor momentum between pre-feasibility and final signing, resulting in a clogged pipeline of theoretically attractive but commercially incomplete projects.

2. Risk allocation: The decisive variable in Tanzania's PPP contracts

The next challenge lies in risk allocation, the quiet determinant of whether a PPP project ever sees construction. Under the PPP Act, the private party is expected to assume "substantial financial, technical, and operational risks". In practice, this principle has sometimes been interpreted to mean "virtually all risks that do not directly involve political authority". This means that construction, design, demand, currency, and in some cases regulatory change risks are all shifted to the private party, without meaningful sharing or compensation mechanisms.

A recurring difficulty is that PPP contracts often fail to include automatic adjustments for change in law or currency restrictions, both of which can materially erode equity value and compromise loan repayment schedules. Even where force majeure clauses exist, their drafting tends to focus on natural events and neglect sovereign acts, leaving investors without recourse if payment structures or tariffs are frozen by policy.

Termination compensation clauses are also frequently insufficient to restore debt and equity value in a political default scenario, which is a clear red flag for international financiers. When lenders cannot verify that their exposure is recoverable through termination, they avoid the transaction entirely. Thus, the PPP market stalls not because of lack of interest, but because of gaps in contractual risk clarity.

3. The Expectation Gap: The Government wants infrastructure; investors want certainty

Where the Government seeks public value, economic growth, skills transfer, and off-balance sheet financing, investors need returns, enforceable contracts, and predictable cashflows. The result is a structural tension:

Government objective	Investor objective
Deliver visible infrastructure quickly	Secure predictable cashflows
Avoid long-term fiscal liabilities	Secure payment guarantees
Maintain tariff affordability	Ensure cost-reflective pricing
Control asset lifecycle	Maintain operational autonomy
Limit sovereign guarantees	Secure de-risked financing

Until the government expands tools like government guarantees, availability payments, PPP Facilitation Fund, and tariff indexation, the market may continue to see "approved PPP concepts" that fail to reach financial close.

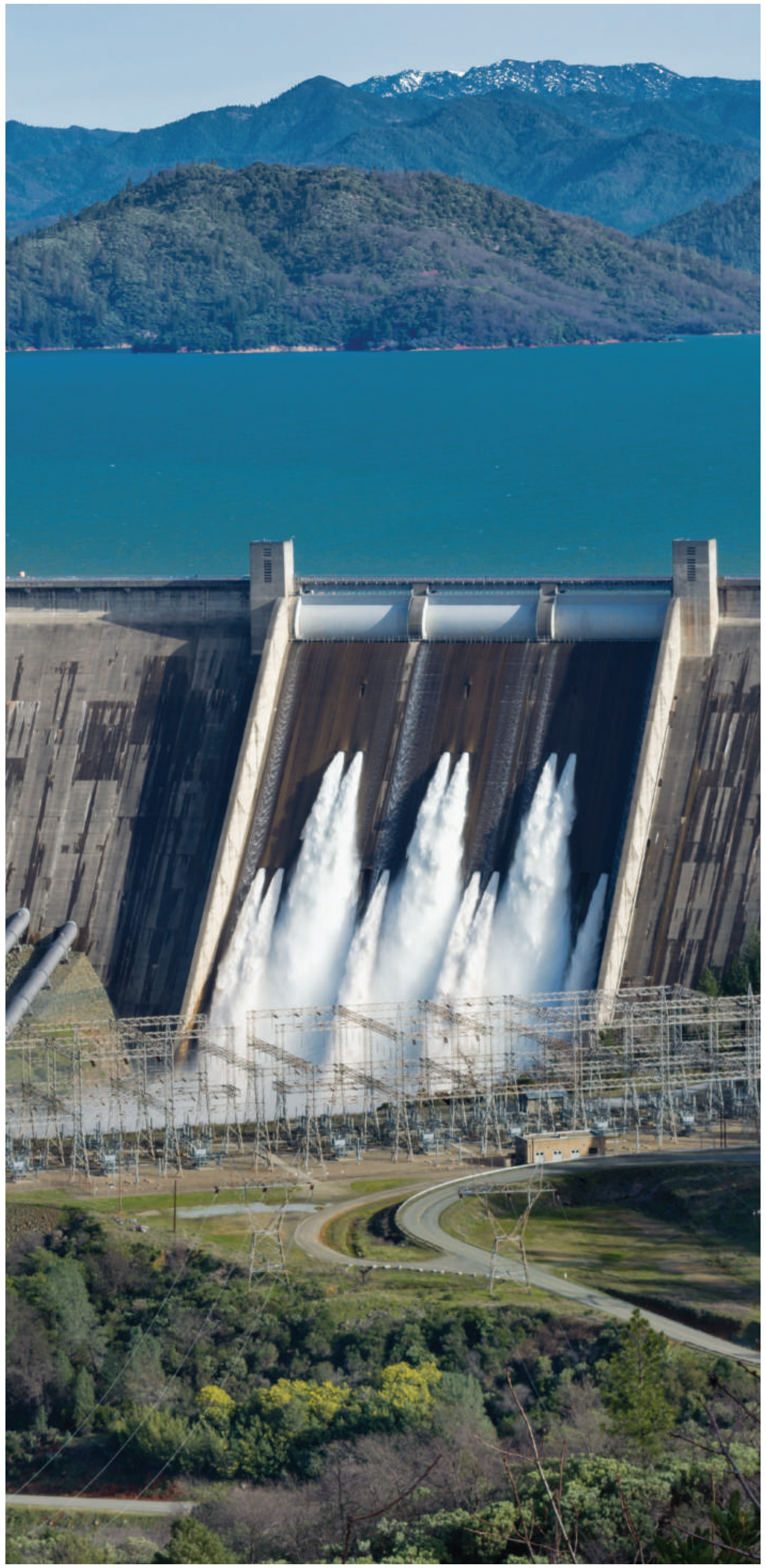
4. Regulatory red flags: Where PPPs get derailed

The regulatory environment, while formally modernised, is still a practical battlefield dotted with hindrances. Tanzania's PPP lifecycle requires sequential approvals by the contracting authority, sector ministry, PPP Centre, Ministry of Finance, Attorney General, and Cabinet. In theory, this is a rational gatekeeping mechanism; in practice, it imposes costly delays that are difficult to recover once due diligence and financing processes have begun.

Further delays occur when land acquisition and relocation obligations required to be performed by the State are left incomplete or underfunded. The dispute resolution environment is also unpredictable. Although the law allows for international arbitration under the New York Convention, recent project histories indicate a tendency for public bodies to resist, delay, or reinterpret arbitration clauses, particularly where settlement involves foreign currency exposure.

At the same time, the procurement frameworks governing PPP tenders are not fully harmonised with the Public Procurement Act, meaning that competitive bidding, sole-sourcing, and unsolicited proposals are not always clearly distinguished or transparently evaluated. For the foreign entrant, these are not just procedural nuisances they are deal risks that need to be negotiated in advance, accounted for in pricing, and mitigated through contractual scaffolding.

Sophisticated investors increasingly structure their bids to price in red tape risk, or, in higher-risk projects, require the government to deliver land, permits, and resettlement obligations as conditions precedent to the concession or financial close.



5. Forward View: Tanzania is open but only to the prepared

Tanzania remains open for PPP investment, but not for passive capital. It is a market for the deliberate, the informed, and the institutionally prepared. Those who understand this distinction will not only succeed; they will set the strategic foundations in a market whose infrastructure gap is not just large but lasting. The successful investor will:

- 5.1 Treat Tanzania as a legally distinct jurisdiction, even within regional blocs.
- 5.2 Demand commercially tested risk allocation, not optimistic public policy rhetoric.
- 5.3 Build structured relationships with PPP Centre, sector ministries, and regulators.
- 5.4 Negotiate payment, tariff, land, and regulatory clauses before signing MOUs.
- 5.5 Treat every PPP contract as a 15–30 year legal instrument not just a tender submission.

The lesson is not that PPPs in Tanzania are unworkable. The lesson is that they are not turnkey. They are cumulative achievements of law, finance, contract engineering, and administrative resolve. The country has a genuine appetite for private capital and the political will to pursue PPPs, but the commercial structures remain a work in progress.

And so, investors who expect Tanzanian PPPs to behave like those in South Africa or India will be disappointed yet those who treat them as frontier-growth opportunities, governed by disciplined legal-correlated structuring, will find competitive advantages not yet saturated by global funds.

DISCLAIMER:

This analysis is for informational purposes and should not be considered legal advice. For specific legal concerns, please consult with a qualified professional.

THE ILLUSION OF REGIONAL COVERAGE: TANZANIA REASSERTS TRADEMARK SOVEREIGNTY

1. INTRODUCTION

The issue of territoriality of trademarks has been a settled premise of intellectual property law: trademark rights do not travel beyond the jurisdiction in which they are granted unless the law of that jurisdiction expressly permits otherwise.

The case of **Lakairo Industries Group Co. Limited & Others v. Kenafrica Industries Limited & Others**, Civil Appeal No. 593 of 2022 tested the application of that principle in the context of the African Regional Intellectual Property Organization (ARIPO) system and the domestic regime of the United Republic of Tanzania.

Specifically, the Court was called upon to determine whether a party holding marks registered through ARIPO could enforce those rights in Tanzania, a state which has not ratified the Banjul Protocol on Marks and in which the Protocol has no force of law.

2. FACTS

To appreciate the legal tension underlying this case, it is necessary to briefly understand the ARIPO framework. ARIPO is an intergovernmental organization established to promote cooperation in intellectual property matters among its member states in Africa. Through the Banjul Protocol on Marks (1993), ARIPO provides a centralized system that allows an applicant to file a single application for trademark registration designating multiple member states.

Once a state has both signed and ratified the Protocol, an ARIPO registration automatically extends protection to that country. However, member states like Tanzania, though a member of ARIPO, have not ratified the Banjul Protocol. This means that ARIPO-registered trademarks do not automatically have effect or enforceability within Tanzania's jurisdiction.

The dispute arose between Lakairo Industries Group Co. Limited, Lakairo Investment Co. Limited, and Mr. Lameck Okambo Airo (together, "the Appellants"), all Tanzanian entities engaged in the manufacture and sale of confectionery products under the marks "Lakairo Pipi Kifua" and "Lakairo Super Veve," and Kenafrica Industries Limited ("the Respondent"), a Kenyan confectionery manufacturer claiming proprietorship of the marks "Pipi Kifua," "Special Veve," and "Orange Drops."

The Registrar of Trade and Service Marks and the Attorney General of Tanzania were later joined as co-respondents in consequence of the relief sought concerning the Tanzanian register.

The Respondent asserted that its marks, having been registered in Kenya and subsequently through ARIPO, were infringed by the Appellants' use of allegedly similar marks in Tanzania, and further petitioned for expungement of the Appellants' registrations from the Tanzanian register.

The High Court found in favour of the Respondent, holding that the impugned marks infringed the Respondent's rights and directing the removal of the Appellants' marks from the register.

Aggrieved by the decision of the trial court, the Appellants lodged an appeal before the Court of Appeal of Tanzania. In disposing of the matter, the Court of Appeal distilled the Appellants' nine grounds of appeal into two principal issues for determination, namely:

a) Whether the Appellants' trademarks infringed the trademarks of the first respondent, Kenafrica Industries Limited; and

b) whether the first respondent had suffered any legally cognisable damage warranting the reliefs granted by the High Court.

c) The Court further, of its own motion, introduced a third issue for examination, namely whether the High Court had properly exercised its jurisdiction in ordering the expungement of the Appellants' registered trademarks from the Tanzanian Register

3. THE COURT'S DECISION, REASONING AND INTERPRETATION

On appeal, the Court of Appeal allowed the appeal in its entirety and set aside all orders of the High Court. The Court reaffirmed the territorial character of trademark protection, holding that rights in Tanzania arise only upon registration under the Trade and Service Marks Act [Cap. 326 R.E. 2023]. Trademarks registered through ARIPO or in foreign jurisdictions have no operative legal effect in Tanzania unless the marks are independently registered domestically.

The Court underscored that, although the Respondent held registrations in Kenya and through ARIPO under the Banjul Protocol, Tanzania has not ratified that Protocol; ARIPO registrations therefore do not extend protection into Tanzania. By contrast, the Appellants' marks, including Lakairo Pipi Kifua (TZ/T/2018/1616) and Lakairo Super Veve (TZ/T/2017/1407), were duly registered in Tanzania prior to any domestic filing by the Respondent, thereby conferring exclusive rights locally.

In reaching its conclusion, the Court relied on key provisions of the Act, including:

- Section 14(1): *"The exclusive right to the use of a trade or service mark as defined in section 32 shall be acquired by registration in accordance with the provisions of this Act."*
- Section 20(2): *"Subject to the provisions of subsection (2), a trade or service mark cannot be validly registered in respect of any goods or services if it is identical with a trade or service mark belonging to a different proprietor and already on the register in respect of the same goods or services or closely related goods or services or that so nearly resembles that trade or service mark as to be likely to deceive or cause confusion."*
- Section 32(1)(a): *"A trade or service mark is infringed when there is interference with another person's already registered trade or service mark which is likely to confuse the ordinary customers as to the source of the goods or services."*

In interpreting these provisions, the Court relied on established precedents. It cited the case of JP Decaux Tanzania Ltd v. JCDecaux SA & Another (Civil Appeal No. 254 of 2021, 2024 TZCA 838), which confirmed that the first person to register a trademark locally acquires exclusive rights in Tanzania, emphasizing that territorial registration is determinative for enforceable rights.

The Court also referenced Krystalline Salt Ltd v. STD Group of Companies (2024 UGRSB 11, Kenya) and Nairobi Java House Ltd v. Mandela Auto Spares Ltd (Civil Appeal No. 13 of 2015, Uganda) to illustrate the principle that foreign or regional registrations, absent ratification or domestic registration, cannot confer rights in a non-ratifying jurisdiction.

As to infringement and relief, the Court re-emphasised that the Respondent had no enforceable rights in Tanzania and, therefore, similarity in get-up or alleged imitation could not sustain an action for infringement without a domestic title. On damages, the Court cited Salma Mohamed Abdallah v. Joyce Hume to reiterate that claims must be strictly pleaded and proved; in the absence of actionable rights, none could lie. The High Court was further found to have erred in purporting to order expungement of trademarks that were lawfully registered in Tanzania.

Applying these principles, the Court concluded that the Respondent had no actionable rights over its ARIPO or foreign trademarks in Tanzania, and the Appellants' local registration conferred legitimate exclusive rights.

4. IMPLICATIONS FOR TANZANIA AND ARIPO TRADEMARKS

4.1 The decision carries significant implications for trademark protection in Tanzania, as it unequivocally reaffirms that enforceable rights arise solely through domestic registration under the Trade and Service Marks Act. This remains the case regardless of whether a mark is registered abroad or through ARIPO. As such, businesses intending to operate in Tanzania must adopt a territorial filing strategy: they are expected to conduct searches on the Tanzanian register, file applications locally at the outset, and regularise any marks already in use but not yet registered.

4.2 The judgment further clarifies that registrations under the ARIPO/Banjul Protocol are legally ineffectual in Tanzania unless and until the Protocol is both ratified and incorporated into domestic law. Rights holders who rely solely on ARIPO registrations must therefore treat Tanzania as a separate jurisdiction requiring its own national filings if they intend to enforce their marks locally. This restores doctrinal certainty in line with the precedent set in J***P Decaux Tanzania Ltd v. JCDecaux SA***, and reinforces the principle that local registration, not foreign title is the gateway to protection in Tanzania.

4.3 The judgment further clarifies that registrations under the ARIPO/Banjul Protocol are legally ineffectual in Tanzania unless and until the Protocol is ratified and incorporated domestically. Rights holders relying solely on ARIPO must therefore treat Tanzania as a separate filing jurisdiction if they intend to enforce their marks here. This restores doctrinal certainty in line with ***JP Decaux Tanzania Ltd v. JCDecaux SA***, and reinforces that local registration, not foreign title, is the gateway to protection.

4.4 Practically, the ruling puts foreign and regional businesses on clear notice: failure to register locally exposes them to the loss of exclusivity and renders them unable to restrain infringers in Tanzanian courts. To mitigate this risk, brand owners should undertake a comprehensive review of their trademark portfolios to identify any gaps, file or regularise marks in Tanzania, and actively monitor the local market. Furthermore, all licensing, franchising, and distribution arrangements should expressly require local registration where protection is intended. The judgment thus signals a return to territorial orthodoxy and demands proactive compliance from all rights holders seeking to operate in or enforce rights within Tanzania.

In sum, the decision cements the territorial nature of trademark protection in Tanzania and confirms that ARIPO filings do not pierce the border until domestically adopted, a cautionary precedent for rights holders who assume regional registration suffices.

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