

Dear Clients and Colleagues,
Welcome to the latest edition of our quarterly newsletter, "Quarterly Legal Insights."

Dear Clients and Colleagues,
Welcome to the inaugural edition of our quarterly newsletter, *Quarterly Legal Insights*, Issue 1, Q4 2024.

As we begin this new chapter, I am filled with immense pride and gratitude for the trust and support you continue to extend to B M Musau & Co., Advocates LLP. Your confidence fuels our relentless pursuit of excellence and inspires us to consistently elevate the quality of our services.

This first edition is particularly special, marking a period of significant growth and transformation for our firm. We are excited to announce the spacious and accessible location of our offices at Reinsurance Plaza, 10th Floor, Taifa Road, in Nairobi's Central Business District. This strategic location enhances our capacity to serve you better and ensures that our expanding team has the environment it needs to thrive. On that note, we are also delighted to welcome new partners and associates, reinforcing our commitment to delivering exceptional legal services across a broader spectrum. At B M Musau & Co., Advocates LLP, our mission is to empower global conglomerates, institutions, businesses, and governments to make informed decisions in a fast-evolving world. We provide strategic legal counsel that addresses complex challenges, transforming barriers into opportunities. By delivering innovative, client-focused solutions, we foster success for our clients, our team, and the communities in which we operate. We remain committed to the highest standards of integrity, professionalism, and excellence, ensuring our clients navigate an ever-changing legal landscape with confidence.

In this issue, you will find updates on recent case highlights, insightful articles on emerging legal trends, and important legislative changes that impact your business. We have also included testimonials from valued clients, whose feedback serves as a testament to our team's dedication and expertise.

We are particularly excited to include in the inaugural edition the section on legislative monitoring, where we provide a comprehensive overview of both recent and upcoming legislative developments. This section is designed to help you stay informed and prepared for regulatory shifts that may affect your operations.

Looking ahead, we remain committed not only to meeting but exceeding your expectations. Our team is dedicated to providing innovative legal solutions while upholding the highest standards of governance and practice.

Thank you for your continued partnership and for making us part of your journey. We look forward to working closely with you in the months ahead and achieving new milestones together.

Warm regards,



In this newsletter you can expect:

Recent Case
Successes

Pro Bono
Initiatives

Legal Clinics
and
Workshops

Legal Tips

Featured
articles



Community Engagement



Volunteer Spotlight

We are proud to offer pro bono legal services as part of our commitment to supporting underserved communities. At our firm, we believe that access to justice is a fundamental right that should be available to everyone, regardless of their financial situation. By providing pro bono assistance, we aim to address legal needs and ensure that individuals and groups who might otherwise lack representation can receive the support they deserve. Our team is dedicated to making a meaningful impact through these services and to contributing positively to the broader community. We remain steadfast in our mission to uphold justice and equality for all.



Legal Clinics and Workshops

We purpose to organize free legal clinics and workshops on various topics such as intellectual property and data protection, estate planning, family law, and employment rights. These events are designed to educate and assist individuals who might not otherwise have access to legal advice. Our aim is to provide valuable information and support to the community, ensuring that everyone has the opportunity to understand and navigate important legal matters.



Welcome to the Q3 2024 edition of our quarterly newsletter. In this issue, we highlight several insightful articles authored by our esteemed legal professionals. These articles cover a range of topics, providing valuable information and perspectives on recent legal developments and their implications. Here are some of the featured articles for this quarter:

• [Understanding Copyright Law and Its Application in Digital Environments](https://tinyurl.com/Copyright-Law)

In the rapidly evolving digital landscape, copyright laws are crucial for protecting the intellectual property rights of creators and innovators. This article delves into the fundamental principles of copyright law and how they are applied in digital environments in Kenya. It highlights the challenges and legal considerations for creators, providing guidance on navigating the complexities of digital copyright protection. Please read the full article at <https://tinyurl.com/Copyright-Law>

• [Empowering Working Mothers: The Impact of Kenya's Breastfeeding Mothers Bill, 2024 on Employers](https://tinyurl.com/BreastFeeding-Mothers-Bill)

This article examines the recently introduced Breastfeeding Mothers Bill, 2024, which aims to promote and protect the rights of breastfeeding mothers in the workplace. The legislation seeks to create a supportive environment for breastfeeding, both at work and in public spaces, enhancing the health and well-being of mothers and their children. Key provisions include requirements for employers to provide breastfeeding facilities and breaks for nursing mothers. Please read the full article at <https://tinyurl.com/BreastFeeding-Mothers-Bill>

• [The Kenya Land Registration \(General\) \(Amendment\) Regulations, 2024](https://tinyurl.com/Land-Regulations-2024)

This article provides a summary review of the cost implications of the Land Registration (General) (Amendment) Rules 2024 ("the Rules"). The Rules have caused a substantial increase in the cost of services issued at the various land registries in Kenya ranging from land administration to registration of instruments. The Cabinet Secretary justified the increase stating that there was need to strike a balance between the services rendered by the Government and the cost of those services and the need to enhance service delivery by balancing the service and its costs to ensure that the Government can affordably offer those services. Read the full summary at <https://tinyurl.com/Land-Regulations-2024>

• [International Taxation and Double Taxation in Kenya](https://tinyurl.com/International-Double-Taxation)

This comprehensive article addresses the principles of international taxation and the mechanisms in place to prevent double taxation. It explores how Kenya handles double taxation through Agreements for the Avoidance of Double Taxation (DTTs) with other countries. The article also discusses the economic implications of double taxation and the measures Kenya has adopted to mitigate its impact on businesses and individuals. Please read the full article at <https://tinyurl.com/International-Double-Taxation>

• [Private Sector Corruption in Kenya](https://tinyurl.com/Private-Sector-Corruption)

Corruption remains a significant challenge in Kenya, particularly in the private sector. This article provides an in-depth analysis of corruption practices within Kenyan businesses, including common forms of bribery and fraud. It also examines the impact of corruption on the economy and the measures being taken to combat these unethical practices. The article includes case studies highlighting the ongoing struggle against corruption in various sectors. Please read the full article at <https://tinyurl.com/Private-Sector-Corruption>

• [The Finality of Decisions of the Kenya Supreme Court in Deciding Presidential Election Disputes](https://tinyurl.com/KenyaSupremeCourtJurisdiction)

This article reviews the Supreme Court of Kenya's role in resolving presidential election disputes. It discusses the court's exclusive jurisdiction and the significance of its decisions in maintaining electoral integrity. The article also examines the court's advisory opinions and their implications for Kenya's legal and political landscape. <https://tinyurl.com/KenyaSupremeCourtJurisdiction>

We hope you find these articles informative and useful. For more detailed discussions and insights, please visit our Publications and News section on our website: bmmusau.com



• [The Legal Landscape of Surrogacy in Kenya](https://tinyurl.com/Surrogacy-in-Kenya)

The articles gives an overview of the legal framework in Kenya on surrogacy noting that there is no substantive law in place to guide the process of surrogacy in Kenya. The current practice is guided by the provisions of the Constitution, the Law of Contract Act and jurisprudence from decided cases. Please read the full article at <https://tinyurl.com/Surrogacy-in-Kenya>

• [Medical Malpractice Litigation in Kenya](https://tinyurl.com/Medical-Malpractice-Litigation-in-Kenya)

This article analyses the current legal framework on medical malpractice claims in Kenya and the redress offered by the Kenya Courts. It further discusses the duty of care, the breach thereof and statutory limitation of time for claiming damages arising from medical malpractice. It finally demonstrates the application of the law on facts by summarizing decided cases. Read the full article at <https://tinyurl.com/Medical-Malpractice-Litigation>

• [Navigating Trusts: A Guide to Registration under the Kenya Trustees \(Perpetual Succession\) Act](https://tinyurl.com/Navigating-Trusts-A-Guide-to-Registration-under-the-Kenya-Trustees-(Perpetual-Succession)-Act)

This article provides a comprehensive guide on the process of registration of trusts in Kenya and the requirement for registration under the Trustees (Perpetual Succession) Act. It also gives a guide on the taxes payable by trusts under Kenya Law. Please read the full article at <https://tinyurl.com/The-Kenya-Law-on-Trusts>



• [Corporate Tax in Kenya: An Overview](https://tinyurl.com/Kenya-Corporate-Tax)

This article provides an overview of the taxes paid by Corporates in Kenya including corporate income tax, Value Added Tax (VAT), special rates, payroll taxes, county government rates and rent and Capital Gains Tax (CGT). It also a recent court decision on payment of CGT. Please read the full article at <https://tinyurl.com/Kenya-Corporate-Tax>

• [The Kenya Land Acquisition Tribunal](https://tinyurl.com/Kenya-Land-Acquisition-Tribunal)

This article discusses the doctrine of eminent domain under which the Government may acquire land owned by private individuals for public use. The article demonstrates, through the statute and decided cases, the jurisdiction and mandate of the Kenya Acquisition Tribunal. It also distinguishes the jurisdiction of the environment and land court from that of the acquisition tribunal. Please read the full article at <https://tinyurl.com/Kenya-Land-Acquisition-Tribunal>

• [The Kenya Green Finance Taxonomy \(KGFT\) Rules: A Legal Informative Overview](https://tinyurl.com/Kenya-Green-Finance-Taxonomy-(KGFT)-Rules-A-Legal-Informative-Overview)

Recently, the global financial system has continued to emphasize the need for sustainability and robust frameworks to guide green finance initiatives. Kenya, a frontrunner in sustainable development in Africa has developed the Kenya Green Finance Taxonomy Rules (“the KGFT Rules”) through the Central Bank of Kenya (“the CBK”). The KGFT Rules is a draft tool designed to classify economic activities as “green” or environmentally sustainable, aiming to guide both the banking sector and other market participants in making informed investment or financing decisions. This article provides a legal informative overview of the KGFT Rules, highlighting their objectives, the drafting process and their implications for Kenya’s financial sector. Please read the full article at <https://tinyurl.com/The-KGFT-Rules>

Recent Case Successes: Triumph in Arbitration Enforcement

In another notable case, B M Musau & Co., Advocates LLP successfully represented a client in a complex arbitration dispute involving the construction of a mall. Our client, subcontracted for the design, installation, and commissioning of security and fire safety systems, was not paid Kshs. 12,114,485. The matter was referred to arbitration, where the arbitrator awarded our client Kshs. 10,321,928 for the outstanding balance, Kshs. 1,792,557 for the retention due, and Kshs. 2,290,059.71 for arbitration costs, along with interest.

Our client sought to enforce the arbitration award as a court decree, while one opposing party attempted to set aside the award, arguing there was no direct contractual relationship or arbitration agreement. The High Court upheld the arbitrator's award, affirming the contractual relationship and emphasizing the finality of arbitration agreements. This judgment reinforces the enforceability of arbitration awards in Kenya and the importance of clear contractual agreements. Our successful resolution of this case demonstrates our firm's expertise in handling complex arbitration matters and securing justice for our clients.



Recent Case Successes: Seamless Property Transfer: Expertise in High-Profile Conveyancing

B M Musau & Co., Advocates LLP recently undertook a significant conveyancing transaction involving the transfer of a high-value commercial property valued at approximately Three Hundred and Sixty-One Million, (Kshs.361,000,000.00). This complex transaction required our expert legal team from the Conveyancing Department to manage the intricacies of transferring ownership between two major corporate entities. Our involvement was crucial in ensuring that the transfer was executed flawlessly, while, at the same time, adhering to all applicable legal and regulatory standards.

Outcome:

Our firm played an integral role throughout the conveyancing process, ensuring a smooth transition of ownership and addressing every aspect of the transaction with precision. From the outset, we conducted comprehensive due diligence, including rigorous property searches and title verifications, to confirm the validity and integrity of the property's legal standing. We then proceeded to draft and review all necessary legal documents, including sale agreements and transfer deeds, in order to safeguard our client's interests and ensure compliance with legal requirements. The final phase involved coordinating with relevant regulatory bodies to facilitate the timely and accurate registration of the property transfer. The conveyancing department's proactive approach and attention to detail ensured that the transaction was completed without any legal complications or delays, delivering a successful outcome for our client.

Key Achievements:

Thorough Due Diligence:

Conducted exhaustive property searches including an official and historical search and title checks to ascertain the validity of the title and to pre-emptively address any potential issues.

Precise Documentation: Our team skillfully drafted and reviewed complex legal documents, including the sale agreements and transfer deeds, ensuring all terms were clear and legally binding.

Effective Coordination:

Managed the registration process including the lodging of stamp duty at the Land registry, ensuring prompt and accurate updating of property records and facilitating a seamless transfer of ownership.

Significance:

This conveyancing transaction demonstrates B M Musau & Co., Advocates LLP's expertise in handling intricate property transfers and highlights our dedication to providing exceptional legal services. Our comprehensive approach not only facilitated a smooth transfer of ownership but also showcased our ability to navigate complex legal frameworks with ease. By delivering a successful outcome in this high-profile transaction, we reinforced our reputation as a leading firm in real estate and property law, demonstrating our capability to manage high-stakes conveyancing matters with skill and precision.

Legislative Monitoring Report

As we move through the third quarter of 2024, it is essential for businesses and individuals to stay informed about the latest legislative developments. The legal landscape is continuously evolving, and recent legislative changes can have significant implications for various sectors. B M Musau & Co., Advocates LLP is committed to keeping our clients updated on these critical changes. Below are the key legislative updates for Q3 2024:



The Independent Electoral and Boundaries Commission (Amendment) Act 2024

The President assented the IEBC (Amendment) Act 2024 on 9th July 2024 to enhance the functioning of the IEBC in delivering its mandate. It will also guide the selection of the new IEBC Commissioners.

The key amendments include:

- For an individual to qualify as a member of the Commission, they are required to possess experience in information and communication technology and in accounting. These are very important qualifications because the election process is majorly conducted digitally with very reduced human intervention.
- Where the office of the chairperson becomes vacant, the vice-chairperson shall not hold the office of chairperson in acting capacity until appointment of the chairperson. It is required that a chairperson be appointed to fill the position.
- The term of office of the secretary to the commission has been reduced to three years and is only eligible for reappointment for one other term of three years.
- The Commission is required to review its operations within one year after every general elections and publish a report in the Gazette and submit it to Parliament.
- The selection panel on appointment of the chairperson and the Commission members shall consist of:
 - Two persons nominated by the Parliamentary Service Commission representing the majority and minority factions,
 - Three persons nominated by the Political Parties Liasion Committee,
 - One person nominated by the Law Society of Kenya,
 - Two persons nominated by the Institute of Certified Public Accountants of Kenya, and
 - Two persons nominated by the Inter-religious Council of Kenya.
- The selection panel shall conclude the recruitment exercise in 90 days of its appointment and forward the names of the nominees to the President and stand dissolved. However, by a resolution passed by both the National Assembly and the Senate, the tenure of the selection panel may be extended for a specified period.
- Quorum for conduct of business at the Commission is now set at at least five members of the Commission.
- A decision of the majority of all members of the Commission shall be upheld where a unanimous decision has not been reached.

It is hoped that the Act will ensure the next and successive elections will be managed at international best standards.

Legislative Monitoring Report

Social Health Insurance Act 2023

The Social Health Insurance Act 2023 repeals the National Health Insurance Fund (NHIF) Act 1998 and provides a new framework aimed at achieving universal health coverage. Some of its key provisions include:

- The increase in contribution by employees to 2.75% of their gross salary to the Social Health Insurance Fund,
 - The provision of separate contributions for households not deriving income from salaried employment,
 - Establishment of three funds, i.e. the Primary Healthcare Fund, Social Health Insurance Fund, and the Emergency, Chronic, and Critical Illness Fund, to manage various aspects of health coverage.
- On 19th January 2024, the Court of Appeal lifted the orders of the High Court which had suspended the implementation of the Social Health Insurance Act together with the Primary Health Care Act and the Digital Health Act making it operational save for some of its clauses including:
- Section 26 (5) which makes registration under the Social Health Insurance Act and contribution a precondition for dealing with or accessing public services from the national and county governments or their entities.
 - Section 27 (4) which provides that a person shall only access healthcare services where their contributions to the Social Health Insurance Fund are up to date and active.
 - Section 47 (3) which obligates every Kenyan to be uniquely identified for purposes of provision of health services

These were transitional clauses bringing into operation the Social Health Insurance Act and since its constitutionality or otherwise is still subject to determination by the Court of Appeal, they could not be operationalized because it could lead to citizens being unable to obtain services under the NHIF Act pending determination of the case. The Ruling of the Court of Appeal is available at <https://tinyurl.com/SHIA-SUSPENDED>

The Judgment in the substantive appeal against the Orders of the High Court suspending the implementation of the Social Health Insurance Act being Nairobi Court of Appeal No. E984/2023 was delivered on 21st June 2024

The Information, Communication and Technology Authority Bill 2024

The ICT Authority Bill 2024 is poised to be a transformative piece of legislation with the potential to significantly reshape Kenya's tech startups and the broader innovation ecosystem.

It proposes the establishment of the ICT Authority as a regulatory body with extensive oversight powers across the entire ICT ecosystem, including hardware, software, and digital services.

The Bill also mandates enhanced cybersecurity measures, requiring compliance through audits, inspections, directives, and penalties for non-compliance.

While the Bill seeks to establish a standardized regulatory framework, which could enhance professionalism and accountability within the ICT sector, this standardization may impose stringent regulations that could be burdensome especially for startups. Licensing and registration requirements might create barriers to entry, particularly for smaller companies that may lack the resources to comply with extensive regulations. Similarly, significant provisions in the Bill point to increased bureaucracy, potentially slowing down innovation. Most businesses thrive in environments that allow for agility and rapid iteration. The ICT Authority's lengthy approval processes for new technologies or services could hinder the ability to pivot and adapt quickly to market demands.

If the ICT Authority is perceived as a gatekeeper that could stifle creativity, it may lead to reduced funding opportunities.

The establishment of the ICT Authority could foster collaboration between the government and tech startups. By providing a structured environment, the Authority could facilitate partnerships that leverage public resources for private innovation. Such collaboration could open new opportunities for startups to engage in government projects, thereby gaining access to larger markets and resources.

The Bill emphasizes on cybersecurity and the establishment of standards could benefit startups by creating a safer digital environment.

Legislative Monitoring Report

Public Benefits Organization Act

Kenya's legal landscape for public benefit organizations has undergone significant transformation with the implementation of the Public Benefits Organization Act (PBO Act) in May 2024. This new legislation replaces the Non-Governmental Organizations (NGO) Coordination Act of 1990, marking a crucial shift in how organizations engaged in public benefit activities are regulated and supported in the country.

The PBO Act represents a significant advancement in Kenya's legal framework for civil society organizations. It introduces a more nuanced approach to defining and regulating public benefit activities, reflecting the diversity and complexity of contemporary civic engagement.

The PBO Act introduced a more precise definition of a PBO as an autonomous, non-partisan, and non-profit group organized locally, nationally, or internationally, engaging in public benefit activities narrowing the scope of non-profit organizations.

The public benefit organizations are now required to register with the Public Benefit Organizations Regulatory Authority (the "Authority"). The registration process is more rigorous, including thorough vetting of organizational structure, financial transparency, and detailed descriptions of public benefit activities.

The PBO Act offers tax exemptions specifically for registered PBOs and provides a more structured framework for determining eligibility for various benefits derived from registration. Some of the public benefits include enhancing economic, environmental, social, or cultural development; protecting the environment; lobbying or advocating on general public interest issues; or promoting the well-being of the general public or specific categories of individuals or organizations.

The PBO Act establishes the PBO disputes tribunal which has power to hear and determine complaints arising out of any breach of the provisions of the Act or determine any matter or appeal arising pursuant to the provisions of the Act.

Organisations registered under the repealed NGO Act shall be deemed to be registered as a PBO under the PBO Act for a period of 1 year from the commencement date after which they shall regularize their registration under the PBO Act failure to which they shall cease to be a PBO within 30 days of expiry of the period.

Client Testimonials



Point Marketing

It was really wonderful working with you and would definitely recommend to friend, family or other businesses. I would rate a 9 out of 10 and only because I was not involved in the process as a whole. The engagement, detail and communication was exemplary and ultimately the knowledge and skillset that you have in your ranks made it a very smooth journey and partnership. Please do let us know if there is anything that you need from us as well to close out everything.

TLANGELANI MUSHWANA
Human Resources Manager



WS Insight (K) Ltd

Service Provided: Representation in Arbitration Case and High Court Proceedings for Recognition and Enforcement of Arbitral Award

Testimonial: "We are extremely grateful to the team at B M Musau & Co., Advocates LLP for their outstanding representation in our arbitration case and subsequent High Court proceedings for the recognition and enforcement of an arbitral award. Their in-depth knowledge of arbitration law, strategic approach, and unwavering dedication were instrumental in securing a favorable outcome for us. The seamless handling of both the arbitration and court processes showcased their exceptional legal acumen and commitment to client success. They were responsive and supportive of our needs as a client during the processes, ensuring we understood the progress, risks and probable outcomes. We highly recommend B M Musau & Co., Advocates LLP for any arbitration and litigation needs

Ashton Towler
Chief Executive Officer



Embassy of Japan

Service Provided: Review of the Embassy's Rules for the service of local employees.

Testimonial: "The team at B M Musau & Co., Advocates LLP provided exceptional support during our recent review of the Embassy's Rules of service of local employees. Their expertise and attention to detail ensured that our rules are well aligned with the requirements of the Kenya Employment laws. We highly recommend their services."

Ms Mari Takeuchi

Client Testimonials



Stanley & Son Ltd

Service Provided: Legal Representation in Environment and Land Court Proceedings for the last six years.

Testimonial: We are extremely grateful for the outstanding legal representation provided by B M Musau & Co., Advocates LLP in our ongoing proceedings before the Environment and Land Court. Their in-depth knowledge of environmental and land law, combined with their strategic approach and unwavering dedication, has been instrumental in advancing our case. We highly recommend their services to anyone in need of expert legal support in complex land disputes. Their team has provided us with personal and professional support that is invaluable in this kind of case”

Robin Stanley
Director

Distribution Oriented Technologies

Service Provided: Compliance Assistance with the Communications Authority of Kenya

Testimonial: “The team at B M Musau & Co., Advocates LLP has been instrumental in ensuring our compliance with the Communications Authority of Kenya. The expert guidance of B M Musau & Co., Advocates LLP has been essential in navigating the regulatory landscape under the Communications Authority of Kenya (CAK). B M Musau & Co., Advocates LLP has proven to be an invaluable partner in this journey, offering timely advice and strategic insights that keep us ahead of regulatory changes. Their team's deep understanding of the ICT industry's legal framework in Kenya ensures we are well-prepared to address any regulatory concerns promptly. B M Musau & Co., Advocates LLP. We highly recommend their services to any company seeking expert legal guidance and compliance support.”

Ahmed Jaradat
Director, DOT

Legal Tip of the Quarter: Understanding the Affordable Housing Levy

Rate and Remittance:

Employers are required to deduct 1.5% of employees' gross salaries and remit these amounts to the Affordable Housing Fund by the 9th day of the subsequent month. Non-compliance attracts a penalty of 3% of the unpaid amount for each month it remains unpaid, recoverable as a civil debt from the employer

Allowable Deductions and Reliefs:

Employers' contributions to the Levy are allowable deductions under Section 15 of the Income Tax Act. Additionally, resident individuals who pay the Levy are entitled to an affordable housing relief of 15% of their contributions, capped at KES 108,000 per annum (KES 9,000 per month).

Categories of Affordable Housing:

The Act outlines four categories of affordable housing: Social Housing Units, Affordable Middle-Class Housing Units, Affordable Housing Units, and Rural Affordable Housing Units, targeting various income brackets to ensure inclusivity.

Establishment and Management of the Fund:

The Affordable Housing Fund, managed by a Board, will develop and implement five-year investment programs for housing projects. The Fund will receive the Levy amounts, voluntary contributions, and other specified sources.

Application and Allocation of Housing Units:

Eligible individuals can apply for housing units by providing proof of the requisite deposit and meeting set criteria. Preference in allocation is given to marginalized groups, including youth, women, and persons with disabilities

Practical Steps for Compliance:

- **Payroll Adjustments:** Ensure your payroll system is updated to deduct the Levy accurately and generate payment slips under the tax head 'agency revenue' and sub-head 'Housing Levy'.
- **Timely Remittance:** Adhere to the monthly remittance schedule to avoid penalties.
- **Employee Communication:** Inform employees about the deductions and potential tax reliefs to foster understanding and transparency.
- **Stay Informed:** Keep abreast of any updates or regulations related to the Affordable Housing Act to ensure ongoing compliance.

Potential Benefits:

- **Tax Relief:** Take advantage of allowable deductions and affordable housing reliefs.
 - **Corporate Social Responsibility:** Contributing to the Affordable Housing Fund supports national housing initiatives, enhancing your corporate social responsibility profile.
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"We help businesses make the right decisions"

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