

**DOING BUSINESS  
IN KENYA BY**



## **Company registration in Kenya by foreigners**

There are various options that a foreign company /corporation or individual has with regard to establishing a presence in Kenya. These are listed as follows:

1. Registration of a new local company
  2. Registration of a subsidiary company of the main foreign company
  3. Opening a registered branch office of the parent company
- These are discussed in separate headings hereunder:

### **1.Registration of a new local company(LLC)**

The Companies Act No. 17 of 2015 of the Laws of Kenya is the main statutory provision for all companies in Kenya and by extension registration of a company by a foreigner in Kenya. Foreigners can register limited liability companies (LLCs) and limited liability partnerships(LLPs). The registration is done online via the e-citizen portal. E-citizen a government portal for the provision of government services. See [www.ecitizen.co.ke](http://www.ecitizen.co.ke)

#### **1.1 Requirements to register a new local company (LLC)**

- A copy of director shareholder passport bio-data page
- Passport photos of all directors
- E-mail addresses
- Postal addresses
- Residential physical addresses.
- The name of the company
- The nature of the business of the company
- The company's residential physical address
- E-mail addresses of the company
- Postal address of the company
- E-citizen account for directors

*It takes a maximum of seven working days to register a new local company here in Kenya. A foreigner can register a local company and own the company 100%. No local shareholding required excepts in certain regulated sector such as banking and telecommunication industry. The company can be either a private limited company or a public limited company limited by shares.*

A person in a blue suit is holding a pen over a document. The document features a bar chart with several bars of varying heights and colors (blue, yellow, red). The background is slightly blurred, showing what appears to be a computer keyboard and other office equipment.

## 2. Registration of Subsidiary Company

A subsidiary is an entity registered in Kenya and in which the foreign registered Company is the majority or sole shareholder. Unlike a branch Foreign Company, a subsidiary is legally separate from its foreign registered corporate shareholders and with a separate governance structure.

A subsidiary can only exist if the mother entity is legally recognized by the law governing the republic in which the mother company carries out its business. The memorandum and articles of association are produced to show there are provisions allowing the mother company to open subsidiaries. A subsidiary is like a local incorporated company with the only difference being that it is wholly or largely owned by another incorporated entity. This can be incorporated either as a private limited liability company or a public limited liability company depending on the number of members.

The number of members for a private limited liability company can range from one (1) member up-to fifty (50) members excluding employees. This means that the subsidiary can be wholly owned by the parent company. On the other hand, there is a requirement that it must have at least one director who is a natural person.

## 2.1 Requirements to register a subsidiary company

- Scanned certified copy of certificate of incorporation of company from country of registration.
- Scanned certified copy of the Memorandums and Articles of Association of the company. (If in a Foreign language, interpreted and certified copy)
- Registered office in country of origin (Plot / House number, road, City, country)
- Registered office of the Branch in Kenya. (Name of building/ location, plot number, road, county).
- Names of the Directors / shareholders and share structure.
- Contact information of the directors / shareholders - Email address, Telephone number, postal address and residential addresses.
- Scans of Passport bio data and passport photo of directors / shareholders.

### 3. Registration of a branch of a Foreign Company

A branch is essentially a company organized to conduct business on behalf of a parent company in another jurisdiction. The branch office is like a new placement, department or division that is set up under the parent company's name and forms part of that legal entity.

The registration process of a foreign company is provided for under Part 37 of the companies Act, 2015. Section 974 of the Companies Act, provides that a foreign company shall not carry on business in Kenya unless it is registered or has applied to be registered and the application has not been dealt with within the prescribed period.

Branches must have a local representative resident in Kenya.



## 3.1 Requirements to register a branch of a foreign company in Kenya

- Scanned certified copy of certificate of incorporation of company from country of registration.
- Scanned certified copy of the Memorandums and Articles of Association of the company. (If in a Foreign language, interpreted and certified copy)
- Registered office in country of origin (Plot / House number, road, City, country)
- Registered office of the Branch in Kenya. (Name of building/ location, plot number, road, county).
- Names of the Directors / shareholders and share structure.
- Contact information of the directors / shareholders - Email address, Telephone number, postal address and residential addresses.
- Scans of Passport bio data and passport photo of directors / shareholders.
- Appointment of local representative
- Names in full of the local representative.
- Copy of ID and PIN of the local representative.
- Scan passport photo of the local representative.
- Contact information of the local representative. i.e. Postal address, email, Telephone number.
- Residential address of the local representative.



**Branch company registration takes seven working days. After registration the company is issued with a certificate for compliance**

**Subsidiary vs branch**

<b>Comparison topic</b>	<b>subsidiary</b>	<b>branch</b>
<b>Legal personality</b>	<i>Distinct entity from parent company</i>	<i>A unit extension of the parent company</i>
<b>Liability</b>	<i>Limited liability meaning holding company not liable for (mis) deeds of subsidiary</i>	<i>Parent company liable for actions of branch</i>
<b>Residence for tax purposes</b>	<i>Resident in Kenya</i>	<i>Non-resident but with a permanent establishment in Kenya</i>
<b>Corporation tax</b>	<i>Corporate tax rate of 30%</i>	<i>Tax rate of 37.5%</i>
<b>Income subject to tax in Kenya</b>	<i>Worldwide business income</i>	<i>Income accrued in or derived from Kenya</i>
<b>Withholding tax on payments made to parent company</b>	<i>Payments subject to WHT as different legal entities</i>	<i>Payment not subject to WHT</i>
<b>Are payments made to holding /parent company tax deductible expenses?</b>	<i>Yes ,subject to applicable rules such as transfer pricing, thin capitalizations etc</i>	<i>No</i>
<b>Effective tax rate taking into account withholding tax on dividends</b>	<i>30%(as WHT on dividends is 10%)</i>	<i>37.5%</i>
<b>Relatively straightforward</b>	<i>No requirements for local directors/shareholder</i>	<i>Authorized representative in Kenya required for services of legal documents</i>
<b>Minimum share capital</b>	<i>No minimum share capital save in certain regulated sectors</i>	<i>No minimum share capital save in certain regulated sectors</i>
<b>Governance Structures</b>	<i>directorship may vary from that of its holding Company as the two entities are legally separate</i>	<i>is restricted in terms of its directorship such that it is tied to that of the Company registered in the Country of origin.</i>
<b>Memorandum&amp; articles/constitution</b>	<i>is governed by its own Constitution different from that of its holding Company.</i>	<i>is governed by the Constitution of the Company registered in the Country of origin</i>
<b>Time to register</b>	<i>Within seven working days</i>	<i>Within seven working days</i>



### *Taxation In Kenya*

The organization vested with the right of collecting, assessing and accounting for taxes in Kenya is called the Kenya Revenue Authority. The Kenya Revenue Authority (KRA) is the agency in charge of the collection and receipt of all revenue on behalf of the Kenyan government. In performing this function, it has the responsibility of administering and enforcing all laws relating to revenue.

All information regarding taxes in Kenya can be accessed on the Kenya revenue authority website ([www.kra.go.ke](http://www.kra.go.ke)). Taxes in Kenya are categorized under two main heads, direct and indirect taxes. The indirect statutory taxes in Kenya applies when the purchase of goods are made. The various taxes under this banner are excise duty, custom duty & levies and V.A.T. On the other hand, income tax falls under the direct taxes in Kenya.

The direct tax department deals with the collection and assessment of income taxes, which happens to be one of the important statutory taxes in Kenya. The income tax is further divided into four subcategories, for the easy comprehension of the massive structure of statutory taxes in Kenya. They are as follows:

### ***PAY AS YOU EARN (PAYE)***

PAYE is one of the many statutory taxes in Kenya collected from individuals engaged in gainful employment. Under this, the employers make a deduction of a particular percentage from the salary. This percentage is forwarded to the KRA on a per month. Of the many statutory taxes in Kenya, PAYE applies to bonuses, director's fees, commission, weekly wages, monthly and annual salaries. A personal relief, that is a tax credit is provided to every resident employee under PAYE. In addition to that insurance relief and mortgage interest deductions are also provided to qualifying employees.

### ***CORPORATION TAX:***

Yet another of the many taxes in Kenya is the Corporation Tax. Under this tax, the companies operating in the country pay a charge on their total income to the KRA. The indigenous/local/subsidiary companies have to pay a charge of 30 percent while branches of non-resident companies are charged 37.5% on their taxable profits.

### ***Value Added Tax:***

This is the most popular of the many statutory taxes in Kenya. VAT is a consumption charge which is imposed on any taxable goods and services. The consumer who makes a purchase of a service or a commodity is bound to pay the VAT.

### ***Imported And Exported Services:***

The exported services are zero-rated and thus do not come under the preview of the VAT. On the other hand, imported services are issued to registered individuals/corporations. It is assumed that the individual has made a taxable supply to himself. In other cases, REVERSE VAT is payable only when a registered individual is not entitled to a credit facility for a part of the input payable tax.



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### ***CUSTOM AND EXCISE DUTY:***

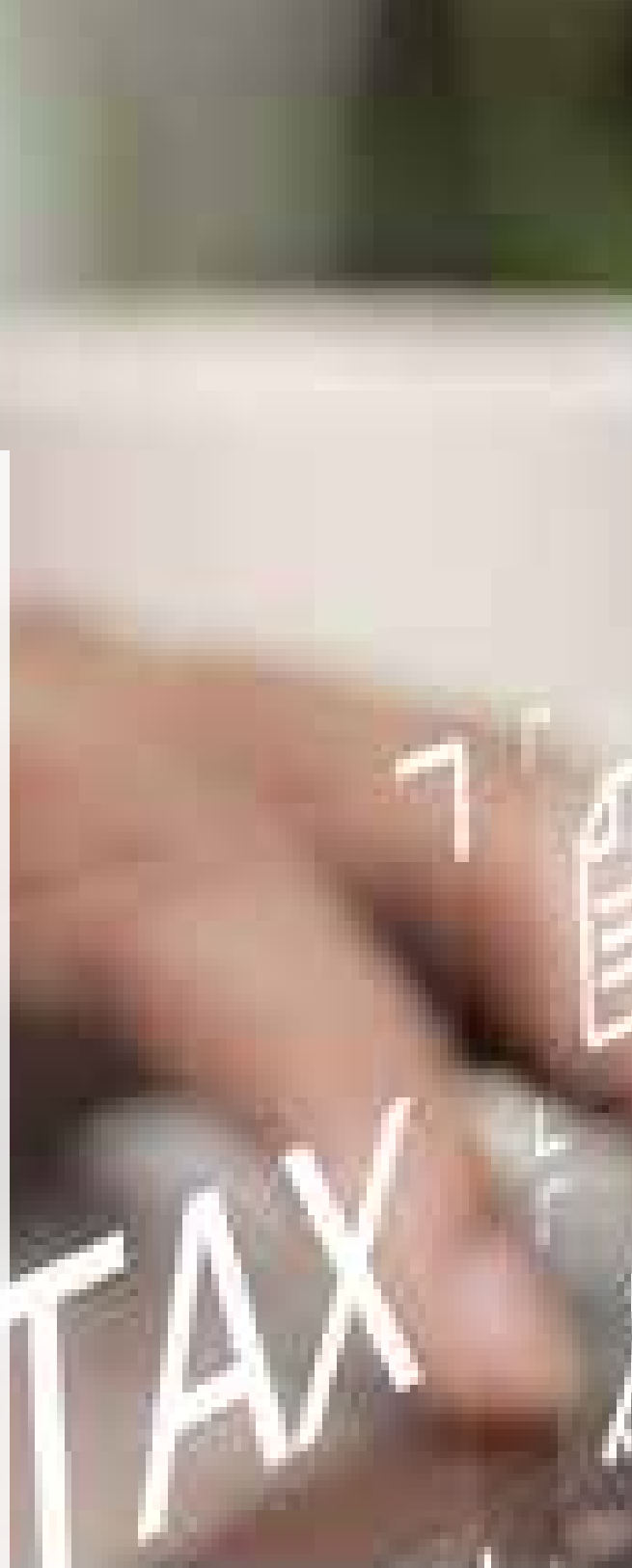
In general excise duty is imposed on certain imported goods and a few locally manufactured ones. Excise duty is also levied on certain services which fall under the Fifth Schedule of the Customs and Excise Act. Some goods which incur excise duty include wine, bottled water, soft drinks and cigarettes. Customer duties are charged to the importer of the goods at the point of the importation. The importers are required to accurately compute and pay the taxes based on the applicable charges. Generally, when goods are imported VAT, import duty, excise duty, import declaration fee, railway development fee, raw material, intermediate goods and finished goods are applied.

#### **Withholding Tax**

These are one of the many taxes in Kenya and is charged on interests, dividends, pensions, performance fees, royalties, commissions and so on. However, the rates of the taxes collected are not fixed. They vary according to the status of the payer. That is whether or not he/she is a resident.

#### **Advance Tax**

This is yet another form of a direct tax that falls under the category of the statutory taxes in Kenya. These taxes are directed towards the public service vehicles and commercial vehicles. The owners are expected to pay the taxes in advance before they can get their commercial vehicles registered.



# EXCISE





### **Residential Rental Income Tax**

This is one of the property taxes of the many statutory taxes in Kenya. The Residential Rental Income Tax is one of the multiple property taxes which fall under the income tax umbrella. The Finance Act of 2015 defines this tax as the amount to be paid for the accrued incomes collected from the residential properties of Kenya. However, the amount should not be over than Kshs 10 million per income year.

### **National Social Security Fund (NSSF)**

Any person who employs one or more employees must register with NSSF as a contributing employer. Employees are required to register as members of the NSSF as well. There are no registration costs. Registered employees are required to contribute to NSSF. See [www.nssf.go.ke](http://www.nssf.go.ke)

### **National Hospital Insurance Fund (NHIF)**

Employers are also required to register with the NHIF and to deduct and account for monthly contributions to the NHIF for each employee based on their monthly income. There are no registration costs. see [www.nhif.go.ke](http://www.nhif.go.ke)

#### **N.B:**

An organization which aims to conduct business in the country can either operate as a subsidiary company or a branch. All the corporate entities are guided by the Companies Act. While dealing with the corporate entities of the country, there are certain sector-specific rules to be followed. Companies operating in certain sectors or industries may be expected to obtain certain additional licenses from relevant operating bodies. For example, the various banks of the country fall under the jurisdiction of the Central Bank of Kenya directed by the Banking Act. In addition to that, the Capital Markets Authority is charged with the responsibility of issuance of shares to the public.

All taxes in Kenya are filled online and paid online via the Kenya revenue authority website portal. Visit [kra itax portal](http://kra.itax.portal).



### ***Importing and exporting of goods into Kenya***

Duties and taxes are levied on any imported and exported goods before releasing them from Customs; except goods qualifying for special privilege according to the laws and regulations, whereby their duties and taxes are exempted. Goods are cleared in Kenya at the port of entry.

### ***Documents Required In Clearance Of Imported Goods***

A Certificate of Conformity (CoC) from the PVoC agent for regulated products;

an import standards mark (ISM) when applicable;

Valid Commercial Invoice from the exporting firm

valid pro forma invoices from the exporting firm.

Bill of Lading (sea cargo)/Airway Bill (air cargo)

Certificate of origin

Freight invoice for sea cargo

Permit/License for restricted goods

Personal or Taxpayer Identification Number (PIN certificate)

Exemption letter (in case goods are exempted)

Purchase Orders/Contracts

Packing List

Letter of Credit (if available)

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### ***EMPLOYMENT FOR FOREIGNERS IN KENYA***

Foreign nationals who wish to engage in gainful ventures in Kenya must comply with the provisions of the Constitution of Kenya, the Citizenship and Immigration Act (the “Act”) and underpinning Regulations. They must also comply with the laws and prescriptions of the specific industries that they wish to venture into. The first step is usually to obtain lawful residence status either as holders of valid work permits, permanent residents or Kenyan citizenship. A foreign wishing to work in Kenya must apply for work permit.

### ***WORK PERMITS***

A work permit is a document issued by the Director of Immigration Services, under the provisions of section 40 of the Act, to enable foreign national (s) enter Kenya and engage in trade, prospecting, farming, business, professional employment, missionary activities and reside in Kenya. Work permit application is done to the director of immigration services. The process for work permits takes three months before issuance of work permit certificate and alien ID. See [www.immigration.co.ke](http://www.immigration.co.ke)

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# **BANK ACCOUNT**

## **OPENING FOR A REGISTERED COMPANY**

***A registered company can open a company bank account here in Kenya.***

### ***List of documents required for company bank account opening***

- An Original and Copy of the Company's Certificate of Incorporation
  - A Board Resolution Letter on the company's official letterhead authorizing the opening of the Company Bank Account – signed by the Director(s).
  - KRA Pin Certificate for company
  - Identification documents of all directors of the Company and any Shareholders i.e KRA Pin Certificate plus Copy of National Identity Card (ID) or a Valid Passport.
  - A duly signed Company Registration Form (Form CR1
  - Form CR2 Memorandum for a Company with share capital.
  - Form CR8 showing the residential address of the Directors of the Company
  - An updated Form CR12 that shows the list of Directors and Shareholders of the company.
  - Business trading permit from the county government
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