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BUYING PROPERTY IN KENYA AS A FOREIGNER:
A Comprehensive Legal Guide to Property Ownership, Immigration, Permanent Residence, Citizenship and Tax Planning

An Integrated Guide for Foreign Investors, Retirees, Digital Nomads, Expatriates and International Families.

EXECUTIVE SUMMARY

Kenya has become an attractive destination for foreign nationals seeking residential property, investment opportunities, retirement, second homes and long-term relocation. From Nairobi's established residential and commercial neighbourhoods to the coastal destinations of Mombasa, Diani, Watamu and Malindi, the Kenyan property market presents opportunities for international investors and families seeking to establish a presence in East Africa.

However, buying property in Kenya as a foreigner requires more than identifying a suitable house, parcel of land, apartment or residential development. Foreign purchasers must navigate constitutional restrictions on land ownership, property due diligence, immigration requirements, taxation, financing, succession planning and the legal implications of holding property personally, through a company or through a family trust.

A property purchase may also be an opportunity to develop a broader investment and relocation strategy encompassing retirement, remote working, employment, business establishment, applications for permanent residence and, where independently eligible, Kenyan citizenship.

It is important to note that purchasing property in Kenya does not automatically confer a right to a work permit, residence permit, permanent residence or Kenyan citizenship. Each immigration pathway is governed by separate statutory eligibility requirements.

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This CM Regulatory Alert examines the legal and regulatory considerations for foreign nationals acquiring residential property in Kenya and explains how a coordinated legal strategy can support property investment, lawful residence, asset protection, family wealth preservation and long-term succession planning.

1. CAN FOREIGNERS BUY PROPERTY IN KENYA?

Yes. Foreign nationals may lawfully purchase qualifying residential and commercial property in Kenya, subject to constitutional and statutory restrictions.

Article 65(1) of the Constitution of Kenya, 2010, provides that a person who is not a Kenyan citizen may hold land only on a leasehold basis for a term not exceeding 99 years.

Article 65(3) further provides that a body corporate is regarded as a Kenyan citizen for purposes of landholding only if it is wholly owned by Kenyan citizens. A trust is similarly treated as citizen-held only where all beneficial interests are held by Kenyan citizens.

Consequently, a foreign national may acquire qualifying leasehold property in Kenya, but cannot circumvent constitutional restrictions by incorporating a Kenyan company with foreign shareholders or establishing a trust.

The restrictions also apply to arrangements involving nominee shareholders or other structures intended to conceal foreign beneficial ownership.

Additional restrictions on agricultural land

Agricultural land may be subject to further statutory restrictions, including those under the Land Control Act, Cap. 302.

Foreign purchasers considering agricultural land, rural estates, farms or properties with agricultural classifications should obtain specific legal advice concerning eligibility, required consents and the legal effect of any proposed transaction.

A property's description as a residential estate, holiday home or investment development does not necessarily determine its legal classification.

What should a foreign buyer investigate before purchasing property?

A comprehensive legal due diligence exercise should ordinarily establish:

1. The identity, legal capacity and authority of the registered proprietor.
2. The authenticity, validity and tenure of the title.
3. Whether the property is freehold, leasehold or held under a sectional title and where applicable, the unexpired term of the lease and any conditions affecting ownership.
4. Any charges, cautions, restrictions, easements, encumbrances or pending litigation.
5. Outstanding land rent, county rates, service charges and other liabilities.
6. Planning permissions, development approvals and permitted land use.
7. Survey records, boundaries, access rights and applicable environmental restrictions.
8. Any necessary lender, lessor, governmental or regulatory consents.
9. Whether the property may lawfully be acquired by a non-citizen.
10. The legal and tax consequences of the proposed ownership structure.

For apartments and off-plan developments, purchasers should additionally examine the developer's title, sectional ownership arrangements, construction and regulatory approvals, project financing, completion obligations, common areas, management arrangements and remedies for delayed or failed completion.

Key takeaway: Foreign investors should establish the legal status of the property and the suitability of the proposed ownership structure before signing a binding sale agreement or committing substantial funds.

2. DOES BUYING PROPERTY IN KENYA GIVE A FOREIGNER THE RIGHT TO LIVE IN KENYA?

No. Property ownership and immigration authorisation are separate legal matters.

A foreign national may acquire and own qualifying property in Kenya without automatically obtaining the right to reside, work or operate a business in the country.

Equally, ownership of a residential property does not independently establish eligibility for permanent residence or Kenyan citizenship.

Before acquiring property, an intending resident should identify the immigration category most appropriate to their circumstances, including retirement, remote employment, local employment, business investment or family relationships.

Kenya provides several immigration pathways that may be relevant to foreign property buyers.

3. CLASS K PERMIT: ORDINARY RESIDENCE FOR PERSONS OF INDEPENDENT MEANS

The Class K permit is particularly relevant to qualifying retirees and financially independent foreign nationals seeking to reside in Kenya without undertaking local employment or income generating activities.

Under the applicable immigration framework, applicants must be at least 35 years old and demonstrate assured annual income of not less than USD 24,000 from qualifying sources including pensions, annuities or other qualifying income that satisfies the applicable statutory requirements.

Applicants must demonstrate the source, continuity and availability of the income and satisfy the remaining immigration requirements.

A Class K permit may therefore be suitable for a foreign national intending to purchase a home in Nairobi, Diani, Watamu, Malindi or another residential destination for retirement or long-term personal residence.

However, the permit does not constitute unrestricted authorisation to undertake employment, trade, business or professional activities in Kenya.

Foreign nationals who intend to operate businesses or undertake local employment should consider alternative immigration categories.

4. CLASS N PERMIT: DIGITAL NOMADS AND REMOTE WORKERS

Kenya's Class N permit framework provides an immigration pathway for qualifying foreign nationals seeking to reside in Kenya while undertaking remote work for employees based outside of the country.

This category is particularly relevant to international professionals employed by foreign companies, consultants, technology specialists and digital entrepreneurs who wish to live in Kenya while maintaining qualifying foreign employment or business arrangements.

The applicable regulatory framework provides that applicants must demonstrate an assured annual income threshold of USD 55,000, together with other eligibility and documentary requirements.

Applicants should establish whether their proposed activities, income sources, overseas employment arrangements and intended residence satisfy the applicable conditions.

Importantly, Class N permit should not be assumed to authorise unrestricted employment by Kenyan employers or participation in the domestic labour market.

Additional considerations for property ownership and remote working

A digital nomad intending to acquire residential property should consider the proposed duration of residence, immigration status, personal tax residence, cross-border income, property ownership structure and any potential Kenyan tax exposure arising from remote business activities.

Where a foreign national operates an overseas company while residing in Kenya, the potential

implications for the company's tax position should also be assessed.

Property ownership should therefore be coordinated with immigration and international tax planning.

5. CLASS D WORK PERMIT: EMPLOYMENT AND RELOCATION TO KENYA

A Class D Permit is issued to a foreign national who has been offered specific employment by an employer in Kenya and possesses skills or qualifications that are not readily available in Kenya, where their engagement is considered beneficial to the country.

The grant of the permit is dependent on the nature of the proposed employment, the applicant's qualifications and the applicable immigration requirements, including the consideration of local labour availability and the benefit of the proposed engagement to Kenya.

A foreign professional relocating to Kenya may wish to purchase a residential property rather than rent accommodation. However, the property acquisition does not establish eligibility for a work permit.

Foreign nationals should also consider their tax residence, employment benefits, applicable social security obligations and any cross-border tax implications arising from their relocation.

6. CLASS G PERMITS: INVESTOR PERMIT

The Class G permit is relevant to qualifying persons intending to engage in a prescribed trade, business or consultancy, subject to the applicable capital, documentation, licensing and regulatory requirements.

Where an investor intends to establish a Kenyan company, acquire commercial property, develop residential units or operate a hospitality or other investment business, the proposed investment should be assessed against company law, immigration law, landholding restrictions, tax legislation and sector-specific regulations.

Applicants are required to demonstrate that they have sufficient capital at their disposal, with the applicable immigration requirements prescribing a minimum investment threshold of USD 100,000, supported by documentary evidence.

Importantly, incorporating a company or acquiring property does not automatically entitle a foreign investor to a Class G permit.

7. PERMANENT RESIDENCE IN KENYA: PLANNING FOR LONG-TERM SETTLEMENT

Foreign nationals intending to establish Kenya as their long-term home should consider whether they may qualify for permanent residence under section 37 of the Kenya Citizenship and Immigration Act, 2011.

The statutory framework recognises several categories of eligible applicants, including former Kenyan citizens who have renounced or lost their citizenship, foreign nationals who have held work permits for at least seven (7) years and maintained continuous residence in Kenya for the three (3) years immediately preceding their application, children of Kenyan citizens born outside Kenya who have acquired foreign citizenship, and qualifying spouses of Kenyan citizens who have been married for at least three (3) years.

For certain long-term residents, eligibility involves statutory requirements concerning lawful residence and work permit history.

For qualifying spouses of Kenyan citizens, a separate permanent residence category may apply.

Permanent residence is not automatically granted because an individual owns property, has incorporated a Kenyan company, holds a temporary immigration permit or has invested a substantial amount of money in Kenya.

Applicants must independently satisfy the requirements of the relevant permanent residence category.

Why permanent residence planning matters

For foreign nationals intending to settle in Kenya permanently, immigration planning should begin before substantial property or business investments are made.

The appropriate strategy may depend on the individual's existing immigration status, residence history, employment, family relationships and long-term objectives.

Early assessment can help identify whether the proposed immigration pathway is compatible with the intended investment and relocation arrangements.

8. MARRIAGE TO A KENYAN CITIZEN: PERMANENT RESIDENCE AND CITIZENSHIP

Foreign nationals genuinely married to Kenyan citizens may qualify for additional immigration and citizenship pathways.

Permanent residence through marriage

Section 37(1)(d) of the Kenya Citizenship and Immigration Act provides a permanent residence pathway for qualifying spouses of Kenyan citizens who have been married for at least three years, subject to the applicable statutory requirements which is commonly described as Category D permanent residence.

It is distinct from the Class D work permit, which concerns qualifying employment.

Applicants must establish the relevant marriage and satisfy the applicable documentation and procedural requirements.

Citizenship by marriage

Article 15(1) of the Constitution provides that a person who has been married to a Kenyan citizen for a period of at least seven years is entitled, on application, to be registered as a Kenyan citizen, subject to the conditions prescribed by legislation.

Section 11 of the Kenya Citizenship and Immigration Act establishes the corresponding statutory framework.

The seven-year marriage period does not automatically confer citizenship. The applicant must satisfy the prescribed conditions and complete the registration process.

Property ownership and international marriages

Where a foreign purchaser is married to a Kenyan citizen, property acquisition should be considered alongside matrimonial property rights, ownership arrangements, inheritance, succession, immigration status and applicable tax obligations.

Particular care is required where property is acquired in one spouse's name, through a family-owned company or through a trust.

The legal consequences depend on the nature of the property, the source of funds, applicable matrimonial property law and the ownership arrangements.

9. FAMILY-OWNED COMPANIES: STRUCTURING PROPERTY INVESTMENTS IN KENYA

A family-owned company may provide a suitable vehicle for acquiring, holding and managing qualifying property investments in Kenya, including residential apartments, commercial premises, rental properties or other qualifying investments.

Such a structure can facilitate centralised management, documented shareholder rights and continuity of ownership, with the company's Articles of Association and shareholders' agreements setting out provisions governing decision-making, management, share transfers and succession.

However, the structure must comply with Article 65 of the Constitution and applicable land legislation.

A Kenyan company with foreign shareholders does not acquire the constitutional landholding rights of a wholly Kenyan-owned company merely by virtue of incorporation.

Asset protection and corporate separation

A properly established company has a legal personality separate from its shareholders. This separation may assist with governance, investment management and the allocation of commercial liabilities.

Nevertheless, incorporation does not provide absolute protection against liability. Shareholders, directors and related parties may remain exposed under guarantees, statutory obligations, unlawful transactions or other circumstances recognised by law.

The appropriate structure should therefore be selected for legitimate commercial, governance and succession objectives rather than as a means of avoiding legal obligations.

10. FAMILY TRUSTS: SUCCESSION PLANNING AND INTERGENERATIONAL WEALTH PRESERVATION

A family trust may provide an effective framework for preserving, managing and transferring family wealth across generations.

Under an appropriately structured arrangement, a family trust may hold shares in family-owned investment companies, while those companies hold the underlying qualifying properties and investments.

This can create a distinction between the trust's wealth-holding and succession functions and the commercial activities undertaken by the underlying companies.

A family trust may also support continuity of investment management, succession planning, provision for beneficiaries and orderly intergenerational wealth transfer.

Key considerations when establishing a family trust

Trust documentation should address the identity and powers of trustees, beneficiaries, distribution provisions, investment authority, trustee appointment and replacement, succession arrangements and appropriate governance safeguards.

Where foreign nationals or international families are involved, additional considerations may include cross-border tax exposure, beneficial ownership requirements, foreign inheritance laws and the legal treatment of trust assets in other jurisdictions.

A family trust must also comply with applicable constitutional restrictions on landholding.

The establishment of a trust does not automatically make foreign-owned property eligible for freehold ownership.

Tax treatment of family trusts

Kenyan legislation provides certain exemptions and reliefs for qualifying trust arrangements and transfers, subject to the applicable statutory conditions.

However, not every transfer into or out of a trust qualifies for exemption from stamp duty, capital gains tax or other taxes.

The relevant statutory provisions, trust classification, transaction structure and applicable conditions should be assessed before implementation.

Key takeaway: Family trusts and family investment companies should be structured as part of a comprehensive wealth and succession plan, rather than established solely to facilitate a particular property acquisition.

11. TAX PLANNING FOR FOREIGN PROPERTY BUYERS IN KENYA

Tax planning is an essential component of foreign property investment in Kenya.

The applicable tax treatment depends on various factors including, the property, the purchaser's tax status, the ownership structure, the intended use of the asset and the circumstances of any future disposal.

The principal considerations include:

Tax or obligation	General position
Stamp duty	Generally 4% for qualifying urban property and 2% for qualifying rural property, subject to applicable statutory rules and exemptions
Capital gains tax	Generally 15% of the taxable net gain on a chargeable disposal, subject to applicable exemptions and reliefs
Rental income taxation	Depends on the owner's residence status, income category and applicable tax regime
Corporation tax	May apply where property is held through a company, depending on the entity's tax status and activities
Value added tax	Depends on the nature of the property and transaction, including applicable exemptions
Land rent	May be payable in respect of qualifying leasehold property
County rates	May be payable under the applicable county rating framework
Trust and succession transfers	May qualify for particular exemptions or reliefs where statutory conditions are satisfied

Cross-border tax considerations

Foreign purchasers should also consider whether their presence in Kenya may affect their personal tax residence and whether income arising in Kenya or abroad is subject to Kenyan taxation.

Relevant considerations may include double-taxation agreements, foreign-source income, rental income, withholding taxes, company taxation, financing arrangements and reporting obligations in the purchaser's country of residence or citizenship.

Where a property is acquired through a company or family trust, the tax consequences should be assessed at the acquisition, holding, income-distribution and disposal stages.

The most suitable structure is not necessarily the one with the lowest initial acquisition cost, but the arrangement that is legally compliant, commercially appropriate and sustainable throughout the investment lifecycle.

12. CHOOSING THE RIGHT PROPERTY OWNERSHIP AND IMMIGRATION STRATEGY

Foreign nationals have different investment, residence and family objectives.

A holiday home purchaser may require a relatively straightforward leasehold acquisition, while an international family relocating permanently may need an integrated property, immigration, tax and succession structure.

The following table illustrates the principal considerations for different investor profiles.

Investor profile	Principal legal considerations
Foreign holiday-home buyer	Leasehold title, due diligence, property management and succession
Retiree	Class K eligibility, residence planning, estate planning and tax status
Digital nomad	Class N eligibility, remote work arrangements and cross-border taxation
Expatriate employee	Class D work permit, residential property acquisition and employment taxation
Foreign business investor	Class G or other applicable permit, company structuring, licensing and investment compliance
Foreign spouse of a Kenyan citizen	Property ownership, permanent residence, citizenship eligibility and matrimonial property
International family	Family trusts, investment companies, succession, governance and international tax planning

The appropriate structure should be determined after reviewing the purchaser's circumstances, intended activities, immigration eligibility, financing arrangements and long-term objectives.

13. PRACTICAL STEPS BEFORE BUYING PROPERTY IN KENYA

Foreign nationals intending to purchase property in Kenya should consider the following before proceeding with an acquisition:

First, establish the purpose of the investment. Determine whether the property is intended for personal residence, retirement, holiday use, rental income, business investment or long-term family ownership.

Second, confirm legal eligibility. Establish the property's tenure, classification and whether it may lawfully be acquired by a foreign national or the proposed investment vehicle.

Third, undertake comprehensive due diligence. Verify title, ownership, encumbrances, planning approvals, survey records, development documentation and any outstanding liabilities.

Fourth, select the appropriate ownership structure. Evaluate direct personal ownership against a family-owned company, trust or another legally permissible arrangement.

Fifth, assess immigration requirements. Determine whether the proposed residence or activities require a Class K, Class N, Class D, Class G or another immigration permit.

Sixth, consider tax and succession planning. Assess acquisition taxes, ongoing tax liabilities, inheritance arrangements, cross-border obligations and the potential consequences of future transfers.

Finally, document and complete the transaction. Ensure that the sale agreement provides appropriate protections, payment arrangements, completion obligations, remedies and procedures for registration.

HOW WE CAN ASSIST

CM Advocates LLP provides integrated legal advisory services to foreign investors, expatriates, international families, retirees, digital nomads and businesses seeking to acquire property, establish residence or invest in Kenya.

Our multidisciplinary teams advise throughout the property investment lifecycle, from initial legal structuring and acquisition to immigration,

financing, asset management, succession and eventual disposal.

Our services include:

- Real Estate Acquisition and Conveyancing: title due diligence, sale agreements, leasehold transactions, sectional properties, off-plan developments, registration and property investment structuring.
- Immigration and Global Mobility: Class K, Class N, Class D, Class G and other applicable permits, permanent residence, citizenship and immigration compliance.
- Family Wealth and Succession Planning: family trusts, family investment companies, estate planning, wealth preservation and intergenerational succession.
- Corporate and Investment Structuring: company incorporation, shareholder arrangements, governance, beneficial ownership compliance and investment transactions.
- Tax and International Advisory: stamp duty, capital gains tax, rental income taxation, company and trust taxation and cross-border tax planning.
- Property Dispute Resolution: title disputes, contractual claims, developer disputes, land-related litigation and enforcement of property rights.

Through a coordinated approach, we assist clients in aligning property ownership with immigration eligibility, investment objectives, family arrangements and long-term wealth planning.

Contact Us:

For legal assistance concerning buying property in Kenya as a foreigner, foreign land ownership, residential and commercial property transactions, immigration permits, permanent residence, citizenship, family trusts, investment companies, succession planning or tax structuring, please contact:

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