CM ADVOCATES LLP



SETTING UP A BUSINESS IN KENYA AS A FOREIGNER: A COMPREHENSIVE GUIDE TO MARKET ENTRY, INVESTMENT AND COMPLIANCE

A CM Advocates LLP Guide for Foreign Investors, International Businesses and Expatriates

Kenya is an important commercial gateway to East Africa, offering access to a regional market, a developed professional-services sector, a skilled workforce and opportunities across financial services, technology, manufacturing, logistics, agriculture, healthcare, real estate, energy and consumer markets. For foreign investors, however, a successful market entry requires more than incorporating a company. It calls for a carefully structured investment, appropriate immigration permissions, tax planning, sector-specific approvals and continuing regulatory compliance.

CM Advocates LLP advises foreign investors, multinational businesses, entrepreneurs, expatriates and international families on establishing, operating and expanding their business interests in Kenya. Through our Business Establishment and Compliance Advisory (BECA) Unit, we provide coordinated legal support from initial market-entry planning to incorporation, licensing, immigration, tax coordination, corporate governance and ongoing compliance.

1. WHY INVEST AND DO BUSINESS IN KENYA?

Kenya offers foreign investors access to a substantial domestic market and a strategic base for regional operations. Nairobi is a major centre for finance, technology, professional services and regional headquarters, while Mombasa provides

an important gateway for maritime trade, logistics and supply chains. Other regions offer opportunities in agriculture, tourism, manufacturing, energy, real estate and the blue economy.

The appropriate investment structure depends on the proposed business activity, target customers, funding arrangements, intended duration of operations, regulatory environment and plans for regional expansion. Investors should assess these considerations before committing capital or entering into binding commercial arrangements.

2. CHOOSING THE RIGHT BUSINESS STRUCTURE

Foreign investors can consider several legal structures, depending on their commercial objectives.

A. Kenyan-incorporated subsidiary

A foreign investor may establish a Kenyan company, commonly a private company limited by shares, to conduct business locally. The subsidiary has a legal identity separate from its shareholders and can generally enter into contracts, employ staff, open bank accounts and hold assets in its own name, subject to applicable law.

This structure may be suitable for businesses seeking a long-term Kenyan presence, local operations, employees, commercial contracts or investment from multiple shareholders.

B. Branch of a foreign company

An overseas company may register as a foreign company in Kenya where it intends to establish a place of business locally and meets the applicable registration requirements.

A branch is not a separate legal person in the same way as a Kenyan-incorporated subsidiary. Its obligations and liabilities may therefore have direct implications for the overseas company. The branch structure should be evaluated alongside local tax, regulatory, contracting and liability considerations.

C. Joint ventures and strategic partnerships

A foreign investor may enter into a joint venture with a Kenyan or other investor. Depending on the commercial arrangement, the venture may operate through a company, limited liability partnership or contractual arrangement.

A properly drafted shareholders' agreement or joint venture agreement should address capital contributions, management, reserved matters, distributions, transfer restrictions, deadlock resolution, exit rights, confidentiality and dispute resolution. Sector-specific local participation requirements, where applicable, must be assessed before the structure is selected.

D. Limited liability partnerships and other structures

A limited liability partnership or another permitted structure may be appropriate for professional services, investment activities or particular collaborative ventures, subject to applicable professional and sector-specific requirements. The choice should take account of liability, governance, taxation, licensing and the legal nature of the proposed activities.

Representative or liaison offices should not be assumed to be exempt from registration or licensing requirements. Their permissible activities must be confirmed under the relevant Kenyan legal and regulatory framework.

3. COMPANY INCORPORATION AND THE LEGAL FRAMEWORK

Company incorporation in Kenya is principally governed by the Companies Act, 2015, together with applicable regulations and other relevant legislation. The process generally involves selecting and approving a company name, identifying shareholders and directors, preparing

the prescribed registration information, disclosing beneficial ownership details where required, and obtaining the relevant incorporation documents.

Investors should also consider:

- The proposed ownership and shareholding structure.
- Directors' responsibilities and corporate governance arrangements.
- Registered office and company records requirements.
- Beneficial ownership disclosures and updates.
- Shareholder agreements and restrictions on share transfers.
- Intellectual property ownership and protection.
- Banking, capitalisation and contractual arrangements.

Kenya and the United Kingdom share important common-law and company-law influences. Nevertheless, the Kenyan Companies Act, 2015 is not identical to the UK Companies Act, 2006. A company incorporated in Kenya is subject to Kenyan law and applicable Kenyan regulatory requirements, even where its parent company or investors are based abroad.

Incorporation is only the beginning. A certificate of incorporation does not, by itself, authorise a business to undertake every regulated activity, employ foreign nationals or qualify for a tax incentive.

4. FOREIGN OWNERSHIP AND INVESTMENT RESTRICTIONS

Foreign ownership is permitted in many Kenyan business sectors, and wholly foreign-owned companies can generally be established where no specific restriction applies. However, investors should not assume that every activity is open to unrestricted foreign ownership.

Restrictions, local participation requirements or additional approvals may apply in particular sectors, including certain financial services, telecommunications, insurance, professional services, mining, security-related activities and other regulated industries. Separate rules may apply to landholding and other strategic assets.

Before committing funds, a foreign investor should obtain advice on the proposed business activity, ownership structure, licensing requirements and any applicable investment conditions.

5. INVESTMENT CERTIFICATES AND INVESTMENT FACILITATION

Kenya Investment Authority (KenInvest) may assist eligible investors with investment facilitation and the applicable investment-certificate process.

An investment certificate may provide access to particular facilitation arrangements or benefits where the statutory requirements are met. Eligibility, investment thresholds, documentation and the scope of any benefits should be confirmed against the law and administrative requirements in force at the time of application.

An investment certificate should not be confused with company incorporation, a sector-specific licence, a work permit or automatic entitlement to tax incentives. Investors should verify each requirement separately.

6. SPECIAL ECONOMIC ZONES AND EXPORT PROCESSING ZONES

Kenya has frameworks intended to encourage investment and particular forms of economic activity, including Special Economic Zones (SEZs) and Export Processing Zones (EPZs).

These arrangements may be relevant to manufacturing, export-oriented businesses,

logistics, processing, services and other qualifying activities. Depending on the applicable framework and the investor's approved activities, an eligible enterprise may access specified fiscal, customs, administrative or operational benefits.

However, SEZ and EPZ incentives are conditional, not automatic. The relevant zone, licensing status, business activities, applicable tax legislation and current regulatory requirements must be examined before an investor relies on a particular benefit. Investors should also consider the commercial implications of operating within or outside a designated zone.

CM Advocates LLP can assist with assessing the suitability of these frameworks, the applicable establishment and licensing requirements, and the legal considerations relevant to an investment decision.

7. IMMIGRATION, WORK PERMITS AND RELOCATING TO KENYA

Establishing a Kenyan business does not automatically grant a foreign investor or employee the right to live or work in Kenya. Immigration planning should therefore be undertaken alongside company formation and operational planning.

The appropriate permission depends on the individual's nationality, role, investment, qualifications, proposed activities and the applicable immigration rules.

Relevant categories may include:

- **Class G permit:** Relevant to qualifying investors engaged in trade, business or consultancy, subject to the applicable eligibility criteria and documentation.
- **Class D permit:** Relevant to qualifying foreign employees engaged by an employer in Kenya, subject to the applicable requirements.
- **Class K permit:** A distinct immigration category with its own eligibility criteria; it should not be treated as a general business or employment permit.
- **Permanent residence:** Available only to applicants who meet the applicable statutory criteria.
- **Dependant passes:** May facilitate residence for eligible dependants but do not, by themselves, confer an unrestricted right to work.

Applications may require evidence of investment, business activities, professional qualifications, employment arrangements, financial capacity or other supporting documents. Requirements and administrative practice should be verified at the time of application.

For businesses relocating directors, executives, technical specialists or other employees, early immigration planning can help minimise disruption to the commencement of operations. Families relocating to Kenya should also consider dependant arrangements, residence planning and any separate permissions required for employment or business activity.

CM Advocates LLP advises on immigration strategy, work and business permits, permanent residence and related matters through its Immigration and Global Mobility practice.

8. STRUCTURING FAMILY BUSINESSES AND PRIVATE INVESTMENTS

For international entrepreneurs and family-owned enterprises, establishing a Kenyan business may form part of a broader wealth, succession and investment strategy.

Depending on the circumstances, investors may consider a holding company, operating company, family investment company, limited liability partnership, shareholders' agreement or other

lawful ownership arrangement. The appropriate structure should reflect the family's objectives, the nature and location of its assets, management arrangements, succession plans and relevant tax obligations.

For families with assets or beneficiaries in more than one country, additional issues may include:

- Cross-border ownership and beneficial ownership reporting.
- Tax residence and the tax treatment of dividends, interest, gains and other distributions.
- Succession planning and continuity of family-owned enterprises.
- Governance arrangements and dispute prevention.
- Trusts and other estate-planning structures.
- Immigration and relocation of family members.
- Coordination with legal, tax and financial advisers in other jurisdictions.

A trust or holding structure does not automatically eliminate tax, protect every asset from claims or remove reporting obligations. Its effectiveness depends on its legal design, administration, purpose, applicable law and the facts of the particular arrangement.

CM Advocates LLP assists entrepreneurs and international families with business structuring and coordinates relevant corporate, private-client, estate-planning, tax and immigration considerations.

9. TAX REGISTRATION AND CONTINUING TAX COMPLIANCE

A business operating in Kenya must identify and comply with the tax obligations applicable to its activities and structure. These may include corporate income tax, value added tax (VAT), withholding tax, Pay As You Earn (PAYE), and other statutory obligations where applicable.

Foreign-owned businesses should consider additional matters, including:

- Tax registration and filing obligations.
- The tax treatment of cross-border payments.
- Transfer pricing requirements for relevant related-party transactions.
- Double taxation agreements, where applicable.
- Permanent establishment exposure for overseas businesses.
- Tax treatment of management fees, royalties, interest and dividends.
- Customs and import-related obligations.
- Record keeping, invoicing and statutory reporting.

Tax treatment depends on the relevant legislation, the nature of the transaction and the taxpayer's circumstances. Investors should not assume that a particular ownership structure, investment certificate or zone designation automatically produces a tax exemption.

Appropriate tax and legal advice at the planning stage can help investors identify risks and avoid costly restructuring after operations have commenced.

10. SECTOR-SPECIFIC LICENCES AND LOCAL APPROVALS

Incorporation does not replace the need for licences, permits or approvals applicable to a particular business. Depending on the proposed activity, investors may need authorisation from a national regulator, county government or other competent authority.

Requirements may arise in sectors such as financial services, telecommunications, healthcare, education, construction, manufacturing, transport, tourism, energy, food, environmental management and professional services.

Businesses may also need county business permits, premises-related approvals, environmental approvals, employment-related registrations or other permissions, depending on their activities and location.

A regulatory assessment should be completed before the business begins regulated operations. The required approvals, application timelines and renewal obligations should be incorporated into the investment plan.

11. ACQUIRING OR LEASING PROPERTY IN KENYA

Foreign investors considering offices, factories, warehouses, hospitality premises, agricultural projects or other real estate should examine the applicable landholding rules before acquiring property.

Article 65 of the Constitution of Kenya generally limits non-citizens to holding land on a leasehold tenure not exceeding 99 years. The treatment of a company with foreign shareholding, the classification of the land and the nature of the proposed transaction requires careful legal assessment.

Additional considerations may include title verification, permitted use, zoning, planning approvals, environmental requirements, security interests, stamp duty and other transaction costs.

Investors should undertake legal due diligence before entering into a property transaction or making substantial payments. Where land is integral to a proposed investment, property structuring should be coordinated with company, tax and regulatory advice.

12. BANKING, CAPITALISATION AND CROSS-BORDER TRANSACTIONS

Opening a Kenyan business bank account and establishing appropriate funding arrangements are important parts of market entry. Financial institutions may require incorporation documents, identification and due diligence information for directors and beneficial owners, evidence of business activities, tax information and details of the source of funds.

Investors should plan how capital will be introduced, how operating expenses will be funded and how permitted cross-border payments will be documented. Loans, equity contributions, intercompany balances, dividends, management fees and other related-party transactions should be structured and recorded appropriately.

The legal and tax treatment of funding arrangements should be reviewed before funds are transferred, particularly where multiple jurisdictions, related entities or foreign currency transactions are involved.

13. EMPLOYMENT, COMMERCIAL CONTRACTS AND CORPORATE GOVERNANCE

A foreign-owned business must establish appropriate arrangements for hiring employees, engaging consultants, protecting confidential information and entering into commercial contracts.

Depending on the business, these arrangements may include employment contracts, workplace policies, consultancy agreements, supplier and distribution agreements, leases, service-level agreements, confidentiality provisions, intellectual property assignments and data protection documentation.

Directors and officers must also understand their statutory and fiduciary duties. Companies should maintain appropriate records, make required filings, manage conflicts of interest and comply with applicable employment, data protection and other regulatory requirements.

Sound corporate governance is not merely a compliance exercise. It can strengthen accountability, support investment and financing, reduce disputes and provide a more reliable platform for growth.

14. ONGOING CORPORATE AND REGULATORY COMPLIANCE

A Kenyan business should maintain a compliance calendar covering its recurring legal and regulatory obligations. Depending on its structure and activities, these may include:

- Annual returns and other Companies Registry filings.
- Beneficial ownership updates and prescribed disclosures.
- Tax returns, payments and statutory records.
- Business permits and sector-specific licence renewals.
- Employment and payroll compliance.
- Data protection and privacy obligations.
- Contractual, corporate and financial record keeping.
- Board and shareholder resolutions.
- Regulatory reporting and other sector-specific requirements.

Compliance obligations vary by business type, sector and circumstances. A structured compliance review can help identify deadlines, allocate responsibility and reduce the risk of penalties, operational interruptions or reputational damage.

15. HOW CM ADVOCATES LLP CAN ASSIST

CM Advocates LLP provides integrated legal support to foreign investors, international businesses, entrepreneurs and family-owned enterprises establishing or expanding their presence in Kenya.

Through our **Business Establishment and Compliance Advisory (BECA)** Unit, we can assist with:

1. **Market-entry planning:** Assessing suitable structures, ownership arrangements and legal considerations before investment.
2. **Company incorporation and registration:** Advising on and coordinating incorporation, foreign-company registration and related corporate documentation.
3. **Investment facilitation:** Advising on relevant investment-certificate processes and potential SEZ or EPZ frameworks.
4. **Licensing and regulatory compliance:** Identifying applicable approvals, permits and sector-specific requirements.
5. **Immigration and global mobility:** Advising on qualifying business and work permits, residence arrangements and relocation-related legal requirements.
6. **Tax and corporate structuring:** Coordinating relevant corporate and tax considerations, including cross-border transactions and related-party arrangements.
7. **Commercial contracts and employment:** Drafting and reviewing business agreements, employment documentation and operational policies.
8. **Real estate and investment transactions:** Conducting legal due diligence and advising on property acquisition, leasing and related transactions.
9. **Family business and private-client matters:** Supporting family-owned enterprises with governance, succession and appropriate wealth-structuring considerations.
10. **Ongoing legal support:** Helping businesses manage recurring corporate, contractual and regulatory obligations as they grow.

Our approach is to provide practical, commercially informed legal advice tailored to the

investor's business model, ownership structure, risk profile and long-term objectives.

16. START YOUR BUSINESS IN KENYA WITH THE RIGHT LEGAL ADVICE

Setting up a business in Kenya as a foreigner can offer significant commercial opportunities. The key is to select the appropriate structure, confirm foreign ownership and licensing requirements, plan immigration and tax matters early, and establish a sustainable compliance framework.

Whether you are establishing a Kenyan subsidiary, registering a foreign company, entering a joint venture, relocating executives, investing in property or structuring a family-owned enterprise, early legal planning can help you make informed decisions and avoid preventable delays.

Contact our Practice Unit

For advice on establishing or expanding your business in Kenya, contact our

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This guide provides general information and is not a substitute for legal, tax or immigration advice on a specific transaction. Applicable laws, regulatory requirements, administrative practice and investment incentives may change. Advice should be obtained based on the investor's circumstances and the law in force at the relevant time.

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