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# DOING BUSINESS IN KENYA





# COMPANY FORMATION IN KENYA

## MAIN FORMS OF COMPANY/BUSINESS IN KENYA

The principal types of business enterprises in Kenya are:

- Registered Companies (Private and Public)
- Branch offices of companies registered outside Kenya
- Partnerships
- Sole Proprietorships
- Societies

A private company requires a minimum of 2 shareholders.

A public company requires a minimum of 50 shareholders.

Foreign corporations (those companies not incorporated in Kenya) can conduct business in Kenya as a company or a branch.

## SPECIFIC TAX CONCERNS RELATED TO ESTABLISHING A COMPANY

The Kenya Revenue Authority (KRA) oversees the country's taxation system, which covers income tax, both individual and corporate, a value-added tax (VAT), Customs and Excise Duty. The KRA is responsible for the assessment and collection of these taxes and has the authority to review entities to ensure that the correct amount of tax is being paid.

All corporate entities whether resident or foreign must register for a personal identification number (PIN) with the KRA. They are also required to register for applicable tax obligations, which include individual income tax aka pay as you earn (PAYE) for employees, VAT and excise duty.

## LEGAL ISSUES RELATED TO ESTABLISHING A COMPANY

All corporate entities are also required to register with the National Hospital Insurance Fund, which is mandated to collect contributions as well as run a national health cover, and the National Social Security Fund, which is the body mandated to collect and administer pension contributions. In addition, they are required to register with the National Industrial Training Authority.

## CULTURAL CONCERNS RELATED TO ESTABLISHING A COMPANY

The Republic of Kenya, also known as Kenya is located on the equator, on the east coast of the continent of Africa, bordering the Indian Ocean.

The Official language of Kenya are English, the National language is Swahili; there are 40+ indigenous peoples with their own languages.

The Currency of Kenya is the Kenyan shilling (KES).



# PERMANENT ESTABLISHMENT IN KENYA: BRANCH OR SUBSIDIARY?

## DEFINITION OF A PERMANENT ESTABLISHMENT

Per the Income Tax Act Cap. 470, established on January 1, 1974:

A permanent establishment in relation to a person means a fixed place of business in which that person carries on business and for the purpose of this definition, a building site or a construction or assembly project which has existed for six months or more.

[www.revenue.go.ke/incometax/pdf/incometaxact.pdf](http://www.revenue.go.ke/incometax/pdf/incometaxact.pdf)

## DEFINITION AND MAIN DIFFERENCES BETWEEN A BRANCH AND A SUBSIDIARY

A branch office is considered an *extension of its parent corporation*. In Kenya, a branch must have the same name and engage in the same activities as its parent corporation. Liabilities extend to its parent corporation. A branch is taxed as a non-resident entity and cannot claim any local tax benefits. Its parent corporation is taxed based upon income that includes the branch office. Any losses at the branch office would appear on the parent corporation's income statement.

A subsidiary is owned by its parent corporation but is itself a *separate legal entity*. Its name and activities can be different from its parent corporation. Liabilities do not extend to its parent corporation. In Kenya, it is taxed on its income alone, as a resident entity, and as such, can claim any local tax benefits.

## TAX AND ACCOUNTING OBLIGATIONS

### CORPORATE AND EMPLOYER TAX OBLIGATIONS

#### **PAYE: Pay as You Earn**

This tax obligation applies to individuals and all income earned from employment.

Employers are not responsible for payment of PAYE tax for the casual employee who has been employed for a period of less than one month.

All entities and individuals are required to register for and obtain a PIN, which is a unique, computer generated number that identifies person/company.

#### **Tax Residency for a Business**

Corporate tax residence is determined by whether or not a company is incorporated under the laws of Kenya, if management and control of the company is exercised in Kenya (particularly during the current year), and whether the company has been declared by the Minister, by notice in the Kenya Gazette, to be resident in Kenya for any year of income.



## Corporate Taxes

Kenyan income tax is payable at the corporate rate by companies and also by unincorporated organizations and associations (excluding partnerships) that have taxable income as defined by the Income Tax Act. Exemptions are granted in the case of religious, charitable, and educational trusts, pension trusts, and some other bodies.

## Tax Exemption

An organization of good public character and established solely for the advancement of education or religion, or that provides for the alleviation of distress or relief of poverty to the public or is of benefit to Kenyan residents may apply for tax exemption status.

## REGISTRATION FORMALITIES

The Companies Act governs the set up and operation of corporate entities.

For a foreign company wishing to establish a corporation in the Kenya, there are a number of documents that must be submitted and processed through the Kenyan Registrar of Companies:

- A certified copy of the Charter, Statutes or Memorandum and Articles of Association of the Company, or other related instruments defining the constitution of the company
- A list of the directors and secretary of the company, giving full names, addresses, nationalities, and occupations of its directors and company secretary (Form 208 - Declaration of Compliance)
- A statement of all existing mortgages and charges entered into by the company affecting properties in Kenya
- Name and local address of the person or persons living in Kenya who are authorized to accept, on behalf of the company, service of notices required to be served on the company
- Full address of the registered or principal office of the company in its home country
- Full address of the company's registered or principal office
- Audited Financial Statements

The name of the business must be registered; the company must register with the Tax Department for a PIN or VAT number; the pertinent documents must be stamped/notarized, and a fee paid for the stamp duty tax at any commercial bank, and the business must have applied for and received a permit to conduct business.

After review and subsequent approval, the Registrar of Companies will issue a "Certificate of Compliance," which is required for the business to then obtain the proper trading licenses.



# HOW TO HIRE MY FIRST EMPLOYEE IN KENYA

## MAIN LEGAL STEPS TO FOLLOW TO HIRE A FIRST EMPLOYEE

An employer in Kenya is required to obtain the following documents from an employee upon/immediately prior to employment:

1. A Kenyan or alien Identity Card (ID). This proves citizenship. For aliens, a copy of valid work permit will be required.
2. A copy of PIN Certificate-proof of registration with Kenya Revenue Authority (KRA). This will enable the employer to deduct from the employee's salary employment tax otherwise known as Pay As You Earn (PAYE) and remit the same to KRA on monthly basis.
3. A copy of National Social Security Fund (NSSF) registration card. Is a statutory requirement for employees to register with the fund. Employers are under obligation to deduct and remit contribution thereon.
4. A copy of National Hospital Insurance Fund (NHIF) registration card. Is a statutory requirement for employees to register with the fund. Employers are under obligation to deduct and remit contribution thereon.

In addition, an employer must register with National Industrial Training Authority (NITA). This enables the employer to contribute to the fund. The fund is used to refund the employer or his employees on expenses incurred on industrial training.

The employer is also required to take Employers' Liability and Work Injury Benefits insurance cover for his employees.

## DESIGN AND CONTENTS OF AN EMPLOYMENT CONTRACT

It is legally required to have a written employment contract in place in Kenya, in the local language, which spells out the terms of the employee's employment (compensation, benefits, termination requirements, etc.) A formal offer letter and employment contract must state the salary and any compensation amounts in Kenyan shillings rather than a foreign currency. Fixed and indefinite term employment contracts are permitted.

The work week in Kenya is generally 40-45 hours. Kenya celebrates 10 national holidays per year, and, with regard to vacation time, employees are entitled to 1.75 days of paid annual leave per month worked, or 21 days over the course of 12 months.

### OTHER BENEFITS

#### **Sick Leave**

Employees are generally entitled to 14 days of paid sick leave per year, with a medical certificate provided. The first 7 days are paid at 100%, the remaining days are paid at 50%.

#### **Maternity/Paternity Leave**

Both new mothers and fathers are entitled to paid time off (maternity/paternity leave). Female employees are generally entitled to 3 months of paid maternity leave. Employees must give 7 days' written notice before going on leave and may be required to present a medical certificate. Fathers are entitled to two weeks of paid paternity leave.



### **Termination/Severance**

Probationary terms of up to 6 months are generally permitted and may be renewed up to 12 months. Employees terminated during the probationary period should be given at least 7 days' notice.

Employees who are paid on a monthly or longer basis must be given at least 28 days' notice of termination.

Severance pay is only mandatory in cases of termination for redundancy. In general, employees are owed 15 days' wages for each year of service.

### **Taxes/Deductions**

Employers and employees each contribute a percentage of wages to social security. The rate is set to increase from 5% to 6%, pending a court ruling.

Employees must also contribute 1% of wages to the National Hospital Insurance Fund to fund Kenya's public/private healthcare system.

[http://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS\\_158910/lang--en/index.htm](http://www.ilo.org/ifpdial/information-resources/national-labour-law-profiles/WCMS_158910/lang--en/index.htm)

## **CAN SOMEBODY DO BUSINESS FOR ME AND NOT BE AN EMPLOYEE?**

Under the Kenyan Employment Act, employers may hire people on the following forms in Kenya:

1. Employment on permanent basis
2. Employments on contract basis
3. Employment on casual basis
4. Subcontracting/outsourcing an independent consultant

<http://www.kenyanbusinessreview.com/487/kenya-business-visa/>