



REGISTRATION OF A FOREIGN OWNED ENTITY IN KENYA: THROUGH A SUBSIDIARY

INTRODUCTION

A foreigner, be it an individual or a multi-national, may set-up shop in Kenya and do business through a locally registered company. This company may be owned by the foreign entity as a subsidiary, or it may be owned by the shareholders of the foreign entity in their individual capacities (becoming an associate company), or it can be registered as a branch. Where the entity seeking to set up in Kenya is a foreign company, the most popular way of registering is through a branch or through a foreign owned subsidiary. To read more on the former, please refer to our article [here](#).

In this article, we shall provide a step-by-step guide on how to register a subsidiary of a foreign company in Kenya.

CONSIDERATIONS

Before setting up a foreign entity in Kenya, a promoter should have the following consideration in mind:

- a) Although the general rule is that there are no restrictions on companies being fully foreign owned, there are some industries which have restrictions on ownership by foreigners. Some of these sectors include:

- i) **Insurance** – Insurance Act requires that not less than one third of the paid-out capital of an insurance company shall be owned by citizens of the East Africa Community Partner States.
 - ii) **Capital Markets** – A company offering securities to the public or listed in the Nairobi Securities Exchange is required to reserve at least 25% of its ordinary shares for investment by local investors from the East Africa Community Partner States.
 - iii) **Mining** – A mining company may only be granted mineral rights relating to small scale operations if no less than sixty percent of the shareholding is held by citizens of Kenya.
 - iv) **Engineering** – A person may register an engineering consulting firm if, among other requirements, at least fifty one percent of the shares in the firm are held by Kenyan citizens
- b) Immigration Permits. Foreign natural directors are required to first obtain permits from the immigration department before they can be allowed to work in Kenya.
 - c) Land ownership. The Constitution defines a Kenyan company as a company which is fully owned by Kenyan citizens. This definition is useful in defining who can own free-hold and agricultural land in Kenya. A foreign- owned private company (a company that is not fully owned by Kenyan citizens) may only hold property on the basis of a leasehold tenure for a period not exceeding ninety-nine years. A foreign company is also restricted from owning agricultural land. The Land Control Act (Cap 302) provides that the Land Control Board shall refuse consent in any dealing regarding an agricultural land in any case in which the land or share is to be disposed of by way of sale, transfer, lease, exchange or partition to a person who is not a citizen of Kenya, or a private company or co-operative society all of whose members are citizens of Kenya, or group representatives incorporated under the Land (Group Representatives) Act (Cap. 287), or a state corporation within the meaning of the State Corporations Act (Cap. 446).

1. What is a subsidiary?

The Companies Act No. 17 of 2017 (“Companies Act”) defines a subsidiary as a company which has another company as its holding company. A holding company is defined as a company that controls the composition of another company's board of directors, controls more than half of the voting rights in that other company, holds more than half of that other company's issued share capital, or is a holding company of a company that is that other company's holding company.

A subsidiary of a foreign company therefore means a company incorporated in Kenya which is owned or controlled by a foreign company.

2. Key features of a subsidiary of a foreign company

- a) A subsidiary is a separate legal entity from its parent company, notwithstanding that it is controlled by the parent company.
- b) As a general principle, the parent company is not held liable for the acts of its subsidiary.
- c) A subsidiary is considered a local company and is required to comply with local requirements similar to those required of companies owned by Kenyan citizens.
- d) A subsidiary is considered a resident company for the purpose of taxation. It is therefore required to pay a corporation tax of 30% on its taxable profit.
- e) There is no requirement to have a Kenyan shareholder or director. The company must however have at least one director who is a natural person.

3. Step-by-Step Registration Process

- a) Name search and reservation. The first step involves searching and reserving a company name with the Registrar of Companies. This is done online through the e-Citizen portal and may be done simultaneously with the application for registration of the company.
- b) Preparation of documents. The key documents required include Particulars of the directors and shareholders; Memorandum of Association; the Notice of residential address of the directors; the Register of Beneficial Owners and a Statement of Nominal Capital. The subsidiary can incorporate the culture of the parent company by incorporating its articles of association and bylaws with necessary modification subject to compliance with the provisions of the Companies Act.
- c) Application for registration. To complete the process of application for registration, the duly executed forms are submitted to the Companies Registry via the e-Citizen platform and application fees paid for. If all the documents are in order, the company will be registered within approximately three to five days. Once registered, the company will be issued with a certificate of incorporation
- d) Tax registration. Once the registration is complete, the subsidiary must register as taxpayer and obtain a Personal Identification Number (PIN) from the Kenya Revenue Authority (KRA) for tax purposes. The directors of the company will be required to facilitate issuance of the company's PIN; therefore, they must have their own PINs. Without the PIN, it is practically impossible for the company to operate. A company's PIN is required for example when

opening of a bank account, conducting employment, conducting the day-to-day sales and generally doing business.

- e) Local compliance. The subsidiary shall need to comply with local laws such as acquiring necessary permits and licenses relevant to the intended line of business. This may involve liaising with the county government offices and other regulatory bodies.
- f) Post-Registration Compliance. Companies in Kenya must adhere to annual requirements such as filing annual returns and tax requirements. It is mandatory for public companies; and private companies with paid up capital of five million shillings or more to have company secretaries. While it is not mandatory for private companies with paid up capital of less than five million shillings to have company secretaries, we recommend that a foreign owned company appoint one to ensure access to the company's Business Registration Services (BRS) portal to maintain the company and make requisite filings.

CONCLUSION

Registering a subsidiary in Kenya, while straightforward, does require adherence to a series of statutory procedures. The effort in adhering to the registration process is often rewarded with the opportunity to operate within one of Africa's most vibrant economies. At CM Advocates, we have a vibrant team of business lawyers who can help you not only register the company but also assist in the setting up processes. This we do through the provision of registered office services, company secretarial services, business licensing services, tax advisory as well as employment and labour law advisory among other services. Additionally, our Immigration team will assist any foreign directors or employees procure the relevant permits or passes as the case may be.

If you would like to consult on this article or any other legal issue pertaining to registration of a subsidiary of a foreign company in Kenya, or any other matter, you may contact the contributors on the emails below or the commercial team through commercial@cmadvocates.com. Do also visit our website <https://cmadvocates.com/en> for more information about us and our services.



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