

COMPANY STRIKE-OFF RISKS IN KENYA:
What Lenders, Family Offices & Multinationals Need to Know

In April 2025, Kenya's Registrar of Companies intensified enforcement against non-compliant entities by issuing notices warning that failure to file annual returns or update Beneficial Ownership (BO) registers could lead to strike-off from the register under Section 894 of the Companies Act. This section empowers the Registrar to strike off companies reasonably believed to be not carrying on business or in operation.

Additionally, Section 93A mandates all companies to maintain a register of beneficial owners and lodge the same with the Registrar. Non-compliance attracts hefty penalties, including:

a) a fine of Kes. 500,000/= for failure to keep a BO register;
b) a further daily penalty not exceeding Kes. 50,000 for each further non-compliance; and
c) risk of company dissolution and asset forfeiture under the legal doctrine of bona vacantia (ownerless property).

These compliance obligations have far-reaching implications for:

a) Banks, DFIs, and lending institutions with security interests in Kenyan companies;
b) Legacy family businesses with generational assets held in dormant or disorganised entities;
c) Multinational corporations operating in Kenya through local subsidiaries, joint ventures, or holding structures.

SPECIFIC RISK EXPOSURE FOR FINANCIAL INSTITUTIONS

Financial sector players including banks, microfinance institutions, private equity funds, and DFIs face direct exposure when borrower companies fall out of compliance. These exposures include:

a) Unenforceable Securities. Charges over land, shares, or assets may become unenforceable post-strike-off unless the company is restored.
b) Legal Limbo. A struck-off company has no legal standing to be sued or to perform contracts unless formally reinstated.
c) Due Diligence Breaches. Unfiled BO registers may compromise AML/CFT compliance, violating CBK Prudential Guidelines and international standards.
d) Portfolio Integrity Risks. A large number of non-compliant borrowers can undermine credit risk profiling and audit ratings.

We recommend proactive compliance reviews across all borrower companies. Where gaps exist, initiate corrective filings and, where necessary, apply for restoration orders from the High Court.

SPECIFIC RISKS FOR LEGACY FAMILY-OWNED COMPANIES

There are Kenyan families that use private companies to hold ancestral land, investment portfolios, or serve as vehicles for trust or estate management. These companies face heightened strike-off risks due to:

a) Deceased Directors/Shareholders. Company records cannot be updated or BO registers filed in the absence of active signatories.
b) Probate Delays. Without grants of probate or letters of administration, assets cannot be transmitted or board resolutions passed.
c) Loss of Generational Wealth. Strike-off can lead to permanent loss of land or shares, especially if unregistered or improperly transferred.
d) BRS System Errors. Legacy company records on the Business Registration Service (BRS) platform may contain outdated or unverified information, complicating succession or restructuring.

We support families with succession planning, probate litigation, and corporate governance restructuring to ensure continuity, compliance, and protection of family assets.

Specific Risks for Multinational Compliance & Legal Teams

Multinational companies with Kenyan entities face multi-jurisdictional regulatory risks. These include:

a) Group Liability Exposure. Non-compliance may trigger cross-border audits, affect consolidated group reporting or breach global SOX or ESG frameworks.
b) Regulatory Sanctions. Fines and reputational damage from both Kenyan and foreign regulators for failing to update BO records or tax filings.
c) Asset Forfeiture. Key assets such as land, leases, licenses, or IP held by struck-off entities are liable to be seized as bona vacantia.

We work with group legal counsel, compliance officers, and tax teams to coordinate restoration filings, manage BO compliance, and ensure smooth regulatory harmonisation across jurisdictions.

DORMANT COMPANIES: TAX & LEGAL PITFALLS

Under the Tax Procedures Act, dormant or inactive companies are still legally obligated to:

a) Apply for voluntary strike-off with the Registrar of Companies, and
b) Apply for PIN deregistration with the Kenya Revenue Authority (KRA)

Failure to do so exposes the company (and potentially directors) to:
a) Penalties and default interest,
b) Additional assessments, and
c) KRA enforcement, even where the company is not operational.

This is especially critical for firms managing legacy SPVs, shelf companies, or entities formed for completed projects.

RECOMMENDED PROACTIVE MITIGATION MEASURES FOR ALL STAKEHOLDERS

We strongly advise immediate action to pre-empt regulatory penalties or asset loss. Our recommended steps include:

a) Portfolio & Compliance Audit. Review all company records and identify at-risk entities.
b) Annual Returns & BO Register Updates. File all outstanding records with the Registrar of Companies.
c) KRA Deregistration. For dormant companies, apply for PIN and tax deregistration.

d) Succession & Probate Action. Initiate administration proceedings where shareholders or directors are deceased.
e) BRS Record Review. Rectify outdated director/shareholder or address information.
f) Voluntary Liquidation or Strike-Off. For redundant entities, consider orderly wind-up.
g) Company Secretarial Support. Engage qualified professionals to ensure your company remains fully compliant with all statutory and regulatory requirements.

Recommended Partner: Bellmac Consulting LLP
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HOW CM ADVOCATES LLP CAN SUPPORT YOU

Our firm offers integrated legal and compliance solutions to mitigate company strike-off risks. Our service offerings include:

1) Legal audits and compliance reviews
2) High Court applications for company restoration
3) Beneficial Ownership register preparation and filing
4) Shareholder rectification and director verification
5) Succession and probate advisory
6) KRA PIN deregistration and tax clearance
7) Lender-side security enforcement and due diligence
8) Liaison with Registrar of Companies and BRS

REQUEST A CUSTOM COMPLIANCE CHECKLIST

CM Advocates LLP can provide your institution or family office with a tailored compliance checklist covering the following:

a) BO register templates & filing guidance
b) Annual return due dates and penalties
c) Shareholder/director verification procedures
d) Succession risk triggers
e) KRA deregistration workflow
f) Lending security compliance red flags
g) Restoration application templates

To request your checklist, email us at: ***law@cmadvocates.com***

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