

Legal Entities

Business in Kenya can be carried on under the umbrella of several types of legal entity.

These include entities registered under the Companies Act, partnerships (including limited liability partnerships), proprietorships, societies and in rare circumstances, unincorporated associations. Some details with respect to companies in particular are set out below.

The primary corporate legislation is the Companies Act, 2015 (which was brought into full effect on 15th June 2016 and repealed the Companies Act (Chapter 486 of the Laws of Kenya) (the **Repealed Act**).

Corporate insolvency that was hitherto governed by the Repealed Act is now governed by the Insolvency Act, 2015.

Statute	The Companies Act, 2015
Types of companies	<ul style="list-style-type: none"> • Private and public • Limited liability • Sole member companies • Companies limited by guarantee • Branches (foreign companies having a place of business in Kenya)
Shareholding/nationality requirements	<ul style="list-style-type: none"> • Registration of foreign companies to carry out business in Kenya requires at least 30% shareholding held by Kenyans by birth¹. • Restrictions imposed in certain sectors by sector or industry specific legislation e.g. insurance, aviation, agricultural land, telecoms, mining

Please contact any one of our [commercial partners](#) for further details

Capital Markets

The Capital Markets Authority is mandated by The Capital Markets Act, Cap 485A, to regulate capital markets. The Authority approves public offers and listings of securities traded at the Nairobi Securities Exchange (NSE). The NSE market segments for issuing shares are the Main Investments Market Segment (MIMS) and Alternative Investments Market Segment (AIMS). The Fixed Income Securities Market Segment (FISMS) is the market segment for issuing bonds.

In order to be listed, a company must be registered under the Companies Act as a public company. No stamp duty is payable on the share capital or increase in share capital of a company listed on the Nairobi Securities Exchange. With effect from 1st January 2016, capital gains arising from the transfer of shares traded on any securities exchange approved by CMA are not subject to capital gains tax.

¹ This is a controversial provision which come under significant criticism for a number of reasons and on which we have some views.

Key eligibility criteria for listing of shares are as follows:-

Requirement	MIMS	AIMS	FISMS
<i>Incorporation status</i>	Public company limited by shares and registered under the Companies Act	Public company limited by shares and registered under the Companies Act	Body corporate
<i>Size: Share Capital</i>	Minimum authorised issued and fully paid up ordinary share capital of 50 million shillings	Minimum authorised issued and fully paid up ordinary share capital of 20 million shillings	Minimum issued and fully paid up share capital of 50 million shillings
<i>Net assets</i>	At least 100 million shillings	At least 20 million shillings	At least 100 million shillings
<i>Free transferability of shares</i>	Shares to be listed shall be freely transferable and not subject to any restrictions on marketability or any preemptive rights	Shares to be listed shall be freely transferable and not subject to any restrictions on marketability or any preemptive rights	Fixed income securities offered to the public shall be freely transferable and not subject to any restrictions on marketability or any preemptive rights
<i>Dividend policy</i>	Clear future dividend policy	Clear future dividend policy	-

Key eligibility criteria for listing of debt instruments are as follows:-

Requirement	Criteria
<i>Incorporation Status</i>	The issuer to be listed shall be a body corporate.
<i>Size: Share Capital and Net Assets of Issuer</i>	Minimum issued and fully paid up share capital of 50 million shillings and net assets of 100 million shillings before the listing
<i>Listing and transferability of securities</i>	Fixed income securities offered to the public except for commercial papers shall be listed, freely transferable and not subject to any restrictions on marketability or any preemptive rights. Commercial papers are not transferable or to be listed at a securities exchange.
<i>Debt ratios</i>	Total indebtedness including the new issue of fixed income securities shall not exceed 400% of the company's net worth (or gearing ratio of 4:1) as at the latest balance sheet.
<i>Size of the issue</i>	Minimum size of the issue shall be 50 million shillings. Minimum issue lot size shall be: (i) One hundred thousand shillings for corporate bonds and preference shares (ii) One million shillings for commercial paper

For more details please contact any one of our [commercial partners](#)

Mergers & Acquisitions, Competition

Under the Competition Act (Act No. 12 of 2010) a business combination supposes a situation where one or more undertakings directly or indirectly acquire or establish direct or indirect control over the whole or part of the business of another undertaking.

The common structures through which businesses combine include: sale and purchase of shares; acquisition of business divisions of an undertaking; acquisition of an undertaking's assets; acquisition of dominance with respect to controlling interest or voting power in a company; by virtue of a court order or directive; privatisation of state-owned or state-controlled entities; joint ventures; leasing the shares of an undertaking and exchange of shares.

Other relevant legislation includes the Capital Markets Act and the Regulations thereunder (Cap 485A), the Companies Act 2015, the Transfer of Businesses Act (Cap 500), the Consumer Protection Act (Cap 46) and more recently the supranational jurisdiction of the East African Community Competition Act 2006 and the Competition Regulations established by the Common Market for Eastern and Southern Africa (COMESA).

For more information please contact any one of our [commercial partners](#)

Immigration

Under the Kenya Citizenship and Immigration Act 2011, one may become a Kenyan citizen by birth or registration. In order to apply for citizenship by registration one must have been lawfully residing in Kenya for a period of at least 7 years, have been married to a citizen for at least 7 years or must be a child adopted by a Kenyan citizen. Kenya allows dual citizenship under the Act.

Permanent residency may also be applied for which entitles the resident to work and own property in Kenya.

Entry permits are issued to non-Kenyans wishing to engage in employment in Kenya whether in gainful employment or voluntary service. Permits are issued under various classes including: Prospecting & Mining; Agriculture & Animal Husbandry; Prescribed Professions; Employment; Specific Manufacturing; Specific Trade, Business or Consultancy; Approved Religious or Charitable Activities; Ordinary Residents and Refugees.

Passes are issued by the Immigration Department to persons wishing to stay in Kenya temporarily for specific reasons. Categories of passes include Dependant's, Student's, Intern/Researcher, Visitor's, Transit, Prohibited Immigrants and Special Passes for specific short term employment.

For more information please contact [Michael Kontos](#) or [Greg Karungo](#)

Intellectual Property

Intellectual property in Kenya is protected under the Trade Marks Act (Cap 506), the Industrial Property Act (No. 3 of 2001), the Copyright Act (Cap 130) and the Kenya Plant Health Inspectorate Services Act (No. 54 of 2012). Kenya is a member of the World Intellectual Property Organisation (WIPO), the Paris Union and the African Regional Intellectual Property Organisation (ARIPO).

For more information please contact [Greg Karungo](#) or [Rahma Karanja](#)

Restrictions on ownership in various sectors

Subject to a few restrictions on foreign ownership, some of which are outlined below, there are no substantial limitations on joint venture arrangements between foreigners and nationals.

Land

Foreigners may only hold land on the basis of leasehold tenure. Leases granted to non-citizens may not exceed a period of 99 years.

Dealings in agricultural land are controlled in Kenya. Consent must be obtained from the Land Control Board for any transaction involving the sale, transfer, lease, mortgage, exchange, partition or other disposal of or dealing with any agricultural land. Furthermore, consent shall not be given to non-citizens for any such transactions.

Banking

Only banks, financial institutions, the Government of Kenya, foreign governments, state corporations, foreign companies licensed to operate as financial institutions in the relevant country and non-operating holding companies approved by the Central Bank, may hold more than 25% of the share capital of a financial institution.

Insurance

In order to be registered as an insurer, certain minimum capital requirements must be met. At least one-third of the paid up capital must be owned by citizens of a Partner State of the East African Community or a partnership whose partners are all citizens of a Partner State of the East African Community or wholly owned by citizens of a Partner State of the East African Community or the Government of Kenya.

Communications Commission of Kenya

A subscription management services provider cannot enter into contractual arrangements with a foreign multi-channel satellite provider unless the foreign provider has landing rights in Kenya. The subscription management services licensee is required to have minimum local equity participation of 20%.

Aviation

Licenses may only be issued for the provision of aircraft services or the operation of aircraft if the applicant is a Kenyan citizen or if 51% of voting rights are held by a citizen of Kenya or the state or both in the case of a body corporate or partnership.

Engineering

An engineering consultancy firm is required to have at least fifty one per cent (51%) of its shares held by Kenyans.

Private Security

Foreign companies seeking licencing as a corporate private security service provider will require registration as a limited liability company or a partnership in accordance with Kenyan laws and is required to have at least 25% local shareholding.

For more information, please contact any one of our [partners](#).

Tax

Income Tax - Corporations

Resident company	30%
Unincorporated entities with turnover of up to K.Shs. 5 million (excluding rental, management, professional and training income) fees on gross receipts	3%
Permanent establishment of a non-resident company	37.5%
Export Processing Zone enterprises:	
First 10 years	Nil
Next 10 years	25%
<u>Newly listed companies (NLC) following the year of listing:</u>	
Lists at least 20% of its shares	27% for 3 years
Lists at least 30% of its shares	25% for 5 years
Lists at least 40% of its shares	20% for 5 years
Income of a registered Unit Trust, Collective Investment Scheme or a Real Estate Investment Trust	Exempt
Organisations established solely for the purposes of relief of property or distress of the public or for the advancement of religion or education	Exempt. Tax exemption status is renewable every 5 years.

Withholding Tax Rates

<u>Dividends:</u>	5% (exempt, if payee is a company that owns more than 12.5%) 10%
Resident (unless paid to Kenya resident companies that own 12.5% or more of the company)	
Non-resident	

Rent – land and buildings	30%
<u>Sale of property or shares in oil, mining and mineral prospecting companies:</u>	10%
Resident	20%
Non-resident	

Double Taxation Agreements

Kenya has Double Tax Avoidance Treaties in place with the UK, Zambia, Germany, Canada, France, Norway, Sweden, Denmark and India.

Compensating tax is payable if a company pays dividends from untaxed income. Pursuant to the Income Tax Act, Cap 470, a company resident in Kenya should establish and maintain a Dividend Tax Account which is used to determine the amount of compensating tax payable by the company.

A company is said to be thinly capitalised under the Income Tax Act, when the loan to equity ratio exceeds 3:1 and the company is in control of a non-resident person alone or together with four or fewer other persons. Interest expense on the loans is then restricted and foreign exchange loss is deferred.

Stamp Duty

<u>Transfer of immovable property:</u>	
Within a municipality	4%
Outside a municipality	2%
The transfer of immovable property between husband and wife or transfer of family property to a limited liability company wholly owned by the family	Exempt
Transfers between holding and subsidiary companies with shareholding exceeding 90%	Exempt
<u>Lease:</u>	
Between 1 and 3 years	1% of annual rent
Over 3 years	2% of annual rent
increase of share capital	1%
Note: the initial nominal share capital of a company registered or to be registered with limited liability is exempted from <i>ad valorem</i> stamp duty	
Transfer of stock or marketable security (excepted quoted securities, which are exempt)	1%

Registration of debentures, mortgages and charges

0.1%

For more details please contact [Peter Mwangi](#) or [Diana Situma](#)

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