



## PN/07: Foreign companies

This publication is not a legal document. It contains general information intended as a basic guide on the main requirements for registration of and filings by foreign companies carrying on business in Kenya under the Companies Act, 2015 (“Companies Act”). The note is not drafted with unusual or complex transactions in mind. This guide should not be deemed to substitute any need to take specialist professional advice.

This practice note will be relevant to you if:

- you are a foreign company thinking of establishing a place of business in Kenya.
- you are a foreign company registered in Kenya looking for basic guidance on your continuing filing obligations.
- you act as an adviser to a foreign company and are looking for guidance on registration and notification requirements in Kenya

These Practice Notes were prepared by the Joint Liaison Committee (“JLC”) comprised of members from Business Registration Service, Law Society of Kenya – Nairobi Branch and Institute of Certified Secretaries.

## Introduction

This note explains how to register a foreign company that operates and or carries on business in Kenya. It also provides guidance on the notification obligations subsequent to such a registration and outlines the documents you must send to/file with the Companies Registry from time to time. You will find the majority of the relevant laws in the following places:

- Part XXXVII of the Companies Act, 2015 (sections 975 to 995 inclusive)
- the Registrar of Companies (Companies Forms) Rules 2015 (Schedule 2)

It is highly recommended that you seek professional advice on registration and continuing obligations of Foreign Companies.

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This note answers many frequently asked questions and provides information on completing the most commonly used filings relating to this area. The guide is not drafted with unusual or complex transactions in mind. Specialist professional advice may be needed in those circumstances.

## Chapter 1

### Registration

#### 1. Do I have to register my foreign company?

A foreign company is prohibited from carrying on business in Kenya (including offering of any debentures and being a guarantor for any debentures offered in Kenya) unless it is registered in Kenya under the Companies Act, 2015.

According to the Companies Act, 2015 a foreign company shall not conduct business in Kenya unless it is registered in Kenya, or has made an application for registration in Kenya but the application has not been finalized within the stipulated period. Conducting business<sup>1</sup>, in this respect, is defined to include, but not limited to, offering debentures in Kenya or being a guarantor for debentures offered in Kenya. Thus, for a foreign company to offer a debenture in Kenya or even be a guarantor for a debenture offered in Kenya, the foreign company must be registered in Kenya. An application for registration as a foreign company in Kenya under the Companies Act will be lodged with the Registrar of Companies.

Foreign companies must establish and maintain a registered office in Kenya and may only operate and/or carry on business at a place in Kenya that has been notified to the Registrar.

#### 2. How do I register?

Prior to carrying on business in Kenya, you must lodge an application for registration as a foreign company with the Registrar through the E-Citizen platform (<https://www.brs.ecitizen.go.ke/>) or [www.services.brs.go.ke](http://www.services.brs.go.ke) and pay the current registration fee of KES 7,550 or as statutorily advised (the fee includes the name search fee, registration fee, official search fee and the convenience fee). When making an application, the following information and documents are required to be submitted in addition to payment of the fee:

- (a) a completed Form FC 2 (Application for registration as a foreign company)
- (b) a certified/notarized copy of the company's certificate of incorporation or registration in its place of origin (or similar document). If the company's certificate of incorporation and charter is not in English, a certified translation should be provided.
- (c) a certified/notarized copy of the company's constitution, the Charter, Statutes, Articles or other instruments defining the constitution of the company or the

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<sup>1</sup> There will be a need to clarify "conducting of business" in the Regulations.

equivalent, If the company's constitution is not in English, a certified translation should be provided.

- (d) a list containing the names and personal details of the directors and shareholders of the company.
- (e) A Certified/notarized/ memorandum executed by or on behalf of the company stating the powers of any directors who (a) reside in Kenya and (b) are members of a local board of directors.
- (f) If applicable, particulars of each existing charge on the property of the company [by completing Form CR 25 as well as a certified copy of the document creating or evidencing the charge (in circumstances where such charge would have been registrable had the company been formed and registered under the Companies Act, 2015).
- (g) notice of the company's registered office its place of origin or, if it does not have such an office, its principal place of business in its place of origin by providing this information on Form FC 2.
- (h) Names and postal addresses of one or more persons resident in Kenya authorized to accept, on behalf of the company, service of notices required to be served on the company
- (i) Full address of place of business in Kenya.
- (j) Safeguards against the disclosure of a natural person's residential address where this information is required to be provided by the company
- (k) A mechanism for the appointment of a liquidator of a foreign company in respect of the foreign company's property in Kenya
- (l) The recognition that a foreign company may have a local board of directors with specific powers in addition to its foreign directors.

Prescribed documents may be in a language other than English but must be accompanied by a certified translation into English.

### **3. Where do I send the registration documents?**

You can upload your registration documents to the Companies Registry portal on <https://www.brs.ecitizen.go.ke> or [www.services.brs.go.ke](http://www.services.brs.go.ke)

#### **4. Is local shareholding required?**

No.

#### **5. Is a local representative required?**

Yes. A foreign company may not be registered in Kenya unless it has at least one local representative. A local representative may be any person of the company's choice but must be resident in Kenya. A local representative is always required to be present at the registered office of the company in Kenya when the office is open.

The name and particulars of the local representative must be stated in the application for registration form.

Local representatives are responsible for ensuring compliance by the company of all requirements under the Companies Act, 2015 and may be personally liable for any penalty imposed on the company for contravention of or non-compliance with the Act. It is an offense for a foreign company to carry on business in Kenya for more than 21 days without a local representative.

#### **6. What about the name of the company?**

You may register a foreign company using its corporate name (its name under the law of its place of incorporation) or an alternative name under which it proposes to carry on business in Kenya. If an alternative name is registered it is treated for Kenyan legal purposes as a company's corporate name [and must be used on any forms that ask for the 'company name'].

There are controls and restrictions which apply to your choice of company name. These are explained more fully in our practice note *PN/01 - Incorporation of Companies*.

#### **7. When is registration effected?**

Once satisfied with the application, the Registrar will issue and sign a certificate of compliance stating:

- (a) the name of the company and its identifying number
- (b) that the company is registered as a foreign company under the Companies Act, 2015 and the date of such registration
- (c) the date of incorporation of the company in its place of origin

The certificate of compliance is conclusive evidence of compliance with the requirements of registration as a foreign company under the Companies Act, 2015.

## Chapter 2

### Filing requirements for foreign companies

#### 1. Do foreign companies need to file financial statements with the Companies Registry after registration?

Yes. Foreign companies are required to file financial statements with the Companies Registry. The financial statements should be filed together with a statement supported by a statutory declaration verifying that the copies are true copies of the financial statements of the Parent Company.

A KES 500/- fee or as statutorily advised which applies to all registered foreign companies that lodge financial statements at the Companies Registry.

#### 2. What other documents are foreign companies required to file with the Companies Registry?

A foreign company should notify Registrar of any changes to the original information delivered for registration as and when changes occur. This includes changes to:

- (a) its constitution (or any other document lodged in relation to the company)
- (b) its directors or their particulars e.g. addresses
- (c) the extent of the powers of directors in Kenya [to represent the company]
- (d) its local representative(s) or their name/address
- (e) the location in its place of origin of its registered office or, where it has no such registered office, its principal place of business.
- (f) the location of its place of business in Kenya

The above changes must be notified within one month of the occurrence of the relevant change using Form FC7.

A registered foreign company must also deliver forms to the Registry notifying the following (within the period specified):

- (a) the particulars of the place in Kenya it proposes to carry on business (prior to carrying on business at that place using Form FC4)
- (b) the closure of a place of business in Kenya (within 21 days of such closure using form FC8). Note that a company is deemed to have closed a place if it does not carry on business there for a continuous period of 6 months.
- (c) the opening hours of the registered office in Kenya using Form FC6

(d) a change in location of the registered office in Kenya or a change in the opening hours (within 7 days of such change using Form FC5)

**3. Do foreign companies need to register charges?**

Foreign companies may be required to register specified charges with the companies' registry once regulations for this are prescribed. At the moment there are no such regulations.

## Chapter 3

### De-registration and liquidation of foreign companies

#### 1. What happens if a registered foreign company ceases to operate or carry on business in Kenya or is dissolved or de-registered in its country of incorporation?

The company's local representative(s) at the relevant time must:

- (a) within one month of the company ceasing to carry on business in Kenya, notify the Registrar of that fact using Form FC9
- (b) within one month of the company being dissolved or de-registered in its place of origin, notify the Registrar of that fact using Form FC10

and following receipt of any such notice the Registrar will strike the company's name from the Foreign Companies Register at which point the company ceases to be registered under the Companies Act, 2015 but remains subject to the filing requirements under the Act with respect to matters occurring at or prior to such de-registration.

#### 2. Appointment of a liquidator

The company's local representative(s) at the relevant time must:

- within one month of commencement of liquidation proceedings in its place of origin, notify the Registrar of that fact.
- when a liquidator is appointed, notify the Registrar of such appointment using Forms as statutorily required.

#### 3. De-registration in other circumstances

Where the Registrar reasonably believes that a registered foreign company is not carrying on business in Kenya or is carrying on such business without a local representative, s/he may (after following the laid down notification procedure) strike the company's name from the Foreign Companies Register at which point the company ceases to be registered under the Companies Act but remains subject to the filing requirements under the Act with respect to matters occurring at or prior to such de-registration.

#### 4. Review of this Practice Note.

This Practice Note shall be reviewed at least once every two years by the JLC at its discretion and subject to any change in the Companies Act.

## 5. Effective Date.

This Practice Note shall come into effect from 16th June 2020.

Version Control			
Version Number	Date issued	Author	Update information
V1.0	16.06.2020	The Registrar of Companies	First published version