

**AMKA AFRICA**

**PROCESSES AND PROCEDURES FOR REGISTRATION,  
LICENCING AND RUNNING OF SMALL BUSINESS  
ENTREPRISES IN KENYA**

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# FOREWORD

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## **PART 1**

### **FORMS OF ENTITIES FOR SMALL BUSINESS ACTIVITIES**

#### **Introduction**

Registration and licencing of businesses offer a lot of benefits to any trader and provide opportunity for compliance with the law. As a result, it is easy to receive funding and trading opportunities for businesses that are registered. Thus, in order to lawfully operate a business in Kenya, one may be required to register an entity to be used as a vehicle for trading.

#### **Benefits of Registering a Business**

Some of the direct benefits for registration of a business include:

- (i) Registration secures the reputation of a trading entity as a legitimate business. The incorporation of your business can suggest that the business has permanence and is committed to effective and responsible management. It gives third parties including customers, clients and contractors a sense of confidence. Thus, when you register your business, your business reputation and prestige is enhanced.
- (ii) Registered businesses (especially companies) get their own legal identities, which affords them continuity even if the ownership of the business changes hands from one person to another, the transactions that were done in the name of the business are kept alive. In law, this is called perpetual succession, meaning that the company has an unlimited life span, and the business will continue to exist even if the owners or directors die or leave the business, or if the ownership of the business changes.
- (iii) In law, some registered entities like companies are deemed to be a separate legal entities. They are given rights and privileges as if they were human beings and are able to own property and carry on business in their own name. The liabilities they incur are their own liabilities and they can sue or be sued in its own name.
- (iv) The registered business can act as security when the business owner needs a loan to run the business. Also, when looking for sponsors or donors for your company, registration documents would show them how serious you are about your venture.

- (v) Registration documents allow you to expand your enterprise, especially if you intend to merge with another company. The document will be vital in ensuring you get a better deal and that your partners won't attempt to short-change you or even take over your company.

## **Forms of Businesses Entities**

### ***A. Sole Proprietorship***

Sole proprietorship is a business owned and operated by one person. The owner is the sole decision maker in the business and is liable for all the losses and returns of the business. In most cases it is usually a business structure for small and medium sized enterprises (SMEs). Although there are no requirements for registration of sole proprietorship, usually however, registration of sole proprietorship is done through registration of business name.

### ***B. Partnership***

A partnership is a business structure where two or more people who have a common view of making profit come together to register a business. In partnerships, the level of financial risk is less when compared to sole proprietors as the losses incurred are shared between all the partners. Since they involve more than one person, the chances of the business failing is also reduced. Additionally, the formalities of registration (including cost, requirements, duration) are minimal, making it an comparatively attractive business structure.

Generally, there are three types of partnerships:

#### ***1. General partnership***

A general partnership is the most basic form of partnership. It does not require registration, but partners may form their business by signing a partnership agreement. Ownership and profits are usually split evenly among the partners, although they may establish different terms in the agreement. All partners in a general partnership have independent power to bind the business in contracts and even loans, and each partner is personally responsible for all of the business's debts and legal obligations.

## **2. Limited Partnership**

This form of business is established under part III of the Partnership Act (No. 16 of 2012). Under this section, a partnership is a limited partnership if it has one or more general partners whom have unlimited liability and one or more limited partners who have limited liability.

In such arrangements, the general partners are liable for all debts and obligations of the partnership, while the limited partners are only liable for the debts or obligations of the partnership to the extent of the amount they have contributed to the partnership at the time of joining the partnership. Thus, the limited partners only invest in the business for financial returns and are not responsible for its debts and liabilities except for what they have invested in it.

One becomes a limited partner in a limited partnership when he/she is registered as such and would cease to be a limited partner if either (a) he/she is deregistered as a limited partner; (b) dies; or (c) the partnership is dissolved.

A limited partner is not permitted to take part in the management of the partnership business or else, he/she will be personally liable for any partnership obligation incurred as a result of the his action and for any other partnership obligation that is incurred during the period he is active.

## **3. Limited Liability Partnership**

Unlike the other forms of partnerships, a limited liability partnership is one that has separate legal personality from its partners. A limited liability partnership (LLP) operates like a general partnership, with all partners actively managing the business, but it limits their liability for one another's actions. However, a partners will still be responsible for his/her own wrongful act or omission (but not responsible for errors and omissions of other partners).

A change in the partners of a limited liability partnership does not affect the existence, rights or obligations of the limited liability partnership.

## ***C. Companies***

A company is a business that in law is recognised as separate and distinct entity from its owners. Companies enjoy most of the rights and responsibilities that individuals possess. They can enter contracts, borrow money, sue and be sued, hire employees, own assets, and pay taxes.

The following types of companies are notable:



### **1. Private Companies Limited by Shares**

These are companies whose owners are legally responsible for the companies' debts only to the extent of the amount of capital they invested. These types of companies restrict their member's right to transfer shares and require the consent of all members to add a new member. The law prohibits invitations to the public to subscribe for shares or debentures of the private companies limited by shares and limit the members to a maximum of fifty (50).

### **2. Companies Limited by Guarantee**

A company is a company limited by guarantee if it does not have a share capital and the liability of its members is limited to the amount that the members undertake to contribute to the assets of the company in the event of its liquidation. The certificate of incorporation of company limited by guarantee must state that it is a company limited by guarantee.

### **3. Public Limited Companies**

A company is a public company if its articles allow its members the right to transfer their shares in the company and it does not prohibit invitations to the public to subscribe to its shares or debentures. The certificate of incorporation of such a company must state that it is a public company.

### **4. Unlimited Companies**

An unlimited company is a company wherein there is no limit on the liability of its members. So, if a company incurs debts, all members are required to share to the entire debt of the company until it is all cleared. Legally, the certificate of incorporation of an unlimited company is required to state that the liability of its members is unlimited.

## **Distinction between Sole Proprietorship, Partnership and Companies**

The following distinctions may be seen for the various entities mentioned above.

- (i) Whereas a sole proprietorship is business which is carried on by a single person is known as proprietor, partnership is a business started by an agreement between 2 or more persons who seek to share the profits of a business, while a company is incorporated under Companies Act, 2013 either as a private limited or public limited company.

- (ii) In terms of legal provisions, there is no specific law governing sole proprietorship, whereas partnerships are governed under the Partnerships Act, 2012 and, for LLPs, by the Limited Liability Partnerships Act (No. 42 of 2011). In the case of companies, they are governed under Companies Act, 2015.
- (iii) With regards to membership, a sole proprietorship constitute of only one person, while a partnership must have a minimum of two partners and a maximum of 50. For a company, a private limited company can be made up of one member with a maximum of 200 members while a Public Company must consist of a minimum seven members with no maximum limitation.
- (iv) Registration of a sole proprietorships and partnerships are not mandatory (but limited partnerships and limited liability partnerships must be registered). For companies, registration is a must.
- (v) Sole proprietorships and partnership are not separate entities from their owners (save in the case of limited liability partnerships which have separate legal personality), whereas a company, once incorporated becomes distinct from its members.
- (vi) In sole proprietorships, the liability of owners are unlimited as is also the case of partnership (except to some extent the limited liability partnerships). For companies, safe for the unlimited companies, the liabilities of members are limited.

However, it needs to be noted that not all these distinctions will exist for each of the forms as highlighted above. It will depend on the legal provisions applicable to each of the types of entity within the group.

### **Other Notable Entities for Small Businesses**

Besides the business entities highlighted above, other types of arrangement such as community and faith based organisations (also known as self-help groups) and societies have become important vehicle for members of communities who have limited financial power, but wish to pool resources together, to do so for their benefit. These forms of organisations are useful insofar as they help members to pool together their limited resources form a larger capital base as well as to increase the market base for their products.

### ***A. Community-Based Organisations/Self-Help Groups***

Community-based organisations or Self-help groups are informal arrangement of people who come together to address their common problems. Their most important characteristic is the idea of people coming together to help each other (i.e. mutual support).

Self-help groups can serve many different purposes depending on the situation and the need. For example, within the development sector, self-help groups have been used as an effective strategy for poverty alleviation, human development and social empowerment and are often, therefore, focused on microcredit programmes and income-generating activities.

### ***B. Societies***

Society is formed when a group of people comes together for a common purpose or a charitable cause. Section 2 of the Societies Act defines a society to include: A club, company, partnership or association of ten or more persons whatever its nature or object that is established in Kenya or has its headquarters or chief place of business in Kenya and any branch of a society.

Most societies are formed for the promotion of the charitable causes. For a society to acquire legal status it must be registered in accordance with Section 4 of the Societies Act.

### **Conclusion**

There are numerous structures that one may adopt to carry out their businesses depending on the number of persons interested in the business, their objectives as well as their financial capabilities. Some of these structures are beyond the scope of this write-up on account of their complexity.

Notably, however, the choice of the structure to be adopted by those who are interested in starting a venture will be determined by the advantages that accrue from each entity, the number of those interested in forming the entity and the financial ability of the members of the group who wish to start the business.

## PART 2

# REQUIREMENTS AND PROCEDURE FOR REGISTRATION OF BUSINESS ENTITIES

### **Introduction**

Various modes of registration exist for the different structures for doing business highlighted in chapter one. Usually, the formalities involved in the formation and management of the kind of business as well as the benefits and advantage derived from a particular structure will determine which of the available types of business organisation one will adopt.

In this part, we shall look at the requirements and formalities for the formation of different types of business entities. The specific forms will be found in the appendix in case one seeks to form any of these entities.

It is notable that under the Business Registration Services Act 2015, the Business Registration Service (BRS) is established to streamline effective administration of the laws relating to the incorporation, registration, operation and management of companies, partnerships and firms. Most of this can be done online (through <https://brs.go.ke/>) or physically at **Huduma Centres**.

### **Registration of a Business Name**

A business name may be registered for either a sole proprietorship or a general partnership. This is because, although the two forms of businesses are not legally required to be registered, the owner(s) may need legal recognition of their businesses to facilitate certain transactions such as opening of bank accounts and getting work from governments other entities.

#### ***A. Requirements for Business Name Registration***

The following are the requirements for the registration of a business name.

1. The proposed business name;
2. The nature of business/activities the business shall undertake – You will be required to specify the nature of business in one line e.g. Stationary, Food Stuff, Hardware etc.;
3. The full names of the business owner(s);
4. Postal address for the business name;

5. Proposed physical address of the business (including the road, plot number, town, and county);
6. Copy of identity card or passport of the proprietor or partners.
7. Passport photo of the proprietor or partners.
8. Copy of KRA PIN certificate of the Proprietor or partners.

### ***B. Steps in the Application for Business Name***

One may register a business name on-line (through this link: [https://brs.go.ke/business\\_name\\_registration.php](https://brs.go.ke/business_name_registration.php)).

The following are the steps for application for registration.

1. Reservation of business name;
2. After reservation, one proceeds to register the business name (by providing the nature of activities; the physical address of the business; the postal code, address and town to be used by the business; the names of the registered owner(s) in full as per the ID; and the ID number);
3. After filing the details, download the system generated form;
4. All partners/proprietors must then sign on the downloaded form (the signatures must be numbered in the order of the names on the form);
5. Registration fees amounting to Kshs. 850 must be paid (An additional fee of Kshs. 200 is charged for each additional business).

### **Registration of Partnerships**

The procedure of registering a partnership business is almost the same as sole proprietorship as a business name (on-line through [https://brs.go.ke/business\\_name\\_registration.php](https://brs.go.ke/business_name_registration.php)) except that in partnership business, a partnership deed must be provided.

#### ***A. Partnership Deed***

A partnership deed is required for a partnership to be registered. The partnership deed normally contains the following particulars

1. The name of the firm or partnership;
2. The names and addresses of partners;
3. The nature or type of the business;

4. The duration of partnership;
5. The amount of capital to be contributed by each partner;
6. The amount and nature drawings that can be made by each partner;
7. The interest to be allowed on capital and charged on drawings;
8. Rights and responsibilities of partners;
9. Duties of partners;
10. Remuneration to partners;
11. The ratio of the profits or losses shared among the partners;
12. The basis and rationale for the calculation of goodwill during the time of admission, retirement, and death of a partner;
13. The keeping of proper books of accounts and the preparation of Balance Sheet;
14. Settlement of amount upon the dissolution of the firm;
15. The procedures and processes to be adopted in the case of disputes among the partners; and
16. Arbitration clause in case of dispute or disagreement.

(A sample partnership deed is attached as **Appendix 1**).

### ***B. Requirements for Partnership Registration***

The following are required in order to form a partnership.

1. Name of Business: A name search needs to be performed first as part of the registration process;
2. Nature of business: The business to be carried out by the firm needs to be given in a very short sentence;
3. Address of the principal place of business: This should include Plot No., Section, and Name of Street or Road, Name of Building;
4. Postal address;
5. Address of any other place of business such as Branch Office;
6. Full names of the partners;
7. Signature on the document, usually at the back page of Form BN2 (Application for Business Name form, **Appendix 2**);
8. Copy of ID/Passport for each partner;
9. Copy of KRA PIN Certificate for each partner;

10. Passport Photo for each partner; and
11. Requisite fees inclusive of Ksh 50 e-citizen convenience fees; Ksh 100 for name reservation.

### ***C. Certificate of Registration***

The registration process will take roughly 3-5 working days to complete based on the Company Registry workload and working hours. The registration and certificate will be issued together at the end of the process.

## **Registration of Limited Liability Partnership (LLP)**

This form of business is registered in accordance with the Limited Liability Partnership Act, No 42 of 2011. As already mentioned, just like companies, limited liability partnerships have separate legal identity and are deemed to be separate from the persons who own it.

### ***A. Requirements for Registration of LLPs***

The following will be required in order to register an LLP.

1. Proposed business names for search and approval;
2. Nature of business; for professional services a practicing certificate by the relevant body for the current year will be attached;
3. Proposed Physical address of the business. Address includes road, plot number, town, and county;
4. Full names of the partners (or company in case of a body corporate);
5. Place and date of incorporation in case of a body corporate;
6. Nationality of the partners;
7. Age of each partner based on their national IDs;
8. Gender of each of the partners;
9. Usual place of residence of each of the partners;
10. Copy of ID/Passport of the partners;
11. Passport photos of the partners;

12. Copy of PIN certificate of the partners;
13. Full names of the Manager;
14. ID/Passport number of the manager;
15. Postal address, nationality of the Manager;
16. Consent to act as the Manger signed by the Manager

### ***B. Procedure for Registration of LLPs***

This can be done online through the e-citizen portal (<https://accounts.ecitizen.go.ke/>). When registered, go to link for Business Registration Services, which will open a new portal. On the tab titled 'Make Application', you will find the 'Limited Liability Partnership: Apply Now' tab.

The procedure would normally involve:

1. A search being conducted to establish if the proposed names are available for registration. A name is then reserved pending registration of the business name/partnership. The application for reservation of a name is done by a letter along with the prescribed fees;
2. Application for registration is lodged with a statement of particulars (in **form LLP1, Appendix 3**) is then filled with the relevant information.
3. This is then signed by the partners and the manager
4. The application is lodged with the Registrar (the Registrar of companies doubles up as the Registrar for Limited Liability Partnerships);
5. The application must be accompanied by the prescribed fee; the approximate total cost will be about Ksh. 25,000/-;
6. The Certificate of Registration is then processed and issued.

### **Registration of Companies**

The incorporation of a Company is a one step, one day process. This is done online on the **e-Citizen** website <https://www.brs.ecitizen.go.ke>. When registered in the e-Citizen, go to link for Business Registration Services, which will open a new portal. On the tab titled 'Make Application' there will be options for registration of various types of companies including Private Limited Company; Public Limited Company; Company Limited by Guarantee; and Foreign Company.



### ***A. General Requirements for Registration of Companies***

1. First, one is required to conduct a search and make reservation of the company name.
2. Then one must then complete the Company Registration Form (CR 1). There is need to specify whether the proposed company is a company limited by shares, guarantee or unlimited company.
3. One must also choose the company constitution to be adopted. They are referred to as the Memorandum and Articles of Association of the company.
4. When the completed application is filed, it must be accompanied by the requisite fees.

### ***B. Documents Required for Company Registration***

There are standard documents provided in the Companies Act to be used in the incorporation of companies. All the forms that one will need are available and accessible online at <https://brs.go.ke/forms.php>.

In summary, the following documents should be lodged at the Companies Registry for registration:

1. Application for reservation of a company name (Form CR14).
2. Company registration form (Form CR1);
3. Memorandum of Association (Models Forms CR2 and CR3);
4. Particulars of the directors and secretary (Form CR10);
5. Statement of nominal capital - This is the total value of the shares that the Company proposed to issue to the members (for example, a company may wish to issue 1000 shares each valued at Ksh 100. The total nominal share capital in this case will amount to Ksh 100,000/-, which is the minimum nominal share capital that a company may have).
6. Articles of Association.
7. Notification of the residential address of directors and company secretary (Form CR8 and CR12);
8. Copy of the Kenyan national identification of each director and secretary or, copy of the Kenyan foreigner certificate, or in the case of a director who is not a Kenyan citizen and is not resident in Kenya, a copy of that director's passport, (I) a passport-sized photograph of each director and the company secretary.

## To Be Noted

1. It is required for the name of a company to indicate the nature of the company at the end. Thus, a private limited company must have the word “Limited” or “Ltd” at the end and a Public Limited Company must have the word “Plc”.
2. The Companies Act contains Model Memoranda in Form CR 2, for a company with share capital and Form CR3, for companies limited by guarantee and Form CR4 for unlimited companies.
3. Also if you choose to adopt the Model Articles of Association found in the Companies Act (see <https://brs.go.ke/assets/downloads/MODEL-ARTICLES-PRIVATE-COMPANIES-LIMITED-BY-SHARES.pdf> for private companies limited by shares; <https://brs.go.ke/assets/downloads/MODEL-ARTICLES-PUBLIC-COMPANIES-LIMITED-BY-SHARES.pdf> for public limited companies; and <https://brs.go.ke/assets/downloads/MODEL-ARTICLES-COMPANIES-LIMITED-BY-GUARANTEE.pdf> for companies limited by guarantee) in full, you **will not** be required to file it with the CR1. On the other hand, if you decide to adopt the Model Articles with amendments, only the amendments should be filed with the CR 1, whereas if you wish to prepare an entirely different Articles specific to the company, then these Articles should be filed with the CR1.

## Registration of Self-Help Groups/Community-Based Organisations

For the registration of a self-help group (which can be done by youth, women, men, persons living with disabilities, older persons or by community project groups), an application is made to the Ministry of Labour and Social Protection.

### *A. Requirement for Registration of Community Based Organisation (CBO)*

1. A group of at least 10 members;
2. Constitution for the Group: A constitution is the group’s guide. It identifies the group’s mission, goals, and objectives. It sets out the offices of the group and roles under these titles should also be defined, written down, and put in a document (preferably the constitution) so that every official understands and agrees to their scope of their work. (see specimen of constitution of a CBO in **Appendix 4**);

3. Minutes of the meeting seeking registration and showing elected officials.
4. List of All members duly signed with Name/Position/ID No. and Signatures.
5. Copies of National Identity Cards of all group members.

### ***B. Procedure for Application for Registration of CBO***

The procedure necessary in order to register a self-help group is as follows:

1. Organize yourselves in a group of at least 10 members.
2. Draft the group's constitution.
3. Once the constitution has been drafted and approved, every member should get a copy which they sign and commit to the terms and conditions.
4. The group is required to hold a meeting to elect the group's officials and to seeking registration. The three most important slots to be filled are the Chairman, Secretary and Treasurer. These positions have to be occupied for accountability and organisation purposes of the group. The minutes of the meeting seeking registration and showing elected officials are to be attached to the application forms.
5. You will fill an Application Form for Registration of Self-Help Group/Community Project to fill (the form is found at <https://www.socialprotection.go.ke/wp-content/uploads/2018/11/CBO-Registration-final-26-10-2016.pdf>). Make sure you tick the type of self-help group you want to register i.e. (Youth, Women, men, Mixed, PWD, Older persons or Community Project).
6. Attach the group's constitution; minutes of the meeting seeking registration and showing elected officials; and list of all members duly signed with Name/Position/ID No. and Signatures, and copies of National Identity Cards of all group members.
7. Registrations with the Ministry of Labour and Social Protection is the next step. You need to visit the either Sub-county's Labour and Social Protection Offices, Sub-county's Public Service, Youth and Gender Affairs Offices, or Huduma Centre to make the application with the respective officer.

8. Pay the Approved Registration fee of Ksh.1, 000/= and lodge the Application at the office of the Sub-county social protection officer or Huduma Centre.
9. It takes 5 working days for the Registration to be approved and a Certificate of Registration is issued by the Ministry of Labour and Social Protection Office. Registration of a Society.

## **Registration of Societies**

If one seeks to register a society, the following is notable.

### ***A. Requirements for Registration of a Society***

The following are required if one is interested in forming a society.

1. A list of designated members (10 members minimum);
2. The names, occupation and postal addresses of the officials (this must include Chairman, treasurer and secretary);
3. Constitution of the society which must contain name, postal address and objects of the society (the specimen format is found at the website of the Attorney General at <https://statelaw.go.ke/forms/>, **Appendix 5**);
4. Application form A and B each in duplicate signed by three of the officers. Form A is the application for registration of a society and Form B is the notification of address and registered office of a society (the relevant forms can be accessed online at <https://statelaw.go.ke/forms/>).
5. Copies of the ID, PIN and Passport photo of the officials.

### ***B. Procedure for Registration of Societies***

The steps to take to register a society are:

1. Have an official name search and secure the proposed name of the society. A name search is conducted to ascertain if proposed names are available for registration. A society seeking registration must make an application to the Registrar of Societies at the State Law Office for reservation of their proposed name. Up to 3 name suggestions can be made in an application (at <https://statelaw.go.ke/services-to-the-public/register-a-society-in-kenya/registration-procedure/#1600097650003-1190ede2-6d42>). This application is done by way of a letter addressed to the Registrar of Societies.

2. Visit the offices of the Registrar of Societies in the Registrar General Division of the office of the Attorney General to make the application for registration. Here you will be given application forms to make the application. These forms include: Application for Registration of Society Form A; Notification of Registered Office or Postal Address of a Society Form B; and Specimen constitution for a society. The same may also be downloaded from at <https://statelaw.go.ke/services-to-the-public/register-a-society-in-kenya/registration-procedure/#1600097650003-1190ede2-6d42>
3. Prepare the societies constitution and fill Forms A and Form B in duplicate. Make sure you have the following documents for submission.
  - (i) A list of designated members ( 10 members minimum);
  - (ii) The names, occupation and postal addresses of the officials Chairman, treasurer and secretary;
  - (iii) Constitution of the society which must contain name, postal address and objects of the society (draft ;
  - (iv) Application form A and B each in duplicate signed by three of the officers.
  - (v) Copies of the ID, PIN and Passport photo of the officials.
4. After preparing the application documents, visit the registrar of societies to pay the application fee of Ksh 2000.
5. Submit your application documents, society's constitution, required documents and application fee payment receipt to the office of registrar of societies.
6. The processing of the application takes a maximum of 120 days to be ready.
7. If the application is approved a certificate of registration of society is then issued. If the application does not comply with the societies rules a Notice of refusal is issued.

## **Conclusion**

Most of the business registration processes can now be done either online or partly online and partly physical. Services from most of the entities can be accesses through the HUDUMA Centres closest to you.

## **PART 3**

# **BUSINESS PERMITS AND LICENCES**

### **Introduction**

In order to legally carry out a business, one may require licences and permits under different laws and regulations. The distinction between a license and a permit is subtle but important. Licenses are more general, granting permission to do something or use something. For example, a business wanting to sell liquor must get a license. On the other hand, permits are usually given for safety issues, like health permits, and may require an inspection before they are granted.

Usually, a business will usually require business permits and licences to be able to operate. For example, barber shops, hair dressing etc. will require single business permits before they legally operate. In relation to business like saloon businesses, street vending businesses etc. you will be required to apply for and renew business licences.

### **Importance of Business Permit**

A business permit is important for a number of reasons, including:

1. It is a legal and mandatory requirement for carrying out business in almost all trades and professions.
2. It enables the government to collect taxes that are used in delivery of service;
3. Without the work permit document, you will not be able to apply for tenders including government tenders. Hence, you cannot be able to transact with many entities that may wish to provide you with funds;
4. The business entity that is not licenced cannot act as security when you need a loan to run the business. Moreover, when looking for sponsors or donors for your company, a permit will be a very welcome document to show them how serious you are about your venture.
5. A work permit allows you to expand your enterprise, especially if you intend to merge or cooperate with another company;
6. The document will be vital in ensuring you get a better deal and that your partners won't attempt to short-change you or even take over your company;
7. A business permit for foreigners in Kenya can prove that they are in the country legally, and they registered the company as per the law.

## **Permits that May Be Required**

There are many types of licences one should have to comply fully with both national and county bylaws. The good news is that you do not have to apply for each of these licenses in isolation. The government introduced what is called a unified work permit to ensure ease of doing business. This document is all you require, but you have to renew it annually. These licenses include:

1. Trading license;
2. Advertising signage license;
3. Health certificate;
4. Fire clearance license;
5. Food hygiene certificate.

## **Requirement for Application for Licences and Permits**

1. The following would be required in applying for business permits: Copy of the business permit application form;
2. Copy of the certificate of incorporation or business name or copy of the identification card of the business owner;
3. Copy (or copies) of the company or the business-owner's PIN certificate(s);
4. A payment permit invoice.

## **Process of Application for Business Permits and Licences**

As already indicated, one may not need to apply for each required permit separately. You can apply for most of the permits through the e-Business portal (available at <http://ebusiness.go.ke/ebusiness.html>) where three step process is required:

1. Create an account as a business or company one time for all your needs;
2. Pay using mobile money, Debit Cards and online banking from local banks; and
3. Download your license from your e-business account, wherever you are.

One may also apply for the specific permit from the relevant authority using the applicable format provided by that Authority. For example, the following steps may be followed to apply for a single business permit in Nairobi City County.

1. Obtain, completely fill and submit the relevant form (For example, the BR-1 form for a single business permit for Business in Nairobi, available at [https://eregulations.invest.go.ke/media/Application%20form%20%20for%20single%20business%20permit\\_1.pdf](https://eregulations.invest.go.ke/media/Application%20form%20%20for%20single%20business%20permit_1.pdf), see **Appendix 6**).
2. Submit the filled form to the KRA offices at Times Tower, Nairobi. The inspection officers will then carry out an inspection to confirm the type of business, location and the number of employees to determine the rates you will have to be charged.
3. The application form is approved by the signatories and further presented to Data entry clerks for data capturing in the Single Business Permit database.
4. After capturing the data, an invoice/bill is generated for the payment to be made and the official receipts is generated.
5. The application form and the original receipt shall be presented to the license Reception Desk officer who shall receive, record them in the register and have them printed for the signatories to affix their final signatures.
6. Once signed by signatories, the Single Business Permit is received by Registry, where it is stamped again and taken to dispatch office for collection by the owner.

The online application process is quite easy as well, applicant is to create a company profile on the platform, fill in all required information and make relevant payment. Upon submission of the application, the agency will process same and issue a business permit upon satisfaction of the information provided. Applicants are able to print out the business permit from the online platform (at <https://www.pdfFiller.com/jsfiller-desk10/?projectId=6134a3049347880d715cd123&lp=true#cbb059a25c67448aa24ac0c85312a6df>).



## **PART 4**

### **ACCESSING GRANTS AND FUNDS**

#### **Introduction**

There are various sources of funds that are accessible to small and medium size entities and the businesses that an individual or registered groups may consider. In most cases, it is required that the group that seeks funding, including youth groups, persons living with disabilities (PLWDs) and women groups should be registered by known government authorities, and must have known physical addresses to confirm their authenticity and real existence. With the advent of dubious dealings and faking of status government and organization including international organization have placed stringent rules that require prove of existence of interested groups

#### **Some of the Available Funds**

##### ***A. Youth Fund***

This is given from the Youth Enterprise Development Fund (YEDF). The Fund seeks to create employment opportunities for young people through entrepreneurship and encouraging them to be job creators and not job seekers. It does this by providing easy and affordable financial and business development support services to youth who are keen on starting or expanding businesses.

The following are available from the YEDF:

##### ***a) LPO Financing***

YEDF offers Bid Bond and Local Purchase Order (LPO)/Local Service Order (LSO) financing to youth participating in government tenders. The loan is available to individuals, registered groups, partnerships and companies owned and run by the youth.

This loan is available to youth who have been awarded tenders by government agencies (ministries, parastatals, county governments and constitutional commissions) under the AGPO programme, and from other reputable procuring entities not owned by the government (those listed at the NSE and credible NGOs).

Youth can access up to Kshs. 5 million. The Fund will finance 70% of the LPO amount. The loan attracts an interest of 1.5% after 90 days. A commission of 6.5% of the amount borrowed

will be charged. The loan will be secured using Letter of undertaking, Bank guarantees, and conventional security.

The applicants is required to be:

1. Be registered with the relevant government body;
2. A valid LPO from a qualifying agency;
3. Undertaking by the procuring entity to pay the tender proceeds in favour of Youth Enterprise; Development Fund Board;
4. Customer account details.

### ***b) Vuka Loan***

VUKA is available to youth who wish to start or expand businesses. Applicants may use the loan for working capital or to purchase income generating assets.

Vuka Start Up is advanced to youth with alternative verifiable income and business plan. Youth can access up to Kshs. 500,000. The loan is fully secured by conventional security.

Vuka Expansion Loan of amount from Kshs. 100,000 to Kshs. 5,000,000. It attracts an interest of 6% and a one-off management fee of 1% netted off from the loan at disbursement. A grace period of one month is given. The loan of Kshs. 100,000 will be secured using chattels, stock and business assets. Loan above Kshs. 100,000 will be secured by conventional security.

Vuka Asset Financing will finance 70% of the value of the assets/equipment being purchased. Additional security will be provided in addition to the asset financed. Loans of Kshs. 100,000 will be secured using chattels, stock, business assets and/or guarantees. Loans above Kshs. 100,000 will require conventional security. In the case of motor vehicles, the Fund will finance up to 90% of the value of motor vehicles (including PSVs, tuktuks & motorcycles) being purchased and must be new. Used motor vehicles shall not exceed 8 years of age. The financed motor vehicle will be fitted with a tracking device and comprehensively insured.

### ***c) Other facilities***

Other facilities form YEDF include Agri-Biz loan, Constituency based loan, Talanta loan and Vijana Baharia loan.

For more details visit their website (<http://www.youthfund.go.ke>).

## ***B. Women Enterprise Development Funds***

Women Enterprise Fund is a Semi-Autonomous Government Agency in the Ministry of Public Service, Youth & Gender Affairs established in August 2007, to provide accessible and affordable credit to support women start and/or expand business for wealth and employment creation.

Some of the facilities include:

### ***a) Tuinuke Loan***

This is a loan product at the constituency level or otherwise known as Constituency Women Enterprise Scheme (CWES). The Tuinuke loan product is given out through registered women groups interested in expanding or starting new businesses.

Tuinuke Loan has the following features:

1. The applicants must be a registered self-help group of 10 members and above comprising 100% women or 70 % women and 30% men. All leadership positions and account signatories must be held by women.
2. Registration is done either at the nearest Social Services office or Huduma Centre. Groups will be eligible for WEF loans three months after registration.
3. Must have an account in a Bank/SACCO FOSA/Post Bank/Deposit Taking Micro-finance (DTM) and must have been in existence for at least 3 months.
4. Groups must be trained in business management skills by the WEF officers as a prerequisite for the loan application
5. CWES loan is interest-free, with only 5% administrative fee with a grace period of 1 month. The loan amounts given, graduation principle and the repayment period is as follows:

<b>CYCLE</b>	<b>AMOUNT (Ksh.)</b>	<b>REPAYMENT PERIOD</b>
First Cycle	100,000	12 Months
Second Cycle	200,000	12 Months
Third Cycle	350,000	12 Months

Fourth Cycle	500,000	15 Months
Fifth Cycle	750,000	24 Months

6. Loan applications forms are available for free from the Fund’s Regional Offices based at all provincial headquarters, the Fund’s Head Quarters at NSSF building Eastern Wing, block A on 11th, 12th, and 14th floors and can also be downloaded from website, [www.wef.co.ke](http://www.wef.co.ke).

***b) LPO Financing***

This is a product tailored to serve women by increasing their capacity to respond and adequately service tenders thus meeting supply requirements. The loan will be available to individual women owning enterprises or women owned companies.

Eligibility Criteria for LPO Financing are: the business must be registered with the relevant government body; For companies, groups and partnerships membership composition must be at least 70% women and 30% men (or 100% women); and a valid Local Purchase Order/Local Service Order duly signed and stamped by the procuring entity i.e. public institutions (listed in the Public Procurement and Disposal Act)

The maximum amount available for this loan is Kshs. 2 Million per individual borrowing. Duly signed Letter of Undertaking and acceptable collateral as per Fund’s Credit Policy. Acceptable collateral are bank guarantee, shares or motor vehicle are used as securities.

You are required to submit customer account details; a one-off administration fee of 5% of the loan amount; tenure of 90 days; certified copy of the letter by the supplier (loanee) to the procuring entity requesting payment through Women Enterprise Fund.

Amount financed is 60% of the LPO amount

***c) Other Facilities***

These may be accessed through <https://www.wef.co.ke/>.

***C. Spark Fund by Safaricom***

Launched the Safaricom Spark Venture Fund to invest and support late-seed, early-growth stage companies with a presence in Kenya, whilst leveraging Safaricom assets to enable the companies to scale. Support tech companies that align with Safaricom's long term corporate vision in

Education, Healthcare and Agriculture. Start-ups in other categories of strategic importance and being complementary to Safaricom's offering will also be considered

The start-ups will be identified and selected by a fund manager (S&B ventures) and upon completion of due diligence process be presented to the Investment Committee and Board of Trustees for funding consideration.

***a) Requirement***

1. Kenyan presence
2. A Core diverse skilled team
3. Refined Working mobile based product/service
4. Commercially viable business model
5. Active user base
6. Generating revenues
7. Partnership with Safaricom signed or being discussed
8. Raising equity or quasi equity

***b) Application process***

The Fund Manager is S&B Ventures, based in Kenya, who source deals, perform due diligence and recommend the investments. The contact is through the email address [spark@afriicatechventures.co](mailto:spark@afriicatechventures.co).

***D. Other Notable Sources of Funds***

***a) KCB Foundation***

These provide a number of facilities for specific groups. The facilities include 2Jijiri and Mifugo Ni Mali accessible at <https://kcbgroup.com/foundation/>.

***b) USAID***

The majority of USAID's funds are awarded through a competitive process. These funding opportunities are posted daily on <https://www.grants.gov/> and <https://sam.gov/content/home>. USAID updates daily, features our business and partnership opportunities at <https://www.usaid.gov/business-forecast>.

Most funding is allocated through **Acquisition and Assistance (A&A)** mechanisms. To solicit support for its programs, USAID typically uses a Request for Proposals (RFP) for contracts and a Notice of Funding Opportunities (NOFO) for cooperative agreements and grants.

Through the **New Partnerships Initiative (NPI)**, USAID works with a more diverse range of partners and provide more entry points for organizations to work with it. There are a variety of other grant and partnership programs, which you can view <https://www.usaid.gov/work-usaid/get-grant-or-contract/opportunities-funding>.

USAID accepts unsolicited proposals and applications (more information is available (<https://www.usaid.gov/work-usaid/get-grant-or-contract/unsolicited-proposals>)). It is important to read the full guidance before submitting an unsolicited proposal or application.

***c) Young African Leadership Initiative (YALI)***

The *Kenya Small Business Development Centers* is aimed at strengthening the capacity of Kenyan MSMEs and builds linkages to U.S. counterparts. The project targets micro, small, and medium enterprises MSMEs at any stage of business in the agribusiness (crops, livestock, and fisheries) and textiles and creatives (artisanal, visual arts, cinema, audiovisual, and multimedia) sectors. More information can be found at <https://yali.state.gov/>.

## **Application Process for the Funds**

### ***A. General Procedures***

In most cases, the applicants are required to submit standard application forms for financial assistance with mandatory attachments for consideration before the specified application closing date.

The funding body will then conduct preliminary review of individual project proposals done by assessing each submitted proposal. If the application is approved grantor will then sign a grant agreement with successful applicants.

Upon the signing of the agreement, the project implementation phase can be launched. The funding body will usually transfer the respective amount of money approved in to the beneficiary.

The applicant will usually be obligated to submit the grant completion report together with all necessary accounting documents, after the completion of the project.

### ***B. Documents Required***

Generally, various funders will require different formats of application form with accompanying documents. For Safaricom PLC, for example, the following documents.

- 1) Proposal application form ([https://www.safaricomfoundation.org/wp-content/themes/safaricomfoundation/safaricom\\_foundation\\_application\\_form.pdf](https://www.safaricomfoundation.org/wp-content/themes/safaricomfoundation/safaricom_foundation_application_form.pdf)).
- 2) Project budget
- 3) Project work-plan.

### ***C. Application Process***

- 1) The applicants are encouraged to submit the standard application form for financial contribution in English and send it with all mandatory appendices to the grantee with avid consideration of postmarked on or before the specified application closing date.
- 2) The grantee will conduct preliminary review of individual project proposals done by assessing each submitted proposal.
- 3) If the application is approved grantor will sign a grant agreement with successful applicants. Upon the signing of the agreement, the project implementation phase can be launched.
- 4) After signing the agreement and receiving financial contribution from the grantee, the Embassy will transfer the respective amount of money approved in agreement.
- 5) The applicant may be required to submit a Completion Report and Financial Report together with all necessary accounting documents, after the completion of the project, and send the requested documents to the grantee.
- 6) After the completion and financial reporting documentation is approved by the grantor, it will pay the remaining balance of the budget to the Final Beneficiary.

## **PART 5**

# **TAXATION**

### **Introduction**

It is important for business persons to be aware of their personal and corporate tax obligations to be fulfilled annually and in a timely effective manner.

### **Types of Taxes**

The following forms of taxes are levied under the law.

#### ***A. Income Tax***

Income tax is a tax charged for each year of income, upon all the income of a person whether resident or non-resident, which is accrued in or was derived from Kenya. Income Tax is imposed on business income from any trade or profession, employment income, rent income, dividends and interests, pension income, income from a digital marketplace and natural resource income. Income tax may be collected in various ways, including through:

##### ***i. Corporation Tax***

This form of Income Tax is levied on corporate bodies including limited companies, trusts, and co-operatives applicable on their annual income. Companies that are based outside Kenya but operate in Kenya or have a branch in Kenya pay Corporation Tax on income accrued within Kenya only.

##### ***ii. Pay As You Earn (PAYE)***

This is a method of collecting tax at source from individuals in gainful employment. Companies and Partnerships with employees are required to deduct tax according to prevailing tax rates from their employees' salaries or wages on each payday for a month and remit the same to KRA on or before the 9<sup>th</sup> of the following month.

##### ***iii. Withholding Tax***

This is a tax that is deducted from certain classes of income at the point of making a payment, to non-employees. Withholding tax is deducted at source from the following sources of income:

- 1) Interests,
- 2) Dividends,



- 3) Royalties,
- 4) Management or professional fees (including consultancy, agency or contractual fees),
- 5) Commissions,
- 6) Pensions,
- 7) Rent received by non-residents, and
- 8) Other specified payments.

Companies and partnerships making the payment are responsible for deducting and remitting the tax to the Commissioner of Domestic Taxes.

#### **iv. Advance Tax**

This is a tax paid in advance before a public service vehicle or a commercial vehicle goes for the annual inspection.

#### **v. Instalment Tax**

Instalment tax is paid by persons who have tax payable for any year that amounts to Kshs. 40,000 and above.

### ***B. Rental Income Tax***

This is a tax charged on rental income received from renting out property. Taxation of rental income depends on how the rented property was used for residential or commercial purposes. All persons: individuals, partnerships and companies that rent out property to other persons for either residential or commercial use are required to pay income tax on rent received.

To facilitate compliance, KRA appoints agents to withhold and pay a percentage of the gross rent as tax. These agents can be verified via the agent checker on **i-Tax**.

### ***C. Value Added Tax (VAT)***

Value Added Tax is charged on supply of taxable goods or services made or provided in Kenya and on importation of taxable goods or services into Kenya. While companies and partnerships can voluntarily register for VAT, they **MUST** register if their annual revenue exceeds Kshs. 5,000, 000.

To facilitate compliance, KRA appoints agents to withhold and pay, VAT on supplies made. These agents can be verified via the agent checker on i-Tax.

### ***D. Excise Duty***

This is a duty of excise imposed on; goods manufactured in Kenya, or imported into Kenya and specified in the 1st schedule to Excise Duty Act, 2015. Companies and Partnerships dealing in excisable good and services are required to pay excise duty. The List and types of Excisable goods and services are listed in the 5th Schedule as read together with Section 117 (1) (d) of the Customs and Excise Act, CAP 472 Laws of Kenya.

They includes mineral water, Juices, soft drinks, cosmetics and Preparations for use on hair, other beer made from malt, opaque beer, mobile cellular phone services and Fees charged for money transfer among others.

### ***E. Capital Gains Tax (CGT)***

This is a tax chargeable on the whole of a gain which accrues to a company or an individual upon transfer of property situated in Kenya, whether or not the property was acquired before 1<sup>st</sup> January, 2015. It took effect on 1st January 2015.

### ***F. Agency Revenue***

This is a type of payment that KRA collects on behalf of various revenue collection agencies in Kenya. The two types of Agency Revenue include:

- 1) Stamp Duty
- 2) Betting and Pool Tax

#### ***i. Stamp Duty***

Stamp duty is a tax charged on transfer of properties, shares and stock. It is collected by the Ministry of Lands, which has seconded the function to Kenya Revenue Authority (KRA).

#### ***ii. Betting Tax***

This tax is provided by Section 29A of the Betting, Lotteries and Gaming Act, 1966. Betting Tax is charged at the rate of 15% on the on what is won from betting. Betting, gaming and Lottery businesses are required to withhold and give to KRA 20% of the winnings being paid out to winners. Excise Duty on Betting is chargeable at the rate of 20% of the amount put up or staked in the bet.

## **Tax Obligations for Various Entities**

### ***A. Tax obligation for Sole Proprietorship***

Sole proprietors whose annual turnover is above Ksh 5 million, are required to register for VAT with the Kenya Revenue Authority (KRA). The VAT is normally 16 per cent cost of the item.

Compliance is supposed to be ensured on the following:

- 1) All taxable supplies contain the specified rates;
- 2) A tax invoice is issued on the supplies made to a buyer;
- 3) Monthly VAT returns are filed by the 20<sup>th</sup> day of the following month;
- 4) Where the output tax (VAT on sales) exceeds the input tax (VAT incurred on purchases) the difference should be paid to the KRA when filing the monthly VAT return. If, on the other hand, the input tax exceeds the output tax, the excess amount is carried forward to be offset against future output tax. However, if an entity were dealing with zero-rated supplies, it would always be in a VAT refund position. The excess credit would be refunded in line with existing VAT provisions. It is important to note that only registered traders are allowed to charge VAT on their sales. It is an offence to charge VAT if one is not registered.

To acquire a KRA PIN for Sole Proprietor Business, one is required to apply an online generated KRA PIN then add VAT under Tax obligation. This process cannot be reversed online and therefore one needs to be very careful when applying. It is advisable that, if possible, you retain the services of someone knowledgeable in the same field to do this for you. Failure to acquire or to file VAT returns will attract a fine of Ksh. 10,000 for each month that returns are not made on time.

Subsequently, just like a natural person, a Sole Proprietor Business that is not making any revenues will file nil returns. Conversely, if one has already enabled the VAT under the Tax obligation, but the business does not need it at the moment, then he/she ought to write a letter to KRA offices and request them to disable your VAT obligation on their PIN in order to avoid being penalized for the failure to make monthly VAT returns.

A resident taxpayer whose annual gross turnover does not exceed Ksh 5 million will be taxed turnover tax at the rate of 3% per quarter of one's turnover. In such a case, the taxpayer will not

be required to register for VAT. Turnover tax does not apply to rental income, management or professional fees, training fees, income subject to withholding tax as a final tax, and income of incorporated companies.

Loss-making businesses are allowed to make an election to be exempted from turnover tax. A written application for exemption has to be made to the Commissioner of Taxes.

### ***B. Tax Obligation for Partnership***

Partnerships are required to apply for a PIN on <https://itax.kra.go.ke/KRA-Portal/>. The documents required for registration are:

- (i) Copy of the Acknowledgement receipt,
- (ii) PIN Certificate for one of the partners (which needs to be on iTax),
- (iii) Deed of partnership (this is optional), and
- (iv) Tax Compliance certificate of the partners (which is also optional).

Partnerships declare their profit through the Income Tax Partnership Return (IT2P). When filing a partnership return, one is required to capture the PIN of each partner and indicate the profit sharing ratio. Any profits or losses are then transferred to each partner's PIN to be used when filing their annual return. The returns must be filed anytime between the 1<sup>st</sup> January and the 30<sup>th</sup> June of the following year.

Unlike corporate entities, Partnerships do not pay corporation tax. All partners must individually account for their taxes. Their profit is distributed to the individual partners in the ratio of their ownership. The profit then forms part of each individual's income, from where it is taxed as business income. The partners are required to file their Individual Income Tax Returns for a particular year of income. For partnerships, there is no requirement for auditing of accounts as each partner is required to prepare his own accounts.

Partnerships with employees are required to apply for PAYE and deduct tax according to the prevailing tax rates from their employees' salaries or wages. The tax should be remitted to KRA on or before the 9<sup>th</sup> day of the following month.

Partnerships can voluntarily register for VAT if they deal with the supply of taxable goods or services. However, they must register if their annual turnover exceeds Kshs. 5,000,000.

Before issuance of a Tax Compliance Certificate for the partnership, the partner's individual PINs are also checked. All partners are therefore required to be tax compliant by ensuring that they file their individual returns and declare their income made from the partnership.

### ***C. Tax Obligation for Companies***

Companies need to pay the various taxes already discussed. They include:

#### ***i. Pay As You Earn (PAYE)***

PAYE is deducted monthly at the prevailing individual income tax rates, on or before the 9<sup>th</sup> of the following month. PAYE returns are filed online via iTax. Companies without PAYE to remit should file a NIL return via iTax. After filing the PAYE return, one should generate the company's payment slip online via iTax and make payment at any of the KRA appointed banks.

#### ***ii. Corporation Tax***

Corporation Tax rate for Resident Companies is at the rate of 30% and for non-resident companies at the rate of 37.5%. This may, however, change from time to time. Some companies enjoy corporation tax incentives and exemptions (e.g. Export Processing Zones (EPZ) are exempt from corporation tax for the first 10 years of operation and newly listed companies enjoy Corporation Tax incentives).

Corporation Tax is filed online via iTax by filing an Income Tax Company Return (IT2C Form), on or before the 6<sup>th</sup> month after the end of an accounting period. For instance, a company whose accounting period runs from 1<sup>st</sup> January to 31<sup>st</sup> Dec is allowed up to 30<sup>th</sup> June of the following year to file their Income Tax - Company Return. Filing after 6 months attracts a penalty. The Return covers one financial year which is a period of 12 months within which the corporation chooses to make its financial statements.

To pay the Company tax, generate a payment slip via iTax and make payment at any of the KRA appointed banks. If the annual tax liability is projected to exceed Kshs. 40,000, then you should pay in instalments via iTax (this is called Instalment Tax).

### ***iii. Withholding Tax***

Withholding Tax rates vary depending on the income, and whether the recipient of the income is resident or non-resident. You need to find this out on the KRA online portal.

Payment of withholding tax is done via iTax. You will be required to generate a payment slip and present it, with the tax due, at any of the KRA appointed banks. After successful payment of Withholding Tax, both the Withholder and Withholdee will receive a withholding certificate via email.

## **Tax Exemptions**

Tax exemptions are given by law to some categories of people. There are two major forms of tax exemptions in the Tax Act. Any other group can only be granted exemption by the Cabinet Secretary to help take care of certain shortages or challenges facing the country.

### ***A. Exemption for Persons Living With Disability (PLWD)***

Persons living with disability are granted a tax exemption on their monthly or annual income.

Information on tax exemption for PLWD is found at <https://kra.go.ke/en/individual/special-needs/your-situation/people-with-disability#:~:text=Tax%20Exemption%20for%20PWDs%20Persons%20living%20with%20disability,are%20required%20while%20applying%20for%20an%20Exemption%20Certificate%3F>.

The Documents Required for Applying for Exemption are found online at <https://www.kra.go.ke/images/APPLICATION-FOR-INCOME-TAX-EXEMPTION-STATUS.pdf>. They include:

1. Disability Medical Assessment Report that stipulates the nature of disability and upholds the signature of the Director of Medical Services (gotten from AFYA HOUSE LG 29).
2. KRA Pin certificate (i-Tax).
3. National Identification Card.
4. NCPWD Disability Card.
5. A certificate copy of the latest pay slip where applicable.
6. A letter from the employer where applicable, clearly stating the nature of disability and how it affects the employee's productivity at place of work.
7. Tax compliance certificate.

8. Applicants to physically appear for interviews before Domestic Taxes Department officers in the nearest KRA offices for an Acknowledgement Slip.

To renew an exemption certificate, attach the same documents for application together with a copy of the expired exemption certificate.

### ***B. Other Tax Exemptions***

There exists no known exceptions in the tax Act that directly point at any other group. However, tax exemption may be considered to exempt some kind of businesses as an incentive from the government. The most important of these incentives may be for services influencing social welfare positively. These services should only exist to improve the conditions of marginalized members of the society. Tax exemptions can be made on value-added tax (VAT), exercise duty, and import duty.

Documents to be attached to the application for income tax exemption status for entities granted tax exemption include:

1. A letter of application for Income Tax Exemption status.
2. Returns of income and audited accounts.
3. Copy of the banks statements.
4. Constitution or Trust Deed.
5. A letter from the provincial administration stating the activities carried out by the organization.
6. Registration Certificate. g) PIN Certificate.
7. Evidence of the projects carried out for the last 3 years.
8. Any other information in support of the application.

## **PART 6**

### **FILING OF RETURNS**

#### **Introduction**

As already seen in the case of taxes, there are legal requirements for filing of returns. Returns will also be required to be filed for companies under company law. Hence, in this part, we shall look at the obligations for filing tax returns as well as the obligation to file company returns.

#### **Tax Returns**

It is mandatory for businesses to report all business income or losses the business makes on the personal income tax return. Sole proprietors normally fill only the individual tax returns and list down the figures and information in their individual returns. For partnerships and companies, other tax returns will be required to be made. The following are the returns required to be made depending on the business being carried out.

#### ***C. Process of Filing Tax Returns Generally***

Broadly, filing KRA return is a 4-step process.

- 1) You need to download the latest return Excel form on your KRA portal,
- 2) Next you need to complete the excel format by mentioning details in relevant sheets,
- 3) Then generate the zip file, and
- 4) Finally, upload the zip file into the i-TAX portal.

#### **Companies Returns**

Section 125 of the Companies Act requires that every company having a share capital shall, once at least in every year, within fourteenth day after the date of the annual general meeting of the company. They are to highlight the structure of the company, the shareholding, the division of shares, the Nominal capital, the names and addresses of the directors and shareholders in a company. The current registered office of the company and details of the company secretary.

#### ***A. Procedure for Filing Company Returns***

Annual returns are made in Form CR29 (**Appendix 7**) to show the “current” status of the company. All Companies should file the first annual return exactly One year and 6 months after incorporation.



Thereafter, the company has to file annual returns every other one year. Returns are filed by filling out Form 1. The form should then be certified by the company secretary and uploaded to e-citizen.

### ***B. What Happens When Annual Returns Are Not Filed***

Where a company annual returns are not filed in time. The registrar levies and Penalty on the company. In the event of any changes in the company structure or in case of any business that requires the registrar to register any external documents like charges, mortgages etc. Where an annual returns is not filed. The registrar shall not process such requests. The company also risks being struck off the register of companies.

### **Conclusion**

It is important for one to be aware that, depending on the nature of business being carried out as well as the structure adopted to carry out the business, you may be required to file the necessary returns annually. Usually, failure to file these returns will lead to stiff penalties being imposed, which may result into the business failing. The persons carrying out the business may also be subjected to criminal punishment for non-compliance with the requirement to file returns.