ESTABLISHING A LEGAL ENTITY IN KENYA

FACT PACK

May 2017
Business Sweden in Kenya
A FOREIGN COMPANY MAY CHOOSE TO OPERATE IN KENYA IN VARIOUS FORMS

TYPE OF COMPANY SET UP IN KENYA

Swedish-owned company in Kenya

- Subsidiary
  - Run from Kenya

- Branch
  - Run from Sweden

Partner in Kenya

Agent

Distributor

TYPE OF SET UP DEPENDS ON COMPANY’S NATURE OF OPERATIONS AND PLANS IN THE COUNTRY
WHILE A SUBSIDIARY SHOWS COMMITMENT TO THE MARKET, A PARTNERSHIP MAY BE LESS BUREAUCRATIC

<table>
<thead>
<tr>
<th>Own company:</th>
<th>Working through partners:</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Pros</strong></td>
<td><strong>Cons</strong></td>
</tr>
<tr>
<td>- Collected knowledge stays within the company</td>
<td>- Quick start-up of business</td>
</tr>
<tr>
<td>- Direct contact with customers</td>
<td>- Low initial costs and fixed costs</td>
</tr>
<tr>
<td>- Higher level of control</td>
<td>- Access to local knowledge/local network</td>
</tr>
<tr>
<td>- Customers prefer to deal with a subsidiary</td>
<td>- Closeness to customer</td>
</tr>
<tr>
<td><strong>Cons</strong></td>
<td><strong>Pros</strong></td>
</tr>
<tr>
<td>- Time consuming</td>
<td>- Limited customer contact</td>
</tr>
<tr>
<td>- Needs a strong organization backing</td>
<td>- Difficult to find right partner</td>
</tr>
<tr>
<td>- High initial costs</td>
<td>- Does not guarantee sales</td>
</tr>
<tr>
<td>- Limited knowledge of business area</td>
<td>- Risk of dependency on partner</td>
</tr>
</tbody>
</table>

FACTORS LIKE RISK AND CONTROL SHOULD BE CONSIDERED WHEN SELECTING LOCAL ENTITY OPTION

SOURCES: BUSINESS SWEDEN ANALYSIS
### TWO MAIN LEGAL ENTITY FORMS ARE COMMON FOR ESTABLISHMENT OF SUBSIDIARY

<table>
<thead>
<tr>
<th>Type of company</th>
<th>LIMITED LIABILITY COMPANY (PRIVATE AND PUBLIC)</th>
<th>BRANCH OFFICE OF A FOREIGN COMPANY</th>
</tr>
</thead>
<tbody>
<tr>
<td><strong>Overall comment</strong></td>
<td>The most common company form in Kenya. It can be either a private company or a public company.</td>
<td>Deemed to be carrying out business in Kenya on behalf of the Head Office of the company, of which the Head Office is responsible.</td>
</tr>
<tr>
<td><strong>Shareholding and capital</strong></td>
<td>Must have at least 1 shareholder (who may be a corporate entity) and a maximum of 50 shareholders. A public company should have at least 7 shareholders. There is no limit on the maximum number of shareholders.</td>
<td>Shareholders remain as per foreign company set up in home country.</td>
</tr>
<tr>
<td></td>
<td>Minimum paid up share capital required in the incorporation process is USD 1 000.</td>
<td>Can keep accounting books and pay tax on everything aside of representation activities may carry out its sales and service activities via a branch office in Kenya so long as it is registered as a foreign company in terms of the Companies Act.</td>
</tr>
<tr>
<td><strong>Number of Directors</strong></td>
<td>Private company: at least 1 (who must be a natural person) or more (including a Kenyan). Public company: 2 or more.</td>
<td>Directors remain as per foreign company set up in home country.</td>
</tr>
<tr>
<td></td>
<td></td>
<td>Required to have a local representative.</td>
</tr>
<tr>
<td><strong>Timeframe</strong></td>
<td>Takes between 4 to 6 weeks to obtain the Certificate of Incorporation (CoI).</td>
<td>Takes between 3 to 4 weeks to obtain the Certificate of Compliance (equivalent of the Certificate of Incorporation for a branch office).</td>
</tr>
<tr>
<td></td>
<td>For public companies, in addition to the Certificate of Incorporation, the Registrar will issue a Trading Certificate.</td>
<td></td>
</tr>
</tbody>
</table>

**Sources:** BUSINESS SWEDEN ANALYSIS
The following requirements are needed for registering a company in Kenya:

**Limited Liability Company**

<table>
<thead>
<tr>
<th>Document</th>
<th>Description</th>
<th>Actor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Name Reservation Application</td>
<td>3 names required in order of priority</td>
<td>Client to give preferred name(s)</td>
</tr>
<tr>
<td>Form 201 – Details of Registered office</td>
<td>Plot number, physical and postal addresses</td>
<td>Lawyers normally draft since they have the details</td>
</tr>
<tr>
<td>Memorandum and Articles of Association (MOA)</td>
<td>Shareholder details, nominal capital amount and share value</td>
<td>Client to present documents to lawyers</td>
</tr>
<tr>
<td>Form 203 – Particulars of Directors and Secretary</td>
<td>Directors and secretary details</td>
<td>Lawyers normally draft since they have the details</td>
</tr>
<tr>
<td>Statement of Nominal Capital</td>
<td>Nominal capital amount par value of the shares</td>
<td>Lawyers normally draft since they have the details</td>
</tr>
</tbody>
</table>

**Branch Office of a Foreign Company**

<table>
<thead>
<tr>
<th>Document</th>
<th>Description</th>
<th>Actor</th>
</tr>
</thead>
<tbody>
<tr>
<td>Certified copy of the CoI* &amp; MOA of the foreign company</td>
<td>Including documents of similar effect</td>
<td>Certification by a Notary Public</td>
</tr>
<tr>
<td>Full address details</td>
<td>Details of registered office of foreign company</td>
<td>Client to present details to lawyers</td>
</tr>
<tr>
<td>List of Directors &amp; Secretary of the foreign company</td>
<td>Directors and secretary details</td>
<td>Client to provide details to lawyers</td>
</tr>
<tr>
<td>Names and Postal addresses</td>
<td>Person(s) authorized to represent company</td>
<td>Client to present details to lawyers</td>
</tr>
<tr>
<td>Statement of existing charges issued by the company</td>
<td>Comprises of property in Kenya (usually nil)</td>
<td>Client to present details to lawyers</td>
</tr>
</tbody>
</table>

*SOURCES: BUSINESS SWEDEN ANALYSIS

* COI: CERTIFICATE OF INCORPORATION
FOUR MAIN STEPS TO GET AN OPERATIONAL ENTITY
TIME FRAME IN STANDARD CASE IS 8 – 12 WEEKS

Step 1
- Incorporate subsidiary
  - Obtain Certificate of Incorporation (CoI) after name search is completed and relevant documents (Memorandum of Articles (MoA) and Articles of Association (AoA) have been presented and filed with the Company Registrar
  - Initiate process

Step 2
- Apply for a Personal Identification Number (PIN) Certificate
  - Obtain Kenyan PIN Certificate for subsidiary from the Kenya Revenue Authority (KRA)
  - Subsidiary incorporated

Step 3 & 4
- Business Permit Application
  - File papers with the City County Authority and pay fees
- Obtain local bank account and deposit initial capital
  - File papers with appropriate authorities
  - Deposit funds to activate bank account (amount dependent on bank policy)
  - Ready to apply for business permit and open bank account
  - Subsidiary operational

SINCE TIME FRAMES DEPEND ON EXTERNAL FACTORS THAT CAN VARY, IT IS GOOD TO PUT A MARGIN INTO ACCOUNT

SOURCES: BUSINESS SWEDEN ANALYSIS
BUSINESS SWEDEN CAN LINK YOU WITH TRUSTED PARTNERS

- **Accountant**
  - Usually used at the set-up of the accounting structure as well as on an annual basis

- **Bank**
  - Required to enable depositing of initial capital
  - Necessary paperwork will need to be completed by company officers and a deposit forwarded to make the account operational

- **Lawyers**
  - Used frequently in the initial phase of setting up contracts, agreements and applying for registrations

- **Administration/book-keeping**
  - Used at the set-up of the accounting structure as well as on an annual basis
  - Assist with the administrative tasks, including but not limited to accounts receivable and payable, payroll and annual reporting, associated with the Kenyan subsidiary

CAREFUL CONSIDERATION OF INCORPORATION PARTNERS IS CRITICAL ON KENYAN MARKET
BUSINESS SWEDEN IN EA CAN ASSIST YOU FURTHER
FROM STRATEGIC ADVICE TO HANDS-ON ESTABLISHMENT SUPPORT

Our team in Eastern Africa

- Robin
- Theresa
- Julia
- Brenda
- Anna-Paula
- Juliet
- Niclas
- Meshack
- Olive
- David
- Louise

- Business Sweden’s assignment is to facilitate for Swedish companies to grow internationally and for foreign investors to invest in Sweden
- We promote Sweden as an attractive, innovative and competitive business partner. An important part is to support Swedish companies in reaching export markets with their products and services
- We are jointly owned by the Swedish government and the private sector, represented by the Ministry for Foreign Affairs and the Swedish Foreign Trade Association
- Business Sweden offers a variety of consultancy services, for example the following:

- **Market Analysis**
  - Deepen your knowledge on local market dynamics in your sector

- **Business Support**
  - We offer office space and administrative support on the ground

- **Visiting Programme**
  - Searching and visiting relevant partners, e.g. distributors

- **Recruitment**
  - We support in finding and recruiting the right local representatives
CONTACT US

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