ESTABLISHING A LEGAL ENTITY IN KENYA

FACT PACK

September 2016
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>‣ Collected knowledge stays within the company</td>
<td>‣ Quick start-up of business</td>
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<tr>
<td>‣ Direct contact with customers</td>
<td>‣ Low initial costs and fixed costs</td>
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<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>
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<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>
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<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>
<tr>
<td></td>
<td>‣ A bad partner can ruin future business</td>
</tr>
</tbody>
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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

<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 appoint at least 2 shareholders and 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>Must have at least 30% of the shareholding to persons who are Kenyan citizens by birth</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: 1 or more</td>
<td>Directors remain as per foreign company set up in home country</td>
</tr>
<tr>
<td></td>
<td>Public company: 2 or more</td>
<td></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 LIMITED LIABILITY COMPANY

<table>
<thead>
<tr>
<th>Name Reservation</th>
<th>Form 201 – Details of Registered office</th>
<th>Memorandum and Articles of Association (MOA)</th>
<th>Form 203 – Particulars of Directors and Secretary</th>
<th>Statement of Nominal Capital</th>
</tr>
</thead>
<tbody>
<tr>
<td>Application for the preferred name(s). Normally require 3 names in order of priority in case one is rejected, then the next available can be registered</td>
<td>Plot/L. R. number, road/street, physical address, postal address</td>
<td>This is the constitution of the Company. It contains: Details of shareholders Amount of Nominal Capital and par value of the shares Details of main business activity of the company</td>
<td>Details of directors and secretary and details of any other directorships Lawyers normally draft this once they have all the details</td>
<td>Amount of nominal capital (the initial capital of the company divided into shares) Par value (face value) of the shares Lawyers normally draft this once they have all the details</td>
</tr>
<tr>
<td>Client to give the preferred name(s)</td>
<td>Lawyers normally draft this once they have all the details</td>
<td></td>
<td></td>
<td></td>
</tr>
</tbody>
</table>

DOCUMENTS ARE FORWARDED TO THE CLIENT FOR EXECUTION AND SIGNING AND SENT BACK TO THE LAWYER

SOURCES: BUSINESS SWEDEN ANALYSIS
THE BELOW ARE NEEDED TO OPEN A BRANCH OFFICE IN KENYA

Five main documents required

- **Copy of the CoI & MOA of the foreign company**
  - Equivalent documents include:
    - A copy of the Charter
    - Statutes or other instruments defining the company constitution
  - Documents certified by a Notary Public and translated into English

- **Names and Postal addresses**
  - Details of person(s) resident in Kenya authorised to accept, on behalf of the company, service of any process on behalf of the foreign company
  - Full address of the registered office of the foreign company
  - Full address of place of business in Kenya

- **List of Directors & Secretary of the foreign company**
  - Details of directors and secretary
  - Details of other directorships of companies in Kenya

- **Statement of shareholding from the country of origin**
  - Proof of 30% shareholding to a Kenyan citizen

- **Statement of all existing charges issued by the company**
  - Comprises of property in Kenya (usually nil)

SOURCES: BUSINESS SWEDEN ANALYSIS
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

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

**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)

Initiate process
Subsidiary incorporated
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**
BUSINESS SWEDEN CAN ASSIST IN CREATING A LEGAL ENTITY WITH A FOUR STEP APPROACH

**Step 1**
- Initialization
  - Define activity and purpose
  - Establish administrative requirements
  - Perform name search

**Step 2**
- Information gathering
  - Collect information and documentation from client
  - Draft documentation for authorities

**Step 3**
- Company registration
  - File papers with appropriate authorities
  - Obtain Certificate of Incorporation
  - Obtain local PIN
  - Obtain business permit

**Step 4**
- Follow up
  - Ensure completed documents are signed and returned
  - Ensure that contact with service providers has been made

**Next step** (not in scope)
- Establish local presence
  - Provide local address
  - Provide administrative services
  - Support start-up of local business, e.g.:
    - Recruitment
    - Sales support

Start-up meeting - Follow-up meeting

Legal entity established with bank account in Kenya
Main type of service providers which Business Sweden will provide referrals to:

- **Bank**
  - Business Sweden will coordinate the set up of a bank account. Necessary paperwork will need to be completed by company officers and a deposit forwarded to make the account operational

- **Lawyer**
  - Lawyers are used frequently in the initial phase of setting up contracts, agreements and applying for visas

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

- **Administration/book-keeping service**
  - 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
**BUSINESS SWEDEN CAN ASSIST IN SETTING UP A LOCAL PRESENCE IN KENYA**

<table>
<thead>
<tr>
<th>INCORPORATION</th>
<th>BSO OFFICE SPACE</th>
<th>VIRTUAL BSO</th>
<th>EMPLOYMENT BSO</th>
</tr>
</thead>
<tbody>
<tr>
<td>Company registration</td>
<td>Provision of single or shared office space with desk</td>
<td>Provision of dedicated phone line</td>
<td>Recruitment of local staff representative</td>
</tr>
<tr>
<td>Application for Kenyan company PIN</td>
<td>Access to phone lines, internet connection and postal address</td>
<td>Use of postal address for incoming mail</td>
<td>Interviewing of potential candidates</td>
</tr>
<tr>
<td>Application of Business Permit from local authorities</td>
<td>Access to conferencing facilities</td>
<td>Business Sweden consultant responsible for handling incoming calls during office hours</td>
<td>Hiring of selected candidate</td>
</tr>
<tr>
<td>Opening a local bank account</td>
<td>Receptionist services</td>
<td>Support in administration and various practical issues</td>
<td>Provision of administrative support</td>
</tr>
</tbody>
</table>
CONTACT US

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