

# CDH: Africa Corporate Guide





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# Introduction

The idea for this guide was borne out of a need. Africa has maintained steady economic growth and investor interest despite global adverse conditions including most recently the COVID-19 pandemic. Many African countries continue to exhibit fortitude as their economies recover and demonstrate resilience and vast potential. In 2022, we saw more money being invested in the continent in the last 10 years and inevitably this will grow into 2023 and years to come.

Reflective of this, increasingly our clients are looking to grow their African footprint and therefore it is incumbent on us to understand the nuances, intricacies and ultimately the legal requirements of setting up in each of the countries in Africa. For this guide, we have selected the most often requested jurisdictions and covered the four corners of Africa.

The purpose of this guide is to simplify the position in relation to incorporation and setting up in various African jurisdictions and to provide our clients with an overview of their obligations in relation to this. This guide is not intended to be legal advice and may only be used for information purposes. We thank all our contributors to this guide. You demonstrate our ability to collaborate and produce work that is important and timely.

CDH has produced similar guides such as the Remote Working, eMobility, Labour Laws in Africa, and continues to collaborate with law firms on the Continent to provide added value to our clients.



**Brent Williams**

**For this guide we have partnered with law firms in the following jurisdictions:**



Cameroon



Democratic  
Republic of  
Congo



Egypt



Ethiopia



Ghana



Guinea  
Conakry



Kenya



Liberia



Mozambique



Morocco



Nigeria



Rwanda



Senegal



Somaliland



South Africa



Tanzania



Uganda



Zambia



Zimbabwe

## DISCLAIMER

While we make every effort to ensure that the content is updated regularly and to offer the most current and accurate information, please note that the Guide is updated as of 31 December 2022. Further note that the information and material published on this Guide is provided for general purposes only and does not constitute legal advice. Please consult one of our lawyers on any specific legal problem or matter. We accept no responsibility for any loss or damage, whether direct or consequential, which may arise from reliance on the information contained in these pages. Please refer to our full terms and conditions. Copyright © 2023 Cliffe Dekker Hofmeyr. All rights reserved. For permission to reproduce an article or publication, please contact us [cliffedekkerhofmeyr@cdhlegal.com](mailto:cliffedekkerhofmeyr@cdhlegal.com).



**Cameroon**



**Name of the firm**

Yeman Africa.

**Brief background of the firm and its work**

Yeman Africa is an African business law firm based in Douala, Cameroon which provides legal advice and innovative services to local and foreign corporates, multinationals, financial institutions, and investment funds throughout Africa. Yeman Africa also develops a dedicated practice for start-ups.

Our lawyers understand the business environment in Cameroon and have an excellent mastery of national and community legislation.

**Lawyers who worked on this questionnaire**

Hervé Essiane. Laetitia Mbondo and Willy Mvondo.

**Any other relevant information**

Yeman Africa incorporates foreign subsidiaries and local companies in Cameroon, helping them to obtain specific licences, authorisations and any documents required to start their activities.



**Cameroon**





Cameroon

### What is the legislation that governs companies in your jurisdiction?

In Cameroon, several texts govern companies, depending on their categories, types or fields of activity.

Non-commercial companies are governed by the Civil Code of 1804 in its version applicable in Cameroon. They may also be governed by specific laws and decrees with regard to the nature of the company or its purpose, such as professional civil companies whose operation may be governed by an ethics code.

As for commercial companies, they are governed by both supranational and national texts.

Supranational texts refer to treaties that influence the creation and existence of commercial companies.

#### OHADA Treaty

The Treaty establishing the Organization for the Harmonization of Business Law in Africa (OHADA), adopted on 17 October 1993 and

amended on 17 October 2008, governs commercial companies through uniform acts such as:

- The Uniform Act on commercial Companies and Economic Interest Groups (AUSGIE)
- The Uniform Act relating to General Commercial Law
- The Uniform Act on Securities
- The Uniform Act relative to Collective Proceedings for the Clearing of debts
- The Uniform Act on Cooperatives (AUSC)
- The Uniform Act on Organization and Harmonization of Company accounts (AUHCE)

For the application of some of these acts, the Cameroonian legislature has enacted laws such as Law No 2003/008 of 10 July 2003 on the sanctions of offences provided by certain uniform acts of the OHADA and Law No 2016/014 of 14 December 2016 fixing the minimum share capital and the modalities of recourse to the services of a public notary in the creation of a private limited company.

#### CEMAC legislation

Economic and Monetary Community of Central Africa (CEMAC) legislation may also have an impact on the mode of operation or even the modalities of creation of certain commercial companies, notably through its:

- Regulation No 06/03 on the organisation, functioning and supervision of the capital market in Central Africa.
- General regulation on the Central African Financial Market Supervisory Commission (COSUMAF).
- Regulation No 02/18/CEMAC/UMAC/CM on stock exchanges in CEMAC.
- The Convention of 16 October 1990 creating a Banking Commission in Central Africa, and all related texts.
- The treaty of 10 July 1992 establishing the Inter-African Conference on the Insurance Market (CIMA) to govern insurance institutions.





Cameroon

At the national level, commercial companies are generally governed by:

- Law No 2015/018 of 21 December 2015 governing commercial activity in Cameroon.
- Law No 2014/007 of 23 April 2014 laying down the modalities of dematerialisation of transferable securities in Cameroon.
- Decree No 2014/3763/PM of 17 November 2014 laying down the conditions of application of Law No 2014/007 of 23 April 2014.
- Decree No 93/720/PM of 22 November 1993, laying down the modalities for the application of Law No 90/031 of 10 August 1990, governing commercial activity in Cameroon (this decree is still applied despite the repeal of this law by Law No 2015/018 of 21 December 2015).
- Law No 98/013 of 14 July 1998 on competition and international trade.
- The general tax code in force.

Besides, it should be noted that although they may be incorporated in the form of commercial companies, state-owned companies are governed

by Law No 2017/011 of 12 July 2017 on the general regulations of public enterprises with its annexed texts such as Decree No 2019/320 of 19 June 2019, specifying the modalities of application of certain provisions of Law No 2017/010 and 2017/011 of 12 July 2017, on the general status of public establishments and public enterprises, Decree No 2019/321 of 19 June 2019 fixing the categories of companies, remunerations, indemnities and benefits of their managers, and Order No 00000201/MINFI of 4 May 2020 on the classification of public enterprises in Cameroon.

### **What are the different types of companies that can be incorporated?**

Besides non-commercial companies, AUSGIE provides the possibility to incorporate the following types of companies:

#### **Private unlimited company**

A company in which all members are traders and have unlimited liability, for the company's debts (Article 270 AUSGIE).

#### **Sleeping partnership (limited partnerships) company**

A company in which the capital is made up of shares and in which one or more partners, known as "*active partners*", whose liability for the company's debts is unlimited, joint and several coexist with one or more partners known as "*sleeping partners*" whose liability for the company's debts is limited by shares (Article 293 AUSGIE).

#### **Private limited company**

A company in which the shareholders are liable for the company's debts up to the limit of their contributions and their rights are represented by company shares. It may be formed by one natural or corporate person, or by two or more natural or corporate persons (Article 309 AUSGIE).

#### **Public limited company**

A company in which the liability of each shareholder for the debts of the company is limited to the amount of shares they have taken and their rights are represented by shares (Article 385 AUSGIE). A public limited company may have only a single shareholder and is allowed to make a public offering.



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### Simplified public limited company

Formed by one or more shareholders whose articles of association freely prescribe the organisation and operation of the company subject to certain mandatory rules. Shareholders of a simplified public limited company are liable for the company's debts only to the extent of their contributions and to which their rights are represented by shares. Where such a company has a single shareholder, it is referred to as a "*sole shareholder*". The sole shareholder shall exercise the powers devolved to shareholders where AUSGIE provides for a collective decision (Article 853-1 AUSGIE).

### Economic interest group

A type of entity whose purpose is to aggregate all the means necessary to facilitate or develop the economic activity of its members and to improve or increase income from the said activity (Article 854 AUSGIE).

Companies without corporate personality may also be created, such as joint ventures (Article 254 AUSGIE) or de facto partnerships (Article 864 AUSGIE).

### Co-operative

An autonomous corporation representing partners' common economic, social, and cultural needs, and whose ownership and management are collective and where power is exercised democratically on a co-operative basis (Article 4 AUSC).

The most commonly used are private limited companies, public limited companies and simplified public limited companies.

### What is the process of setting up a company?

The basic process is set out below:

#### For private unlimited companies and sleeping partnerships

- Establishment of articles of association by authenticated deed or by private deed.
- Declaration of regularity and conformity or notarised declaration of subscription and payment. (A specific document where founders mention all operations carried out in order to create the company and specify that the incorporation is consistent with legal provisions.)

- Registration in the Trade and Personal Property Credit Register of the jurisdiction of the company's headquarters.
- Insertion in a newspaper of legal announcements.
- Signature of the deed of assumption of the commitments made by the founders on behalf of the company in formation.

#### For limited (public, private and simplified) companies

- Establishment of the articles of association by authenticated deed or by private deed.
- Full subscription of the capital with the establishment of subscription forms.
- Payment of the contributions in kind and in cash.
- Deposit of the funds and the list of subscribers at a public notary office or at a bank or a credit or microfinance institution.
- Obtaining the certificate of deposit of funds given by the depositary.
- Declaration of regularity and conformity or notarised declaration of subscription and payment.





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- Signing of articles of association by all subscribers or their duly authorised representatives.
- Constitutive general meeting if contribution in kind or public offering (not for limited liability companies).
- Holding of the first board of directors and appointment of the management (chairman of the board of directors, general managers). Registration, filing of deeds with the clerk of the court of the jurisdiction of the company's registered office (not for limited liability companies).
- Registration in the Trade and Personal Property Credit Register of the jurisdiction of the company's headquarters.
- Withdrawal of funds by the manager.
- Insertion of a notice in a newspaper of legal announcements.
- Signature of the deed of assumption of the commitments made by the founders on behalf of the company in formation.

### Incorporation with public offering

Prior to the operations listed for limited companies above, the incorporation of a joint-stock company with a public offering implies the accomplishment of the following operations:

- Publication of a notice in the newspapers of legal announcements, before the operations begin.
- Approval of the draft statutes (the draft of the articles of association).
- Publication of circulars to inform the public about the forthcoming issuance of shares.

In some instances, a private limited company may be incorporated through the "one-stop shop" Companies Creation Formalities Center (CFCE) for a sole investor, or if the capital is less than or equal to CFA F 1 million (knowing that the minimum capital for this form of company is CFA F 100,000). (See Law No 2016/014 of 14 December 2016 fixing the minimum share capital and the modalities of recourse to the services of a public notary in the creation of a private limited company.)

An application is addressed with the required documents:

- Six copies of the articles of association.
- Two copies of the applicant's identity card or valid passport.
- A criminal record bulletin for a Cameroonian or an affidavit for foreigners, both valid for use for 75 days.
- The fees required (see below).

A company's location sketch signed by the applicant with their phone number.

### How long does the company incorporation process take?

The company incorporation process is deemed to take three days through the CFCE, but an average of 15 days should be considered, while through the public notary it can take four to six weeks.



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### How much does it cost to incorporate a company?

Through the CFCE, it costs around CFA F 55,000, without fiscal stamps and some miscellaneous fees, to incorporate a company:

- CFA F 41,500 for the Trade and Personal Property Rights Register; and
- CFA F 13,175 for the publication in an official journal.

Through a public notary, the average amount is under CFA F 500 000. Generally, the pricing is influenced by the legal notice journal used for the announcement and the share capital amount.

N.B: CFA F 1 is about USD 0.0016

Sometimes, a director can also be an employee on the basis of Article 426 AUSGIE, which states that *"Unless otherwise provided for in the articles of association, a worker of a company may be appointed director where his contract of employment corresponds to an effective job. Likewise, a director may conclude a contract of employment with the company where such contract corresponds to an effective job."*

Therefore, a bank identification certificate and employment contract may be needed to obtain a work permit and for the payment of the director's salary.

### Is there a requirement to have a local director?

No, there's no requirement to appoint a local director in Cameroonian companies.

### Is there a requirement to have a resident director?

There is no specific obligation to appoint a director with local residence.

However, when the director is also hired as an employee, the issuance of their employment contract and their bank identification certificate require a local residence.

### Is there a requirement for a company to appoint a company secretary?

The appointment of a company secretary depends on the willingness of the board manager, according to the company's needs and organisation, but is not required by law.

### Is there a requirement for a company to appoint an auditor?

The appointment of an auditor is always mandatory for a public limited company (Article 694 AUSGIE), during mergers an appraiser auditor is required (Article 672 AUSGIE) as well as during a transformation (Article 187-1).

For partnership companies and limited partnerships companies that meet at the end of the fiscal year, two of the following conditions require an auditor:

- A balance sheet total of more than CFA F 250 million;
- An annual turnover exceeding CFA F 500 million; or
- More than 50 permanent staff (Article 289-1 AUSGIE and 293-1).

For private limited companies and simplified public limited companies that meet at the end of the fiscal year, two of the following conditions:

- A total balance sheet amount that is greater than CFA F 125 million;





Cameroon

- An annual turnover of more than CFA F 250 million; or
- More than 50 permanent staff members (Articles 376 and 853-13 AUSGIE).

### Can a company be wholly owned by foreigners?

Yes, nothing in the Cameroonian legislation prohibits that. However, in some sectors, the law imposes a minimum participation of the state (mining and forestry sectors) or requires foreign companies to conclude representation agreements with local companies (advertising sector).

### Is there a requirement to declare beneficial ownership?

According to Article 10 of Decree No 2014/3763/PM of 17 November 2014, laying down the conditions of application of Law No 2014/007 of 23 April 2014 (laying down the modalities of dematerialisation of transferable securities in Cameroon) transferable securities accounts must include the identification of the natural persons or legal entities owning the transferable securities

and, if applicable, the identification of the usufruct (beneficial ownership) as well as the rights attached thereto and, if applicable, to whom these rights belong.

The AUSGIE also provides that decisions concerning the allocation of profits are reserved for the usufructuary (beneficial ownership) (Article 128). The latter is convened to the meetings at the same time as the legal owner (Article 519).

Besides, Article 75 of General Regulation of COSUMAF which states that *"Any person or entity that achieves to hold, alone or in concert, a certain shareholding interest or voting rights of a listed company must disclose the amount of its holding to the public."*

*For the application of the above-mentioned disclosure, the thresholds of capital or voting rights to be reached or held are set respectively at: 5%, 10%, 20%, 33,33%, 50% and 66,67%.*

*The declaration also applies to any reduction in shareholding below the thresholds mentioned in the previous paragraph."*

### Is there a requirement to register a company address?

Yes, pursuant to Articles 23, 24 and 25 of AUSGIE, every company shall have a registered office which shall be indicated in its articles of association.

The company shall have its registered office either at its principal location of activity or at the location where its administrative and financial services are concentrated. The choice of location shall be made by the members.

The registered office may not consist solely of a postal address. It shall be identifiable by an address and a sufficiently specific geographical location.

As a kind of sanction, Article 26 of AUSGIE provides that *"third parties may rely on the statutory registered office but it may not be relied upon by the company as against them where the real registered office is located elsewhere"*.



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Moreover, Article 26 paragraph 3 of the decree No 93/72/PM provides that in order to obtain an approval to carry out commercial activity, a foreign company shall provide a commitment to establish the company head office in Cameroon.

### **Is there a requirement to have a fully paid up share capital at the point of incorporation?**

The principle is that cash contributions and contributions in kind shall be paid in full during the company formation (Article 41 AUSGIE).

However, as far as PLCs are concerned, the shares representing cash contributions are paid up upon the subscription of the capital by half of their nominal value. The payment of surplus shall be made once or by instalments within two years from the registration of the company with the Trade and Personal Property Credit Register, under the terms provided in the articles of association (Article 311-1 AUSGIE).

For a **private limited company** and a **public limited company**, at least one-quarter of the shares representing cash contributions shall be paid up during capital subscription. The rest shall be paid up within a period of not more than three years from the date of registration of the company in the Trade and Personal Property Rights Register, in accordance with the terms and conditions laid down by the articles of association or by a decision of the board of directors or of the managing director. Shares representing cash contributions which have not been fully paid up shall be registered shares. As long as the capital is not fully paid up, the company may neither increase its capital, unless such increase of capital is by contributions in kind, nor issue bonds (Article 389 AUSGIE).

For a **public limited company** making a public offering, the capital must be fully subscribed (Article 827-2 AUSGIE).

### **Are there any filling requirements for a change of directors or a change in shareholding?**

Although there is no prior formality for the shareholding's modification or a modification of the company director, it should be noted that the modifications of any information contained in the Trade and Personal Property Credit Register have to be reported in it (Article 427, 434, AUSGIE).

Moreover, with regard to the Cameroonization of jobs, the appointment of a foreign director also hired as an employee is subject to the presentation of a certificate of shortage of Cameroonian manpower, as outlined below.



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**Are there any post-incorporation requirements that need to be satisfied? For example, registrations for tax purposes or business licences.**

When the company is incorporated, a taxpayer registration number should be obtained through the national tax office's internet platform, Fiscalis.

Article 6 of Decree No 93/720/PM, provides that commercial activities must be declared and a professional card issued prior to the commencement of activities. In cases of wholly foreign-owned companies, an authorisation to carry out commercial activities in Cameroon should be sought from the Ministry of Commerce.

In addition, activities such as logging, energy oil and gas, commercial transportation, and liquor store operations are subject to prior licensing.

**If there is no requirement to have a local director or shareholder, what is a foreigner required to do to register a company for tax purposes and other similar post-incorporation registrations?**

No matter the nationality of the investor, upon incorporation, the company will have to register with the tax administration in order to obtain a taxpayer's registration number.

The first step is to obtain an attestation of the taxpayer's registration, which is easily generated in Fiscalis. This attestation is used to address an application to the competent tax office in order to be registered in the taxpayer's database and to generate an attestation of non-due tax debts. This can be done by the company founder(s) or the firm in charge of the incorporation, or any other specialist.

Filing a monthly tax requirement is the responsibility of the company. Some companies may appoint an accountant or an accounting and tax firm which will assist with and ensure that the company is compliant with its tax obligations.

Pursuant to Decree No 74/733 of 19 August 1974, laying down the procedures for implementing Law No 69/LF/18 of 10 November 1969, establishing an old-age, disability and death pension insurance scheme, any employer must register any of its employees within eight days of hiring (Article 5).

And the Order No 020/MTPS/SG/CJ of 26 May 1993, laying down the modalities for the declaration of enterprises, provides that any person who proposes to open or re-open an enterprise of any kind whatsoever shall, within 30 days prior to opening, make a declaration to the Labour Inspector and to the service in charge of the manpower in the relevant jurisdiction (Article 4).





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**If there is no requirement to have a local director or shareholder, what is the process of obtaining a work permit for foreign employees?**

To obtain a work permit, the employer shall apply for the endorsement of the employment contract by the Minister of Employment and Vocational Training prior to its commencement. The contract is deemed to have been endorsed if the minister fails to give a response within the two months after the reception of the application (Article 27(2) and (3) of the Labour Code).

This endorsed contract consists of a work permit for a foreign employee.

**Are there different classes of work permits?**

No, there are not different classes of work permits in Cameroon.

**What are the requirements for obtaining a work permit? (Please provide the requirements for each class of work permit, if applicable).**

Article 5 of Decree No 93//575/PM of 15 July 1993, laying down the procedures for drawing up and approving certain employment contracts, provides that a request is addressed through a registered letter with a request for advice of delivery to the Minister of Employment and Vocational Training. An employer may apply for a work permit on behalf of foreign employees, whether they are already in Cameroon or still abroad. For this purpose, foreigners already in Cameroon must have a long-term visa (more than three months). The application shall contain:

- Six signed copies of the employment contract for which the visa is requested.

- A medical certificate less than three months old issued by a medical authority from the place of recruitment, attesting that the person concerned is fit to carry out their employment activities in Cameroon.
- Professional or academic references of the applicant, such as certified copies of work certificates or diplomas.
- A detailed descriptive note of the job in question, highlighting the corresponding profile.
- The applicant's curriculum vitae.
- A certified copy of the entry and residence permit in Cameroon for expatriates already in Cameroon.
- A copy of the contract, convention or any other document justifying the occupation of the post by a foreigner.



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- A plan for the Cameroonization of jobs, approved by the minister in charge of labour.
- A detailed organisation chart of the company, showing all the managerial and supervisory positions, with the corresponding profiles.
- For certain types of jobs, the work permit seeker shall provide a certificate of manpower shortage (Article 2 of Decree No 93//571/PM of 15 July 1993, laying down the conditions of employment of foreign workers for certain occupations or levels of professional qualification).

### **How long does a work permit application take to be processed?**

The maximum time for completion of the work permit procedure is two months according to Article 27 of the Labour Code.

### **What is the cost of a work permit? (Please provide the cost of each class of work permit, if applicable).**

The work permit is free of charge (See circular letter No 00000001/CL/MINFOP/DRMO/SDLA of 30 April 2021, relating to the conditions for obtaining approvals of employment contracts for workers of foreign nationality).

### **Are there any annual compliance requirements that a company must meet?**

As Article 72 AUHCE provides that the annual financial statements and the management report shall be submitted to shareholders or members for approval within the period of six months from the closing date of the fiscal year, all types of companies are obligated to hold an annual meeting at least six months following the end of the year. This annual meeting aims at approving the financial statements and the allocation of income (Article 137 AUSGIE and 110 AUSC).

Furthermore, the company must file its statistical and tax declaration with the tax administration, and its financial statement with the Trade and Property Credit Registrar (the company's house).



**Democratic  
Republic of Congo**



<b>Name of the firm</b>	Proxima Law Firm SCA.
<b>Brief background of the firm and its work</b>	<p>Proxima is a law firm in the DRC with offices in Kinshasa that was originally established under the leadership of Pierre Kasongo, Yves Brosens and Serge Nawej.</p> <p>Proxima has extensive joint expertise in Africa in respect of investments and projects, most notably in the DRC.</p> <p>Proxima offers a full range of legal services including Corporate, Finance and Projects, Intellectual Property and Technology, Arbitration and Regulatory, Real Estate, Employment and Taxation.</p>
<b>Lawyers who worked on this questionnaire</b>	Serge Nawej, Katerina Papachristou, Junior Ekambo and Daniel Yamba.
<b>Any other relevant information</b>	<p>Proxima is an eight-year-old law firm in the DRC with offices in Kinshasa established under the leadership of Serge Nawej who is currently the managing partner of the firm.</p> <p>We are very knowledgeable on Organization for Harmonization of Business Law in Africa law – which is crucial for lenders and investors to achieve a successful outcome in their projects. Proxima is a law firm in the DRC breaking new ground and working at international standards in close co-operation with international law firms when applicable.</p>





**Democratic  
Republic of Congo**

### **What is the legislation that governs companies in your jurisdiction?**

The Uniform Act on Commercial Companies and Economic Interest Groups was revised by the Organization for Harmonization of Business Law in Africa (OHADA) on 30 January 2014. However, factors such as the sector of activity or the presence of a public person in the status of the company allow companies to implement their own additional provisions or special statutes.

### **What are the different types of companies that can be incorporated?**

#### **Limited liability company (*société à responsabilité limitée* – SARL)**

A limited liability company (LLC) is a company in which the partners are only responsible for the company's debts up to the amount of their contribution and whose rights are represented by company shares.

The characteristics of an LLC are the following:

- The number of partners is at least one (the maximum is unlimited).
- The maximum duration is 99 years.
- The minimum share capital is USD 2,000 and the contributions making up the share capital can be made in cash, in kind or in industry.
- The contributions in cash must be enumerated in the articles of association.
- The value of the shares must be at least USD 10 – these shares are not negotiable and must be subscribed in full and fully paid up at the incorporation of the company. It is also necessary to specify in a notarial deed the contributions in cash and in kind made by each of the partners to pay up their share in the company's capital.

#### **Management and administration**

The manager, who must be a natural person, ensures the daily management of the company. They may be chosen from among

the partners or from outside the company. Unless otherwise provided for, they are appointed in the articles of association or in a separate document for a renewable term of four years.

They can be dismissed by a decision of the partners representing more than half of the share capital, but dismissal without just cause exposes the company to damages. Their resignation without just cause exposes the manager to damages.

The manager is invested with the extensive powers to act in all circumstances in the name of the company. Clauses limiting their powers are not opposable to third parties. If there is more than one manager, each of them may, unless otherwise provided for in the articles of association, act separately.

Any agreement concluded between the company and one of its managers or one of its partners must be approved by the partners, on the report of the manager or the auditor, if any.



In the case the articles of association or the law being violated, the manager is liable to face criminal or civil proceedings. The complaint can be filed by one or several shareholders acting individually (individual action for personal injury) or for injury to the company (corporate action).

#### **Quorum required during the general meetings of LLCs**

This differs depending on whether it is an ordinary general meeting or an extraordinary general meeting.

For an ordinary general meeting, decisions are taken by a majority of the share capital on first call and by a majority of the votes cast on second call. For an extraordinary general meeting, the quorum is three quarters of the shares.

#### **Shares transfer in an LLC**

The transfer of shares is free between partners as well as between spouses, ascendants and descendants. Unless otherwise provided for in the articles of association, the transfer to a third party is subject to the consent of the majority of the non-transferring

partners representing three quarters of the shares, less the shares of the transferring partner.

A right of pre-emption is granted to the co-associates, i.e. they can buy the shares offered for sale as a priority.

#### **Controls in an LLC**

In addition to the control carried out by the members in the exercising of their right of communication and information, a supervisory board may be responsible for auditing the accounts and the annual balance sheet and for reporting to the partners during the meetings.

When the company exceeds one of the following three thresholds, an auditor must be appointed for three years:

- A turnover exceeding USD 500,000;
- Capital of more than USD 20,000; or
- More than 50 permanent employees.

The board of directors and the supervisory board have a permanent right to verify any of the company's

documents. They must issue an audit report on the accounts or, failing that, state the reasons for any reservations made or failure to certify them.

#### **The single-member LLC**

A single-member LLC has only one partner, called the sole partner, who can be a natural or legal person. This allows one to have a legal structure which limits the responsibility and simultaneously ensures the perennality of the company.

The legal regime of the single-member LLC is that of the multi-person LLC with some adaptations.

The management can be ensured by the sole partner or by a third party. The sole partner takes ordinary and extraordinary decisions, but they must be careful not to confuse the company's assets with their personal assets. If they succumb to the temptation, they risks being subject to collective procedures (for example, being obliged to cover the company's liabilities with their personal assets). They may also be prosecuted for misuse of corporate assets.





## Democratic Republic of Congo

The manager, whether they are the sole partner or not, must hold the meetings, file the management reports and the inventory, i.e. they must give an account.

The sole shareholder can decide on an early dissolution. This decision is followed by the transfer of the company's assets to the sole partner's personal assets.

### **Simplified joint stock company (*société par actions simplifiée* – SAS)**

The SAS was introduced into OHADA law as a result of the reform of commercial company law in 2010. It now coexists with the other forms of commercial companies, namely public limited companies, limited partnerships, general partnerships and the limited liability companies.

It is organised by Articles 853-1 to 853-23 of the OHADA Uniform Act relating to commercial companies and economic interest groups.

The simplified joint stock company is a rather atypical form of company. It is characterised mainly by the freedom granted to the partners with regard to its organisation and operation. Its nature and its regime reflect its particularity.

### **The nature of a SAS**

Several elements characterise a SAS:

- It is a company with limited risks. The partners are only responsible for the debts of the company up to the amount of their contributions; it is therefore similar to the SARL and the SA.
- The SAS is a joint-stock company: in return for their contributions, partners receive shares and not social shares.
- The company does not make a public offering, i.e. its shares are not negotiable on the stock market. In this respect, it differs from the SA which, under certain conditions, can make a public offering.
- A SAS can be a multi-person company or a single-person company (in this case, we speak of the SASU): the legislation makes provision for both the SAS with several shareholders and the SAS with only one shareholder. There is a common point with the SA, which can also be a one-person company.
- The SAS is above all a flexible company which can be freely organised by the partners, notably with regard to the share capital, the number of partners, the modes of administration, etc.
- A SAS is not a company with variable capital, but it can become one.
- There is no minimum share capital; the parties freely determine the share capital as well as the nominal amount of the shares and the conditions of payment of the contributions.



### The regime of the SAS

As a consequence of its particular nature, an SAS does not have its own legal regime. It is freely organised by the shareholders in accordance with Article 853-7, which provides that *“the articles of association determine the conditions under which the company is managed”*. The only mandatory body in the SAS is the chairman, who represents the company with respect to third parties (Article 853-8). The other powers are exercised by the general meeting (Article 853-11).

Moreover, Article 853-3 provides that, unless there are exceptions, the rules for public limited companies apply to a SAS. Among the exceptions, the presence of the auditor is not mandatory except in the cases provided for by Article 853-13.

### Limited partnership (*société en commandite simple – SCS*)

SCSs are companies in which two categories of partners coexist:

- The general partners, who are in the same situation as the partners of general partnerships and to whom the management is entrusted, unless it is exceptionally entrusted to a third party.

- The limited partners, who are only liable up to the limit of their contributions and who cannot interfere in the management of the company, which makes it impossible to appoint a manager from among the limited partners.

As for the necessary share capital, the law sets neither a minimum nor a maximum. It is divided into shares, which can only be transferred with the consent of all partners, unless otherwise provided for in the articles of association. The articles of association must indicate the amount or value of the shares of all the associates.

An annual general meeting is held each year within six months of the end of the financial year.

The limited partners and the non-managing general partners have the right, twice a year, to obtain access to the books and corporate documents and to ask questions in writing about the management of the company, which must also be answered in writing.

### General partnership (*société en nom collectif – SNC*)

The law defines an SNC as a company in which *“all the partners are merchants and are indefinitely and jointly and severally liable for the company’s debts”*. An SNC is constituted between persons who commit themselves because of their mutual trust. Its main characteristics are:

- It cannot carry out certain activities such as banking and insurance.
- All the partners (at least two) must be merchants.
- The associates commit themselves indefinitely and jointly and severally to the payment of the company’s debts.
- The law does not fix any minimum capital.
- The share capital is divided into shares of equal value, which can only be transferred with the consent of all the partners.



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- The partnership is designated by a corporate name which must be immediately preceded or followed in legible characters by the words "*société en nom collectif*" or the acronym "*SNC*".
- In principle, the death of a partner leads to the dissolution of the partnership. However, the articles of association may provide for the continuation of the partnership with the heirs or between the survivors, after reimbursement of the heirs.
- A spouse cannot participate in the same SNC as his/her spouse, in order to avoid both of them being indefinitely and jointly liable.
- The management is ensured by one or several managers or partners, or not.
- The remuneration of the manager is fixed by the act of appointment. Their role is to represent the company in its relations with third parties, but they must keep the partners informed of their various actions on an ongoing basis.

- The partners have the power to deliberate and to take all decisions beyond the powers of the manager, in particular the approval of the accounts.
- The share of each associate in the profits or their contribution to the losses is proportional to their contribution.
- The contributions in industry do not enter in the amount of the capital, since they are not realisable and they give right only to the attribution of a percentage of the profits.

### Public limited company (*société anonyme*)

An SA is a company in which "*the shareholders are responsible for the social debts only up to the amount of their contributions and whose rights are represented by shares*".

Its main characteristics are the following:

- It can have only one shareholder.
- The commitment of the members is limited to the amount of their contribution. This is why the capital that constitutes the credit of the company must be indicated in all documents.
- Similarly, the rights of the members are proportional to the amount of their contributions represented by negotiable securities.
- The incorporation of the company is subject to the fulfilment of numerous formalities, which are relatively complex when there is a public offering (concern for the protection of public savings).
- The minimum share capital is USD 200,000 in the case of a public offering, and USD 20,000 otherwise.
- The share capital can be increased during the life of the company either by new contributions or by the incorporation of reserves. In the event of a loss, the share capital can also be reduced.



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## **Management and administration**

The law offers the shareholders two solutions: a corporation with general administration or a corporation with a board of directors.

### **1. An SA with general administration**

A corporation with a maximum of three shareholders need not set up a board of directors. It may appoint a managing director who assumes the functions of administration and management of the company. This managing director is appointed either by the articles of association or by a general meeting. They must necessarily be a natural person, who may combine their duties as director with an employment contract.

### **2. An SA with a board of directors**

The board of directors is composed of at least three, and at most 12, members, elected by the general meeting for a period that cannot exceed two years in the case of appointment by the articles of association or by the constitutive general meeting, and six years

where they are appointed during the company's life. They may be re-elected, but may also be dismissed at any time by the ordinary general meeting, even if the matter has not been included in the agenda.

A non-shareholder may be appointed as a director. A director may also be bound to the company by an employment contract. The director is remunerated by a fixed function allowance determined by the general meeting. The board of directors may grant exceptional remuneration for special assignments.

The board of directors is chaired by a chairman appointed from among its members; and the management of the company is ensured by a CEO chosen by the board of directors from among its members or outside them.

The decisions of the board of directors are taken by a majority of the members present or represented. The directors are liable for any damage caused to third parties and to the shareholders.

## **Controls in an SA**

Apart from the general meetings of shareholders, the control of the activities of the corporation is ensured on a ongoing basis by the auditors and occasionally by any expert appointed by a judge to investigate a specific management act.

Every corporation is required to have at least one statutory auditor and one alternate. In the case of a public limited company, two statutory auditors and two alternates are required.

If the company fails to appoint an auditor, any shareholder may ask the interim relief judge to appoint one until the general meeting has made the required appointments.

The statutory auditors occupy a special place in public limited companies, enjoying a certain independence in the performance of their mission. Indeed, the duration of their mandate as well as its content are determined by law and not by the will of the shareholders: Their term of office is two financial years when





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they are appointed by a constituent general meeting or by the articles of association, and six financial years when they are appointed by an ordinary general meeting (during the life of the company). To guarantee their independence, the law provides that they can only be dismissed by a general meeting and for misconduct. Similarly, one or more shareholders representing at least one tenth of the share capital have the right to apply to the courts for the removal of one or more statutory auditors.

### Role of the statutory auditors

Their primary role is to control: the statutory auditors verify the validity of the information given to shareholders and the regularity and sincerity of the company's accounts. To facilitate the accomplishment of this heavy task, the law grants them important powers of control and investigation.

In addition, they are required to inform the company's directors and shareholders of any irregularities and inaccuracies found. In particular, they must present a general report to the shareholders on the accounts for the past financial year. They are also

required to disclose to the judicial authorities (public prosecutor, judicial police authorities, etc.) any criminal acts that they become aware of during the course of their duties.

### Economic interest group (*groupement d'intérêt économique – GIE*)

An economic interest group is governed by Book VII of the Uniform Act relating to the law of commercial companies and economic interest groups. It can be defined as a legal entity whose exclusive purpose is to implement, for a given period, all means likely to facilitate or develop the economic activity of its members, to improve or increase the results of this activity.

Consequently, the EIG is not a commercial company, insofar as its purpose is not to make profits for itself and to share them, but its role is to pool means intended for the development of the economic activity of its members. Nor can it be considered as an association in the sense that its object may be commercial and that its activity must be essentially related to the economic activity of its members.

### What is the process of setting up a company?

As mentioned above, this depends on the sector of activity. Some industries such as construction, mining, manufacturing, telecommunication and others, require certain administrative authorisations and therefore have special provisions. However, there are still some common rules. The procedure is as follows:

- Drafting of the articles of association.
- Opening a bank account for the company in line with the requirement to deposit the capital amount in a bank located in the jurisdiction of the company head office.
- Filing the registration of the notarised articles of association in paper and electronic form at the office for the creation of companies.
- Payment of registration fees.
- Obtaining incorporation documents.



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### **How long does the company incorporation process take?**

Once the articles of association have been drafted, they have to be submitted to the compliance office of the bank for the opening of a bank account. This process can take an estimated eight working days.

Once the account is opened, the shareholders must deposit the capital amount and establish an attestation of capital deposit.

Then, they must request the filing and registration of the company, a process which takes around 15 to 18 working days.

However, for some time now, there has been a delay in the administration. Therefore, the process could take up to one month. But it is possible, with certain diligence, to have them in less than 15 days.

### **How much does it cost to incorporate a company?**

Fees to establish the attestation of capital deposit: USD 80 to 90.

Fees for registration:

- For individuals, the equivalent in Congolese francs of USD 30, broken down as follows:
  - Trade and Personal Property Credit Register (RCCM) fees: USD 20.
  - National identification (Id. NAT) fee: USD 10.
- For SARLs under private signature, the equivalent in Congolese francs of USD 70, distributed as follows:
  - RCCM fees: USD 30.
  - Id. NAT fee: USD 30.
  - Official journal fees: USD 10.
- For legal entities, the equivalent in Congolese francs of USD 80, divided as follows:
  - RCCM fees: USD 30.
  - Id. NAT fee: USD 30.
  - Official journal fees: USD 10.
  - Authentication fees: USD 10.

### **Is there a requirement to have a local director?**

No. However, note that according to Article 103 of the Uniform Act, the founders (including managers or directors) of the company must have a domicile in the territory of the state. The domiciliation cannot be only by a post office box. It must be determined by an address or a sufficiently precise geographical indication.

### **Is there a requirement to have a resident director?**

In our opinion, it is not necessary to have a resident director, but the local domiciliation of this latter is a commitment. In this sense, the prescriptions of the aforementioned Article 103 are applicable.



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### Is there a requirement for a company to appoint a company secretary?

No. There is no requirement to appoint a company secretary because the daily activities are managed by the general manager or the “*gerant*”, depending on the type of company.

### Is there a requirement for a company to appoint an auditor?

The appointment of a statutory auditor is mandatory for a public company. In limited liability companies and other types, the appointment of an auditor is only mandatory if certain conditions are met, namely:

- the balance sheet total must be greater than the equivalent of CFA 125 million in stable currency;

- the annual turnover must be greater than the equivalent of CFA 250 million CFA francs in stable currency; and
- the permanent workforce must include more than 50 people.

Thus, if a company meets two of these criteria, it is required to appoint at least one statutory auditor according to Article 376 of the Uniform Act.

### Can a company be wholly owned by foreigners?

In some sectors such as telecommunications<sup>1</sup>, banking<sup>2</sup> and insurance<sup>3</sup>, potential investors are required to include Congolese nationals as foreigners are not allowed to own more than 51% shareholding in the company. However, as a general rule, capital can be held entirely by foreigners.

### Is there a requirement to declare beneficial ownership?

Yes. As the beneficial owners of a company are taxed at a rate of 20% on the ownership and property taxes.

### Is there a requirement to register a company address?

Yes. Among the obligations contained in Article 13.4 of the Uniform Act, there is the obligation to have a registered office in the national territory of the country.

### Is there a requirement to have a fully paid up share capital at the point of incorporation?

No. However, it is obligatory to mention the amount of share capital in the articles of association. In this respect, it is important to note that the contributions are made in

<sup>1</sup> Law No 20-017 of 25 November 2020 – related to telecommunications and information and communication technologies.

<sup>2</sup> Law No 003/20002 of 2 February 2002 – related to the activity and control of credit establishments.

<sup>3</sup> Law No 15/00 of 17 March 2015 – relating to the Insurances Code.



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different ways. Several contributions are possible, in particular: contributions in cash (money), contributions in kind (material goods) and contributions in industry (knowledge put at the disposal of the company for its well-being). The latter cannot exceed 25% of the share capital.

Please note that certain companies have the option of paying up in instalments, in particular:

**Limited liability companies:** The shares shall be paid up during the subscription of the registered capital at least by half of their face value, under the terms of Article 311-1 of the Uniform Act. The surplus shall be paid up in one or more instalments within a period of two years, as from the registration of the company in the RCCM.

**Public companies:** The shareholders may pay up one quarter of the registered capital, namely CFA 10 million, provided that the surplus is paid up within three years from the date of registration of the company in the RCCM (Article 389 of the Uniform Act).

### **Are there any filing requirements for a change of directors or a change in shareholding?**

Yes. Any change in the company that would result in a change in the articles of association must be filed and registered in with the RCCM by a Legal representative of the company.

### **Are there any post-incorporation requirements that need to be satisfied? For example, registrations for tax purposes or business licences.**

Yes, after incorporation, it is mandatory for the applicant to apply for:

- A national identification.
- A number of affiliations to the National Social Security Fund.
- A tax number.

However, the procedure has been simplified by the establishment of a single portal in charge of issuing these documents called the Guichet Unique de Création d'Entreprise (GUCE).





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### **If there is no requirement to have a local director or shareholder, what is a foreigner required to do to register a company for tax purposes and other similar post-incorporation registrations?**

Registration automatically makes you subject to tax obligations, whether you are a foreigner or not.

### **If there is no requirement to have a local director or shareholder, what is the process of obtaining a work permit for foreign employees?**

In order to work under an employment contract in the DRC, a foreigner must hold a work establishment visa issued by the Directorate General of Migration, based on an employment contract approved by the National Employment Office and a foreigner's work permit issued by the Minister of Labour, which is valid for two years and renewable. In order to enter the country, the foreigner

must have a valid passport or any other travel document in lieu of a passport, as well as the vaccination certificates required by the health police's regulations.

### **Are there different classes of work permits?**

Yes, there are five classes.

#### **Category A**

- Agro-pastoral.
- Livestock.
- Fishing.
- Forestry exploitation.
- Extraction of construction and civil engineering materials.
- Basic research.
- Drilling of filtering wells.

#### **Category B**

- Construction (civil and metal engineering).
- Energy (electricity, water, etc.).
- Transport and communication.
- Services (health, education, auditing, restaurant, customs agency, storage of petroleum products, tourism, etc.).
- Manufacturing industry.
- Agribusiness.

#### **Category C**

- Petroleum (import, export, distribution, research, exploration, marketing, refining).
- Various activities in the mining sector (exploration, prospecting, research, laboratory, infrastructure development, related mining activities)
- General trade.
- Banking.
- Financial institutions.
- Telecommunications.
- Insurance.
- Gambling (casinos, lotteries and entertainment sectors).

#### **Category D**

- Mineral buying and selling other than gold, diamonds or coloured stones.
- Cutting, smelting and processing of products other than gold, diamonds and coloured stones.



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### **Category E**

- Mining (extraction, processing, and/or transformation of any mineral substance).
- Treatment and processing of minerals for third parties.
- Buying and selling of precious materials (gold, diamonds and coloured stones).
- Mining construction (as a main activity).

### **What are the requirements for obtaining a work permit? (Please provide the requirements for each class of work permit, if applicable).**

Generally, one is required to provide the following:

- Incorporation documents of the company.
- National identification.
- The purchase of the model form issued by the services of the Ministry of Labour.

- The organisation chart of the company.
- The candidate's curriculum vitae.
- The description of the position to be filled.
- Documents justifying the professional qualification (diploma or certificate of services rendered).
- The training programme.
- Three passport photos.
- Proof of payment of dues.
- Photocopy of all pages of the applicant's passport.
- Work contract.

### **How long does a work permit application take to be processed?**

One month.

### **What is the cost of a work permit? (Please provide the cost of each class of work permit, if applicable).**

- Category A: USD 500.
- Category B: USD 700.
- Category C: USD 1,000.
- Category D: USD 1,500.
- Category E: USD 2,800.

### **Are there any annual compliance requirements that a company must meet?**

At the end of each fiscal year, the company must submit all its tax declarations (tax on profits and earnings) to the GUCE and deposit its financial statements that have been ruled on in its ordinary general meeting by the associates and the active management.



Egypt



**Name of the firm** Matouk Bassiouny & Hennawy.

**Brief background of the firm and its work**

We are a leading law firm in Egypt with resources, expertise and experience that are second-to-none in the market. Our teams provide top-tier legal advisory services, while consistently maintaining a sector-focused commercial approach. Our primary goal is to create value for our clients.

Matouk Bassiouny & Hennawy was established in 2005 and since then, has developed into a premier full-service business law firm in Egypt, and the region. We pride ourselves in our people as well as in the strong and long-lasting relationships we have built with our corporate and institutional clients over the years. Further, we deeply value the bonds and synergies we have formed with numerous tier-one international law firms, with whom we routinely team up to provide the highest level of legal services to our clients in the most significant, high-value and sensitive transactions, projects and disputes in Egypt and the region. Trained both locally and internationally in both civil and common law systems, our lawyers are fully conversant in English, Arabic and French. We are ideally placed to advise on high-profile, high-value and complex matters.

Our firm is fully committed to understanding our clients' businesses and needs. We are organised within four main practice groups and have developed core sector focus capabilities organised into 17 specialised sector groups: Capital Markets; Corporate and M&As; Dispute Resolution; Finance and Projects; Banking; Consumer Goods & Retail; Education; Energy & Water; Healthcare; Heavy Industries; Hospitality; Insurance; Life Sciences and Pharmaceuticals; Non-Banking Financial Institutions; Private Equity; Public Procurement; Real Estate; Sports; TMT; Transport and Logistics; and FinTech Emerging Companies Venture Capital.

Matouk Bassiouny & Hennawy is consistently ranked as a top-tier law firm by prominent legal publications including IFLR1000, Chambers Global and Legal 500. We have also been the recipient of multiple awards from prestigious organisations, including Private Equity Africa and the IFLR Middle East Awards.

**Lawyers who worked on this questionnaire**

Tamer Fawki, Susan Romana and Shery Soliman.

**Any other relevant information**

Matouk Bassiouny & Hennawy operates in Egypt, UAE, Sudan and Algeria.

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## Egypt

### What is the legislation that governs companies in your jurisdiction?

#### Companies' Law

Companies (and branches) in Egypt are mainly regulated under the Companies' Law No 159 of 1981, and its executive regulations, as amended. The Companies' Law is the general law, which governs all capital companies (joint stock companies, limited liability companies, limited partnership by shares, and sole shareholder companies), in addition to branches of foreign companies and representative offices registered in Egypt. The provisions of the Companies' Law apply to the aforementioned companies regardless of the type of their activities.

#### Investment Law

Investment Law No 72 of 2017, and its executive regulations, as amended, which offers a number of guarantees, and tax and non-tax incentives to projects established pursuant to its provisions.

#### Capital Market Law

Capital Market Law No 95 of 1992, and its executive regulations, as amended, regulates the operations of investment funds, holding companies, and companies that undertake securities' activities, such as brokerage, asset management and venture capital companies. Further, the Capital Market Law governs listed companies and/or companies, whose shares might be tradeable on the Egyptian Stock Exchange.

#### Other laws

In addition, the Egyptian Civil Law No 131 of 1948; the Egyptian Commercial Code No 17 of 1999; the Commercial Agency Law No 120 of 1982; and the Commercial Registry Law No 34 of 1976, and its executive regulations, as amended, govern companies in Egypt.

### What are the different types of companies that can be incorporated?

Foreign investors are entitled to undertake activities in Egypt through establishing a company, a branch of foreign entity, or representative offices.

#### Joint stock companies

Joint stock companies (JSCs) are among the most used corporate vehicles in Egypt as they can generally carry out any activity, and certain activities can only be carried out by a JSC (i.e. capital markets, insurance and banking). JSCs require a minimum of three shareholders, who could be natural and/or juristic persons, and a minimum share capital of EGP 250,000, noting that the minimum share capital of a JSC may vary depending on its activity.

#### Limited liability companies

A limited liability company (LLC) is also a popular type of corporate vehicle in Egypt, as it requires a minimum of two quota-holders, but it cannot exceed 50, who could be natural and/or juristic persons. Normally, there is no minimum capital requirement for an LLC.

Generally, the liability of shareholders in JSCs and quota-holders in LLCs is limited to their respective share/quota holdings in the company, which is what distinguishes capital companies from "persons' companies".



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### **Sole shareholder company**

A sole shareholder company, which is a recently added form of company, has capital that is wholly owned by one person (i.e. natural, or juristic). This type of company must have its headquarters in Egypt or carry out most of its operations therein.

### **Branches**

Branches may only be established to execute contracts concluded by the holding company and an Egyptian entity (whether a private corporation or a governmental body). The branch is not permitted to conduct any business of procurement (directly from the market or from intermediary suppliers), distribution, supply, direct sales in wholesale or retail markets, or export and import for trading purposes. Such activities can only be executed if determined under the scope of said contracts.

### **Representative offices/scientific offices**

Representative offices/scientific offices may be established by foreign companies. The object of such offices is limited to studying and exploring the Egyptian market to conduct market research without performing any kind of commercial or income generating activities. If such offices exercise any other activity conflicting with their purpose, they will be written off the register.

### **What is the process of setting up a company?**

The process of setting up a capital company may vary depending on the type of company being set up. The procedures, documents, and legal requirements for setting up an LLC are easier than the requirements for setting up a JSC. For instance, the General Authority for Foreign Investment and Free Zones (GAFI) allows LLCs to be incorporated without the actual deposit of the capital of the company at the time of incorporation.

The shareholders of a JSC should be coded and should have a written bookkeeping/custodian agreement concluded with a custodian prior to the incorporation of the JSC, but this requirement is not applicable for LLCs.

We have set out below the main documents and steps required for the registration of a JSC and/or an LLC:

- A non-confusion certificate should be issued from GAFI to confirm that the proposed name is not identical, or similar to any other existing company name in Egypt. GAFI's current practice is not to issue such certificate for LLCs prior to incorporation.
- Each founder should submit a power of attorney in favour of the lawyer undertaking the incorporation process on their behalf.
- Preparing the bylaws of the company with all the required information based on the model approved by GAFI and having them certified by the Egyptian Bar Association and notarised by a Notary Public.



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- Opening a bank account for the company under establishment with one of the authorised banks in Egypt in order for the founders to deposit the required capital, if applicable. The bank will issue a certificate with the deposited amounts to be submitted to GAFI at incorporation.
- Provision of a sale or lease agreement of the company's headquarters.
- Appointment of a certified auditor by submitting an acceptance of the appointment letter issued by the auditor to GAFI.

GAFI will review the required documents and provide its comments or request additional documents, if any, then issue a certificate confirming the establishment of the company. The company will also be registered with the Commercial Registry Office.

Foreigners, whether natural or juristic persons, will require security clearance checks, and any documents submitted by them must be notarised at the Egyptian Consulate in the country of origin and legalised at the Egyptian Ministry of Foreign Affairs, and officially translated into Arabic.

### How long does the company incorporation process take?

The incorporation process normally takes seven business days from the date of submission of all required documents before GAFI. However, GAFI offers premium services for an additional cost of EGP 10,000, where the incorporation process can be finalised in two business days from the date of submission.

### How much does it cost to incorporate a company?

The incorporation fees of capital companies are determined by GAFI on the basis of the share capital of the company.

### Is there a requirement to have a local director?

No, there are no nationality requirements with respect to the directors of a JSC or LLC.

### Is there a requirement to have a resident director?

No, there are no residency requirements with respect to the directors of a JSC or LLC.

### Is there a requirement for a company to appoint a company secretary?

No; however, general assembly meetings and board of directors' meetings require the attendance of a secretary.

### Is there a requirement for a company to appoint an auditor?

Yes, companies must have a certified auditor who is registered in the auditors and accountants register.

### Can a company be wholly owned by foreigners?

Yes, however, certain activities require a minimum percentage of Egyptian ownership, such as importation activities, which require a minimum of 51% Egyptian shareholders. Other activities, such as commercial agencies and foreign exchange trading, require 100% Egyptian ownership.



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### **Is there a requirement to declare beneficial ownership?**

Yes. Pursuant to the Commercial Registry Law No 34 of 1976, all companies registered in the Commercial Registry must maintain a ledger that includes information on its ultimate beneficial owners. This requirement has not been implemented in practice to date.

### **Is there a requirement to register a company address?**

Yes, a company's address must be registered under its bylaws, commercial register, tax card and social insurance file.

### **Is there a requirement to have a fully paid-up share capital at the point of incorporation?**

The share capital of a JSC must be paid as follows:

- a minimum of 10% deposited at incorporation;

- a minimum of 15% paid within a maximum of three months from the date of incorporation; and
- the remaining 75% to be paid within a maximum of five years from the date of incorporation.

LLCs can be set up without their capital being deposited at incorporation, which can take place after incorporation.

### **Are there any filling requirements for a change of directors or a change in shareholding?**

The requirements for a change of directors differ based on the company and the type of change, but they are mainly as follows:

- acceptance of resignations of directors of a JSC may be adopted through a board of directors' meeting, until approved by an ordinary general assembly meeting (OGM), but an OGM is required in an LLC;
- appointment of new directors requires an OGM in a JSC, and an extraordinary general assembly meeting (EGM) in an LLC; and

- replacement of representatives of juristic persons in a JSC may be adopted through a BOD meeting or an OGM.

The change in shareholding must be reflected in the company's bylaws, which requires the convocation of an EGM in both a JSC and an LLC.

### **Are there any post-incorporation requirements that need to be satisfied? For example, registrations for tax purposes or business licences.**

Primarily, companies are required to comply with the following post-incorporation requirements, in addition to any specific licences/permits applicable to their activities:

- tax registration and obtaining a valid tax card;
- setting up a social insurance file with the National Organization for Social Insurance and registering the company's directors and employees thereunder; and
- maintaining financial books and submitting annual audited tax returns.





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### **If there is no requirement to have a local director or shareholder, what is a foreigner required to do to register a company for tax purposes and other similar post-incorporation registrations?**

A foreign director/shareholder can delegate a third party (i.e. a law firm) to carry out the post-incorporation registrations on its behalf.

### **If there is no requirement to have a local director or shareholder, what is the process of obtaining a work permit for foreign employees?**

A request should be submitted by the company to the Central Administration for Employment

at the Ministry of Manpower and Immigration to allow the foreign employee to enter and reside in Egypt for work purposes. Afterwards, the foreign employee will be granted two months at most, from the date of entering Egypt, to submit a request to the competent administrative authority or any of the affiliate offices of the General Administration for Foreigners Work Permits.

The competent authority will then issue a temporary permit, which grants the foreigner temporary residence to work in Egypt until the competent authority receives the security clearance. The work permit will be issued after the security clearance is completed.

### **Are there different classes of work permits?**

No, there are no different classes for work permits.

### **What are the requirements for obtaining a work permit? (Please provide the requirements for each class of work permit, if applicable).**

The following are the main conditions that must be fulfilled in order to obtain a work permit for a foreign employee:

- the percentage of foreign employees should not exceed 10% of the total employee headcount;
- the qualifications and experience of the foreign employee must be adequate for the prospective position, provided that such experience is not less than three years;



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- the position available to a foreign employee should not be in competition with that of an Egyptian employee and there should not be an Egyptian candidate; and
- the appointment of two Egyptian assistants to be trained by the foreign employee.

### **How long does a work permit application take to be processed?**

The process of obtaining work permits usually takes three to four months for foreign employees, and one to two months for foreign directors.

### **What is the cost of a work permit? (Please provide the cost of each class of work permit, if applicable).**

The cost of obtaining a work permit averages EGP 5,800, in addition to any other payments due to the competent authorities at the time, if applicable.

### **Are there any annual compliance requirements that a company must meet?**

Every company is required to hold an annual OGM to approve its financial statements and determine its profit

distribution, if any. The company is also required to submit the following to the Companies Department at GAFI on an annual basis:

- a copy of the balance sheet, the profit and loss account and the auditor's report;
- the names, positions and nationalities of the board members or managers (as the case may be);
- details of all personnel and the salaries paid to Egyptian employees; and
- details of profits and the portion distributed to employees.



Ethiopia



**Name of the firm**

Mehrteab & Getu Advocates LLP.

**Brief background of the firm and its work**

Mehrteab & Getu Advocates LLP (MLA) is a leading full service law firm in Ethiopia with 25 years' experience advising and representing clients on wide range of legal matters concerning business and investment in the country including, but not limited to, Company Formation, Investment, Intellectual Property, Employment, Immigration, Tax, Energy, Mining, Oil and Gas, Charities and Societies, Hospitality and Leisure, Real Estate, Banking and Finance, Aviation, Project Finance, Private Equity and Corporate Restructuring.

**Lawyers who worked on this questionnaire**

Getu Shiferaw and Meron Kahase.

**Any other relevant information**

With over 20 lawyers and five major practice areas, MLA is the largest law firm in the country.



**Ethiopia**





**Ethiopia**

### **What is the legislation that governs companies in your jurisdiction?**

The Commercial Code of the Federal Democratic Republic of Ethiopia (Proclamation No 1243/2021) is the main source of legislation that governs companies in general. Furthermore, the Commercial Registration and Licensing Proclamation No 980/2016 and the Commercial Registration and Licensing Council of Ministers Regulation No 392/2016 sets out the procedure on how the different types of companies are registered and licensed. In addition, the Ethiopian Investment Proclamation No 1180/2020 and Investment Regulation No 474/2020 apply with regards to fully or partially foreign-owned companies. Furthermore, the Public Enterprises Proclamation No 25/92 applies to government-owned corporations.

### **What are the different types of companies that can be incorporated?**

The followings are business organisations (or companies) that can be incorporated in Ethiopia as per the Commercial Code of Ethiopia:

#### **General partnership**

This type of company typically includes forms of partnership consisting of one or more partners who are each jointly and severally liable between themselves and within the partnership itself for the obligation of the partnership. In other words, liability is not restricted to the business. In general partnership, partners' contributions can be in the form of money, movable or immovable assets, skill, etc.

#### **Limited liability partnership**

This type of business organisation is formed by two or more partners to render professional service and services complementary thereto. In a limited liability partnership, the partners' liability is limited to the amount of their contributions. What makes it different from the other types of partnerships is that this partnership has a legal personality distinct from that of the partners. Furthermore, only professionals licensed by an appropriate organ to provide that particular professional service are permitted to be partners.

#### **Limited partnership**

These kinds of business partnerships contain partners with different types of liability. General partners who are in fully jointly and severally liable with the partnership, and limited partners who are liable only to the extent of their pledged contribution. Limited partners are restricted from holding managerial position and they are not allowed to offer their skill as a contribution.



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### **Joint venture**

This is a business organisation established by an agreement between two or more persons and is in principle subjected to the general principles of partnerships. However, it has no legal personality, and its existence is unknown to third parties. Moreover, registration formalities required of other business organisations do not apply to joint ventures.

### **Share company**

These are companies whose capital is fixed in advance and divided into shares and whose liabilities are met only by the assets of the companies. It incorporates the concept of limited liability of shareholders as shareholders are liable only to the extent of their contribution or shareholding. Share companies have professional management, such as a board of directors, general managers, secretaries and auditors.

Share companies in Ethiopia can issue negotiable securities, such as equity instruments (shares) or debt instruments (debentures). The minimum number of shareholders required to form a share company is five people and they can have an unlimited number of shareholders. Big firms like banks, insurance companies and others usually opt to be incorporated as share companies.

### **Private limited company**

These are same as share companies for the most part in terms of liability being restricted to the assets of the company and the company having a distinct legal personality from its members. The difference between a private limited company and a share company is the permitted number of shareholders and its more flexible governance. Private limited companies are legally required to have a minimum of two shareholders and the total number of members cannot exceed 50.

### **One-member private limited company**

These are basically private limited companies with a single shareholder in the company.

### **Public enterprise/corporation**

These are wholly state-owned public enterprises established in accordance with the Public Enterprises Proclamation No 25/92 to carry out business activities. Companies like Ethiopian Airlines Group, Ethio Telecom, Ethiopian Electricity Power and the Commercial Bank of Ethiopia are public enterprises.

The recommended and practical types of business organisations for foreign investments are: share companies, private limited companies and one-member private limited companies.



## Ethiopia

### What is the process of setting up a company?

The roadmap for company incorporation, particularly for a foreign company, is:

1. Submit an investment application form with the required documents to the Ethiopian Investment Commission (EIC) and obtain approval.
2. Reserve a company name – three alternatives should be submitted to the EIC and an available name will be reserved.
3. Submit a memorandum of association (bylaws) for the entity and sign a copy of them at the EIC.
4. The EIC will issue two support letters for the new entity: one to open a blocked USD account<sup>1</sup> with the name of the entity under formation and the second to process the company's tax identification number (TIN) registration at the Ministry of Revenues desk at the EIC.
5. The entity opens a blocked USD bank account at the bank of its choice for the shareholders to wire USD 200,000, or whatever the legal minimum required amount is.
6. An office lease agreement should be signed in the name of the entity under formation.
7. The TIN registration must then be processed at the EIC (a lease agreement signed in the name of the entity under formation at the notary office is a condition for TIN registration).
8. Submit the TIN certificate, lease agreement and bank advice confirming that the minimum capital amount has been transferred to the EIC and obtain a commercial registration certificate and investment permit. At this stage, the entity acquires legal personality/judicial existence.

After the entity attains judicial existence the investment permit will be a transitional license until the date of commissioning an investment project. Once the entity is ready for business, the EIC will issue a business license.

### How long does the company incorporation process take?

Approximately two to four weeks.

<sup>1</sup> Foreign investors are required to meet a minimum capital requirement to invest in Ethiopia. Thus, one of the requirements to obtain a commercial registration certificate is to transfer the minimum capital into the company's newly-opened USD bank account. Until the company is registered and acquires a legal existence, the transferred money cannot be accessed or operated (i.e. it's blocked). Once the company is fully registered and obtains its commercial registration certificate, a general manager or anyone authorised by the company can activate the bank account and make it ready for operation.



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### **How much does it cost to incorporate a company?**

Administrative costs might be within the range of USD 500 to 1,000. However, foreign investors are required to inject a minimum of USD 200,000 to incorporate a wholly foreign-owned company in Ethiopia. However, if the investment is a joint investment with a domestic investor the minimum requirement is USD 150,000. In addition, if the investment is in the sector of architectural or engineering consultancy works or related technical consultancy services the minimum requirement is USD 100,000 for a wholly foreign-owned entity or USD 50,000 if it is a joint investment with a domestic investor.

### **Is there a requirement to have a local director?**

There is no requirement to have a local director. Ethiopian law requires any company to appoint a director/general manager upon registration. A general manager in principle has a responsibility to oversee the day-to-day activities of the company and any other duty given by the shareholders. The general manager can be a local or a foreigner. Only share companies are required to have directors (a minimum of three to a maximum of 12). Directors should be shareholders and a maximum of one third of the directors can be non-shareholder/independent directors.

### **Is there a requirement to have a resident director?**

There is no legal requirement that obliges a director to be a resident. However, where the company decides to have a resident director,

the director needs to obtain a residence permit as it is mandatory for a foreigner to have a residence permit in order to reside in Ethiopia. The required documents to obtain a residence permit are:

- Application form.
- Personal file of the expat.
- Authenticated academic credentials, professional licence or certificates.
- Passport valid for not less than three months.
- Valid work permit.
- Employment contract.
- Support letter from the applicable government organisation.
- Business licence or investment permit of the employer company.
- Passport-size photos of the expat.

Residence permits are issued by the Immigration and Citizenship Service.





Ethiopia

### **Is there a requirement for a company to appoint a company secretary?**

Yes. A company in Ethiopia needs to have a secretary who is responsible or accountable to the general manager.

### **Is there a requirement for a company to appoint an auditor?**

Yes. Share companies are required to have an auditor. However, private limited companies are required to have an auditor only when the company consists of 10 or more members or its total assets exceed ETB 10 million. It is not a requirement to have an auditor for the other types of companies.

### **Can a company be wholly owned by foreigners?**

Yes. Foreigners can register a fully foreign-owned company as long as the investment area is opened for the same. Under Ethiopian investment laws there are three divisions where a foreigner cannot wholly own a company.

1. Areas of investment reserved for joint investment with the Government.
2. Areas of investment reserved for domestic investors.
3. Areas of investment reserved for joint investment with domestic investors.

Apart from areas of investment that fall into these categories, all investments can be wholly owned by foreigners.

### **Is there a requirement to declare beneficial ownership?**

No. There is no requirement to declare beneficial ownership in Ethiopia.

### **Is there a requirement to register a company address?**

Yes, every company in Ethiopia must obtain a TIN to be legally registered. One of the requirements to obtain a TIN is to provide a lease agreement that accurately states the company's address. Thus, it is mandatory to register an address during commercial registration.

### **Is there a requirement to have a fully paid up share capital at the point of incorporation?**

There is no need for fully paid up capital for share companies, but at least one quarter of the fully subscribed capital has to be paid up. Unless a shorter period is provided in the memorandum of association or bylaws of the company, the subscribed capital shall be paid within



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a period of five years from the date of registration of the company if it is a cash contribution. Where contribution is made in kind, formalities like transfer of ownership or obtaining a title deed must be completed within six months from the date of registration of the company.

On the other hand, this requirement is mandatory for private limited companies and one-member private limited companies. In these instances, subscriptions must be fully paid up.

### **Are there any filling requirements for a change of directors or a change in shareholding?**

There has to be a vote and approval by the general meeting/shareholders meeting to remove a director and replace them with another director. The decision and change of the director must be recorded in the minutes of the meeting. The minutes then need to be filed at the commercial registry and all commercial documents will be amended accordingly.

### **Are there any post-incorporation requirements that need to be satisfied? For example, registrations for tax purposes or business licences.**

Yes. After the incorporation stage, a company needs to secure a business license to operate its business and it should register for value-added tax (VAT) if its annual gross income exceeds ETB 1 million. After a successful registration, a company in Ethiopia needs to:

1. Obtain a business license.
2. Register for VAT (if income exceeds ETB 1 million).
3. Prepare a company seal.
4. Install a cash registration machine.
5. Prepare a manual receipt for cash sales, withholding, etc.

Under Ethiopian commercial law, registering for a TIN precedes incorporation. Thus, a company will have its TIN before it obtains its commercial registration certificate.

The followings are the general steps to applying for a TIN:

- Authenticated lease agreement.
- Reserved company name.
- Memorandum of association.
- Passport copy of the general manager and two photographs of them.
- Completed form.

Note that there are no fees required to register for a TIN.

### **If there is no requirement to have a local director or shareholder, what is a foreigner required to do to register a company for tax purposes and other similar post-incorporation registrations?**

Refer to Question 15.



Ethiopia

**If there is no requirement to have a local director or shareholder, what is the process of obtaining a work permit for foreign employees?**

Under Ethiopian law, employers can employ expatriates only for positions that could not be filled by Ethiopian nationals. Foreign employers may, however, employ expatriates for top management positions without any restrictions. Therefore, for non-top managerial expatriates, the employer is required to furnish support letter from the relevant government organ showing that the required skill and/or expertise is not available in the local market. In addition, the law requires that foreign investors should replace, within a limited period (the visa period), expatriate personnel with Ethiopians, by way of skill transfers to Ethiopians.

**Are there different classes of work permits?**

There is no express provision that provides classes of work permit. However, depending on the position of the expat in the organisation, the requirement and validity of the work permit may differ. For example, a work permit for top management (including the CEO, COO, CFO and board chairman) can be issued without fulfilment of some of the required documents set for other foreign employees; such as an educational certificate and support letter. Such work permits may be valid for up to two years where a third of the organisation's management includes Ethiopians during its implementation phase. There are also other categories of work permits issued for non-management positions, such as, expats hired during a construction

phase, for machinery installation, auditing and accounting works, supervision, and other technical roles. These work permits are granted for a limited number of employees in an organisation. The validity of these permits ranges from three months to one year.

**What are the requirements for obtaining a work permit? (Please provide the requirements for each class of work permit, if applicable).**

An employer must submit its application for a work permit along with the following required documents:

- Application form.
- Personal file of the expat.
- Authenticated academic credentials, professional licence or certificates.
- Passport valid for not less than three months.



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- Valid work or business visa.
- Employment contract.
- Support letter from the applicable government organisation.
- Business license or investment permit.
- Passport-size photos of the expat.

As stated above, however, work permits for top management may be issued without the fulfilment of the pre-conditions set for other foreign employees; such as a certified educational certificate, employment agreement, or support letter. A resolution showing that the employee was appointed in that position and an letter outlining their experience may be sufficient for that category of employee.

The Ministry of Labour and Skills issues work permits, but the EIC is delegated to provide the same service in its one-stop-shop arrangement with regards to foreign investors.

### **How long does a work permit application take to be processed?**

Approximately one week.

### **What is the cost of a work permit? (Please provide the cost of each class of work permit, if applicable).**

Approximately ETB 2,000.

### **Are there any annual compliance requirements that a company must meet?**

There are no annual compliance requirements for work permits. However, a work permit must be renewed before it expires.

If the foreigner enters with a business visa and intends to stay for more than 90 days, they should apply for a residence permit in addition to the work permit. A residence permit is renewed annually along with the work permit. Apart from that, the business licence of the company shall be renewed annually. Furthermore, there are tax compliance requirements that need to be fulfilled, like registering for VAT if annual sales exceeds or are expected to exceed ETB 1 million in a year, declaring tax periodically, installing a sales register machine, preparing manual cash sales receipts, preparing withholding tax receipts, etc.





Ghana



**Name of the firm**

Sam Okudzeto & Associates  
(Sena Chambers)

**Brief background of the firm  
and its work**

Sam Okudzeto & Associates is a highly-regarded full-service law firm based in Accra – Ghana's capital city. Our practice areas include Civil Litigation and Alternative Dispute Resolution, Commercial Arbitration, Tax Advisory Services, Corporate and Commercial Practice and Intellectual Property. The Firm has five practice groups consisting of over 30 lawyers who see to our clients' (both domestic and international) needs within their respective areas of focus.

**Lawyers who worked on this  
questionnaire**

Esine Okudzeto, Nana Akua Mensah,  
Jeitan Osei-Bonsu and Zakaria Yakubu

**Any other relevant information**

Find out more about us  
[www.senachambers.com](http://www.senachambers.com)



**Ghana**







Ghana

### **What is the legislation that governs companies in your jurisdiction?**

The Companies Act, 2019 (Act 992) governs companies in Ghana.

### **What are the different types of companies that can be incorporated?**

The different types of companies that can be incorporated in Ghana include:

#### **Private company limited by shares (Limited or Ltd)**

This type of company is one which has the liability of its members limited to the amount unpaid on the shares respectively held by them and in addition has the essentials of a private company, i.e. its constitution restricts the right to transfer its shares, limits the total number of shareholders to 50 (subject to

statutory exemptions), prohibits the company from making an invitation to the public to acquire its shares/ debentures and prohibits the company from making any invitation to the public to deposit money for fixed periods, whether bearing interest or not.

#### **Public company limited by shares (PLC)**

This is also a type of company which has the liability of its members limited to the amount unpaid on the shares respectively held by them and is not subject to the restrictions of a private company stated above.

#### **Company limited by guarantee (LBG)**

This type of company has the liability of its members limited to an amount that the members respectively undertake to contribute to the assets of the company in the event of it being wound up.

#### **Unlimited private company (PRUC)**

This is a private company that does not have a limit on the liability of its members.

#### **Unlimited public company (PUC)**

This is a public company that does not have a limit on the liability of its members.

#### **External company**

This is an entity formed outside Ghana which has an established place of business (e.g. branch, management, registration office, factory etc) in Ghana.



Ghana

## What is the process of setting up a company?

The process of setting up any company in Ghana involves submitting an application to the Office of the Registrar of Companies in the prescribed form with the required information – which includes:

- Name of the proposed company, as well as the type of company, nature of business, etc.
- The company name, names and addresses of the shareholders, the percentage of their respective shareholdings, respective occupations, and any directorships in any other companies.
- The full names of the first directors of the company.
- Information of the company secretary and auditor.

- Beneficial ownership disclosure.
- Disclosure of stated capital and authorised shares for companies with shares.
- Undertaking of payment by members in case the proposed company is a company limited by guarantee.

As a further requirement of incorporation, a tax identification number needs to be obtained for the proposed company and all proposed officers of the company.

## How long does the company incorporation process take?

The processing of an application for incorporation may take one to two weeks after submission of a duly completed application.

## How much does it cost to incorporate a company?

An applicant would be required to pay GHS 230 for incorporation; a filing fee of GHS 50; and stamp duty of 0,5% of the stated capital at the in-house bank of the Registrar General's Department.

## Is there a requirement to have a local director?

No. However, sections 171 and 182 of Act 992 provide that at all times, a company must have at least two directors, and one of these directors must be ordinarily resident in Ghana. An appointed director must meet the requirements under the Act.

## Is there a requirement to have a resident director?

Yes. Section 182 of Act 992 provides that at least one director of the company shall be ordinarily resident in the country.





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### **Is there a requirement for a company to appoint a company secretary?**

Yes. It is a mandatory requirement for all companies in Ghana to have a company secretary. Per section 211 of Act 992, an individual or a body corporate may be appointed as a company secretary. The appointed person or entity must have obtained a professional qualification or tertiary level qualification with the requisite skills to perform the duties of a company secretary or must have held office as a company secretary, a chartered accountant, or lawyer. The appointed company or individual must consent to it and there must be proof of it in writing.

### **Is there a requirement for a company to appoint an auditor?**

All companies operating in Ghana are required to appoint an auditor. Section 139 of Act 992 provides that the auditor may be a company, a body corporate or a partnership firm. The appointed auditor must accept or consent to the appointment in writing.

### **Can a company be wholly owned by foreigners?**

Generally, a company established in Ghana can be wholly owned by foreigners. Every company with foreign equity participation is required to register with the Ghana Investment Promotion Centre (GIPC) upon incorporation and prior to starting operations. Additionally, the mining, energy and petroleum industries have local content requirements that must be met.

The minimum capital requirement for a company wholly owned by foreigners is pegged at USD 500,000 but this amount is increased to USD 1 million where the company is in the business of trading. The interpretation section of the GIPC Act defines a “*trading enterprise*” as an enterprise that has as its principal activity the purchase and sale of goods, whether imported or not, and provision of services, whether the purchase and sale of goods and services are carried out in a market or any other place.

After the incorporation has been completed, the incorporation documents along with proof of payment of the applicable minimum capital shall be submitted to the GIPC for a certificate to be issued to the wholly foreign owned company.



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### **Is there a requirement to declare beneficial ownership?**

Yes, there is a requirement in section 13(2)(m) of Act 992 for particulars of the beneficial owners of a proposed company to be disclosed during incorporation. There is a further requirement to disclose details of any beneficial owners to the Registrar General's department when filing annual returns and when there is a change in already submitted beneficial ownership information.

### **Is there a requirement to register a company address?**

Yes, there is a requirement to register a company address.

### **Is there a requirement to have a fully paid up share capital at the point of incorporation?**

No, Act 992 does not require a fully paid up share capital during incorporation neither does the act provide any statutory minimum capital requirements for companies limited by shares.

### **Are there any filling requirements for a change of directors or a change in shareholding?**

A change of director in a company shall be completed by filing a special resolution to that effect and a Notification of Change/Appointment of Directors form (Form 17) at the Registrar General's Department.

A change in shareholding shall be completed by filing a special resolution to that effect and a Return of Issue of Shares form (Form 7) and Particulars of Alteration in the Stated Capital of Company form (Form 8). In the case of a share transfer, the company shall be required to register upon submission of a duly stamped instrument of transfer and the share certificate.

### **Are there any post-incorporation requirements that need to be satisfied? For example, registrations for tax purposes or business licences.**

Yes, there are post-incorporation requirements for companies that need to be satisfied. All foreign or foreign investors who are participating in such undertaking in Ghana are mandated to register their business with the GIPC.



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Newly incorporated companies are also required to register with the Ghana Revenue Authority for the purposes of statutory taxes. The business shall also be required to register with the metropolitan authority within the area it intends to operate. Businesses within certain sectors shall have a further requirement to register with their industry regulator and obtain a licence to operate. For example, a company that intends to undertake banking business shall have to apply for and obtain a license to operate from the Bank of Ghana to be eligible to commence banking business.

**If there is no requirement to have a local director or shareholder, what is a foreigner required to do to register a company for tax purposes and other similar post-incorporation registrations?**

A Ghanaian business may be wholly foreign owned, however, at least one of the directors must be ordinarily resident in Ghana. The resident director may be responsible for post incorporation registrations.

**If there is no requirement to have a local director or shareholder, what is the process of obtaining a work permit for foreign employees?**

Act 992 requires that at least one director of a company incorporated in Ghana is ordinarily resident in Ghana at all times.

Before a foreign employee can work in Ghana, they must acquire a work permit. Work permits are issued by the Ghana Immigration Service. The Ghana Investment Promotion Centre, the Freezones Board, the Ministry of Interior and some other industry regulators also provide immigrant quotas for regulated entities.

A company seeking to procure work permits for foreign employees may do so by obtaining a work permit application form from the Ghana Immigration Service Office in Accra. The applicant is expected to accurately complete and sign the application form.

Generally, a Ghana work permit is valid for one year, with the option to renew. A residence permit from the Director of Immigration will also be required for residing and working in Ghana.



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The application forms should be signed by an authorised representative of the employer. The person who signs the application must attach relevant documents as proof that they are an officer of the company.

A foreign employee may enter Ghana on a business visa and apply for a work permit prior to the expiration of their visa.

### **Are there different classes of work permits?**

There are two types of work permits:

- temporary work permit; and
- standard work permit.

A temporary work permit authorises a foreign national to conduct lawful work activities for a period not exceeding six months. This type of permit cannot be extended in-country.

A standard work permit authorises a foreign national to conduct lawful work activities for a period of one year. This type of permit can be extended in-country.

The Ministry of Interior and the Freezones Board may provide immigrant quotas under specific circumstances. Additionally, section 35 of the GIPC Act provides an automatic immigration quota for all entities who have invested foreign equity in Ghana. The number of immigrant quotas allocated to an entity depends on the amount of foreign investment made by the entity in Ghana. The following are the automatic quota allocations based on a company's investment:

- Paid capital of not less than USD 50,000 and not more than USD 250,000 receives an automatic expatriate quota of one person.
- Paid capital of not less than USD 250,000 and not more than USD 500,000 receives an automatic expatriate quota of two persons.

- Paid capital of not less than USD 500,000 and not more than USD 700,000 receives an automatic expatriate quota of three persons.
- Paid capital of not less than USD 700,000 receives an automatic expatriate quota of four persons.

A work permit may be applied for by either the employer or the expatriate. Either party may engage the services of a lawyer or immigration practitioner, but the application packet submitted by the professional must contain an application letter from the employer or expatriate.





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### **What are the requirements for obtaining a work permit? (Please provide the requirements for each class of work permit, if applicable).**

The requirements for obtaining a work permit are the same in each class. The applicant must provide the following documents:

- An application letter from the applicant or the organisation engaging the applicant.
- CV/educational certificates
- Marriage certificate (if the applicant is married to a Ghanaian).
- Letter of support from spouse (Ghanaian), if applicable.
- Company registration/objects of the company that intends to employ the applicant.
- Certificate of incorporation.
- If working for a government establishment, a letter of support from the appropriate establishment.
- Letter of appointment/employment.

- Current tax clearance certificate of the company.
- Audited account of the company.
- Value-added tax registration certificate.
- GIPC certificate for companies owned by foreigner/Ghanaian foreign venture.

For professionals, a letter of support from the respective professional body will be required: e.g. doctors require clearance or registration from the Dental and Medical Council and nurses need clearance/registration from the Nurses and Midwives Council.

An entity may apply for an immigration quota permit at the Quota Secretariat of the Ministry of Interior by providing the following:

- An application letter.
- A completed Immigration Quota form (AG 1 Form).

The AG 1 Form, together with attachments, then needs to be submitted and the applicant will then be referred to the Ghana Immigration Service for an investigation and report.

Documents to be attached to the AG1 Form:

- Tax clearance certificate.
- Bank statement.
- Registration of company.
- Certificates of incorporation of business.
- Clearance from professional body (where applicable).

It may take up to three months after receipt for a duly completed form to be processed.

### **How long does a work permit application take to be processed?**

The duration for processing work permits is within two to three weeks from the date of submission of documents and the completed form. In cases where the application is referred for further investigation, the application will take three months from the submission date.



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### What is the cost of a work permit? (Please provide the cost of each class of work permit, if applicable).

The Review of Fees and Charges for 2016 (LI 2228) of the Ghana Immigration Service sets out the fees required for obtaining a work permit:

Permit type	Ghanaians with foreign passport	ECOWAS	Other nationals
Residence permit – work permit (companies)	\$150	\$500	\$1,000
Residence permit – work permit (missionaries, NGOs)	-	\$300	\$300

### Are there any annual compliance requirements that a company must meet?

Yes.

- Per Act 992, companies in Ghana are required to file their annual returns. Every company shall, at least once every year, deliver an annual return to the Registrar General including particulars of every member of the company after the first 18 months, along with a financial statement. There is a further requirement to disclose details of any beneficial owners to the Registrar General's Department when filing annual returns and when there is a change in an already submitted beneficial ownership information.
- The Income Tax Act also requires companies to file their annual tax returns.
- Board of directors' meetings.
- Annual general meetings.
- Companies registered under the GIPC are required to renew their registration with the centre every two years.



**Guinea  
Conakry**



**Name of the firm**

BAO & Fils Law Firm.

**Brief background of the firm and its work**

Founded in 1986, BAO & Fils is among the oldest law firms in the Republic of Guinea and one of the most important business law firms in the market. As a pioneer in the practice of business law in Guinea, we are proud to have participated in the development of the country's legal framework in a wide range of sectors and practices.

Advising in French and English, BAO & Fils has more than three decades of experience, both nationally and internationally, as legal counsel for the most complex questions of Guinean law in matters of investment, acquisition, restructuring and financing. BAO & Fils works regularly and closely with the largest business law firms in the world, and from all major international financial centers.

**Lawyers who worked on this questionnaire**

Me Mody Oumar Barry and Mr Yves Constant Amani.



**Guinea  
Conakry**







Guinea  
Conakry

### What is the legislation that governs companies in your jurisdiction?

The legislation governing companies in Guinea is the Uniform Act on Commercial Companies and the Economic Interest Group adopted on January 30, 2014 in Ouagadougou (OHADA Company Law).

### What are the different types of companies that can be incorporated?

The major types of companies that can be incorporated are:

- The General Partnership (Société en Nom Collectif - SNC);
- The Limited Partnership (Société en Commandite Simple);
- The Public Limited Company (Société Anonyme - SA);
- The Private Limited Company (Société A Responsabilité Limitée - SARL);
- The Simplified Joint-Stock Company (Société par Actions Simplifiée - SAS);
- The Branch (Succursale); and
- The Joint-Venture (Groupement d'Intérêt Économique).

### What is the process of setting up a company?

The process of setting up the companies listed in (2) above is standard and can be summed up in the five following steps:

1. Drafting of the company's articles of association.
2. Adoption of the articles of association by the shareholders through a general meeting of shareholders and appointment of auditors (if required).
3. Filing of the dated and executed articles of association and minutes of the general meeting of shareholders with the public notary, who is a lawyer in private practice, and payment of the amount of the share capital for the creation of the company (if required).
4. Filing of the articles of association and the minutes of the general meeting of shareholders with the Agency in Charge of Promoting Private Investment in Guinea (APIP) to apply for the certificate of incorporation (RCCM) and tax indemnification number (NIF). The APIP is responsible for issuing the RCCM and the NIF.

5. Publication of the incorporation in the local Gazette duly authorised to publish the legal announcement. Publication can be done either by APIP on its website or by the applicant in a legal journal.

### How long does the company incorporation process take?

The process of incorporating a company takes five business days from the filing of the required documentation with the APIP.

### How much does it cost to incorporate a company?

The cost for incorporating a company depends on the type of company to be incorporated. Below are the costs to register the most common types of companies in Guinea and the associated professional fees:

Registration fees with the APIP:

- Public limited company: GNF 550,000 (approx. USD 70).
- Private limited company: GNF 530,000 (approx. USD 65).
- Simplified joint-stock company: GNF 550,000 (approx. USD 70).



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- Branch: GNF 500,000 (approx. USD 60).
- Joint venture: GNF 450,000 (approx. USD 50).

This is aside from professional fees which range from USD 550 – USD 1200.

### **Is there a requirement to have a local director?**

There is no specific requirement to have a local director.

### **Is there a requirement to have a resident director?**

Not in law but in practice, the managing director in charge of the day-to-day operation should be resident for representing the company before local authorities (tax, customs, labour inspectorate, banks, etc.).

### **Is there a requirement for a company to appoint a company secretary?**

There is no specific requirement to appoint a company secretary under OHADA Company Law for any of the companies set out in (2) above. The appointment of a company secretary is left to the will of the management of each company.

### **Is there a requirement for a company to appoint an auditor?**

The requirement to appoint an auditor depends on the type of company and, in some cases, the company's annual turnover as follows:

#### **Public limited company**

According to Article 702 of the OHADA Company Law, public limited companies that do not raise capital through public offerings are required to appoint one principal auditor and one deputy. Public limited companies that raise capital through public offerings are required to appoint at least two auditors and two alternates.

#### **Simplified joint-stock company**

According to Article 853-13 of the OHADA Company Law, the appointment of an auditor is optional in an SAS. Thus, it will at least need to appoint an auditor if two of the following three conditions are met:

- the balance sheet total is greater than CFA 125 million;
- the annual turnover is above CFA 250 million; and
- it has a permanent workforce of more than 50 people.

It is also required to appoint an auditor when the company controls one or more companies or when the company is controlled by one or more companies.

#### **Private limited company**

According to Article 376 of the OHADA Company Law, private limited companies are required to appoint at least one auditor if they meet, at the end of the fiscal year, two of following conditions:

- the total amount of the balance sheet is greater than CFA 125 million;
- the annual turnover is greater than CFA 250 million; or
- the number of permanent staff exceeds 50 people.

A company is not required to appoint an auditor if it has not met two of the conditions set forth above for two years preceding the expiration of the mandate of the auditor. For other private limited companies that do not meet these criteria, the appointment of an auditor is optional. Nonetheless, such an appointment may be requested in court by one or more members holding at least one-tenth of the share capital.



Guinea  
Conakry

### Can a company be wholly owned by foreigners?

According to Article 8 of the Law L/2015/008/AN of 25 May 2015, of the investment code of the Republic of Guinea (Investment Law), subject to the provisions of Article 6<sup>1</sup> above, foreign private investors can freely own up to 100% of the equity or company shares they intend to create in Guinea. Please note that this is not applicable to all companies as Article 6 of the Investment Law restricts foreign ownership of companies involved in the publication of newspapers and broadcasting to a maximum of 40% of shares.

Investments made in each of the sectors covered by the provisions of the Investment Law are made freely.

### Is there a requirement to declare beneficial ownership?

There is no requirement to declare beneficial ownership under the OHADA law.

### Is there a requirement to register a company address?

Yes, according to article 13 of the OHADA Company Law, the articles of association must state:

- the type of company;
- its name followed, where applicable, by its acronym;
- the nature of its business and area of its activity, which constitutes its purpose; and
- its registered office.

### Article 23 of the OHADA Company Law

Every company shall have a registered office which shall be stated in its articles of association.

### Article 24 of the OHADA Company Law

The registered office shall be located, at the members' option, either at the company's principal place of business, or at its administrative and financial management center.

### Article 25 of the OHADA Company Law

The registered office may not consist solely of a postal address. It shall be localised by a physical address or a specific and acceptable geographical indication.

### Article 26 of the OHADA Company Law

Third parties may use the registered office address that appears in the articles of association, but this address shall not be enforced against them by the company if the actual registered is located elsewhere.

<sup>1</sup> Article 6: Sectors of activities reserved

Natural or legal persons of foreign nationality may not hold, directly or through Guinean law firms, over 40% of shares of companies engaged in Guinea in the following activities:

- The publication of newspapers or periodicals of general or political information
- The broadcasting of television or radio programmes

Effective management of the aforementioned businesses must be held by private persons of Guinean nationalities residing in Guinea.



Guinea  
Conakry

### Article 27 of the OHADA Company Law

The registered office may be changed, for each type of company, under the conditions set forth in the OHADA Company Law for the amendment of the articles of association. However, it may be transferred to another location in the same city by a simple decision of the company management body or the board.

### Is there a requirement to have a fully paid-up share capital at the point of incorporation?

The determination of the share capital only involves accounting for contributions in kind or in cash.

#### Contributions in kind

Contributions in kind relate to movable or immovable, tangible, or intangible property (e.g. brand, patent, goodwill). This contribution necessarily implies its evaluation, namely the attribution of a monetary value to the property.

The valuation of the property is necessary because it will allow the company to determine the amount of its share capital, but also the number of shares of the shareholder.

In the OHADA area, the contribution in kind has the following characteristics:

- It must be fully paid up when the company is incorporated (Article 45 of section 2 of the OHADA Company Law).
- Its evaluation must be made in principle by the partners in the articles of association (Article 50 of the OHADA Company Law).

Its assessment is controlled by an auditor in the private limited company (SARL) when the value of the contribution exceeds FCFA 5 million or approx. USD 8,000 (Article 312 of the OHADA Company Law), and in the public limited company (SA), the auditor is automatically required for any contribution in kind (Article 400 of the OHADA Company Law).

#### Cash contribution

It consists of making a cash contribution by the shareholder. However, some companies include the possibility of making a release by

instalment, in particular in a SARL, the shares are paid up during the subscription of the share capital at least by half of their nominal value, under the terms of article 311-1 of the OHADA Company Law.

The release of the surplus occurs in one or more instalments within two years, from the registration of the company in the trade register (RCCM).

In an SA, shareholders can release a quarter of its share capital, namely CFA ten million, subject to releasing the surplus no later than three years from the registration of the company with the RCCM (Article 389 of the OHADA Company Law).

### Are there any filing requirements for a change of directors or a change in shareholding?

According to Article 124 of the OHADA Company Law, the appointment or removal of company management shall be published with the trade registry (RCCM).

According to Article 263 of the OHADA Company Law, where one of the entries of the notice provided for in



## Guinea Conakry

article 262<sup>2</sup> above is rendered void following an amendment of the articles of association or of any acts, of any deliberations or any decisions of meetings of the company or its structures the amendment shall be published in the form of a notice in a newspaper authorised to publish legal notices in the state party of the headquarters. The notice, signed by the notary who lodged or drafted the document amending the articles of association or by the company legal representatives, shall contain, in addition to information provided for in article 262 above, the following:

- the title, date, publication number, and place of publication of the newspaper in which notices referred to in the two preceding articles were published; and
- the amendments made.

### Are there any post-incorporation requirements that need to be satisfied? For example, registrations for tax purposes or business licences.

The tax registration of companies in Guinea is made during the commercial registration process. Thus, the only additional registration required of companies is the registration with social security authorities (*Caisse Nationale de Sécurité Sociale*) and obtainment of licences.

Registration to the general social security regime managed by the National Social Security Fund (CNSS) is compulsory for:

- All workers subject to the Labour Act.

- Students in vocational schools, people placed in training centres, trainees.
- Other categories of people, in the event of the creation of special social security regime for certain sectors.

In accordance with Article 5 of the Social Security Law, an employer must apply for a registration with the CNSS within eight days from registration or acquisition of the business or on the date of the first hiring of one or more workers.

Once registration is completed, the contribution procedure begins. The social security contribution is 23% (employer's contribution being 18% and employee's contribution being 5%) of the gross salary. The payment of the

<sup>2</sup> Article 262 of the OHADA Company Law, the notice, signed by the notary who lodged the company articles of association or by the founder(s), shall include, besides the information provided for in Article 257(1) above, the following:

1. a brief description of the company purpose;
2. the duration of the company's existence;
3. the amount of contributions in cash and contributions in kind;
4. the number of instruments issued against contributions in cash, in kind and of services;
5. the last name, first name and the domicile of members with unlimited liability of the company debts;
6. the last name, first name and domicile of the first company managers and first auditors;
7. references of the registration of company formation documents with the registry of commerce and securities in the State party of the headquarters;
8. references of the registration with the registry of commerce and securities;
9. the amount of capital paid in full, in the event the capital is not fully paid; and
10. special benefits stipulated.





**Guinea  
Conakry**

contribution is made either monthly when the staff of the company is more than 20 employees; or quarterly when the staff is less than 20 employees.

Over and above the CNSS registration, companies are required to obtain licenses to operate in Guinea Conakry. Please note that licenses vary according to the sector that each company operates in.

**If there is no requirement to have a local director or shareholder, what is a foreigner required to do to register a company for tax purposes and other similar post-incorporation registrations?**

Foreigners are required to provide a copy of their passport and criminal record from their country of origin. Once these documents are submitted, the company is responsible for tax registration and other similar post-incorporation registrations.

**If there is no requirement to have a local director or shareholder, what is the process of obtaining a work permit for foreign employees?**

An employment contract and a valid copy of the entry visa of the foreigner are required to apply for the work permit. However, no member of the ECOWAS area is required to apply for the work permit in Guinea.

**Are there different classes of work permits?**

No.

**What are the requirements for obtaining a work permit? (Please provide the requirements for each class of work permit, if applicable).**

Please see Annex A.

**How long does a work permit application take to be processed?**

Please see Annex A.

**What is the cost of a work permit? (Please provide the cost of each class of work permit, if applicable).**

Please see Annex A.

**Are there any annual compliance requirements that a company must meet?**

There are certain annual compliance requirements that a company must meet. They include:

- closing of the financial year;
- meeting of the annual general assembly of shareholders;
- filing of the year financial statement with the tax office; and
- filing of the year financial statement with the tax office.



Guinea  
Conakry

## Annex A – Immigration Process in Guinea

Type of Documents	Documents Required	Timeline	Validity Period	Government Fees	Issuing Authorities	Complementary Information
Entry Visas	<p>Application forms delivered by the Central Office of the Police and Air Borders.</p> <p>Valid passport.</p>	3 to 5 days max	3 months	Approx. USD 30	<p>Ministry of Foreign Affairs</p> <p>-</p> <p>Ministère des Affaires Étrangères</p>	<p>This visa allows the expatriate to enter in Guinea. It is renewable once for a period of 90 days. In cases where there is no diplomatic representation of Guinea in the country of the assignee, the DCPAF issue an authorization to enter to the assignee. Be also advised the same application in Guinea is possible for the country having a Guinea Diplomatic representation. Upon, arrival to the Guinean airport, the passport of the assignee will be collected by the authority for Visa stamping. We will collect it and sending to the assignee two days later.</p>
Multi Entry Visas (Business Visa)	<p>Application forms delivered by the Central Office of the Police and Air Borders.</p> <p>Passport of the assignee with a valid visa.</p>	3 to 5 days max	1 year	Approx. USD 100	<p>Ministry of Foreign Affairs</p> <p>-</p> <p>Ministère des Affaires Étrangères</p>	<p>This visa allows the expatriate to leave and enter Guinea as many times as he/she likes during its validity without having to ask other visas. This type of visa can only be obtained if the applicant is in Guinea.</p>



Guinea  
Conakry

## Annex A – Immigration Process in Guinea...continued

Type of Documents	Documents Required	Timeline	Validity Period	Government Fees	Issuing Authorities	Complementary Information
Long Stay Visas	Application forms delivered by the Central Office of the Police and Air Borders.  Passport of the assignee with a valid visa.	3 to 5 days max	1 year	Approx. USD 100	Foreign Affairs - Ministère des Affaires Étrangères	This visa is valid for one (01) year. It is normally issued to expatriate workers in Guinea and students. It is renewable for the duration of the contract of work or study.
Work Permit	Copy of employee's passport.  A written request addressed to the Agency of employment (AGUIPE).  A duly completed model of local work employment.  Two photos.	3 to 5 days max	1 year	USD 1,000	Agence Guinéenne pour la Promotion de l'Emploi (AGUIPE)	The work permit is valid for (01) one year. It is renewable depending on the duration of the contract.
Resident Permit	Application forms delivered by the Central Office of the Police and Air Borders.  Passport of the assignee with a valid long stay visa.	2 weeks max	1 year	Approx. USD 100	Ministry of Security - Ministère de la Sécurité	The application for this document is subject to presentation of the valid work permit. It is renewable annually and if the employment contract is ongoing. Renewal requires the fingerprint of the applicant.





Kenya



**Name of the firm**

Cliffe Dekker Hofmeyr Inc – Kenya.

**Brief background of the firm and its work**

We are a full-service law firm – with an extensive reach across Africa – consisting of more than 350 lawyers and a track record spanning over 168 years.

**Lawyers who worked on this questionnaire**

Sammy Ndolo and Njeri Wagacha.



**Kenya**





Kenya

### **What is the legislation that governs companies in your jurisdiction?**

The Companies Act, 2015, The Companies (General) Regulations, 2015, the Registrar of Companies (Forms) Rules, 2017, and the Companies (Beneficial Ownership Information) Regulations, 2020 are the primary legislation governing companies in Kenya.

### **What are the different types of companies that can be incorporated?**

The Companies Act provides for the following types of companies:

#### **Companies limited by shares**

A company is limited by shares if the liability of its members is limited by the company's articles to any amount unpaid on the shares held by the members.

#### **Companies limited by guarantee**

A company is limited by a guarantee if it does not have a share capital, the liability of its members is limited by the company's articles to the amount

the members undertake to contribute to the assets of the company in the event of its liquidation and its certificate of incorporation states that it is limited by guarantee.

#### **Unlimited companies**

A company is unlimited if there is no limit on the liability of its members and its certificate of incorporation states that the liability of its members is unlimited.

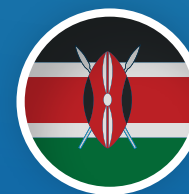
In practice, the following types of companies, which can be either limited by shares or limited by guarantee, can be incorporated in Kenya:

- a) Private limited companies whose articles restrict a member's right to transfer shares, limit membership to 50, prohibit public invitations to subscribe for shares or debentures of the company and require all members to consent to add a new member.
- b) Public limited companies whose articles allow its members the right to transfer their shares in the company and do not prohibit initiations to the public to subscribe for shares or debentures of the company.
- c) Companies limited by guarantee do not have a share capital, the liability of its members is limited by its articles to the amount that the members undertake to contribute to the assets of the company in the event of its liquidation.

### **What is the process of setting up a company?**

The process of incorporating a company in Kenya involves the following steps:

1. Preparation of the company incorporation documents which include:
  - A company registration form (Form CR1).
  - Memorandum (Form CR2).
  - Notice of residential address of a director (Form CR8).
  - Statement of nominal capital.
  - Register of beneficial ownership (Form BOF1).
  - Notice of appointment of secretary and of secretary's particulars (Form CR10).
  - Notice of residential address of a company secretary (Form CR12).



Kenya

2. Once the incorporation documents have been completed, the company incorporation application is submitted to the Registrar of Companies through the e-Citizen platform. The application must indicate at least three names for the proposed entity in order of priority. The application is finalised by paying the applicable fee.
3. Subject to availability, the Registrar reserves a name (from the three) for use by the proposed company after conducting an availability search. If none of the names are available for a reservation the applicant is requested to provide additional names for consideration.
4. The Registrar reviews the incorporation application and, if fine, the application is approved.
5. Upon approval, a certificate of incorporation is issued together with the initial official search confirming the directors and shareholders of the company as well as its registered office.

### **How long does the company incorporation process take?**

A straightforward company incorporation process (one that does not have corrections) in Kenya takes three to five days from the date of submission.

### **How much does it cost to incorporate a company?**

The Companies Registry fee for registering a company in Kenya ranges from KES 10,800 (for private companies) to KES 15,000 (for companies limited by guarantee with over 100 members).

### **Is there a requirement to have a local director?**

It is not mandatory to appoint a local director when incorporating a company in Kenya.

### **Is there a requirement to have a resident director?**

It is not a requirement to have a resident director when incorporating a company in Kenya.

### **Is there a requirement for a company to appoint a company secretary?**

It is not mandatory for a private company to appoint a company secretary except where its nominal capital is KES 5 million and above. However, it is highly recommended for a private company to have a company secretary for ease of registration and to assist with post-incorporation compliance requirements. Every public company must have a company secretary.

### **Is there a requirement for a company to appoint an auditor?**

Private companies are required to appoint an auditor or auditors for each financial year of the company unless the directors resolve that an audited financial statement is unlikely to be required. Public companies are also required to have an auditor or auditors for each financial year of the company unless the directors reasonably resolve otherwise on the ground that an audited financial statement is unlikely to be required for a particular financial year.



## Kenya

### Can a company be wholly owned by foreigners?

Yes. A company can be wholly owned by foreigners.

### Is there a requirement to declare beneficial ownership?

Yes. It is a requirement to declare the company's beneficial owners. The Companies (Beneficial Ownership) Regulations, 2020, define a beneficial owner as a natural person who meets any of the following conditions:

- holds at least 10% of the issued shares in the company either directly or indirectly;
- exercises at least 10% of the voting rights in the company either directly or indirectly;
- holds a right, directly or indirectly, to appoint or remove a director of the company; or
- exercises significant influence or control, directly or indirectly, over the company.

### Is there a requirement to register a company address?

Yes. It is mandatory for a company to provide its registered office details at incorporation.

### Is there a requirement to have a fully paid up share capital at the point of incorporation?

Shares in public companies must be paid up to a minimum of one quarter of their nominal value. The Companies Act is not clear on this point in relation to private companies. However, the model articles for private companies under the Companies Act provide that the shares of a company must be fully paid and in practice, the shares allotted at incorporation are usually automatically indicated by the e-filing system as fully paid up even though there are no actual funds received on behalf of the company in this respect. Therefore, the shareholders must ensure that the funds are readily available as and when required.

### Are there any filing requirements for a change of directors or a change in shareholding?

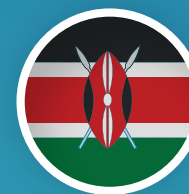
Yes. The Registrar of Companies must be notified of changes in directors and shareholding of a company within 14 days of the change. It is an offence to fail to notify the Registrar of director changes and each officer of the company who is in default, commits an offence and, on conviction, is liable to a fine not exceeding KES 200,000.

### Are there any post-incorporation requirements that need to be satisfied? For example, registrations for tax purposes or business licences.

Yes. A newly incorporated company must be registered with the following statutory bodies:

- Kenya Revenue Authority (KRA): An agency that is responsible for the assessment, collection, and accounting of all revenues on behalf of the Government of Kenya.





Kenya

- National Hospital Insurance Fund (NHIF): A state corporation with a mandate to provide health insurance to Kenyans. The core business and mandate of the NHIF is to provide accessible, affordable, sustainable, and quality health insurance for all Kenyan citizens.
- National Social Security Fund: The government agency responsible for the collection, safekeeping, responsible investment and distribution of retirement funds of employees in both the formal and informal sectors of the Kenyan economy. Participation for both employers and employees is compulsory.
- Directorate of Occupational Safety & Health Services: Its mandate is to ensure compliance with the provisions of the Occupational Safety and Health Act, 2007 and promote the safety and health of workers.
- National Industrial Training Authority: A state corporation whose mandate is to promote the highest standards in the quality and efficiency of industrial training in Kenya and to ensure an adequate supply of properly trained manpower at all levels of industry.

A newly incorporated company will also need:

- The applicable county government annual business permit.
- Applicable sector-specific licenses.

**If there is no requirement to have a local director or shareholder, what is a foreigner required to do to register a company for tax purposes and other similar post-incorporation registrations?**

A foreigner who owns a company in Kenya has the following options to enable them to register the newly incorporated company for tax in Kenya:

- appoint a local director who will be the principal tax contact for the company; or
- the foreigner obtains their own KRA personal identification number (PIN) which will then be used in the company's tax registration application.

For the other post-incorporation registrations in Question 15 do not require local directors to apply for them.

**If there is no requirement to have a local director or shareholder, what is the process of obtaining a work permit for foreign employees?**

A foreign employee should apply for and obtain a work permit from the Department of Immigration Services to enable them to live and work in Kenya.

**Are there different classes of work permits?**

Yes. There are different classes of permits in Kenya. The most common work permit type for those in employment is the work permit (Class D) and special pass (temporary work permit).

Other categories of permits available apply based on the activity proposed to be undertaken by the person namely:

- Class A for a person intending to engage in mining.
- Class B for a person engaged in agriculture or animal husbandry.



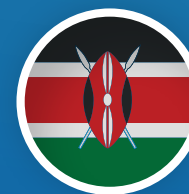
## Kenya

- Class C for a person of a prescribed profession and who intends to practice that profession.
- Class F for a person engaged in manufacturing.
- Class G for those intending to do a specific trade, business or consultancy or profession (other than a prescribed profession).
- Class K for persons not younger than 35 and who have an assured annual income derived from other sources other than employment, occupation, trade, business or profession.
- Class M for persons granted refugee status and their spouse who intends to take up employment.
- Class I for those engaged in approved religious or charitable activities.

### What are the requirements for obtaining a work permit? (Please provide the requirements for each class of work permit, if applicable).

Each class of permits has varying requirements, but the following are the general requirements:

- Duly completed and signed Form 25.
- A detailed and signed cover letter from the employer/organisation, addressed to the Director of Immigration Services.
- Copies of valid national passport (bio page).
- A passport-size coloured photo (soft).
- Current immigration status if in the country.
- Copy of any previous permit(s) and or pass(es) held (if any).
- Duly certified copies of academic and professional certificates.
- Curriculum vitae.
- Name of the Kenyan understudy (a Kenyan Citizen to work under their direct supervision and be trained by the foreigner).
- Certified copies of academic/professional certificates and full contracts of the Kenyan understudy.
- Curriculum vitae for the Kenyan understudy.
- Full contact-address, email, cell phone, of the Kenyan understudy.
- Clearance letter from relevant institutions (if applicable).
- Certificate of company/organisation registration.
- Valid organisation tax compliance certificate for new cases, and both the organisation's and the individual's tax compliance certificates for renewals cases from the KRA.
- The non-refundable processing fee (KES 10,050).
- Duly completed and signed Report on Employment (Form 27), usually applicable for Class D permits.



Kenya

The employer usually submits the work permit application on behalf of the expatriate who may engage an immigration expert to assist with the preparation and submission of the application with the immigration department.

### **How long does a work permit application take to be processed?**

It takes about three to four months for a work permit to be processed and issued.

### **What is the cost of a work permit? (Please provide the cost of each class of work permit, if applicable).**

The government fees for the issuance of a work permit under Classes A, B, C, D, F, G and K range between KES 100,000 and KES 250,000 (payable upon approval) for each year the permit is approved. The permits application fee is KES 10,000. The application fee for a Class K permit is KES 1,000 and its issuance fee is KES 5,000 year. No application or issuance fees is payable in relation to a Class M permit. An application for a special pass is free but once approved one pays KES 15,000 for each month the pass is approved. All fees payable in relation to the application and issuance of a permit are not refundable.

### **Are there any annual compliance requirements that a company must meet?**

In addition to the event-driven compliance requirements, a company must file an annual return (Form CR29) with the Registrar of Companies. The company must also file its annual tax return with the KRA before 30 June of every year. There are industry/sector specific annual compliance requirements that a company may also be required to meet.



**Liberia**





**Name of the firm**

CMB Law Group, LLC.

**Brief background of the firm and its work**

CMB Law Group is a legal and advisory firm located in Monrovia, Liberia. Our dedication to excellence is premised on the belief that the provision of stellar legal services in Liberia helps to foster an equitable and accessible legal environment, which, in turn, encourages business investments, economic growth, and ultimately a better Liberia.

Our clients include multinational enterprises, concessionaires, domestic corporations and international NGOs. Our legal disciplines are comprehensive and include of labour/ employment law, litigation, tax, strategic commercial advice, as well as corporate and transactional services.

Our legal ethos in regard to the provision of legal services is that proactive and pre-emptive actions save our clients money and time. This philosophy cuts across the maze of legal activities and is applicable to litigation as well as commercial and contractual transactions. We believe that a lawyer's role should be advisory and that we should at all times identify methods to prevent unnecessary litigation and maximise our clients' commercial goals.

**Lawyers who worked on this questionnaire**

Cllr Charlyne M. Brumskine.



**Liberia**



CMB Law Group, LLC.



## Liberia

### What is the legislation that governs companies in your jurisdiction?

The Associations Law, Title 5 of the Liberian Code of Laws Revised. The Business Corporation Act (BCA) applies to every resident and non-resident domestic corporation and to every foreign corporation authorised to do business or doing business in Liberia.

### What are the different types of companies that can be incorporated?

#### Corporation

A corporation is a for-profit entity that has the authority to issue shares. The corporation is the most widely used business association in Liberia. A corporation may be registered either as a new entity in Liberia, a subsidiary or as a branch of a foreign corporation that is registered under

the jurisdiction of another country and desires to open a branch in Liberia. Here, corporate income is subject to double taxation in that income generated by the entity is taxed at an entity level. The portion of the corporate income that goes to the shareholders as dividends is then taxed again.

#### Limited liability company

A limited liability company (LLC) is a company having one or more members. An LLC may be registered either as a new entity, subsidiary, or a branch. The owners of a limited liability company are referred to as "*members*".

Additionally, unlike a corporation, corporate income is taxed only once. This means that the company does not get taxed as an entity; rather, only the income that is distributed to members can be taxed.

#### Not-for-profit

A not-for-profit entity must be registered or incorporated by at least three persons. Under Liberian law, it does not have the authority to issue shares or indulge in activities for pecuniary profit or financial gains. Unlike an LLC or a business corporation, a not-for-profit entity is prohibited from distributing any gains, profits or dividends to any of its members except upon dissolution.

#### Partnership

A partnership is an association of two or more persons to carry on as co-owners a business. Formation of a partnership need not be formally registered in order to exist. The Associations Law provides that the receipt by a person of shares of profits from a business is prima facie evidence of a partnership. The partners may not be sued individually for partnership acts, liabilities and



**Liberia**

obligations. When a judgment has been obtained against a partnership, execution thereof shall be against the assets of the partnership, though the partners are personally liable for the satisfaction of such judgments.

### **Limited partnership**

A limited partnership is a partnership formed by two or more persons having as members one or more general partners and one or more limited partners. The limited partners as such shall not be bound by the obligations of the partnership. Two or more persons desiring to form a limited partnership shall sign and acknowledge a certificate containing the limited partnership agreement and shall file the certificate with the Registrar of Deeds of the county in which the principal office of the limited partnership or its registered agent shall be located.

### **What is the process of setting up a company?**

A company must register with the Liberian Business Registry. The company must file either its articles of incorporation, an application for authority to do business, or a certificate of formation. Upon completion, a business certificate will be issued for a period of one year, to be renewed annually. Additionally, the Liberian Business Registry requires that the identification of shareholders, incorporators, and directors (if a company chooses to list the names of directors in its articles of incorporation) are to be submitted as required documents in order for an entity to be registered.

A company is not required to reserve its name prior to registration; however, upon the filing of the required documents, the Liberian Business Registry will conduct its due diligence to ensure that the name of the company is not in use by another pre-existing Liberian entity.

### **How long does the company incorporation process take?**

The incorporation process takes approximately two weeks.

### **How much does it cost to incorporate a company?**

A company can elect to register either as a domestic corporation, a branch of a foreign company, or a subsidiary of a parent company.

- The cost to incorporate a branch is USD 1,450.
- The cost to incorporate a new domestic corporation or subsidiary is USD 955.
- The cost to incorporate a not-for-profit corporation is USD 585.



## Liberia

### **Is there a requirement to have a local director?**

The Associations Law requires that a company is to have at least one director, but this director need not be local.

### **Is there a requirement to have a resident director?**

A director of a company does not need to be a resident of Liberia.

### **Is there a requirement for a company to appoint a company secretary?**

The Associations Law requires that every corporation must have a secretary who will have the duty to record the proceedings of the meetings of the shareholders and directors in a book to be kept for that purpose and otherwise acting as the secretary of the corporation. The secretary need not be local. This requirement applies only to business corporations.

### **Is there a requirement for a company to appoint an auditor?**

No.

### **Can a company be wholly owned by foreigners?**

Yes. The Associations Law of Liberia provides that companies may be wholly owned by foreigners. There is no legal prohibition against foreign ownership, whole or partial, for any business associations in Liberia.

### **Is there a requirement to declare beneficial ownership?**

Yes. The Associations Law requires that corporations with shareholders include the names and addresses of the shareholders in their articles of incorporation. The pertinent part of the law reads:

*"Every domestic corporation and foreign corporation authorised to do business in Liberia shall keep up-to-date records containing the names and addresses of all registered shareholders and beneficial owners, the respective number and class of shares held by each and the dates of ownership thereof ... A resident domestic corporation shall keep the records required to be maintained by this subsection in the Republic of Liberia."*

Limited liability companies are required to keep records containing the names and addresses of all members. Partnerships must keep records of their partners. There is no regular statutory duty to disclose members or partners, unless the government requests said records. At such time, relevant records of beneficial owners, members or partners must be disclosed.





Liberia

In our Associations Law, the term “*beneficial owner*” is used in relation to control over a corporation. A “*member*”, however, is a person acquitting a limited liability company’s interest. A partner has an interest in a partnership.

**Is there a requirement to register a company address?**

Yes. The Associations Law provides that every business association: corporation, LLC, not-for-profit and partnership must register a company address.

**Is there a requirement to have a fully paid up share capital at the point of incorporation?**

No. There is no requirement to have fully paid up share capital at the point of incorporation.

**Are there any filling requirements for a change of directors or a change in shareholding?**

There are no legal requirements. However, to ensure proper corporate governance, a company may elect to write a board resolution approving the change and update its director and shareholder register as well as issuing a share certificate, if necessary.

**Are there any post-incorporation requirements that need to be satisfied? For example, registrations for tax purposes or business licences.**

This would depend on the nature of the business. For instance, an international NGO will need to renew its accreditation and sector clearance per annum. However, every company registered in Liberia is required to renew its business certificate annually.

A business owner who has obtained a certificate to do business in Liberia with the Liberian Business Registry must register with the Liberian Revenue Authority and apply for a tax identification number (TIN).



## Liberia

### **If there is no requirement to have a local director or shareholder, what is a foreigner required to do to register a company for tax purposes and other similar post-incorporation registrations?**

Liberian law does not impose a different set of requirements for foreign owners to register a company for tax purposes. The entity will be taxed based on its structure and not on its ownership.

### **If there is no requirement to have a local director or shareholder, what is the process of obtaining a work permit for foreign employees?**

A prerequisite for a work permit is the issuance of a resident permit by the Liberian Immigration Services.

The government charges the following fees for a resident permit:

- Non-African citizen: USD 750.
- Non-Economic Community of West African States (ECOWAS) citizens (other Africans): USD 600.
- ECOWAS citizens: USD 150.
- Non-African spouse: USD 600.
- Non-ECOWAS spouse: USD 500.
- Non-African minor child: USD 400.
- Non-ECOWAS minor child: USD 300.
- Gratis resident booklet: USD 60.

Required documents:

- A letter from the employer (if the applicant has an employer).
- A copy of the applicant's passport.
- Four passport-size photos.

In order to receive a work permit, the documents listed in Question 19 must be submitted and the relevant fees paid.

### **Are there different classes of work permits?**

There are four categories of work permits in Liberia. See the answer to Question 21.



Liberia

**What are the requirements for obtaining a work permit? (Please provide the requirements for each class of work permit, if applicable).**

- Approved landing visa.
- Copy of the advertisement for the job/position.
- Applicant's CV or resumé.
- Copy of applicant's passport.
- Two passport-size photos.
- Application letter from the company mentioning the applicant's full name, resident permit's number, passport number and position to be occupied.
- Copy of the company's business registration certificate.
- Application fee.

These are the requirements for all classes of work permits.

**How long does a work permit application take to be processed?**

Approximately two weeks.

**What is the cost of a work permit? (Please provide the cost of each class of work permit, if applicable).**

**Category A**

This permit is obtained by all aliens who seek employment in the formal sector, i.e. institutions, corporations, partnerships, other entities and self-employed aliens and costs a fee of USD 1,000.

**Category B**

This permit is obtained by ECOWAS citizens who seek employment in the informal sector and costs USD 100 .

**Category C**

This permit is obtained by non-ECOWAS Africans who seek employment in the informal sector and is USD 200.

**Category D**

This is obtained by aliens who enter into a written contract with the Government of Liberia, employed by organisations, or married to resident Liberian citizens. The fee is USD 200.

**Are there any annual compliance requirements that a company must meet?**

Companies are required to renew their business certificates annually.





**Morocco**



**Name of the firm**

Bakouchi & Habachi – HB Law Firm LLP.

**Brief background of the firm and its work**

Established in 2006, Bakouchi & Habachi – HB Law Firm LLP is a multidisciplinary business law firm, with significant experience in commercial matters and stock exchange law in the Moroccan market (IPO, capital increase, capital decrease, preferred shares, etc.), this is combined with extensive knowledge of commercial disputes as the firm also represents clients in courts and administrations regarding corporate litigations (shareholders agreements, criminal and civil responsibility of directors, etc.).

The firm draws upon its extensive experience in representing clients in general and complex commercial transactions and litigation. A wide range of representation is available to our commercial clients, including relating to general business matters, mergers and acquisitions, intellectual property, financing, leasing, employment contracts, as well as consulting and non-compete agreements.

We advise clients on the development of distribution networks, as well as on their license agreements, franchises, exclusive or selective distribution, sales office or business introductions and general conditions of sale, and we help them to protect their rights.

HB Law Firm regularly advises local and foreign companies and international groups on all matters regarding corporate governance issues. Our law firm has experience in setting up and ensuring the follow-up of governance structures, in all types of mergers and acquisitions, public offerings or private takeovers, and domestic or trans-national transactions.

On a daily basis the firm also handles corporate law issues for several clients, overseeing aspects of legal security in the drawing up of their legal documentation in compliance with the legal formalities of the relevant authorities.

HB Law Firm also regularly advises investors operating in various sectors during all stages of their implementation projects in Morocco, and assists large multinational companies, SMEs and individuals in all aspects related to their projects as well as in their dealings with administrative authorities.

**Lawyers who worked on this questionnaire**

Ms Salima Bakouchi, Mr Kamal Habachi and Mr Saad Morchid.



**Morocco**



Morocco

### What is the legislation that governs companies in your jurisdiction?

- Dahir forming the Code of Obligations and Contracts (12 August 1913) as completed by the Dahir No 1-07-129 (30 November 2007) promulgating Law No 53-05, Dahir No 1-11-140 (17 August 2011) promulgating Law No 24-09, Dahir No 1-15-15 (19 November 2015) promulgating Law No 09-15, Dahir No 1-19-76 (17 April 2019) promulgating Law No 21-18, and Dahir No 1-20-100 (31 December 2020) promulgating Law No 43-20.
- Dahir No 1-97-49 (13 February 1997) promulgating Law No 5-96 on the general partnership, the limited partnership, the partnership limited by shares, the simplified joint stock company, the limited liability company, and the joint venture company (as amended by Law No 21-19 and, recently, 19-20).

- Dahir No 1-96-124 (30 August 1996) promulgating Law No 17-95 relating to joint stock companies (as amended and supplemented by Laws No 81-99, 23-01, 20-05 and 78-12, Law 20-19 and, recently, 19-20).
- Law 15-95 on the commercial code which governs relations between business partners, rules on means of payments, business assets (fonds de commerce) and the solvency procedure, amended in 2018 by Law 73-17.
- Dahir No 1-99-12 (5 February 1999) promulgating Law No 13-97 relating to economic interest groups as amended and completed by the Dahir No 1-14-29 (12 March 2015) promulgating Law No 69-13.

### What are the different types of companies that can be incorporated?

A company can be created under several legal structures, namely:

- Partnership (société en nom collectif – SNC)

- Limited partnership (société en commandite simple – SCS)
- Partnership limited by shares (société en commandite par actions – SCA)
- Simplified joint stock company (société par actions simplifiée – SAS)
- Limited liability company (société à responsabilité limitée – SARL)
- Joint stock company (société anonyme – SA)
- Economic interest groups (groupement d'intérêt économique – GIE)

The different types of companies outlined above are classified either as partnerships (SNC and SCS) or corporations (SA, SAS and SCA). The SARL is a form of company that bridges the gap between partnerships and corporations.

In partnerships, the partners must be qualified as merchants (except for the limited partners in an SNC) and are indefinitely and jointly held liable for the company's debts.



Morocco

In corporations, shareholders are not required to be merchants and are held liable only to the extent of their participation.

The SARL is similar to a corporation in that the partners and managers are not required to be merchants. Also, the partners are held liable only up to the amount of their capital participation. The SARL is also similar to the partnerships in that the personality of the partners is taken into consideration in terms of number of partners, transfer of shares, etc.

The GIE can be defined as a collaboration vehicle between existing companies. It can only be formed between legal entities, and engages the joint and indefinite liability of its members.

Other differences can be observed in terms of the operating procedures of the various types of companies.

### What is the process of setting up a company?

The process of setting up a company is as follows:

1. Obtain a negative certificate issued by the Moroccan Office of Industrial and Commercial Property to retain the corporate name.
2. Conclude a lease or purchase contract, or domiciliation agreement (virtual office).
3. Draft the articles of association or minutes and all required ancillary documents.
4. Complete the registration before tax administration with the General Department of Taxes, under the Ministry of Economy and Finance, which is a formality to which deeds and agreements are subject and which has the effect of giving a certain date to agreements under private signature.
5. Obtain a certificate of registration in the professional tax roll and the tax ID from the General Department of Taxes, under the Ministry of Economy and Finance.
6. The registration of the company in the relevant trade register held by the commercial court.
7. The registration of the company with the National Social Security Fund, which will provide a registration number.
8. The publication of the incorporation the company in the Official Gazette and in the legal announcements' newspaper.

### How long does the company incorporation process take?

The incorporation process can take about 15 days.

### How much does it cost to incorporate a company?

The expenses to incorporate a company are about EUR 300 to EUR 600.



Morocco

### **Is there a requirement to have a local director?**

There is no requirement to have local director.

### **Is there a requirement to have a resident director?**

There is no requirement to have a resident director.

### **Is there a requirement for a company to appoint a company secretary?**

There is no requirement to appoint a company secretary, except for joint stock companies (SA).

### **Is there a requirement for a company to appoint an auditor?**

Regarding companies governed by Law No 5-96, the appointment of an auditor is not mandatory except when the companies concerned have an annual turnover exceeding MAD 50 million (around USD 4,89 million) excluding tax, and regarding the simplify joined stock company the

appointment of an auditor is optional and mandatory when the turnover at the end of the financial year, exceeds an amount that would be set by decree.

For joint stock companies and partnerships limited by shares, the appointment of an auditor is mandatory in all cases. The auditor is appointed by the articles of association.

### **Can a company be wholly owned by foreigners?**

Yes. A company can be wholly owned by foreigners. There is no restriction/obligation regarding the appointment of a Moroccan shareholder.

### **Is there a requirement to declare beneficial ownership?**

Decree No 2.21.708 of 21 September 2021 related to the setting up of a public register of beneficial owners of companies and legal entities incorporated in Morocco was

published on 23 September 2021, but this decree is not yet enforceable, it will only come into force on the date of the creation of this platform. The companies affected by this declaration are:

- Companies registered in Morocco.
- Foreign companies carrying out commercial activities in Moroccan territory.
- Legal entities established outside the national territory, and which have carried out one or more financial or real estate operations or any form of service provision in Morocco, or which have directors residing in Morocco.

### **Is there a requirement to register a company address?**

Yes. The registration of a company address is mandatory, whether it concerns a registered office, or a company owned office.





Morocco

### **Is there a requirement to have a fully paid up share capital at the point of incorporation?**

The shares must be fully subscribed when the company is incorporated. The shares can be paid up to at least one-quarter of their nominal value. The remaining amount must be paid up within a period not exceeding three years (for joint stock companies) or five years (for limited liability companies) from the date of incorporation of the company.

### **Are there any filling requirements for a change of directors or a change in shareholding?**

The changing of shareholders: (i) in joint stock companies requires only the signature of the transfer deed and the registration of this transfer in the shareholders register; (ii) in limited liabilities companies, it requires the signature of a purchase deed, approval of general meeting, the change of the articles of association and updating the trade register.

The changing of directors: (i) in joint stock companies will be done in the ordinary general meeting; (ii) in limited liability companies, it will be done in an extraordinary general meeting, followed by updating the trade register.

### **Are there any post-incorporation requirements that need to be satisfied? For example, registrations for tax purposes or business licences.**

Yes. Several post-incorporation requirements must be satisfied, for example:

- Filing the annual financial statements
- Holding general meetings
- Obtaining business licences, as applicable, etc.

In this regard, we would like to mention that the required formalities for the incorporation of a company are listed in the answers to Question 3.

### **If there is no requirement to have a local director or shareholder, what is a foreigner required to do to register a company for tax purposes and other similar post-incorporation registrations?**

The presence of a foreigner is not mandatory. A foreigner can draw up a power of attorney allowing them to authorise, in their name and on their behalf, all the formalities for the incorporation of a company as well as all the formalities that may result from it.

### **If there is no requirement to have a local director or shareholder, what is the process of obtaining a work permit for foreign employees?**

The process of obtaining a work permit for foreign employees includes two phases: obtaining (i) a foreigner's employment contract and (ii) a work-stay permit.



Morocco

### Obtaining a foreigner's employment contract

Any employer who wishes to hire a foreign employee must obtain authorisation from the Ministry of Employment. This authorisation is granted in the form of a visa stamped on the foreigner's employment contract. Prior to this request for a foreigner's employment contract, the employer must apply for a certificate of activity from the National Agency for the Promotion of Employment and Skills (Agence Nationale de la Promotion de l'Emploi et des Compétences – ANAPEC).

Then the ANAPEC publishes a job offer on a national level in order to allow any Moroccan candidate presenting the required profile to apply for the requested job. This is an application of the national priority rule, which is in force in many countries.

Within a period, in practice, of at least 15 days (for very experienced profiles), if no national candidates apply or do not match the profile needed, the ANAPEC issues a certificate by which it certifies the absence of national candidates to fill the proposed job and allows the recruitment of the foreign employee.

The employer then must send the entire file to the Ministry of Employment, which will issue a foreigner's employment contract allowing the foreign employee to apply for a work-stay permit.

### Obtaining the work-stay permit

Once the foreigner's employment contract has been issued, the employee must go to the wilaya (prefecture) of the city where the employer is located to file an application for a residence permit for the employee.

A receipt for the application, which is valid for three months and renewable once for the same period, is given to the applicant.

After four renewals, the foreign employee may apply for a residence permit that is valid for 10 years.

### Are there different classes of work permits?

As mentioned above, in order to work in Morocco foreigners must obtain a work visa in addition to a work permit.

### What are the requirements for obtaining a work permit? (Please provide the requirements for each class of work permit, if applicable).

#### Requirements for obtaining a foreigner's employment contract

The employer is required to submit a file including:

- A request to the attention of the ANAPEC general manager indicating the full name of the future foreign employee and the job to be performed.
- A duly completed ANAPEC application form.



Morocco

- A descriptive sheet issued by the employer describing in detail the requirements of the position to be offered and the skills required.
- A document confirming their identity (ID or passport).
- A resumé and legalised copies of degrees and work certificates from previous employers.
- An announcement detailing the job offer which will be published in two newspapers (one French, the other Arabic).

#### **Requirements for obtaining a work-stay permit**

The employee must provide the following documents to the wilaya:

- The foreigner's employment contract
- Identification document (ID or passport)
- A birth certificate
- An extract from the criminal record
- A document proving residence (legalised lease contract)
- A medical certificate
- Photos

#### **How long does a work permit application take to be processed?**

The process of a work permit can take about three to six months for the certificate of activity issued by the ANAPEC, and one month for obtaining the work-stay permit.

It should be taken into consideration that these deadlines may be slightly longer.

#### **What is the cost of a work permit? (Please provide the cost of each class of work permit, if applicable).**

All costs related to obtaining a foreigner's work contract are at the expense of the employer (the cost of obtaining the certificate of activity issued by the ANAPEC is MAD 5,000 (USD 490) excluding VAT.

#### **Are there any annual compliance requirements that a company must meet?**

Yes, several annual compliance requirements must be satisfied, for example:

- Filing the annual financial statements with the relevant courts and tax administrations
- Holding general meetings
- Payment of taxes and contributions, etc.





Mozambique



**Name of the firm**

Couto, Graça & Associados, Ltd.

**Brief background of the firm and its work**

Couto, Graça & Associados (CGA) is a Mozambican law firm that develops activities with the purpose of providing high quality legal services to its clients.

CGA has a strong reputation in Corporate, Concessions, PPs, Dispute Resolution, Labour and Investment, as well as leading practices in Banking, Real Estate and Tax. The firm is also acknowledged as a prominent advisor in a number of industry sectors, including the energy and natural resources and infrastructure sectors.

CGA specialises in Contracts, Concessions, Project Finance, Banking, Finance, Equity Market and Insurance, Corporate, Labour, Arbitration, Conciliation, Mediation, Public Law, Legislative Research and Drafting Law, Land and Environment, Judicial Litigation, and Intellectual Property.

CGA is a member of the LEX Africa alliance, a unique legal service group with a wide network of relationships between leading law firms on the African continent; of the AERIAL network, which aims to share information, expertise and resources on African aviation law; of IsFin, the world's leading Islamic Finance Lawyers; and a member of the International Bar Association.

**Lawyers who worked on this questionnaire**

Telmo Ferreira, Daisy Nogueira and Jhoice Tivane.



## Mozambique



COUTO, GRAÇA & ASSOCIADOS

SOCIEDADE DE ADVOCADOS



## Mozambique

### What is the legislation that governs companies in your jurisdiction?

- Commercial Code currently in force (approved by Decree Law No 2/2005 of 27 December, as amended by Decree Law No 2/2009 of 24 April, and Decree Law No 1/2018 of 4 May).
- New Commercial Code, which only came into force on 23 September 2022 (approved by Decree Law No 1/2022, of 25 May, once in force it shall revoke the Decree Law No 2/2005, of 27 December, as amended by Decree Law No 2/2009, of 24 April, and Decree Law No 1/2018, of 4 May).
- Competition Law (approved by Law No 10/2013, of 11 April).
- Competition Law Regulation (approved by Decree No 97/2014, of 31 December).

- Legal Regime of Insolvency and Corporate Restructuring (approved by Decree Law No 1/2013, of 4 July).
- Regulation for the registration of Legal Entities (approved by Decree Law No 1/2006, of 3 May).

### What are the different types of companies that can be incorporated?

According to the Commercial Code currently in force (approved by Decree Law No 2/2005, of 27 December, as amended by Decree Law No 2/2009, of 24 April, and Decree Law No 1/2018, of 4 May), the types of commercial companies are:

- Companies under general partnership with unlimited liability (*sociedade em nome colectivo*):
- The business name is formed by the name and the addition of "*sociedade em nome colectivo*" or "*SNC*".

- There is no minimum capital amount stipulated by law (the capital must be enough for the activity that is intended to be carried out).
- The shareholders are subsidiary and have unlimited liability for the company's debts.
- The minimum number of shareholders is two.
- Industry contributions are admitted, however, their value is not computed in the share capital.

### Capital and industry company (*sociedade de capital e indústria*)

- The business name is formed by the name and the addition of "*sociedade de capital e indústria*" or "*SCI*".
- There is no minimum capital amount stipulated by law (the capital must be enough for the activity that is intended to be carried out).



## Mozambique

- There are two categories of shareholders: some shareholders contribute with money, goods and/or other rights for the formation of the assets and restrict their liability to the value of the subscription with which they subscribed for the share capital, and others with their work or technical skills and are exempt from any liability regarding the debts of the company.
- The minimum number of shareholders is two.

### Companies under limited partnership (*sociedade em comandita*)

- The business name is formed by the name and the addition of "*sociedade em comandita*" or "*SC*", or "*sociedade em comandita por ações*" or "*SCA*".
- There is no minimum capital amount stipulated by law (the capital must be enough for the activity that is intended to be carried out).

- There are two categories of shareholders: limited liability shareholders (contributing with capital) and unlimited liability shareholders (contributing with goods and services). The limited liability shareholders are not liable in their personal capacity for the debts of the company. The unlimited liability shareholders are liable for the debts in the same terms as the shareholders in companies under general partnership with unlimited liability.
- Number of shareholders: not less than two.

### Company by quotas

- The business name is formed by the name and the addition of "*limitada*" or "*Lda*".
- There is no minimum capital amount stipulated by law (the capital must be enough for the activity that is intended to be carried out).

- The share capital is divided into quotas and the shareholders are solely liable for the payment of the share capital.
- Only the company's assets are liable for the company's debts.
- Contributions in kind as a form of payment of capital are not permitted.
- Number of shareholders: not less than two (the law allows the existence of company by quotas with a single shareholder (*sociedade por quotas unipessoal*)).

### Joint stock companies

- The business name is formed by the name and the addition of "*sociedade anónima*" or "*SA*".
- The share capital is divided into stocks and each stockholder limits its liability to the value of the stocks subscribed.
- Number of shareholders: not less than three.
- There is no minimum amount stipulated by law (the capital must be enough for the activity that is intended to be carried out).



## Mozambique

### Company by quotas can have a single shareholder (individual)

According to the new Commercial Code, approved by Decree-Law No 1/2022 of 25 May, which came into force on 23 September 2022, the following types of commercial companies can be incorporated:

### Companies under general partnership with limited liability (*sociedade em nome colectivo de responsabilidade limitada*)

- The business name is formed by the name and the addition of "*sociedade em nome colectivo limitada*" or "*SNCL*".
- There is no minimum capital amount stipulated by law (the capital must be enough for the activity that is intended to be carried out).

- The shareholders are not liable in relation to the company for the company's obligations, limiting its liability to the patrimony of the company.
- The minimum number of shareholders is two.
- Industry contributions are admitted; however, their value is not computed in the share capital.

### Company by quotas (*sociedade por quotas*)

- Please see above.

### Joint stock companies (*sociedade anónima*)

- Please see above.

### Simplified joint stock companies (*sociedade por acções simplificadas*)

- The business name is formed by the name and the addition of "*sociedade por acções simplificada*" or "*SAS*".

- There is no minimum capital amount stipulated by law (the capital must be enough for the activity that is intended to be carried out).
- There is no minimum capital amount stipulated by law (the capital must be enough for the activity that is intended to be carried out).
- The share capital is divided into stocks and each stockholder limits its liability to the value of the stocks subscribed.
- The minimum number of shareholders is one.

Company by quota, joint stock companies and simplified joint stock companies can have a single shareholder (individual or corporation).





## Mozambique

### What is the process of setting up a company?

The general procedure for incorporation of companies in Mozambique is as follows:

1. Reservation of the name of the company to be incorporated, at the Legal Entities Registrar Office.
2. Opening of a provisional bank account in the name of the company, to which the intended shareholders of the company will transfer their corresponding shareholdings.
3. Payment of the share capital (in the event that the payment is not deferred), by deposit into the company's account.
4. Signature of an incorporation agreement (which shall include the articles of association of the company) with notarised signature or, if the share capital is constituted by immovable assets, the incorporation of the company will have to be made by way of public deed (which shall include the articles of association).
5. Registration of the company at the Legal Entities Registrar Office and publication of the articles of association in the Government Gazette, which is a simultaneous process.
6. Tax registration to obtain the taxpayer number (NUIT).
7. Obtaining a business license.
8. Company registration at the National Social Security Institute.
9. Submission of the declaration of commencement of activity to the tax authorities.
10. Communication of commencement of activities at the Ministry of Labour, Employment and Social Security.

In certain fields of activity, prior authorisation to incorporate a company is required, for example:

- For credit institutions and financial companies, the process of incorporation is subject to the prior written authorisation of the Central Bank of Mozambique, which should be considered as the first step.

- For insurance institutions, the process of incorporation is subject to the prior written authorisation of the Ministry of Economy and Finance, which should be considered as the first step.

### How long does the company incorporation process take?

Considering the general procedure described above, and when the business license does not require the prior opinion of the ministry that supervises the relevant sector of activity, it takes up to two weeks to incorporate a company, provided that all relevant documentation is available.

### How much does it cost to incorporate a company?

The cost of incorporation of a company varies based on the amount of the share capital and the length (number of lines) of the articles of association which must be published in the Government Gazette. Moreover, the cost will vary based on the business license that the company seeks to obtain, which is different based on the different sectors of activity.



## Mozambique

According to ministerial decree No 79/2017 of 27 December, the charge for the publication in the Government Gazette is MT 113 MT (approximately USD 2) per line.

The cost of registration at the Legal Entities Registrar Office ranges from MT1,454 to MT 15,450 depending on the share capital of the company.

e.g. of a cost for registration of a company:

With a share capital of MT 1,500,000 (approximately USD 23,722) and with the articles of association occupying 500 lines:

- the price for registration of the company at the Legal Entities Registrar Office would be MT 7,450 (approximately USD 120), and
- the publication of the articles of association in the Government Gazette would be MT 56,500 (approximately USD 890).

Generally, the cost of the license, with some exceptions, is the equivalent of one minimum national wage (of the public sector, which is MT 8,758, according to Decree No 32/2022 of 13 July, which corresponds to approximately USD 139 at the exchange rate at the time of writing).

### **Is there a requirement to have a local director?**

The Commercial Code currently in force does not provide such requirement.

### **Is there a requirement to have a resident director?**

In general, there is no requirement to have a resident director. However, there are specific cases where the law does establish a similar requirement, e.g. in insurance institutions the majority of the members of the board must be residents.

### **Is there a requirement for a company to appoint a company secretary?**

There is no such requirement.

### **Is there a requirement for a company to appoint an auditor?**

The appointment of an auditor shall be required for companies that are required to appoint a supervisory board or a single supervisor. A company is required to appoint a supervisory board or a single supervisory when:

- it has 10 or more partners,
- it issues bonds, or
- it is a joint stock company.

Under Article 153 of Commercial Code, one member of the supervisory board or the supervisor has to be an auditor or an audit company.



## Mozambique

### Can a company be wholly owned by foreigners?

Generally, the law does not require that a company be wholly owned by locals.

However, in some sectors, it is required that the majority of the share capital be Mozambican (e.g. for the purpose of obtaining a mining certificate or trading of mining products).

### Is there a requirement to declare beneficial ownership?

The previous Commercial Code did not require the declaration of beneficial ownership. However, it should be noted that the new Commercial Code, which came into force on 23 September 2022, establishes this requirement.

### Is there a requirement to register a company address?

Yes, according to Article 3 of the Regulation for the Registration of Legal Entities, the company's

headquarters must be registered (note that according to Article 94 of the Commercial Code, the company's headquarters must be established at a defined location, or in the absence of that, at the domicile of one of the partners, and must be registered prior to the commencement of business).

### Is there a requirement to have a fully paid-up share capital at the point of incorporation?

According to Article 116 of the Commercial Code currently in force, the share capital is paid up on the date of the incorporation of the Company. However, the payment may be deferred under the terms fixed for each type of company. For example:

- In company by quotas, the payment of shares to be paid in money may be deferred, up to half of their nominal value but the overall quantity of payments made on such shares, jointly with the sum of the nominal value of shares corresponding to contributions in kind, shall make up the minimum capital determined by law.

In this type of company, the integral payment of cash holdings may be deferred for a period not exceeding three years.

- In joint stock companies, the payment of the nominal value of the shares subscribed may be deferred up to 75% of its nominal value; the deferred payment cannot be for a period exceeding five years.

Article 95 of the new Commercial Code, which came into force on 23 September 2022, establishes that the share capital should be paid up to one year from the date of the definitive registration of the articles of association, and the deadline can be deferred for up to three years, provided the share capital is equal to or greater than MT 750,000 and has been paid up by at least 25%.



## Mozambique

### **Are there any filling requirements for a change of directors or a change in shareholding?**

Generally, there is no filling requirement for the change of directors, excluding the decision of the relevant corporate body for the purpose. However, depending on the sector of activity, the final approval of the appointed directors may be subject to the decision of the regulator, as is the case with credit institutions and financial companies.

With regards to the change in shareholders, the filling requirement will depend on the sector of activity of the company, given that for some sectors of activity, such as banking and finance, insurance and mining, amongst others, the change is subject to prior approval.

Furthermore, the intended change in shareholding may lead to a filling requirement before the Mozambican Competition Authority, based on the provisions of the competition legislation, under which it is considered that the intended change falls within the thresholds established in the law for a filling requirement.

### **Are there any post-incorporation requirements that need to be satisfied? For example, registrations for tax purposes or business licences.**

Please refer to our response to question 3 above.

### **If there is no requirement to have a local director or shareholder, what is a foreigner required to do to register a company for tax purposes and other similar post-incorporation registrations?**

For tax purposes, the company must have a resident tax representative.

### **If there is no requirement to have a local director or shareholder, what is the process of obtaining a work permit for foreign employees?**

It depends on the type of work permit required.

#### **Short-term work permit**

Before a foreign worker enters the country, the employing company must notify the entity supervising the labour area of the province where the worker will be performing their activities, together with the following:

- the grounds;
- an authenticated copy of the foreigner's identification document;
- an authenticated copy of the company's license; and
- the proof of payment of one minimum wage of the company's sector of activity.





## Mozambique

### Quota regime

The employing company must notify the entity supervising the labour area of the province where the worker will be performing their activities, together with the following documents:

- two forms of communication (provided by the entity supervising the labour area) duly filled out;
- three copies of the employment contract;
- certificate(s) of academic qualifications, accompanied by a certificate of equivalence issued by the entity that oversees the labour area, or documentation proving the worker's experience;
- company tax discharge certificate;
- nominal list of the company (list of employees);
- an authenticated copy of the foreign person's identification document; and
- proof of payment of five minimum wages of the company's sector of activity.

### Authorisation regime

Application for a work permit (in the approved format), together with the following documents:

- three copies of the employment contract;
- certificate(s) of academic qualifications, accompanied by a certificate of equivalence issued by the entity that oversees the labour area, or documentation proving the worker's experience;
- company tax discharge certificate;
- opinion of the syndicates' delegate or syndicate committee or the labour syndicate of the area of activity;
- authenticated copy of the foreign person's identification document;
- an authenticated copy of the company's license;
- nominal list of the company (list of employees); and
- proof of payment of 10 minimum wages of the company's sector of activity.

According to the Regulation of Mechanisms and Procedures for Contracting Foreign Citizens (Decree No 37/2016, of 31 August), it is the employer who must apply for the permit. However, the employer may be represented by any person by means of an instrument of representation, which in this case is a power of attorney.

### Are there different classes of work permits?

Yes, the different classes of work permits are:

- Short-term work.
- Quota regime.
- Authorisation regime.



## Mozambique

### **What are the requirements for obtaining a work permit? (Please provide the requirements for each class of work permit, if applicable).**

Short-term work (for working time not exceeding 90 days per year, consecutive or interspersed)

A short-term work permit aims to enable the performance of punctual, unpredictable work involving scientific or highly specialised professional technical knowledge.

For the acquisition of a short-term work visa, it is sufficient that the employer notifies, duly substantiated, the entity that oversees the labour area in the province where the foreigner is going to work, before the foreigner enters into the country.

The notification must be submitted together with the following documents:

- an authenticated copy of the foreigner's identification document;
- an authenticated copy of the company's licence; and
- proof of payment of one minimum wage of the company's sector of activity.

### **Quota regime**

To obtain a work permit under this regime, the employer, depending on the type of classification of the company, must have a quota available for hiring foreigners, based on the following:

- 5% of all Mozambican workers in large companies (companies that employ more than 100 workers);

- 8% of all Mozambican workers in medium companies (companies that employ more than 10 and fewer than 100 workers); and
- 10% of all Mozambican workers in small companies (companies that employ fewer than 10 workers).

### **Authorisation regime**

To obtain a work permit under this regime, the employer must prove that there are no nationals with the required qualifications or that the number of nationals is not sufficient.

It is important to note that there is specific legislation governing work permits for the oil and mining sector (Decree No 63/2011, of 7 December).



## Mozambique

### How long does a work permit application take to be processed?

Generally speaking, it takes around six weeks.

### What is the cost of a work permit? (Please provide the cost of each class of work permit, if applicable).

- Short-term work: One minimum wage of the company's sector of activity.
- Quota regime: Five minimum wages of the company's sector of activity.
- Authorisation regime: 10 minimum wages of the company's sector of activity.

### Are there any annual compliance requirements that a company must meet?

The company must meet the following requirements:

- Update the nominal list of the company (list of employees) with the Ministry of Labour, Employment and Social Security.
- Approve the balance sheet and the company's account.
- Present the annual report on the company's accounting and tax information to the tax authority.
- Submit the annual income declaration for the previous year to the tax authority.
- Pay the economic activity tax.

In this case, minimum wage is the National Minimum Salary of the public sector, which is MT 8,758, according to Decree No 32/2022 of 13 July, which corresponds to approximately USD 139 at the exchange rate at the time of writing.



**Nigeria**



## Name of the firm

### Brief background of the firm and its work

B&I was established on 1 February 1991. Its founders aimed to build a first-class institution that would rank among the best in the world. Today, B&I is a multidisciplinary law firm with a proven track record in Corporate Restructuring, Banking and Finance, Foreign Investment & Divestments, Mergers & Acquisitions, Capital Markets, Corporate Finance, Energy, Projects, Infrastructure, and Corporate & Commercial Law.

We are consistently ranked as a leading Nigerian law firm; and a number of our lawyers as leading lawyers in the IFLR's Guide to the World's Leading Financial Law Firms, Chambers Global Guide to the World's Leading Lawyers, Who's Who Legal and Legal 500. In particular, we are widely judged to be Nigeria's leading law firm in Foreign Investments and Divestments, Mergers & Acquisitions, Banking and Finance, and Securities & Capital Markets, among other practice areas. From our clients' feedback, we are acclaimed to be innovative and outstanding in the provision of efficient, timely and cost-effective solutions to matters brought to us.

B&I is structured as a partnership and is a fairly large sized Nigerian law firm, currently comprising 15 partners and over 60 additional lawyers. Our personnel are youthful and energetic, dedicated, knowledgeable, motivated and dynamic; and have consistently demonstrated commitment to excellence in their various areas of legal practice. The firm currently has five core practice groups:

- Corporate, Securities and Finance (including Mergers & Acquisitions)
- Commercial Litigation, Arbitration and Alternative Dispute Resolution
- Shipping, Aviation and International Trade
- Intellectual Property and Information Technology
- Energy & Natural Resources (oil, gas, power and mining)

### Lawyers who worked on this questionnaire

Azeezah Muse Sadiq, Thelma Okorie and Chiedozie Ndubuisi.



## Nigeria



**BANWO & IGHODALO**



## Nigeria

### What is the legislation that governs companies in your jurisdiction?

The primary legislation governing companies and businesses in Nigeria is the Companies and Allied Matters Act 3 of 2020 (as amended) (CAMA 2020), which repealed and replaced the Companies and Allied Matters Act CAP C20 LFN 2004. Section 1 of CAMA established the Corporate Affairs Commission (the CAC or the Commission) as the regulatory body responsible for the implementation of the provisions of CAMA 2020.

In the exercise of its regulatory powers, the CAC issued the Companies Regulations 2021 (CR 2021) to provide a framework for the implementation of CAMA 2020. In addition to CAMA 2020 and CR 2021, other legislation on specific subject matters (e.g. tax, employment, immigration, and investments) and industry specific laws regulate the operation of companies in Nigeria with respect to the subject matters to which they relate.

### What are the different types of companies that can be incorporated?

Further to section 21(1) of CAMA 2020, the following types of companies are registrable in Nigeria:

#### Company limited by shares

Which limits the liability of its members by the memorandum of association to the amount, if any, unpaid on the shares respectively held by them. In the event of the winding-up of the company or insolvency, the liability of the shareholders will be limited to the amount not fully paid up in respect of the shares held by them.

#### Company limited by guarantee

The liability of members, in the event of winding-up or insolvency, is limited up to the amount guaranteed to be contributed to the assets of the company. Further to section 26(12) of CAMA 2020, such amount to be guaranteed by each contributor shall not be less than NGN 100,000 (approximately, USD 240, based on the Central Bank of Nigeria exchange rate

as at 1 August 2022). The guaranteed amount may only be demanded at the time of insolvency or winding-up. The consent of the Attorney General of the Federation is required for the registration of a company limited by guarantee, as the company is not formed to make profits for distribution to the members but for the promotion of commerce, art, science, religion, sports, culture, education, research, charity or other similar objects.

#### Unlimited liability company

The liability of its members in the event of winding-up is unlimited. Where the financial liability of the company exceeds its assets, such liability may attach to the members' personal property to liquidate the debt. The members have a joint and non-limited obligation to contribute to the assets of the company to enable settlement of its financial liability, if any, in the event of the company's insolvency.

Section 21(2) of CAMA 2020 provides that the types of companies highlighted above, may be registered as private or public companies. A company is private where its memorandum and article



**Nigeria**

of association provides for it and contains restrictions on the transfer of its shares and sale of its assets and limits the maximum number of its members to 50 (although where two or more persons jointly hold one or more shares in a company, they will be treated as a single member). A private company cannot invite the public to subscribe for any of its shares or debenture unless authorised by law. Any other company not being a private company shall be a public company. The minimum membership of a public company is two members, without any maximum.

In practice, companies are registered in Nigeria as either a:

- private company limited by shares;
- public company limited by shares;
- private company limited by guarantee;
- public company limited by guarantee; or
- private unlimited company.

## **What is the process of setting up a company?**

Registration of a company is initiated and completed on the CAC's Company Registration Portal which is accessible to accredited agents (i.e. legal practitioners, accountants, and chartered secretaries) and individuals who are directors, trustees or proprietors/partners in the company seeking to be registered. The following represents a step-by-step process for the registration of a company in Nigeria.

### **1. Search available company name**

The promoters of a company shall select a preferred name and an alternative name with which the company may be registered. Please note that the use of certain names is prohibited or restricted under CAMA 2020.

## **Prohibited names**

Section 852(1) of CAMA 2020 prohibits the use of certain names in the registration of companies, including:

- Names identical to the name of an existing company or limited liability partnership, or so nearly resembling that name as to be calculated to deceive (except where the company or limited liability partnership is in the course of being dissolved and signifies its consent).
- Names containing the words "*Chamber of Commerce*" unless it is a company limited by guarantee.
- In the opinion of the CAC, the name:
  - is misleading as to the nature or extent of its activities or is undesirable, offensive or contrary to public policy;
  - violates existing trademarks, business names or body corporates registered under CAMA 2020, unless the consent of the owner is obtained;



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- contains a word likely to mislead the public as to the nationality, race or religion of the persons by whom the business is wholly or mainly owned or controlled;
- is deceptive or objectionable in that it contains a reference or suggests an association with any practice, institution, personage, foreign state government, international organisation or international brand, or is otherwise unsuitable; or
- is capable of undermining public peace or national security.

### Restricted names

Further to section 852(2) of CAMA 2020, a company may not be registered with a restricted name unless the Commission consents to the use of such a name. Restricted names are names which include:

- the word "*Federal*", "*National*", "*Regional*" or "*State*";

- "*Government*" or any word which in the opinion of the Commission suggests or is calculated to suggest that the company enjoys the patronage of the Government of the federation, state, ministry or department in Nigeria, or contains the word "*Municipal*" or "*Chartered*", or in the opinion of the Commission, suggests or is calculated to suggest, connection with any municipality or other authority;
- contains the word "*Corporative*" or its equivalent in any language or abbreviation or the word "*Building Society*"; or
- contains the word "*Group*" or "*Holding*".

The promoters shall select names which are not prohibited. Where a restricted name is sought to be used, the promoters shall obtain the consent of the Commission. The promoters may also conduct a public search on the names of existing companies on the Commission's website (at Public Search) to ensure that their proposed company name is not in conflict with any existing business or company name.

### 2. Reserve company name

An application for reservation of the preferred/alternative name is completed on the Company Registration Portal. Where the name satisfies legal requirements and does not conflict with any existing company or business name, the Commission shall reserve the name for a period of 60 days and assign an availability code to the name. A fresh application may be made to the Commission to further reserve the name after the expiration of the 60-day period.

### 3. Complete all statutory forms

The promoters shall within the 60-day window commence the registration of the company using the name availability code. All relevant forms and information, including the details of the directors, shareholders, issued share capital, business objects, and other information to be included in the memorandum and articles of association of the company, are completed on the Company Registration Portal.





**Nigeria**

#### **4. Pay applicable fees**

The promoters shall pay the applicable fees detailed below.

#### **5. Submit the application for registration of the company**

The completed application is submitted via the Company Registration Portal for the Commission's approval.

#### **6. Obtain certified copies of incorporation documents**

Once approved, the certified copies of incorporation documents (i.e. certificate of incorporation, memorandum and articles of association, and the extract) can be downloaded online.

#### **How long does the company incorporation process take?**

The company incorporation process typically takes an average of four to six working days from when the application is successfully submitted to the Commission. However, the actual timeline is subject to regulatory bureaucratic delays.

#### **How much does it cost to incorporate a company?**

The cost of incorporation of companies varies amongst the different types of companies and the proposed issued share capital with which the company is to be registered. Preliminary, the cost of name reservation is NGN 500 (less than USD 2) and NGN 5,000 (approximately USD 12) for restricted names and companies limited by guarantee. Upon approval of the name, the registration cost is calculated in accordance with the schedule of fees published by the Commission.

Please click here to access the schedule of fees. The CAC charges a fee of NGN 10,000 (approximately, USD 24) and NGN 20,000 (approximately USD 48) to register a private and public company respectively, with issued share capital of NGN 1 million (approximately USD 2,400). Where the issued share capital exceeds NGN 1 million, the

CAC shall charge a graduated fee of NGN 5,000 (approximately USD 12) for every NGN 1 million in the share capital. The CAC charges the sum of NGN 20,000 (approximately USD 48) for registering a company limited by guarantee.

In addition to the registration fees, the promoters shall stamp the memorandum and articles of association of a company limited by shares at the rate of 0,75% on the value of the issued share capital of such a company. We note that the foregoing fees are exclusive of bank charges and professional fees payable to accredited agents.

#### **Is there a requirement to have a local director?**

No, there is no statutory requirement to have a local director.

#### **Is there a requirement to have a resident director?**

No, there is no statutory requirement to have a resident director.



## Nigeria

### Is there a requirement for a company to appoint a company secretary?

Except in the case of a small company, every Nigerian company is required to appoint a company secretary.

Section 394(3) of CAMA 2020 provides the qualifying conditions of a small company, as follows:

- the company shall be a private company;
- the company's turnover for the relevant financial year is not more than NGN 120 million (approximately USD 288,000) or such amount as may be fixed by the Commission;
- its net assets value is not more than NGN 60 million (approximately USD 144,000) or such amount as may be fixed by the Commission from time to time;
- none of its members is an alien;
- none of its members is a government, government corporation and agency or its nominee; and

- in the case of a company having a share capital, the directors between themselves hold at least 51% of its equity share capital.

Accordingly, any company that does not qualify as a small company shall be required to appoint a company secretary.

### Is there a requirement for a company to appoint an auditor?

Yes, further to section 401 of CAMA, every Nigerian company is required to appoint an auditor. By virtue of section 402, the audit requirements contained in the act (including the requirement to appoint an auditor) are not applicable to small companies or companies that have not carried on any business since incorporation (excluding insurance companies and banks).

Therefore, as provided in section 401, a company shall in each annual general meeting appoint an auditor

or auditors to audit the financial statements of the company and to hold office from the conclusion of that meeting until the conclusion of the next annual general meeting. The first auditors of a company may be appointed by the directors at any time before the company is entitled to commence business and the appointed auditors shall hold office until the conclusion of the next annual general meeting of the company.

### Can a company be wholly owned by foreigners?

A Nigerian company may be wholly owned by foreigners. In this regard, the Nigerian Investment Promotion Commission Act, CAP N117 LFN 2004 (NIPC Act) permits foreigners to own up to 100% of any business enterprise with the exception of enterprises on the "negative list". The negative list includes enterprises involved in the production of and dealing in arms, ammunition, narcotic drugs and psychotropic substances.



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Some sector-specific laws also impose ownership restrictions in relation to certain regulated businesses. Examples of such legislation include:

- Section 3(2) of the Nigerian Oil & Gas Industry Content Development Act 2010 (LCA) which provides that exclusive consideration shall be given to Nigerian indigenous service companies that demonstrate ownership of equipment, Nigerian personnel and capacity to execute contracts on land and swamp operating areas of the Nigerian oil and gas industry in respect of contracts and services required in that sector. The LCA defines a “*Nigerian Company*” as “*a company formed and registered in Nigeria in accordance with the provisions of Companies and Allied Matters Act with not less than 51% equity shares held by Nigerians.*”
- Section 1 of the Architect (Registration, etc.) Act 1969 provides that a person shall not prepare or take full responsibility for the erection or commissioning of architectural building plans

or practice or carry-on business (other than that having relevance to ship construction, or to landscape or golf links) under any name, style or title containing the word “*architect*” unless they are a Nigerian citizen and registered under the act. Similar restrictions exist with respect to certain professional practice areas.

### **Is there a requirement to declare beneficial ownership?**

Section 120 of CAMA 2020 provides that a person with significant control over a company shall, within seven days of becoming such a person, indicate to the company in writing the particulars of such control. The company shall not later than one month from the receipt of such information or change therein, notify the Commission of that information. By virtue of section 868 of CAMA 2020, “*a person with significant control*” means any person who, amongst other things, directly or indirectly holds at least 5% of the shares in a company; or directly or indirectly holds at least 5% of the voting rights in a company.

In addition, the Regulatory Framework for Bank Verification Number (BVN) Operations and Watch-List for the Nigerian Banking Industry issued by the Central Bank of Nigeria through the circular dated 12 October 2021 requires banks and other financial institutions to ensure that the details of all signatories, directors and beneficial owners are linked to their respective non-individual (corporate) bank accounts. Accordingly, every company incorporated in Nigeria is required to disclose details of its beneficial owners to its banks.

### **Is there a requirement to register a company address?**

Yes, section 36(2)(b) of CAMA 2020 requires that the memorandum of association of a company to be registered in Nigeria shall specify the registered office address and head office if it is different from the registered office address.



## Nigeria

### Is there a requirement to have a fully paid up share capital at the point of incorporation?

There is no statutory requirement that any minimum amount of a company's issued share capital must be paid up.

### Are there any filing requirements for a change of directors or a change in shareholding?

A Nigerian company is required to notify the CAC of any appointment, removal or change in the details of a director within 14 days of passing the requisite resolution. While there are no filing requirements for the transfer of shares, every Nigerian company which allots new shares shall within one month of the allotment, file a return of allotment with the Commission indicating the number of shares allotted and the changes to the company's shareholding.

### Are there any post-incorporation requirements that need to be satisfied? For example, registrations for tax purposes or business licences.

Following the incorporation of a company, certain post-incorporation registrations shall apply including:

#### Registration with the Nigerian Investment Promotion Commission (NIPC)

Nigerian companies with foreign equity participation, pursuant to section 20 of the NIPC Act, shall register with the NIPC and obtain a certificate of business registration prior to commencing business. Until such a company is registered with the NIPC, it is not entitled to commence business in Nigeria.

Where there are no queries, a certificate of business registration is typically issued within one to two weeks from the date of application.

An application should be submitted to the NIPC along with the following documents:

- the incorporation documents of the company (i.e. the certificate of incorporation, status report and memorandum and articles of association);
- details of the contact person of the company (i.e. their name, address, phone number, email address and designation);
- proposed number of employees;
- the company's phone number; and
- letter authorising a third party to assist in procuring the Certificate of Registration on behalf of the company, if applicable.

The official fee payable is NGN 15,000 (approximately USD 35.98).

#### Registration with the Federal Ministry of Interior

In relation to an application for a business permit for a Nigerian company with foreign equity participation, section 36(1)(b) of the Immigration Act, 2015 prohibits a non-citizen of Nigeria from establishing a business or registering a company for





## Nigeria

that purpose without the consent of the minister responsible for immigration matters. In practice, the consent in the form of a “*Business Permit*” issued by the department of citizenship of the Federal Ministry of Interior (FMI) is obtained after the incorporation of the company has been concluded. The application usually takes about three to four months to be processed and the permit granted, if there are no delays either caused by incomplete documentation or queries on the submitted application.

An application needs to be made to the FMI and the following documents submitted:

- application letter addressed to the Permanent Secretary of the Federal Ministry of Interior on the company’s letterhead;
- name, address and email address of the company;
- phone number of the company;
- name and email address of the company’s representative;
- nature the company’s business;
- address of factory/operational premises;
- work status of directors (whether full time/part time);
- where the company has a foreign director(s), whether or not the director(s) is resident in Nigeria;
- confirmation as to whether or not any of the company’s directors are engaged in any employment with another company;
- international passport of the company’s directors;
- confirmation as to whether the company will incur any expenditure in foreign currency e.g. in respect of payment of royalties, services, charges, salaries of foreign personnel, etc;
- number of staff involved in managerial/supervisory functions;
- number of staff that carry out clerical/office duties;
- number of skilled labour staff;
- number of unskilled labour staff;
- certificate of capital importation;
- percentage of capital from foreign sources;
- copy of the company’s certificate of incorporation;
- copy of the company’s memorandum and articles of association;
- status report issued by the CAC;
- copy of the company’s certificate of business registration;
- title document (such as lease agreement or deed of assignment) in respect of the company’s office/ business premises;
- joint venture agreement between foreigner(s) and Nigerian(s);
- reference letter from the company’s bank;
- tax clearance certificate; and
- feasibility report.

The official fee payable is NGN 350,000 (approximately USD 840).

### Registration with the Federal Inland Revenue Service (FIRS)

As the primary tax authority in Nigeria, every Nigerian company is required to register with the FIRS for purposes of the company’s income tax and value-added tax. In practice, a tax identification number is automatically generated and assigned to a company that has been successfully incorporated at the CAC. This registration has been synchronised with the incorporation process and no additional fee is payable.



## Nigeria

In addition, some sector-specific laws impose registration obligations on companies intending to operate in such regulated industries.

### **If there is no requirement to have a local director or shareholder, what is a foreigner required to do to register a company for tax purposes and other similar post-incorporation registrations?**

There are no special requirements for tax registration applicable to Nigerian companies with foreign equity participation. All tax registrations with the FIRS may be made by completing the prescribed forms.

For the FMI registration, foreign promoters are required, amongst other things, to provide a copy of the certificate of capital importation (CCI), which is evidence of capital importation into Nigeria through an authorised dealer (i.e. a licenced commercial bank). The authorised dealer is required to issue the CCI within 24 hours of receipt of capital imported into Nigeria and converted into Naira for the purpose of investment. A CCI assures the

unhindered remittance of investment capital and any returns thereon, in any convertible currency by the named holder thereof.

Furthermore, a foreign promoter registering with the FMI shall, in addition to submitting the corporate documents of its company and the CCI, provide the following:

- contact details of the company's representative;
- a reference letter from its bankers indicating that the company maintains and operates a bank account with a reputable commercial bank in Nigeria;
- tax clearance certificate;
- title document in respect of the company's registered business address;
- international passport of each director;
- a copy of NIPC certificate of business registration;
- a feasibility report for the proposed business operation; and
- an application letter.

As an administrative point, where the company intends to open a corporate bank account with a commercial

bank in Nigeria, all the directors (including foreign directors) will be required to register and obtain bank verification numbers.

### **If there is no requirement to have a local director or shareholder, what is the process of obtaining a work permit for foreign employees?**

Any Nigerian company desirous of employing foreign personnel needs to obtain expatriate quota approval. There are two types of expatriate quota approvals:

1. Permanent until reviewed (PUR) quotas, which are usually reserved for CEOs.
2. Ordinary quotas, which are issued to expatriate employees of a company, as well as directors.

It is the duty of the company to apply for expatriate quota approval. Expatriate quota positions (except with respect to the PUR), when granted, are valid for a specified period of three years in the first instance and renewable thereafter biannually within a total life span of 10 years.



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The following must be provided in support of the application:

- reason for the request (the company must be able to demonstrate that there is scarcity of the requisite skill for the position in Nigeria);
- proposed training programme for Nigerian understudies (at least two per expatriate);
- proposed annual salary to be paid to expatriates; and
- for each position required:
  - curriculum vitae of the expatriate;
  - education qualification;
  - years of experience;
  - job description;
  - country of origin; and
  - state of deployment.

The official fee payable is NGN 100,000 (approximately USD 240).

Upon securing expatriate quota approvals, each expatriate employee must obtain a Combined Expatriate Residence Permit and Alien Card (CERPAC), which permits them to reside and work in Nigeria. The CERPAC is issued by the Immigration

Office to non-Nigerian employees upon their arrival in Nigeria. Prior to arriving in Nigeria, expatriates are required to obtain a subject to regularization (STR) visa from the Nigerian Embassy/High Commission in their home countries, which enables them to lawfully take up employment during the period in which their applications for the issuance of a CERPAC are being processed. An STR visa is valid for a period of 90 days.

An application for a CERPAC is made on a CERPAC form addressed to the Minister of Interior and the form is valid for three months from the date of purchase. The following documents need to be submitted in addition to the form:

- application letter on the company's letterhead;
- expatriate quota issued by the FMI;
- business permit issued by the FMI;
- offer letter of employment to the expatriate by the company;
- letter of acceptance of employment from the expatriate;
- academic credentials and curriculum vitae of the expatriate;
- certificate of incorporation;

- board of directors' resolution, where the expatriate is to occupy the position of a director or CEO;
- two recent passport photographs of the expatriate; and
- international passport of the expatriate (containing STR visa and arrival endorsement page).

The official fee payable is USD 2,000.

A CERPAC is usually issued within six to eight weeks from the date of application and is valid for a period of one year. Expatriates seeking CERPAC validity for two years will have to purchase two CERPAC forms.

### Are there different classes of work permits?

There are two classes of work permits in Nigeria:

1. Temporary work permit (TWP)
  - required by expatriates who are invited to Nigeria to engage in short-term specialised skill assignments, typically between 90 to 180 days.
2. STR/CERPAC – required by foreigners seeking to take up long-term employment in Nigeria.



## Nigeria

### What are the requirements for obtaining a work permit? (Please provide the requirements for each class of work permit, if applicable).

#### TWP/STR – Pre-approval letter

The application is made by the hiring/inviting organisation and should indicate the following;

- name of contractor/employee;
- contractor/employee nationality;
- contractor/employee passport number;
- contractor/employee purpose and duration of visit;
- copy of contractor/employee passport bio-data page;
- hiring organisation company profile;
- copy of certificate of incorporation from CAC;
- copy of status report from CAC;
- memorandum and articles of association;
- letter of invitation to the expatriate on company's letter head indicating acceptance of immigration responsibility; and
- country where visa is to be issued.

The visa approval letter usually takes two to three days and must be used within three months from the date it is issued. Once the pre-approval letter is obtained from the Nigerian Immigration Service, the expatriate can proceed to apply for a TWP/STR visa at the Nigerian Embassy/High Commission in their home country.

#### TWP visa

- passport with a minimum of six months' validity and more than two leaves;
- a letter from the hiring organisation in Nigeria addressed to the Nigeria Consulate in the country the applicant is applying from;
- completed application form;
- certificate of incorporation of the hiring company in Nigeria;
- copy of the passport bio data page;
- evidence of flight itinerary;
- evidence of hotel/accommodation;
- stamped bank statements of the hiring organisation for the last three months;
- two passport photographs of the expatriate;
- employment offer letter;
- letter of employment acceptance signed by the expatriate;

- Nigeria Immigration Service visa payment receipt; and
- a pre-approval letter from the Nigeria Immigration Service.

#### STR visa

- passport with at least six months validity;
- completed visa form in quadruplicate with four recent passport photographs;
- completed IMM22 form in quadruplicate;
- copies of the letter of expatriate quota approval from the Ministry of Interior;
- copies of the letter of business permit approval from the Ministry of Interior;
- copies of the application letter applying for an STR visa on the company's letterhead;
- copies of flight itinerary to Nigeria;
- copies of the certificate of incorporation of the company from CAC;
- copies of credentials, certificates and curriculum vitae, all vetted by a relevant official of the Nigerian High Commission/Embassy (English certified translated copy where applicable);





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- copies of the offer letter of employment;
- four copies of letter of acceptance of employment, signed by expatriate;
- Nigeria Immigration Service visa payment receipt; and
- pre-approval letter from the Nigeria Immigration Service.

#### CERPAC

- application letter from the employer requesting regularization of stay and accepting immigration responsibility on behalf of the expatriate;
- copies of the letter of expatriate quota approval from the Ministry of Interior;
- copies of the letter of business permit approval from the Ministry of Interior;
- copies of offer letter of employment;
- international passport with STR visa endorsement;
- a duly completed CERPAC statutory form;
- an STR package containing STR documentation received from the Nigerian Embassy/Consulate;

- copy of the certificate of incorporation for the company from the CAC;
- company's board of directors' resolution confirming the appointment as director (where applicable);
- two recent passport photographs of the expatriate; and
- payment of prescribed fees.

#### How long does a work permit application take to be processed?

TWP visa – The Nigeria Immigration Service normally takes around 10 to 20 working days to process TWP visa applications.

STR visa – The application time depends on the High Commission or the Nigerian mission in the applicant's home country.

CERPAC – It usually takes around three to six weeks after the application and submission of required documents to obtain the CERPAC. The timeline is, however, subject to regulatory bureaucratic delays.

#### What is the cost of a work permit? (Please provide the cost of each class of work permit, if applicable).

There are no official fees associated with obtaining the pre-approval letters from the Nigerian Immigration Service.

The cost for obtaining an STR and TWP visa is dependent on the home country of the expatriate.

It costs USD 2,000) to obtain one CERPAC form.

#### Are there any annual compliance requirements that a company must meet?

A Nigerian company shall observe certain annual compliance requirements, including the requirement to hold an annual general meeting of shareholders every year and file annual returns to the CAC within 42 days of completion of the annual general meeting. The company shall also make annual tax filings to the FIRS.



**Rwanda**



**Name of the firm**

Trust Law Chambers.

**Brief background of the firm and its work**

Trust Law Chambers is a leading corporate and commercial law firm in Rwanda that has been providing world-class legal advice and transaction services to a wide range of international and local clients since 2004.

**Lawyers who worked on this questionnaire**

Davis Higiyo and Richard Balenzi.



**Rwanda**







Rwanda

### **What is the legislation that governs companies in your jurisdiction?**

Law No 007/2021 of 05/02/2021  
Governing Companies (Law)

### **What are the different types of companies that can be incorporated?**

#### **A company limited by shares**

The liability of this company's shareholders is limited to the amount paid or unpaid on the shares held by them.

#### **A company limited by guarantee**

This type of company is used primarily for non-profit and has the liability of its members limited to the amount the members agree to.

#### **A company limited by shares and guarantee**

This is a company where the liability of the shareholders is limited both to the paid or unpaid amount on their shares, and by the guarantee of members, limited to the amount that the members undertake to contribute to the assets of the company in case of winding-up.

#### **An unlimited company**

This is a company for which the legal liability of its members or shareholders is not limited and all members or shareholders have total and joint liability to cover all contingent debts.

#### **A protected cell company (PCC)**

This is a company in which a single legal entity consists of a core linked to several cells, each with separate assets and liabilities.

### **What is the process of setting up a company?**

All the types of companies in Rwanda are set up by applying to the Registrar General under the Rwanda Development Board for registration and granting of a certificate of incorporation. The process of applying for registration entails the applicant submitting to the Registrar General, through the Rwanda Development Board One-stop Portal, the following documents:

- certified certificates of incorporation for corporate shareholders or identification documents for individual applicants;
- consent letters signed by each of the persons named as the company's directors and/or management;





Rwanda

- shareholder resolutions/consent letters to open up a company and to be shareholders therein signed by each member or shareholder of the company or by their agent who has been authorised thereto in writing;
- the memorandum of association of the company;
- where the company has articles of association, a copy of the articles of association; and
- beneficial ownership information, where applicable.

Once the Registrar General is satisfied that the application for registration complies with the requirements provided under the law, they are obliged to register the application and record the company's details in the register of companies and businesses. Then, the Registrar General shall issue a certificate of incorporation.

The Registrar General sends to the company, or the person who applied for the company incorporation, a certificate of incorporation in the prescribed form stating: the company's registered name, the company's registered code, the type of company incorporated, and the company's date of incorporation.

A certificate of incorporation is conclusive evidence that all the requirements of the Law in respect of incorporation have been complied with and that the company has been duly incorporated under the Law on the date of incorporation stated in the certificate.

### **How long does the company incorporation process take?**

Three to seven days, on average.

### **How much does it cost to incorporate a company?**

No official fees are charged.

### **Is there a requirement to have a local director?**

There is no requirement to have a Rwandan or "*local*" director.

### **Is there a requirement to have a resident director?**

Yes, Articles 7(4) and 157 are to the effect that a company must have at least one director who resides in Rwanda.

### **Is there a requirement for a company to appoint a company secretary?**

Article 172 of the law governing companies requires public companies to appoint a company secretary. A private company, however, may have a company secretary but is not required to have one.



## Rwanda

### **Is there a requirement for a company to appoint an auditor?**

Article 131 requires every company to appoint an external auditor to audit its annual accounts.

It provides that the appointment of an auditor is authorised by the shareholders by ordinary resolution. The first auditor of the company may be appointed by the board of directors, without the approval of the shareholders.

In cases where no auditor is appointed, the Registrar General has the power to direct the company to appoint its auditor within 30 days after incorporation.

### **Can a company be wholly owned by foreigners?**

Yes, a company can be wholly owned by foreigners.

### **Is there a requirement to declare beneficial ownership?**

Article 116 of the law requires every member or shareholder of a company to declare, or cause to be declared an entry in the register of beneficial owners, information in relation to their beneficial ownership.

### **Is there a requirement to register a company address?**

Yes. On application for incorporation of a company, Article 19 of the Law requires the applicants to submit the address of the registered address of the registered office in Rwanda.

### **Is there a requirement to have a fully paid up share capital at the point of incorporation?**

No, there isn't a requirement to have a fully paid up share capital.

### **Are there any filing requirements for a change of directors or a change in shareholding?**

The law requires that where there is a change or replacement of a director, or a change of address of a director, within 30 days of the change, it must be filed with the Registrar General's office. In addition, where a company has altered its share capital, within 15 days of such alteration, it must file a notice of the same with the Registrar General.

### **Are there any post-incorporation requirements that need to be satisfied? For example, registrations for tax purposes or business licences.**

No. Upon registration, a company is automatically issued a taxpayer identification number (TIN) number and may apply for a value-added tax certificate, but there are no post-incorporation requirements that need to be satisfied.



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**If there is no requirement to have a local director or shareholder, what is a foreigner required to do to register a company for tax purposes and other similar post-incorporation registrations?**

A company duly registered with the Registrar General through the Rwanda Development Board is issued with a registration number that doubles as the TIN for the company's post-incorporation tax purposes.

**If there is no requirement to have a local director or shareholder, what is the process of obtaining a work permit for foreign employees?**

Article 32 provides that a foreigner who is authorised to reside in Rwanda temporarily or permanently, is required to:

- register with the nearest office of the Directorate General; and
- comply with legal obligations as provided for by the law.

Almost all foreign nationals are required to apply for a visa to enter and stay in Rwanda. They also need a work permit, as a visa only allows entry to the country but not employment. Applicants should have a valid passport or another type of travel document with at least six months of validity on the day they enter Rwanda.

A foreigner can apply for the visa upon arrival or submit an application online before leaving their home country. The visa fee is either due online or upon arrival and ranges from free to USD 150 depending on the nationality of the foreigner and the purpose of the visit. The other option is applying to the Rwanda Diplomatic Mission in their country of residence.

A work permit in Rwanda is obtained by applying to the Rwanda Directorate General of Immigration and Emigration for a specific category of permit, as every permit has its own requirements and fee which varies from USD150 to USD 250 depending on the category of the permit. The application can be done through the [irembo.gov.rw](http://irembo.gov.rw) portal.

The application is made by the foreign employee, accompanied by the employment contract, employee recommendation letter, their certified academic documents and their curriculum vitae.

**Are there different classes of work permits?**

Yes, there are different types of work permits which the law describes as temporary resident permits. They



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are provided for under Article 13 of the Ministerial Order on Immigration and Emigration. These different categories/classes of temporary resident permits are:

### Class A

This permit is issued to a foreigner who intends to engage in prospecting for minerals, mining or other related activities in Rwanda. It is divided into three sub-classes:

- A1: Investor.
- A2: Entrepreneur.
- A3: Recurring applicant.

### Class B

This permit is issued to a foreigner who intends to engage in agriculture, animal husbandry or other related activities. It is divided into three sub-classes:

- B1: Investor.
- B2: Entrepreneur.
- B3: Recurring applicant.

### Class C

This permit is issued to a foreigner with a prescribed profession or with qualification and skills including professional players and artists. This class is divided into two sub-classes:

- C1: Entrepreneur with prescribed profession.
- C2: Professional player or artist.

### Class D

This permit is issued to a diplomat representing their country in Rwanda and foreigners who are working in international or regional organisations with diplomatic status and their dependents. The validity of this permit depends on accreditation period of the diplomat. This is divided into three sub-classes:

- D1: A diplomat who is accredited to Rwanda.
- D2: A foreigner who is working in an international or regional organisation with diplomatic status.

- D3: Issued on a reciprocal basis, to a foreigner accredited to Rwanda as a diplomat. Its validity is determined by the reciprocal agreement or existing practice between Rwanda and the country the diplomat is representing.

### Class E

This permit is issued to a foreigner employed on a contract basis by the Government of Rwanda, including foreigners who work in tertiary institutions of learning or parastatals, or who provide technical assistance under a bilateral agreement between Rwanda and another country or an international organisation. A holder of this permit may be exempted from permit fees in accordance with the existing agreements. It has two sub-classes:

- E1: Issued to a foreigner employed on a contract basis by the Government, including foreigners who work in tertiary institutions of learning or parastatals.





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- E2: Issued to a foreigner who provides technical assistance to Rwanda under a bilateral agreement with another country or with an international organisation.

### Class F

This permit is issued to a foreigner who intends to engage in manufacturing or processing on their own account or as part of a partnership. This class of permit has three sub-classes:

- F1: Investor.
- F2: Entrepreneur.
- F3: Recurring applicant.

### Class G

This is a permit issued to a foreigner who intends to engage on their own account or in a partnership in business of a specific trade of goods or services. It is divided into three sub-classes:

- G1: Issued to a foreigner who engages in trade of goods or services and who is a national of a country within the region (East African Community and La Communauté Economique des Pays des Grands Lacs), or any other country or community, as determined by the relevant organs.
- G2: Issued to a foreigner who engages in specific trade of goods or services and who is a national of a country outside the region in which Rwanda is situated.
- G3: This permit may be issued to a foreigner who engages in specific trade of goods or services and who has already acquired similar residence permit twice before.

### Class H

This permit is issued to a foreigner with specific employment by a specific employer. This class is divided into seven sub-classes:

- H1: Issued to a foreign skilled worker whose skills are on the occupations in demand list and who possesses the qualifications or relevant work experience. This permit is valid for a period of three years and is renewable.
- H2: Issued to a foreign worker sponsored by their employer and who possesses the required qualifications or relevant work experience. This permit is valid for a period of two years.
- H3: Issued to a foreign journalist or foreign media representative who holds an accreditation from the competent Rwandan authorities. This permit is valid for a period of two years.



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- H4: Issued to a foreign semi-skilled worker or artisan who is a national of one of the countries within the region.
- H5: This permit is issued to a foreigner who works in an international or regional organisation.
- H6: This is issued to a foreign employee based on special agreement or on a reciprocal basis.
- H7: Issued to a foreign professional researcher who is not accredited to any school, research centre or any other institution of learning.

### Class O

This permit is issued to a foreigner who invests in the accommodation sector and other related activities. This class is divided into three sub-classes:

- O1: Investor.
- O2: Entrepreneur.
- O3: Recurring applicant.

### What are the requirements for obtaining a work permit? (Please provide the requirements for each class of work permit, if applicable).

Classes A, B, C, D, F, G, W, X and Z have the same requirements as provided for by the Directorate General of Immigration and Emigration and these are:

- Investment certificate of the company.

- Detailed curriculum vitae.
- Full business registration certificate.
- Application letter.
- Original police clearance from the country of the previous residence of six months.

For the other classes, that is, E, H, K, P, R and S the requirements are the same, but there are additional requirements needed. For example, Class E requires a contract with the Government or a parastatal institution and a copy of the agreement with the Government. Class H requires a copy of the employment contract and recommendation letter from the employer.



Rwanda

### How long does a work permit application take to be processed?

Typically, the procedure of work permit issuance in Rwanda takes one month.

### What is the cost of a work permit? (Please provide the cost of each class of work permit, if applicable).

These fees are paid in Rwandan Francs (RWF) and are dependent on the class of work permit applied for as follows:

- Class A: (A1) RWF 150, 000; RWF (A3) 250,000.
- Class B: RWF 150,000; (B3) RWF 250,000.
- Class C: RWF 150,000.
- Class E: RWF 150,000.
- Class F: (F1) RWF 150,000; (F3) RWF 250,000.

- Class G: RWF 150,000.
- Class H: (H1) RWF 150,000; (H2) RWF 150, 000; (H3) RWF 150,000; (H4) RWF 50,000; (H5) RWF 150,000; and (H6) Paid on the reciprocal basis.
- Class K: RWF 150,000.
- Class P RWF 50,000.
- Class R RWF 50,000.
- Class S RWF 150,000.

### Are there any annual compliance requirements that a company must meet?

Under Article 142, the law governing companies requires a company to deliver annual accounts to the Registrar General not later than seven months after its accounting reference date in the case of a private

company, and four months after its accounting reference date in the case of a public company. This includes: a signed copy of the approved annual accounts; a copy of the auditor's report on those accounts; and the reports of directors relating to the same accounting period.

Companies are also required to file annual returns to the registrar general. As part of this, directors must ensure that each year, during the month allocated to the company, the company delivers an annual return in the prescribed form to the Registrar General. The return must be signed by two directors of the company, or if there is only one member, by that member.





Senegal



**Name of the firm** Geni & Kebe.

**Brief background of the firm and its work** Geni & Kebe is a full-service commercial law firm providing legal services in sub-Saharan Africa. Founded in 1912, Geni & Kebe is the oldest law firm in Senegal. Over 100 years on, Geni & Kebe now works in collaboration with affiliate offices in 13 countries to provide a full spectrum of legal services across the region.

**Lawyers who worked on this questionnaire** Boubacar Diakité.

**Any other relevant information** Boubacar Diakité is a senior associate at Geni & Kebe and heads the Corporate practice. He is a key member of the team and a leader in matters pertaining to corporate and finance law. He is a skilled attorney with extensive knowledge of OHADA law and is intricately familiar with even the most minute details of Senegalese law. He has been involved in several transactions in recent years, including advising some of the world's largest banks on their investments in Senegal.

Boubacar coordinates matters in this growing area of practice for the firm. Boubacar works closely with the team of corporate lawyers to help foreign businesses establish themselves in the region, carry out complex mergers and acquisitions, conduct due diligence on target companies, and provide financing to top projects.

He has been seconded to major law firms in London including Norton Rose Fulbright for the International Lawyer for Africa (ILFA) program and at Slaughter & May's EXPLORE program in London, Slaughter and May as well and lastly at the DLA London and Paris Offices. Boubacar also lived in South Africa and Mauritius for a year whilst studying for his Master's degree.

He regularly advises on cross-border transactions in these jurisdictions.



**Senegal**

**GENI & KEBE**



Senegal

### What is the legislation that governs companies in your jurisdiction?

The legislation governing companies in our jurisdiction, which is the Uniform Act on Commercial Companies and Economic Interest Groups, was revised by the Organization for Harmonization of Business Law in Africa (OHADA Company Act). This act is common to 17 African states: Benin, Burkina Faso, Cameroon, Central African Republic, Côte d'Ivoire, Congo, Comoros, Gabon, Guinea, Guinea Bissau, Equatorial Guinea, Mali, Niger, the Democratic Republic of Congo (DRC), Senegal, Chad and Togo.

### What are the different types of companies that can be incorporated?

The OHADA Company Act provides for four types of companies:

#### Public limited company (PLC) (société anonyme)

A PLC is a company in which the shareholders are liable for the corporate debts up to the amount of their contributions and in which the capital is divided into shares with a minimum value of XOF 10,000. The minimum share capital in a PLC is XOF 10 million. The advantages of setting up a PLC are:

- a strong ability to raise funds, notably with a public offering of shares;
- the risk is limited to the contributions of each shareholder;
- the possibility of releasing only a quarter of the capital;

- the possibility for the shareholders, in principle, to freely transfer their shares;
- the company is managed by either a general, director or a general administrator; and
- the appointment of an auditor is mandatory.

#### Limited liability company (LLC) (société à responsabilité limitée)

A LLC is a company with shareholders whose liabilities are limited to their contributions and in which the capital is divided into shares with a minimum value of XOF 5,000, and the appointment of an auditor is not mandatory and is subject to certain conditions. The advantages of setting up an LLC are:

- shareholders are free to determine the amount of the capital since a minimum is not provided by law;



Senegal

- the shareholders are liable up to their contributions; and
- the shareholders have the opportunity to ensure strict control of access to new shareholders in the company's capital.

### **Simplified joint stock company (société par actions simplifiées)**

A simplified joint stock company (SAS) is a company set up by one or more shareholders and whose articles of association freely provide for its organisation and management. The shareholders of this company are only liable for the company's debts up to the amount of their contributions and their rights are represented by shares.

The amount of the share capital is freely determined by the shareholders as well as the nominal value of the shares and there is no required minimum.

The SAS is characterised by its contractual freedom, and the shareholders choose their management structure. In doing so, it is managed by a president in light of the provisions of the articles of association.

This president may be an individual or a legal entity.

### **What is the process of setting up a company?**

The process of setting up a company is:

- Choose the legal form of the company.
- Draft the articles of association and signature of the incorporation documents.
- Deposit the share capital of the company at the notary's office.
- Complete the administrative procedures with the Agency for the Promotion of Investments and Major Works (APIX) (obtaining a National Identification Number for Enterprises and Association (NINEA) and a trade registry certificate).

- Registration of the company at the trade registry (RCCM).
- Publication of the incorporation in the legal gazette.

When setting up a company, the following documents are required:

#### **1. If the shareholder is a company**

- Notarised articles of association of the company (original and a translated copy).
- Notarised trade register certificate of the company.
- Minutes of the meeting where the incorporation of the company was decided on.
- Certificate of appointment of the directors of the new company.
- Criminal record of the directors of the new company.
- Notarised copies of the directors' passports.



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### 2. If the shareholder is an individual

- Copy of their passport.
- Criminal record.
- Power of attorney that gives powers to the lawyer to set up the company.

All documents should be notarised and translated into French.

### How long does the company incorporation process take?

Incorporating a company will take 15 working days if all the required documents are in order.

### How much does it cost to incorporate a company?

The costs include the legal fees (notary and lawyer) and the registration costs. They are not fixed and depend on the amount of share capital of the company. For instance:

- the amount for the notary's fees is XOF 20,000 for an LLC with share capital less than or equal to XOF 500,000; but
- XOF 70,000 for an LLC with share capital between XOF 500,000 and XOF 5 million.

For a public limited company, the notary's fees are around XOF 700,000 for a share capital of XOF 10 million.

With regard to the registration costs, they are estimated at XOF 25,000 if the share capital is between XOF 100,000 and XOF 10 million and 1% of the share capital if it is over XOF 10 million.

### Is there a requirement to have a local director?

The director can be a national citizen or a foreigner.

### Is there a requirement to have a resident director?

Generally, there is no requirement to have a resident director. However, one is required in the case of a branch.

### Is there a requirement for a company to appoint a company secretary?

There is no requirement for a company to appoint a company secretary.





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### **Is there a requirement for a company to appoint an auditor?**

An auditor must be appointed in an LLC whose share capital exceeds XOF 10 million or when one of the following two conditions is met:

1. The annual turnover exceeds XOF 250 million.
2. The number of employees of the company exceeds 50.

Apart from these instances, an LLC is not required to appoint an auditor.

Shareholders representing at least 10% of the share capital may also request the appointment of an auditor.

Public limited companies that do not raise capital from the public must appoint an auditor and an alternate auditor. However, public limited companies that raise capital from the public must appoint at least two auditors and two alternate auditors.

### **Can a company be wholly owned by foreigners?**

A company can be wholly owned by foreigners. However, there are business sectors for which the shareholding must be partly held by Senegalese nationals, such as freight companies<sup>1</sup> and customs clearing companies<sup>2</sup>.

### **Is there a requirement to declare beneficial ownership?**

All oil and gas companies duly established in Senegal and carrying out activities on the national territory must declare their beneficial owners to the trade registry.

### **Is there a requirement to register a company address?**

Yes. There is a requirement to register a company address.

### **Is there a requirement to have a fully paid up share capital at the point of incorporation?**

With regard to the LLC, Article 311-1 of the OHADA Company Act allows the shareholders to pay up to half of the share capital at the time of incorporation and the other half within two years after incorporation.

<sup>1</sup> Requires that 50% of the share capital must be held by Senegalese nationals.

<sup>2</sup> Requires that at least 25% of the company's capital must be held by West African Economic and Monetary Union nationals (i.e. from Burkina Faso, Benin, Côte d'Ivoire, Guinea Bissau, Mali, Niger, Senegal and Togo).



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For PLCs, the shareholders may pay up to one quarter of its share capital subject to paying up the remainder no later than three years from the date of registration of the company in the trade registry (Article 389 of the OHADA Uniform Act on Commercial Companies).

### **Are there any filing requirements for a change of directors or a change in shareholding?**

Yes. The changes must be filed in the trade register.

### **Are there any post-incorporation requirements that need to be satisfied? For example, registrations for tax purposes or business licences.**

Yes. With regard to tax registration, upon registering, a company must apply for a Fiscal Identification Code (COFI), which is a sequence of three characters that completes the NINEA received at the time of the setting up of the company.

The process is done by a notary at the time of incorporation of the company and is very simple. An application including copies of the company's articles of association and the trade registry certificate is submitted to the tax office of the company's registered office. The deadline for issuing the NINEA is three business days.

With regard to the business licences to be obtained post-incorporation, if the activities of the company are regulated and require any sector-specific licence or permit, then the company will apply for them.

### **If there is no requirement to have a local director or shareholder, what is a foreigner required to do to register a company for tax purposes and other similar post-incorporation registrations?**

A foreigner will be required to follow the same process as a Senegalese national in registering a company for tax purposes and other similar post-incorporation registrations.

### **If there is no requirement to have a local director or shareholder, what is the process of obtaining a work permit for foreign employees?**

A work permit is required for all foreign employees wishing to work in Senegal except for citizens of Economic Community of West



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African State countries. Thus, in order to be valid, a foreigner's employment contract must be approved by the Direction du Travail et de la Sécurité Sociale (DGTSS). The procedure to obtain a work permit is as follows:

- Four copies of the employment contract signed by all parties.
- A copy of the employee's passport or identity document.
- The employee's criminal record, certified by the court.
- The employee's medical certificate.

After submission of these documents, the DGTSS will verify the agreed work conditions, the identity of the employee, the free consent and conformity of the employment with the applicable labour provisions. The DGTSS will then stamp the employment contract.

### **Are there different classes of work permits?**

No. There are no different classes of work permits.

### **What are the requirements for obtaining a work permit? (Please provide the requirements for each class of work permit, if applicable).**

Please refer to the response in Question 17.

### **How long does a work permit application take to be processed?**

The procedure will take at least 15 working days.

### **What is the cost of a work permit? (Please provide the cost of each class of work permit, if applicable).**

The procedure is free of charge.

### **Are there any annual compliance requirements that a company must meet?**

Within six months of the end of the financial year, the management of the company must prepare the company's annual summary financial statements (known as "*états financiers de synthèse*") and must also prepare a management report. This is a legal obligation, and failure to comply exposes the manager of the company to civil penalties (payment of a fine) but also criminal penalties.

The company's annual summary financial statements are submitted to the ordinary general meeting of the shareholders, which decides on the approval of the financial statements. The approval of the financial statements must take place within six months of the end of the financial year, which is 31 December, and no later than 30 June of the following year.



**Somaliland**





**Name of the firm**

Adroit Law.

**Brief background of the firm and its work**

The firm is registered in Somalia and has its headquarters in Mogadishu, Somalia with a desk in Puntland and Somaliland.

The firm's expertise lies in providing a wide variety of legal advisory services in Property, Energy, Natural Resource, Corporate, Procurement, Taxation, and Labour Law. Equally, the team possesses extended experience in the formulation of laws, regulations, and policies.

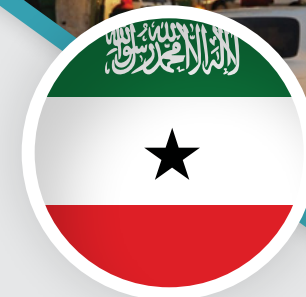
What sets Adroit Law apart is our unique capacity and immensely experienced team of people with diverse academic and professional backgrounds who can provide quality services on an array of different projects and assignments. We pride ourselves on our quality legal and consulting service and extensive understanding of the legal systems, culture, economic and regulatory environment in the horn of Africa countries, especially Somalia and Somaliland.

**Lawyers who worked on this questionnaire**

Fathi Egal, Salim Said and Sheila Cadogan.

**Any other relevant information**

Key services offered by the firm are legal reform consulting and corporate and commercial law services.



**Somaliland**



## Somaliland

### What is the legislation that governs companies in your jurisdiction?

Somaliland Companies Law, No 80/2018 (Act) and Companies Implementing Regulations of 2021.

### What are the different types of companies that can be incorporated?

Under Article 6 of the Act, a company incorporated in Somaliland can either be a private or public company.

In accordance with Article 5 of the Regulations, the application for incorporation should specify whether the company is:

- A private company: Defined as one which restricts the right to transfer its shares, limits the number of its shareholders to 30 and prohibits invitation to the public to subscribe for any shares (Article 7 of the Act).
- Company limited by shares or limited by guarantee (Article 4 of the Act): Defined as a company whose members' liability is limited to their paid-up shares and, on the other hand, a company whose liability is limited by a guarantee.

- Unlimited company: Described as one which can be either public (formed by seven or more persons) or private (formed by two or more persons).
- Single member company: Defined as a company that has only one shareholder (Article 7 of the Act) and which is also presumed to be a private company.
- Public company: All companies with more than seven members are assumed to be public companies unless it is stated in its application that it is a private company.

In addition to the above, the law recognises other business entities that are eligible for registration i.e. sole proprietorship, general partnership, cooperative and commercial agency. The following documents are required for registration as another business entity.

Companies incorporated outside of Somaliland can do business in Somaliland by registering a branch and obtaining authority to do business and conduct activities by filing a Statement of Foreign Entity Authority with the Ministry of Commerce (Ministry) (Article 99).

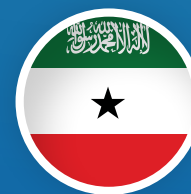
The Statement of Foreign Entity Authority should contain the following information:

- The company's true name and its assumed entity name.
- The jurisdiction under which it is incorporated.
- The form of the entity under which it is recognised in its country of original incorporation and an authenticated copy of the certificate of incorporation.
- The official address of its principal office.
- The date it expects to commence transacting or conducting activities in Somaliland.

If the name that a foreign entity wishes to use as its foreign entity name is not available for use as a company name under Article 16, the foreign entity shall assume another available name.

The statement of foreign entity should be accompanied by the following documents, submitted in Somali and English:

- An authenticated copy of the certificate of incorporation from the company's country of origin/original incorporation.



**Somaliland**

- Address and principal office of the foreign company.
- A declaration indicating the representative or agent of the company in Somaliland (power of attorney).
- A copy of the applicant's passport and a passport-size photograph.

### **What is the process of setting up a company?**

A natural person should submit a statement of formation (notice of intent) with the Ministry, that serves as the custodian of the Companies Registry.

The statement of formation, which can either be in Somali or English, should state:

- the name of the company;
- the physical and mailing address of the company's principal office;
- names and contact details of its promoters and names of the management or managers of the company;
- that there is at least one member of the company; and

- any other matters relating to the company or the statement of formation the person forming the company determines to included therein.

A company is formed when the statement of formation and standard application form is filed with the Ministry and the fact that the statement of formation is on file in the records of the Minister of Commerce is notice that the company is a company, and is a notice of all the facts stated therein.

The application for formation or incorporation of a company should be accompanied by:

- the memorandum and articles of association of the company;
- the national identity card or passport of each applicant;
- a recent colour photograph of each member; and
- a notarised power of attorney for any agent acting on behalf of the company seeking incorporation.

Please note that the above procedure applies to all types of companies in Somaliland.

### **How long does the company incorporation process take?**

No timeframe is provided by the Act for the incorporation process, but practice indicates that it takes approximately one to two days if all the required information is provided at the time of submitting the statement of formation.

### **How much does it cost to incorporate a company?**

Incorporation costs vary depending on whether the company is a local or foreign company.

Local companies are required to pay SOS 400,000 and foreign companies are charged SOS 1 million.

The business name registration fee is standard for all types of companies at SOS 100,000.

### **Is there a requirement to have a local director?**

There is no requirement to have a local director as a member/director of a company.



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The only criterion is that the director must not be younger than 18 and they can only be appointed or fired by a majority vote of the shareholder (Article 12 (d) and 34 of the Act).

### **Is there a requirement to have a resident director?**

There is no requirement to have a resident director but there is a requirement to have a local representative who must be a resident of Somaliland.

### **Is there a requirement for a company to appoint a company secretary?**

There is no requirement to appoint a company secretary.

### **Is there a requirement for a company to appoint an auditor?**

There is no requirement to appoint an auditor.

### **Can a company be wholly owned by foreigners?**

According to the law, foreigners can wholly own companies without restrictions but they must appoint a local representative who is resident in Somaliland. The local representative can be a Somalilander or foreigner with residency in Somaliland, or even a body corporate or partnership entity (Article 99 of the Act and Part 3 of the Regulations).

### **Is there a requirement to declare beneficial ownership?**

The law is silent on beneficial ownership declarations for all types of companies in Somaliland.

### **Is there a requirement to register a company address?**

Yes, a company is required to include the principal office address of the company in the statement of formation to be submitted for registration to the Ministry of Commerce's one-stop shop Business Registration Office (Articles 11 and 12 of the Companies Act).

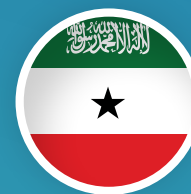
### **Is there a requirement to have a fully paid up share capital at the point of incorporation?**

No, there is no requirement to have fully paid up share capital at the point of incorporation.

### **Are there any filing requirements for a change of directors or a change in shareholding?**

Yes, the law requires companies to report any changes to the company, including a change of directors or shareholding by filing a statement of amendment. Article 33 of the Regulations stipulates that a company is "*obliged to register modifications on its articles of association, shareholder structure and directors as well changes of its registered office with the Registry*". However, the law is silent on the timelines and the penalty for failing to file the modifications.





**Somaliland**

**Are there any post-incorporation requirements that need to be satisfied? For example, registrations for tax purposes or business licenses.**

Yes. Post-incorporation requirements include registration for tax and obtaining a business license (depending on the nature of the business). With respect to business licenses a company should apply for the relevant license with the Ministry of Trade, Industry and Tourism. The following broad business activities are listed as requiring a business license: professional services, money transfer, clearing and forwarding, general trading, fuel importation, shipping agent and social enterprise. <https://brls.govsomaliland.org/site/business-licensing/#>

**If there is no requirement to have a local director or shareholder, what is a foreigner required to do to register a company for tax purposes and other similar post-incorporation registrations?**

Once a company is incorporated, the Ministry of Trade, Industry and Tourism will provide the company with a referral letter which it should use for purposes of obtaining a tax identification number (TIN) and relevant license.

Tax: The Ministry of Finance Development assigns TINs to all companies and individuals, and issues them with a tax registration certificate confirming that they are registered taxpayers in Somaliland. New businesses that commence taxable activities are required to register within 21 days of their incorporation.

To apply for a TIN, a company needs to provide a copy of the applicant's national ID or passport, its trade/business license, and the company's articles of association.

Business licenses: With respect to business licenses, the response for question 15 would apply as there is no differentiation in requirements between a local and foreign applicant.

**If there is no requirement to have a local director or shareholder, what is the process of obtaining a work permit for foreign employees?**

The process of obtaining a work permit requires either the foreign employee or their employer to apply to the Ministry of Labour. The application should contain the following information:

- Passport or refugee ID.
- Curriculum vitae.
- Two passport-size photos.
- A medical certificate.
- Letter from the employing organisation with details about the nature of the job and its objectives.
- A permit from the ministries of health and education if the work has to do with health or education.



## Somaliland

However, the process was recently simplified through the establishment of the Office of Labour within the Ministry of Employment, where all the concerned ministries have joined offices within the immigration department.

If there is no pending tax obligation by the employing organisation, and the process takes approximately 5 to 14 days.

### Are there different classes of work permits?

Somaliland does not have a formal classification system for permits but different information is required from foreigners looking to be employed by the private sector or NGOs *visá-vis* those seeking to be employed by the Government.

The general guidance, as per Article 25 of the Somaliland Immigration Law, is that a foreign person shall not undertake any activities for gain in the territory of Somaliland unless they have been

granted a work permit by the Ministry of Internal Affairs. On granting a work permit to a foreign person, the Minister of Internal Affairs shall consider whether a citizen, who can suitably undertake the work for which the foreign person is sought for, can be found. This will be ascertained by the Ministry of Health and Labour and the relevant ministry that deals with the activities the foreign person would undertake.

### What are the requirements for obtaining a work permit? (Please provide the requirements for each class of work permit, if applicable).

The requirements are listed below:

#### Foreigners working for a private/public company or organization should provide the following documents:

- Employer's written application indicating foreign employee data, reason, security grantee and livelihood.
- Valid passport for at least one year.

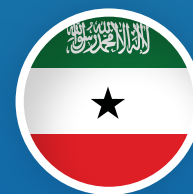
- Employment contract approved by the Ministry of Labour.
- Two passport-size photos.
- Academic skills certificate.
- Curriculum vitae.
- National ID (if applicable).
- Medical certificate.

#### Foreigners working for the Government should provide the following documents:

- Written stay permit application from the concerned department indicating the personal data and securities.
- Valid passport for at least one year.
- National ID.
- Employment contract approved by the Ministry of Labour.
- Curriculum vitae.
- Two passport-size photos.
- Academic skills certificate.

#### How long does a work permit application take to be processed?

There is no formal timeframe in the law, but practice shows that If all the documents of the applicant are accurate, the process may take from five to 14 days.



**Somaliland**

**What is the cost of a work permit? (Please provide the cost of each class of work permit, if applicable).**

No.	Duration	Visa fee	Work permit fee	Remarks
1.	6 months	USD 258	USD 250	For UN/INGO employees.
		USD 154	USD 150	For private hospital and health services.
2.	1 year	USD 154	USD 60	For private primary/secondary schools.
		USD 316	USD 200	For telecommunication firms.
		USD 154	USD 100	For private universities.
		USD 316	USD 120	For construction/decorations .
		USD 154	USD120	For manufacturing and factories.
		USD 316	USD 50	For hotels and restaurants.
		USD 154	USD 50	For subordinate staff (watchmen, cleaners etc.).
		USD 316		Staying up to a year without a work contract.

#### **Are there any annual compliance requirements that a company must meet?**

Companies are required to renew their business license annually and to submit annual reports to the Registry. Article 34 of the Regulations requires companies to file their annual returns/reports within 30 days of the company's incorporation anniversary; or any other date that the Registry Office may prescribe.

Failure to file the annual report within the prescribed time attracts a penalty of SOS 400,000 (Article 72 of the Act and 34 of the Regulations).

Failure to file annual reports for three consecutive years may prompt the Registry to strike off the company from the Companies Registry and take action referred to as "*administrative dissolution*" (Article 35 of the Regulations).





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**Name of the firm**

Cliffe Dekker Hofmeyr Inc.

**Brief background of the firm and its work**

We are a full-service law firm – with an extensive reach across Africa – consisting of more than 350 lawyers and a track record spanning 168 years.

**Lawyers who worked on this questionnaire**

Willem Jacobs.



**South Africa**





South Africa

### **What is the legislation that governs companies in your jurisdiction?**

Companies Act 71 of 2008 (Act)

### **What are the different types of companies that can be incorporated?**

- Private companies.
- Personal liability companies.
- Public companies.
- Non-profit companies.
- State-owned companies.

#### **A private company (suffix: (Pty) Ltd)**

This refers to a company that trades for profit, and such a company can exist into perpetuity, irrespective of any shareholder change (it is a juristic entity). There must be at least one director, and one shareholder; there are no restrictions on the number of shareholders. The primary distinguishing factor of a private company is the restrictions on the transferability of company shares, particularly pre-emptive rights of existing share-holders to shares and that the company is prohibited from selling shares to the public or listing them on the stock exchange.

#### **A personal liability company (suffix: Inc.)**

A company that trades for profit and is generally used by professional associations such as attorneys, engineers and stockbrokers who wish to utilise some of the entity's many advantageous, such as its perpetual succession and flexible profit distribution. It operates on the principle of personal liability, which entails that the directors of the company are jointly and severally liable with the company for all contractual debts and liabilities incurred when they held their positions.

#### **Public companies (suffix: Ltd)**

These are companies that exist separately from their owners and shareholders, and can exist for perpetuity. A public company is similar to a private company in that they are both considered to have a legal personality and, consequently, the shareholders of public companies have limited liability. There must be at least three directors and seven shareholders in a public company. Only public companies may be listed on the stock exchange and a public company can freely transfer its shares to any member of the public.

#### **Non-profit companies (suffix: NPC)**

A company that is incorporated for public benefit or any other object relating to one or more cultural or social activities, or communal or group interest. To successfully register a non-profit company, there must be at least three incorporators and three directors. It is important to note that it is not a requirement for these types of companies to have members, and it is thus possible to register such a company without any members.

#### **State-owned companies (suffix: SOC)**

This refers to a state-owned entity, or a national government business enterprise as defined in the Public Finance Management Act 1 of 1999 as an entity which is a juristic person under the ownership and control of the national executive and has been assigned financial and operational authority to carry on a business activity as its principal business, provides goods or services in accordance with ordinary business principles, and is financed fully or substantially



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from sources other than the National Revenue Fund or by way of tax, levy or other statutory money. The term thus refers to legal entities that are created and governed by the Government of the Republic of South Africa to undertake commercial activities on its behalf.

### **What is the process of setting up a company?**

Companies are registered with the Companies and Intellectual Property Commission (CIPC). Registration takes place electronically through the CIPC's eservices platform. Every new company that is incorporated must be registered with a memorandum of incorporation (MOI), which is the governing document of the company. The MOI is binding between the shareholders of the company (if there are more than one), and between the company and each director or prescribed officer and sets out the rules agreed to by the share-holders for the management and maintenance of the business.

Private companies may be registered with a standard or customised MOI. The standard MOI is provided by law and is integrated into the company registration process. A customised or non-standard MOI allows share-holders to impose certain conditions or amend the alterable provisions of the Act, such as including an audit requirement.

A private company with a standard MOI may be registered online, at a self-service terminal or through collaborating banks. To incorporate a private company with a customised MOI, the MOI must be attached to the incorporator's application documents and this process may require the assistance of a legally qualified person or someone with company secretarial knowledge.

### **How long does the company incorporation process take?**

Incorporation and registration of a company can take between two to five business days, depending on the type of company incorporated.

### **How much does it cost to incorporate a company?**

A company registration may vary between ZAR 125 (for a private company) and ZAR 475 (for a non-profit company registered without members).

### **Is there a requirement to have a local director?**

No.

### **Is there a requirement to have a resident director?**

No.

### **Is there a requirement for a company to appoint a company secretary?**

The Act prescribes that all public and state-owned companies are required to appoint a company secretary.



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### **Is there a requirement for a company to appoint an auditor?**

All public and state-owned companies are required to appoint an auditor, however, it is not mandatory for a private or personal liability company to appoint an auditor, unless the company is required to produce audited financial statements according to a public interest score. If a private or personal liability company elects to appoint an auditor, or is required to do so, and they are not appointed at incorporation, they must be appointed by the directors or by an ordinary resolution of the shareholders within 40 business days of the incorporation of the company.

An auditor may be re-appointed annually and may serve for a maximum of five consecutive financial years. If an individual has served as the auditor or designated auditor of a company for two or more consecutive financial years, and then ceases to be the auditor or designated auditor, they may not be appointed again as the auditor or designated auditor of that company until after the expiry of at least two further financial years. If a company

has appointed two or more persons as joint auditors, the company must manage the rotation in such a manner that all of the joint auditors do not relinquish office in the same year.

### **Can a company be wholly owned by foreigners?**

Yes.

In terms of section 1 and 13, the Act defines a company that is incorporated outside of South Africa as a "*foreign company*". Should such foreign company wish to establish business operations in South Africa, it may be required to either establish a branch of the company by registering the foreign company as an "*external company*" in terms of the Companies Act or by incorporating a wholly-owned subsidiary of the foreign company in South Africa.

The inference from the above is that a company may be wholly owned by foreigners.

Furthermore, section 38 of the Act authorises the board of a company to issue shares. This section, and the

Companies Act in general, does not preclude the board from issuing shares to foreigners and therefore being wholly owned by foreigners.

However, if the company wishes to conduct business with the state or with state-owned companies in South Africa, it must comply with the Broad-Based Black Economic Empowerment Act 53 of 2003. This legislation requires a certain proportion of the ownership, management, employees and suppliers of the company to be black South Africans for the company to qualify for state contracts.

### **Is there a requirement to declare beneficial ownership?**

No, not at this stage. However, there is a Companies Amendment Bill under discussion which may change the position in due course.

### **Is there a requirement to register a company address?**

Yes, the registered address and postal address of the company must be stipulated on incorporation. The registered address is the address





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at which legal documents/notices will be served on the company. The Act requires all companies to keep records of their minutes, resolutions and decisions, as well as the financial statements and share register at a location that has been declared. A notice of the location of the company records must be lodged with the CIPC if the company records are not kept at its registered address.

### **Is there a requirement to have a fully paid up share capital at the point of incorporation?**

No.

### **Are there any filing requirements for a change of directors or a change in shareholding?**

Companies are required to notify the CIPC of any director resignations, appointments or removals.

There are no filing requirements for a change in shareholding.

### **Are there any post-incorporation requirements that need to be satisfied? For example, registrations for tax purposes or business licences.**

In terms of section 67(1) of the Income Tax Act 58 of 1962 (ITA), read with Government Gazette Notice No. 44571, the company will be required to register for income tax. Practically, however, once a company is incorporated it is automatically registered for income tax via the CIPC (which reports the registration to the South African Revenue Service (SARS)) and an income tax number is issued by SARS at the time of incorporation.

Once registered, the new company will be considered a tax resident in South Africa and will be liable for income tax in South Africa on its worldwide income.

The company will further have to register for value-added tax (VAT) if it makes taxable supplies of more than ZAR 1 million in any 12-month period, under the compulsory registration. A business may also choose to register

voluntarily for VAT if the value of taxable supplies made or to be made is less than ZAR 1 million, but has exceeded ZAR 50,000 in the previous 12 months.

Most new businesses will not require a business license, but there are certain types of businesses that may not trade without a proper trade license, according to the Business Act 71 of 1991 (Business Act). In terms of Schedule 1 of the Business Act, the categories of companies that require business licenses are: (i) those that participate in the sale or supply of meals or perishable foodstuffs, (ii) those that participate in the provision of certain types of health facilities or entertainment, and (iii) those that are involved in hawking in meals or perishable foodstuffs.

Applications for business licenses are processed by the local municipality where the trading premises are located. A trade license or application is not transferable at change of ownership or from one premises to another. A trade license can be withdrawn or suspended if there is non-compliance with the relevant regulations.



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Once the application is submitted in terms of the application procedure for the relevant local municipality, the licensing department sends a report to the other municipal departments involved in the process. The application needs to comply with all relevant laws relating to, amongst other things, health and safety, noise and air pollution, and the relevant building regulations.

Once the trading license has been granted, the premises may be inspected from time to time.

**If there is no requirement to have a local director or shareholder, what is a foreigner required to do to register a company for tax purposes and other similar post-incorporation registrations?**

All companies (whether or not they have a local director or shareholder), are required to appoint a public officer in terms of the ITA. A public officer is an individual who is residing in South Africa and must be a registered taxpayer with SARS. The public officer

is responsible for all acts, matters or things relating to the company under the various tax acts.

The individual representative who is approved by SARS must be a senior official of the company, residing in South Africa. Should the company not have a senior official residing in South Africa, then any suitable person can fulfil this role.

Income tax registration takes place automatically on incorporation, however, as stated above, VAT registration takes place as a post incorporation requirement. VAT registration can be effected online via SARS' eFiling portal (which includes the completion of a VAT 101 form) and making a virtual appointment with SARS' VAT eBooking System or submitting to a SARS branch. VAT registration must occur within 21 days from the date of exceeding the R1 million threshold.

There are no further post-incorporation requirements.

**If there is no requirement to have a local director or shareholder, what is the process of obtaining a work permit for foreign employees?**

Work permits or temporary visas for work are issued by the Department of Home Affairs. There are several types of work visas foreign employees can apply for to legally work and reside in South Africa. Applications must be submitted at a South African embassy before arrival in South Africa, and the applicant must submit all information/documentation required, as listed on the Department of Home Affairs' checklist. Any foreigner who wants to enter South Africa for the first time must apply for the appropriate temporary residence visa at the South African diplomatic representative in their country of origin, but renewals can be done in South Africa.



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## Are there different classes of work permits?

Yes: business visa, general work visa, corporate visa, critical skills work visa, intra-company transfer work visa, spousal visa and relatives visa (the holder of a relatives visa may not conduct work in South Africa).

## What are the requirements for obtaining a work permit? (Please provide the requirements for each class of work permit, if applicable).

The different classes of work permit visas have varying requirements, as set out below.

<http://www.dha.gov.za/index.php/types-of-visas>

Foreigners who are contemplating investing in the South African economy by establishing a business or by investing in an existing business in the country must apply for a business visa. An applicant will be required to invest a prescribed financial capital contribution.

- To invest in or open a business in South Africa, an applicant will need to, along with Form BI-1738, submit a certificate issued by a chartered accountant registered with the South African Institute of Chartered Accountants to the effect that the applicant has:
  - at least an amount in cash to be invested in the Republic as determined from time to time by the Minister of Trade and Industry (Minister), after consultation with the Minister;
  - at least an amount in cash and a capital contribution as determined from time to time by the Minister, is available.
- An undertaking by the applicant that at least 60% of the total staff complement to be employed in the operations shall be South African citizens or permanent residents, permanently employed in various positions.
- An undertaking to register with:
  - The South African Revenue Service.
  - Unemployment Insurance Fund.
  - Compensation Fund for Occupational Injuries.
  - Companies and Intellectual Properties Commission, where legally required.
  - Relevant professional body, board or council recognised by the South African Qualifications Authority (SAQA), where applicable.
- A police clearance certificate from each country where they have resided since the age of 18, including the Republic of South Africa.
- A letter of recommendation from the Department of Trade and Industry regarding:
  - the feasibility of the business; and
  - the contribution to the national interest of the Republic.
- A yellow fever vaccination certificate if they have travelled or intend travelling through a yellow fever endemic area.
- Medical and radiology reports.



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The capital requirements above may be reduced or waived in respect of the following types of industries/businesses:

- Information and communications technology.
- Clothing and textile manufacturing.
- Chemicals and bio-technology.
- Agro-processing and metals and minerals refinement.
- Automotive manufacturing.
- Tourism crafts.

Business visa applications made for existing businesses require the following documents (in addition to all those listed above) to be submitted with the temporary residence application form:

- Financial statements for the preceding financial year; and
- The contribution to the national interest of the Republic.

A corporate visa allows a corporate entity (e.g. a mine group, farmer, etc.) to employ a pre-determined number of skilled/semi-skilled/unskilled workers. A corporate visa is issued for a period not exceeding three years. Applications must be made at any VFS centres or nearest South African embassy, mission or consulate abroad.

To apply for a corporate work visa the corporate entity need:

- To submit duly completed application forms signed by the applicants.
- To provide a corroborated statement demonstrating the need to employ foreign workers and the number of foreigners to be employed.
- A certificate by the Department of Labour.
- Proof of registration of the corporation with the:
  - The South African Revenue Service.
  - Unemployment Insurance Fund.
  - Compensation Fund for Occupational Injuries.
  - Companies and Intellectual Properties Commission, where legally required.
- The applicant for a corporate visa must provide proof that at least 60% of the total staff complement that are employed are citizens and permanent residents employed permanently in various positions.
- Provide a job description and remuneration for each foreign worker.

- An undertaking to ensure that:
  - the foreigner workers have valid passports;
  - the foreign workers will be employed only in the specific positions for which the visa is issued;
  - the foreign workers will leave South Africa on completion of their duties; and
  - a cash deposit or guarantee for the foreign workers may be payable by the corporate entity or by the workers in the case of skilled workers.

Upon receipt of the approved number of workers, the Department of Home Affairs will issue the corporate visa and authorisation certificates for each worker in terms of Regulation 18(2)(b), then the corporate entity can start recruiting workers. Once a corporate visa has been issued to the applicant (entity), the applicant may then proceed to recruit workers, the workers will then apply for corporate worker certificates and these certificates are issued in line with the corporate visa for three years, but may not exceed the validity period of the corporate visa.





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General work visas are valid for the duration of the contract of employment or a period not exceeding five years.

To apply, the applicant must submit the following documentation:

- A duly completed application form signed by the applicant.
  - A passport valid for no less than 30 days after the expiry of their intended visit.
  - Payment of the prescribed fee.
  - A vaccination certificate, if required by the Act.
  - Proof of financial means to cover envisaged living expenses in the Republic until the applicant receives a salary. This should be in the form of:
    - bank statements;
    - cash available; or
    - or travellers' cheques.
  - Medical and radiology reports.
  - A police clearance certificate from each country in which the applicant has resided for 12 months or longer since the age of 18.
- A written undertaking by the employer accepting responsibility for the costs related to the deportation of the applicant and their dependent family members, should it become necessary.
  - An application for a general work visa shall be accompanied by:
    - A certificate from the Department of Labour.
    - Proof of qualifications evaluated by SAQA and translated by a sworn translator into one of the official languages of the Republic.
    - A contract of employment signed by both the employee and the employer.
    - Full particulars of the employer including proof of registration with the Registrar of Companies.
    - An undertaking by the employer to inform the Director-General upon the employee no longer being in the employ of such employer or when employed in a different capacity or role.
    - All required documentation for a spouse and/or children if they intend to accompany the employee.

Critical skills work visas are issued for a period not exceeding five years and to apply for one the applicant must submit the following:

- A duly completed application form signed by the applicant.
- A passport valid for no less than 30 days after the expiry of payment of the prescribed fee.
- A vaccination certificate, if required by the Act.
- Proof of financial means to cover envisaged living expenses in the Republic until the applicant receives a salary. This should be in the form of:
  - bank statements;
  - cash available; or
  - or travellers' cheques.
- A cash deposit equivalent to the value of a return or an undertaking from the employer.
- Medical and radiology reports.
- A police clearance certificate from each country in which the applicant has resided for 12 months or longer since the age of 18.
- Proof of application for a certificate of registration with the accredited professional body, council or board recognised by SAQA.



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- Proof of evaluation of the foreign qualification/s by SAQA translated by a sworn translator into one of the official languages of the Republic.
- Proof of employment within 12 months after obtaining a critical skills work visa in the form of an employment contract specifying the occupation and capacity in which the foreigner shall be employed.

Occasionally, multi-national companies may decide to transfer an existing employee from a foreign branch to a branch in South Africa. These employees must apply for an intra-company transfer work visa. In such cases, no proof of steps taken to obtain the services of a South African citizen/permanent residence will be required.

Intra-company transfer work visas are issued for a period not exceeding four years and cannot be renewed or extended.

To apply for one the applicant must submit:

- A duly completed application form signed by the applicant.

- A passport valid for no less than 30 days after the expiry of intended visit.
- Payment of the prescribed fee.
- A vaccination certificate, if required by the Act.
- Proof of financial means to cover envisaged living expenses in the Republic until you receive a salary. This should be in the form of:
  - bank statements;
  - cash available; or
  - or travellers' cheques.
- A cash deposit of equivalent value to a return ticket.
- An employment contract with the company abroad.
- A letter from the employer/company abroad confirming that the applicant will be transferred to a branch/affiliate company in South Africa.
- A letter from the South African company where the applicant will work, confirming the transfer from the parent/affiliated company abroad. This letter should specify the occupation and capacity in which the applicant will be

employed and should also confirm that the maximum duration of employment will not exceed four years.

- An undertaking by the employer:
  - that the applicant will leave South Africa once the four-year period comes to an end;
  - confirming that the applicant's passport is valid; and
  - that the applicant will be employed in the position for which the permit is issued.
- Medical and radiology reports.
- A police clearance certificate from each country in which the applicant has resided for 12 months or longer since the age of 18.
- All required documentation for a spouse and/or children if they intend to accompany the applicant.

### How long does a work permit application take to be processed?

The processing time varies based on which country the application is submitted in and could take between four to eight weeks to process. The first



South Africa

application must be submitted at the South African diplomatic representative in the applicant's country of origin, but renewals can be done in South Africa.

**What is the cost of a work permit? (Please provide the cost of each class of work permit, if applicable).**

The fee payable to the Department of Home Affairs upon application is ZAR 1,520.

**Are there any annual compliance requirements that a company must meet?**

All companies (including external companies) and close corporations are required by law to lodge their annual returns with CIPC within 30 days of the anniversary of their registration every year.

Annual returns are used to determine whether the business is still doing business or will be doing business in the future. If annual returns are not filed, the CIPC assumes that the business is dormant and starts the process to remove the business from the register of active businesses.

The annual return may be regarded as a type of annual *"renewal"* of the company registration. Also, annual returns may be used to gauge the level of compliance with the Act, especially financial reporting.

The turnover for the latest financial year end is used and declared to the CIPC. Turnover includes sales and any other income, equalling the total income for the company. The amount declared should be accurate as the CIPC and SARS have access to each other's records. The CIPC recently began to name and shame companies publicly for under declaring their turnover. The fee payable to the CIPC, on filing of a company's annual returns, is calculated using a scale which is accessible on the CIPC's website.

Failure to file annual returns will result in the CIPC assuming that the company is not doing business or that it is not intending on doing business in the near future. Non-compliance with annual returns may lead to deregistration, which has the effect that the juristic personality is withdrawn, and the company ceases to exist.

Companies have 30 business days from the date that the entity become due to lodge annual returns before it is in non-compliance with the Act.

Due to the nature and the content required on an annual return, annual returns must be filed by the company or its duly authorised representative that is in a position to provide the required information to the CIPC.

**Annual returns vs tax returns**

A clear distinction must be made between an annual return and a tax return. An annual return is a summary of the most relevant information regarding the company or close corporation and is filed with the CIPC, while a tax return focuses on taxable income of a company or close corporation in order to determine its tax liability to the state and is filed with SARS.

Compliance with the one does not mean that there is compliance with the other. These are two different processes, administered in terms of different legislation by two different government departments.



**Tanzania**



**Name of the firm** ARS Law & Advisories.

**Brief background of the firm and its work**

ARS was formed in May 2017 by Amish Shah who was a partner at ATZ Law Chambers and Adept Chambers and one other partner. It is a full-service law firm and has set up its own litigation practice with the team from Kesaria & Co. Advocates being employed by ARS as of May 2022. ARS is also allied with well-established business and corporate advisory firms globally. In July 2018, Amish was joined by Shamiza Ratansi who was the managing partner at ATZ Law Chamber and a partner at Adept Chambers. Ruth Shah-Wigley is also a consultant at ARS and provides assistance on a consultancy basis, as and when required, and is an expert in human rights in business and supply chains and environmental, social, and corporate governance. In March 2022 the firm saw Dr Frederick Ringo join the team as a partner, he was the managing partner of Ringo & Associates which then became known as Adept Chambers.

Our lawyers have the know-how, ability, and skills to handle complex legal and business advisory matters.

The firm's vision is to provide outstanding and practical solutions for its clients efficiently and in a timely manner, and to be accessible to its clients at all times.

Our partners and team of lawyers have been involved in a number of sophisticated transactions, including Public Private Partnerships, Corporate and Commercial, Construction, Fintech, IP, Virtual Currencies and Blockchain, Insurance and Insurance Brokerage, Infrastructure, Real Estate, Complex Mergers and Acquisitions, Banking and Project Finance, Capital Markets, Privatisation Projects, Corporate Restructuring, Insolvency, Mining, Energy and Telecommunications, Mediation, and Arbitration and Litigation.

**Lawyers who worked on this questionnaire**

Amish Shah, Shamiza Ratansi and Aisaa Kisamo.



**Tanzania**





## Tanzania

### Definitions

Unless otherwise stated the following terms shall have the meaning ascribed to them in the below:

#### **BAFIA**

Banking and Financial Institutions Act 2006.

#### **BRELA**

Business Registration and Licensing Agency.

#### **BoT**

Bank of Tanzania.

#### **CA**

Companies Act 2002.

#### **CMSA Act**

Capital Markets and Securities Act [Cap 79 R. E. 2002].

#### **COSTECH**

Tanzania Commission for Science and Technology.

#### **ERB**

Engineers Registration Board.

#### **ETS**

Electronic Tax Stamps.

#### **EPZA**

Export Processing Zones Authority.

#### **ISIC**

International Standard Industrial Classification of All Economic Activities.

#### **LATRA**

Land Transport Regulatory Authority.

#### **MCT**

Medical Council of Tanganyika.

#### **Memarts**

Memorandum and Articles of Association.

#### **NBAA**

National Board for Auditors and Accountants.

#### **NGO**

Non-Governmental Organisation.

#### **NIDA**

National Identification Authority

#### **NIN**

National Identification Number.

#### **NSSF**

National Social Security Fund.

#### **ORS**

BRELA Online Registration System.

#### **OSHA**

Occupational Safety and Health Agency.

#### **PSPTB**

Procurement and Supplies Professionals and Technicians Board.

#### **TASAC**

Tanzania Shipping Agencies Corporation.

#### **TBS**

Tanzania Bureau of Standards.

#### **TIC**

Tanzania Investment Centre.

#### **TIN**

Taxpayer Identification Number.

#### **TCAA**

Tanzania Civil Aviation Authority.

#### **TMDA**

Tanzania Medicines and Medical Devices Authority.

#### **TNMC**

Tanzania Nursing and Midwifery Council.

#### **TRA**

Tanzania Revenue Authority.

#### **VRN**

Value Added Tax Registration Number.

#### **WCF**

Workers' Compensation Fund.



Tanzania

## What is the legislation that governs companies in your jurisdiction?

- Companies Act 2002.
- Business Licensing Act [Cap 213 R. E. 2002].
- Business Names (Registration) Act [Cap 213 R. E. 2002].
- Trade and Service Marks Act [Cap 326 R. E. 2002].
- Law of Contract Act [Cap 345 R. E. 201].
- Sale of Goods Act [Cap 214 R. E. 2002].
- Income Tax Act [Cap 332 R. E. 2019].
- Tax Administration Act 2015.
- Value Added Tax Act [Cap 148 R. E. 2019].
- Tax Revenue Appeals Act [Cap 408 R. E. 2019].
- Tanzania Revenue Authority Act [Cap 399 R. E. 2019].
- Fair Competition Act 2003.
- National Industries (Registration and Licensing) Act [Cap R. E. 2002].
- Registration and Identification of Persons Act [Cap 36 R. E. 2002].
- Non-Citizens (Employment Regulation) Act 2015.
- Occupational Health and Safety Act 2003.
- National Social Security Fund Act [Cap 50 R. E. 2002].
- Workers Compensation Act 2008.
- Tanzania Investment Act [Cap 38 R. E. 2002].
- Land Act [Cap 113 R. E. 2019].
- Land Registration Act [Cap 334 R. E. 2019].
- Standards Act 2009.
- Environmental Management Act 2004.
- Stamp Duty Act [Cap 189 R. E. 2019].
- Arbitration Act 2020.
- Evidence Act [Cap 6 R. E. 2019].
- Tanzania Food, Drugs and Cosmetics Act 2003 (from 2019 known as Tanzania Medicines and Medical Devices Act).
- Banking and Financial Institutions Act 2006.
- Microfinance Act 2018.
- Foreign Exchange Act [Cap 271 R. E. 2002].
- Electronic and Postal Communications Act [Cap 306 R. E. 2022].
- Electronic Transactions Act [Cap 442 R. E. 2022].
- Cyber Crimes Act 2015.
- Road and Fuel Toll Act [Cap 220 R. E. 2019].
- Port Service Charges Act [Cap 264 R. E. 2019].
- East African Community Customs Management (Amendment) Act 2011.
- East African Community One Stop Border Post Act 2016.
- East African Community Customs Management Act 2004 (R. E. 2017).
- Vocational Education and Training Act [Cap 82 R. E. 2019].
- Oil and Gas Revenues Management Act [Cap 328 R. E. 2019].
- National Payment Systems Act 2015.
- Fire and Rescue Force Act 2008.
- Energy and Water Utilities Regulatory Authority Act 2006.
- Electricity Act 2008.



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- Petroleum Act 2015.
- Water Supply and Sanitation Act 2019.
- Mining Act [Cap 123 R. E. 2019].
- Fire and Rescue Act 2008.
- Insurance Act 2009.
- Contractors Registration Act [Cap 235 R. E. 2002].
- Engineers Registration Act [Cap 63 R. E. 2002].
- Special Economic Zones Act 2006.
- Export Processing Zones Act 2002.
- Natural Wealth and Resources (Permanent Sovereignty) Act 2017.
- Natural Wealth and Resources Contracts (Review and Re-Negotiation of Unconscionable Terms) Act 2017.
- Anti-Money Laundering Act [Cap 423 R. E. 2022].
- Prevention and Combating of Corruption Act [Cap. 329 R. E. 2022].
- Employment and Labour Relations Act [Cap 366 R. E. 2019].
- Finance Act, 2022.
- Tourism Act 2008.
- Wildlife Conservation Act [Cap 283 R. E. 2022].

### Anti-Dumping Act and Countervailing Measures Act 2004

The number of local laws that govern companies is potentially very broad, and it is not feasible to provide an exhaustive list. Therefore, please request a clarification if you have any questions.

### What are the different types of companies that can be incorporated?

#### Private company limited by shares

This is a company which, by its articles of association, is restricted in its right to transfer shares, is limited under the CA to have not more than 50 members, and is prohibited from making any invitation to the public to subscribe for shares.

Although the law was amended to allow for a single shareholder company, the relevant regulations are yet to be issued by the Minister of Industry and Trade on the

governance and operability of such an entity. Therefore, the practice remains that this type of company is required to have a minimum of two shareholders who can be individuals or corporate shareholders.

The CA requires that the company at all times have at least two directors.

The minimum authorised share capital required for a company to be registered in Tanzania is TZS 20,000.

When this type of company is wound up, its liability is limited to the amount, if any, of the nominal value of the shares which are unpaid. No member of a company limited by shares can be called upon to pay more than the face value of the shares.

#### Private company limited by guarantee with share capital

Under this type of company, the liability of its members is limited by its memorandum of association to an amount that the members undertake to pay if necessary upon liquidation of the company. Therefore, its members do not have to pay anything as long as company is a going concern.





**Tanzania**

### **Private company limited by guarantee having no share capital which intends to promote commerce, investment and trade**

Its members are liable to pay the guaranteed amount, and this arises only when the company has gone into liquidation and not when it is a going concern.

In 2019, the law was changed that had previously required all companies limited by guarantee having no share capital to operate only for investment, trade or commercial activities and any other activity prescribed by the Minister of Industry and Trade by notice published in the Gazette.

### **Unlimited company**

The liability of the members of an unlimited company is unlimited. Therefore, their liability is similar to that of the liability of the partners

of a partnership firm. The following are the basic characteristics of unlimited companies:

- Members have unlimited liability (if the company is being wound-up, members can be made to contribute to the company's assets without a limit to enable it to pay its debts).
- They can be set up with or without a share capital.
- They are not subject to the same restrictions on alteration of capital as other types of companies, and do not normally have to file annual accounts with the Registrar of Companies unless they are the parent or subsidiary of an undertaking whose members' liability is limited.

### **Public company**

This type of company is limited by shares or a guarantee and has a share capital. Its memorandum of incorporation should state that the company is a public limited company.

This type of company requires seven or more members for it to be registered as such.

The minimum authorised share capital required for a public company is TZS 1 billion in order for it to be listed on the Dar es Salaam Stock Exchange (DSE). A public company need not be listed on the DSE.

The transfer of shares in this type of company is unrestricted, meaning the public is invited to purchase shares.

### **What is the process of setting up a company?**

The first step is to obtain a NIN from the NIDA, which is responsible for the registration and issuance of NIDA cards to Tanzanian citizens and legal residents. Foreigners can use their passports to register a company but foreign residents would need a NIN for general identification and for the registration of SIM cards. Foreign residents are eligible for NIDA if they are in possession of a residence permit and a passport valid for more than six months. Furthermore, one is required to obtain a TIN issued by the TRA.



## Tanzania

The second step is to register the company at BRELA, which issues the company with a certificate of incorporation. The process for registration of a company differs depending on whether the company is a local company or a branch of a foreign company.

### Local company registration

- Create an Online Account on BRELA's ORS.
- Obtain a name clearance from BRELA's ORS.
- Reserve a company name (if required).
- Preparation and notarisation of the Memarts which complies with the ISIC classification.
- Fill out a consolidated form online.
- Fill out Form 14a and 14b as per the Companies (Forms) (Amendments) Rules, 2021.
- Download, print and sign the consolidated form and Ethics and Integrity Pledge Form.

- Obtain a stamp to be affixed on the Ethics and Integrity Pledge Form.
- Scan and upload the duly executed Memarts, signed consolidated form, Ethics and Integrity Pledge Form and Form 14a and Form 14b.
- Obtain payment order.
- Pay incorporation and registration fees.
- Obtain certificate of incorporation.

### Registration of a foreign branch

- Create an online account on BRELA's ORS.
- Submit certified copies of the constitution/Memarts (statute or charter)
- Submit a certified copy of the certificate of incorporation.
- Submit a certified copy of the most recent audited accounts or other books of account of the company including management accounts.

- Fill out a consolidated form and Form 434 (situation of registered office abroad and in Tanzania, list of directors of the company, persons who reside in Tanzania representing the company and declaration which is to be witnessed by a Notary Public or commissioner for oaths).
- Download, print and sign the consolidated form and Ethics and Integrity Pledge Form.
- Scan and upload the duly signed consolidated form, signed Form 434, copy of Memarts, certificate of incorporation, copy of recent accounts and the signed Ethics and Integrity Pledge Form.
- Obtain payment order.
- Pay compliance fees.
- Obtain a certificate of compliance.

### How long does the company incorporation process take?

This depends on the amount of backlog and verification to be done by BRELA, but it usually takes between three to seven days, or longer.



Tanzania

## How much does it cost to incorporate a company?

Below are the costs for the most common type of companies formed in Tanzania for business purposes.

### Local company

- Registration fee which, depending on the company's nominal share capital, ranges between TZS 95,000 (USD 41.30) and TZS 440,000 (USD 191.30).
- Filing fee of TZS 66,000 (USD 28.70).
- Stamp duty of TZS 6,200 (USD 2.70).

### A branch of a foreign company

- Submission of a certified copy of a charter/statute/Memarts is (USD 750).
- Registration of any document required to be delivered to the Registrar of Companies, other than the balance sheet, (including but not limited to the Form 434 duly signed and witnessed by a Notary Public or commissioner of oaths) is USD 220).
- Filing of the balance sheet is USD 220.

Please note that there would be legal costs in respect of preparation of constitutional documents including Memarts, Forms 14a and Form 14b for a local company or preparation of Form 434, copy of Memarts, certificate of incorporation, copy of recent accounts required for obtaining a certificate of compliance for registering a branch of a foreign company.

## Is there a requirement to have a local director?

There are generally no requirements to have a local director in a company, however, there are specific sectors which require local directors to be part of a company's board. These include:

- **Banking** – requires that a board of a banking institution be made up of at least two Tanzanian citizens.
- **Insurance** – requires one-third of the board of a company undertaking insurance business to be citizens of Tanzania.
- **Mining** – requires all directors to be Tanzanian citizens for it to be issued with a Primary Mining Licence.

## Is there a requirement to have a resident director?

There is no specific requirement for a director to be a resident of Tanzania. However, please note that every company is required to obtain a TIN and one of the directors would be required to provide their biometrics in order to process the company's TIN. As such it is common for companies to have a resident director.

Further, there are certain requirements in regulated sectors for a resident director, for instance, in the mining sector a mining right would not be granted to a foreign company unless one of the directors has been resident in Tanzania for a period of four years or longer.



## Tanzania

### Is there a requirement for a company to appoint a company secretary?

According to the CA, a company secretary should be appointed. It is the duty of the directors:

- in the case of a public company, to take all steps to secure a secretary, or each joint secretary of the company who is a person qualified as an advocate, certified public accountant, auditor or such qualifications as the Minister may prescribe in the regulations; and
- in the case of a private company, to take all reasonable steps to secure a secretary or joint secretary of the company who appears to have the requisite knowledge and experience of discharging the functions of the secretary of a private company.

### Is there a requirement for a company to appoint an auditor?

The CA makes it mandatory for a company to appoint auditors at every annual general meeting and to set their remuneration.

Every auditor in a company may be re-appointed/terminated upon the resolution of the members of the company. Please note that under section 171 of the CA, certain companies may be exempted from having audited accounts, however, in practice this is not being followed.

### Can a company be wholly owned by foreigners?

Yes, a company generally can be owned wholly by foreigners, whether individuals or body corporates, as long as during the incorporation their passport or certificate(s) of incorporation are submitted. However, in certain sectors, local content requirements are mandatory including:

#### Mining

- At least 20% of the equity of a company undertaking mining activities/operations must be owned by a Tanzania citizen.

- In any mining operations under a mining licence or a special mining licence, the Government of Tanzania shall have not less than 16% of non-dilutable free carried interest shares in the capital of a mining company depending on the type of minerals and the level of investment.
- Additionally, the Government shall be entitled to acquire, in total, up to 50% of the shares of the mining company. It should be noted that where a special mining licence holder does not enter into an agreement with the Government offering free carried interest, then under the law the special mining licence holder is required to offer 30% of its issued and paid-up share capital to the public.

#### Insurance

At least one-third of the controlling interest, whether in terms of shares, paid up capital or voting rights must be held by citizens of Tanzania.

#### Oil and gas

A Tanzanian citizen must have a minimum of 15% participating rights in a company undertaking petroleum business.





**Tanzania**

## Telecommunications

Any person holding a National Facilities or National Services Licence must have at least 25% of its issued and paid up share capital held by Tanzanian citizens to be obtained through a public offer.

## Tourism

Under the regulations for undertaking business as a tour operator, a company should have as one of its shareholders a citizen of Tanzania having a shareholding of 50%.

## Aviation

No undertaking shall provide airport ground handling services unless:

- its principal place of business and its registered office are located in Tanzania;
- the undertaking is owned by Tanzanian citizens by at least 35% of the total shares (except for aviation fuel providers); and
- its main business is in one or more ground handling activity in isolation or combined.

## Public listing

The Dar es Salaam Stock Exchange Public Limited Company Rules 2022, promulgated under the CMSA Act, require every listed company or issuer to reserve at least 25% of its issued share capital to be held by the public.

Please also note that a wholly foreign-owned company would only be able to own land in Tanzania for investment purposes through the TIC and would obtain a lease known as a derivative title which has its own cost and reporting obligations.

## Is there a requirement to declare beneficial ownership?

Yes, under the Companies (Beneficial Ownership) Regulations, 2021 a person whose name is entered in the register of members of a company as the registered owner of shares in that company but who does not hold the beneficial interest in such shares shall file with the company a declaration to that effect by filling in Form 14d prescribed in the Companies (Forms) Rules 2005 (CF Rules) within a

period of 30 days from the date on which their name is entered in the register of members of the company – provided that where any change occurs in the beneficial interest in such shares, the registered owner shall, within a period of 30 days from the date of such change, make a declaration of the change to the company by filling in Form 14d prescribed in the CF Rules.

A person who holds or acquires a beneficial interest in shares of a company not registered in their name shall file with the company a declaration disclosing such interest by filling in Form 14e prescribed in the CF Rules within 30 days after acquiring such beneficial interest in the shares of the company – provided that where any change occurs in the beneficial interest in such shares, the beneficial owner shall, within a period of 30 days from the date of such change, make a declaration of the change to the company by filling in Form 14e prescribed in the CF Rules.



## Tanzania

Where any declaration is received by the company, the company shall make a note of the declaration in the register of members and beneficial owners and shall, upon payment of the fee prescribed under the Companies (Fees Payable to Registrar) Regulations 2005, and within a period of 30 days from the date of receipt of declaration by it, file a return in prescribed form with the Registrar in respect of the declaration.

Please note that beneficial interest is required to be registered during incorporation of a company by filing the Form 14b and upon obtaining registration is required to maintain a register of beneficial members.

### **Is there a requirement to register a company address?**

This is a mandatory requirement under the CA that where there is a change of address, the Registrar of Companies must be notified of the change by filing Form 111 at BRELA within 14 days after the date of change.

### **Is there a requirement to have a fully paid up share capital at the point of incorporation?**

There is no requirement to have a fully paid up share capital at the point of incorporation. However, please note that where the shares have not been fully paid up it would affect the debt to equity ratios. Pursuant to the Finance Act 2022 amendments, the thin capitalisation rule has changed in that equity is now limited to paid up share capital at the end of the year of income while previously, it comprised of paid up share capital, paid up share premium, and retained earnings.

### **Are there any filing requirements for a change of directors or a change in shareholding?**

Any changes made with respect to a company are required to be filed and incorporated in the company's annual returns that are filed at BRELA every year. The changes are, however, to be filed separately with the respective form(s).

For changes in directors/secretary:

**Form 210a – Appointment of a Director or Secretary**

**Form 210b – Termination of a Director or Secretary**

**Form 210c – Change of Directors' Particulars (including name and address)**

For changes in shareholding:

- Form 55a – Return on Allotment of Shares.
- Stamped Share Transfer Form – Transfer of Shares.
- Form 14d – Declaration by the registered owner of shares but who does not hold the beneficial interest in such shares.

These forms would have to be accompanied by the relevant resolutions (board/shareholders as required). Further, share transfers would have to be accompanied by stamped share transfer forms evidencing that the relevant taxes have been paid as well as a tax clearance certificate issued by the TRA.



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**Are there any post-incorporation requirements that need to be satisfied? For example, registrations for tax purposes or business licences.**

After a company is incorporated, it is required to, *inter alia*:

- Obtain a TIN certificate by filing the TIN application forms with the TRA, attaching the certificate of incorporation and enclosing the memorandum and articles of association.
- Obtain a business licence from BRELA for companies with business activities of a national and international nature whereas, for companies with local nature, they obtain business licences from local government authorities. Further, depending on the nature of business, a company may be required to obtain a sector-specific licence to operate – for instance banks, microfinance companies, mining companies, gaming companies, companies operating in the tourism and hospitality sector, etc.
- A company should also register for VRN or a value-added tax certificate where its annual turnover is above TZS 100 million in a 12-month period or with sales of TZS 50 million in a period of six months.
- The company and the employees need to be registered with the NSSF and WCF.
- A company is required to register and obtain a certificate from OSHA, a government agency established to protect workers against potential hazards at workplaces.
- Registration with LATRA is required for a company undertaking a land transportation business for goods or passengers while a shipping company/ shipping agent/ shipping service provider would be required to obtain the relevant licence from TASAC.
- A company owning a building or leasing part of a building is also required to obtain a fire safety certificate issued by the Commissioner General of Fire and Rescue Force as required by the Fire and Rescue Act 2008.
- Where a company is setting up a manufacturing plant, its products, along with the imported products including but not limited to vehicles, should be compliant with the Standards Act 2009. Therefore, approval from TBS is mandatory.
- Manufacturing/importing companies in Tanzania should also register for ETS before they commence operations. This allows the TRA to tax excisable goods, which for now include cigarettes, wines, spirits, beer and other alcoholic beverages, sweetened or flavoured water and other non-alcoholic beverages.
- Obtain other regulatory approvals that may be industry/ sector specific including mining, tourism, hospitality, banking, oil and gas, etc.



## Tanzania

### **If there is no requirement to have a local director or shareholder, what is a foreigner required to do to register a company for tax purposes and other similar post-incorporation registrations?**

As highlighted above, one of the directors would have to be physically present in Tanzania for a few days to provide their biometrics in order to process the TIN and any other post-incorporation registration that may require biometrics to be provided.

### **If there is no requirement to have a local director or shareholder, what is the process of obtaining a work permit for foreign employees?**

Please note that every foreigner employed in Tanzania is required to hold a work and residence permit.

Application for a work permit is filed online from the website of the Prime Minister's Office Labour, Youth, Employment and Persons with Disability. Physical and soft documents are then submitted to TIC for investors with certificates of incentives and to the Ministry of Industry, Trade and Investment in Dodoma for investors or traders who are not registered and do not qualify to go to TIC.

Once the application for a work permit is approved, then an application for a residence permit is filed online on the immigration website.

### **Are there different classes of work permits?**

The categories of work permits include:

- Class A – issued to a foreign investor who is self-employed.
- Class B – issued to a non-citizen in possession of a prescribed profession.

- Class C – issued to a non-citizen who is in possession of such other profession.
- Class D – issued to a non-citizen employed or engaged in a registered religious and charitable activity.
- Class E – issued to refugees.
- Please note that the Non-Citizens (Employment Regulation) Act 2015 defines a prescribed profession to include medical and healthcare professionals, experts in oil and gas, teachers and university lecturers in science and mathematics.

As highlighted above all foreigners must obtain residence permits.

The categories of residence permits include:

- Class A – issued to employed foreigners.
- Class B – issued to foreigners employed by companies or institutions.
- Class C – issued to other foreigners such as missionaries, students, volunteers, researchers or retired persons.





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## What are the requirements for obtaining a work permit? (Please provide the requirements for each class of work permit, if applicable).

### Application process for work permits

- An applicant is required to register on the Online Work/Residence Permit Application System (OWAIS) using their existing email or create a new email.
- The applicant will then be required to create an account on the OWAIS by filling in their names and the details of the company or institution that seeks to employ them.
- In the same window, the applicant is required to create a password which will be used to log into the OWAIS at any time when applying for a new permit and following up on a submitted application.
- Then the applicant submits their details by clicking the "Submit" button, and the account will be created.

- The applicant will then be in a position to log in to the OWAIS and continue filling out an Online Work/Residence Permit Application Form.
- After filling out the application form, the applicant will submit the same electronically by clicking the "Submit" button.

### Application process for a residence permit

- Visit the direct link: <https://eservices.immigration.go.tz/online/permit> or visit the website <http://www.immigration.go.tz/>
- Then go to "e-services" and select "Online Residence Permit Application".
- The applicant is advised first to read the Residence Permit Guidelines.
- The applicant must create an account by clicking on the "create account" tab.
- Once the account is created, the applicant can proceed with filling out the form, attach all the required documents (all documents should be certified) and submit the application.

- Once an application has been approved for payment, the applicant will be notified, and they will be required to pay the prescribed fee within 60 days. If no payment has been made after 60 days, the application will be automatically deleted.
- After payment the applicant will receive a residence permit enrolment notification, which requires the applicant to report to the nearest Immigration Office for fingerprints and photo capturing (enrolment process).
- Once the enrolment process is done the applicant will wait for their residence permit processing and issuance within one week.
- The residence permit may be collected at the Regional Immigration Office where the company is located or at the Immigration Headquarters, Immigration Head Office Zanzibar, TIC or EPZA, as the case may be.



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### Documents required for obtaining a work permit

Class A Residence Permit	Class B Residence Permit	Class C Residence Permit
Duly filled online application.	Duly filled online application.	Duly filled online application.
Application letter.	Application Letter.	Covering letter from institution, school or mission.
Work permit issued by Labour Commissioner (Tanzania).	Work permit issued by Labour Commissioner (Tanzania Mainland).	Work permit issued by Labour Commissioner (Tanzania Mainland) or exemption letter from relevant authority (for missionaries, volunteer and NGO employees).
A copy of national passport (valid for at least six months).	A copy of national passport (valid for at least six months).	A copy of national passport (valid for at least six months).
Passport-size photograph.	Covering letter from the employer.	Passport-size photograph.
One full-size photograph.	Passport-size photograph.	One full-size photograph.
Registration certificates from relevant authorities (in case the business requires authorisation from specific regulators).	One full-size photograph.	Registration certificates from relevant authorities (in case the activity requires authorisation from specific regulators).



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Class A Residence Permit	Class B Residence Permit	Class C Residence Permit
Certificate of incentives (in case the business or project has been registered with TIC or EPZA).	Curriculum vitae of the employee.	Curriculum vitae of the applicant.
Board resolution i.e. Extract of the board meeting resolving to appoint the applicant as a director (where the applicant is not among the first director).	Certified copies of academic certificates.	Job description.
Memarts or extract from Registrar showing company shareholders, share distribution and nominal capital of the company.	Official translation of documents/ certificates in case they are written in languages other than English or Swahili.	Certified copies of academic certificates.
Certificate of incorporation or Certificate compliance or business name registration or certificate of change of name.	Job description for the expatriate/employee.	Official translation of documents or certificates in case they are written in languages other than English or Swahili.
Valid business license.	Employment contract.	Certificate of registration of institution, school or mission.
Certificate of registration for TIN.	Previous original Class B permit (in case of renewal or replacement).	Pages of constitution of an organisation showing signatories, objective and members of organisation.
Valid tax clearance certificate.	Organisation structure of the company.	Previous original Class C permit (in case of renewal or replacement).



## Tanzania

Class A Residence Permit	Class B Residence Permit	Class C Residence Permit
Tax payment slips.	Registration of certificates from professional boards where necessary e.g. NBAA, ERB, PSPTB, Nurses and Midwifery Council, Medical Council etc. or qualifications that require registration with authorised institutions and certificate, clearance or licenses be issued. These include: accountants, engineers, architects, surveyors, doctors, teachers, nurses, pilots, employees in security companies, executive personnel in financial institutions such banks, bureau de change etc.	Letter of no objection for holders of resident permits shifting to new institution.
Lease agreement or certificate of occupancy.	Business license.	Special requirements: <ul style="list-style-type: none"> <li>• Specific documents for intern students: <ul style="list-style-type: none"> <li>• Letter of approval from host institution.</li> <li>• Evidence of sponsorship/ scholarship.</li> <li>• Letter of approval from ministry of education and vocational training for intern students (internship).</li> <li>• Physical verification visit report (PVV) where necessary.</li> </ul> </li> </ul>





**Tanzania**

Class A Residence Permit	Class B Residence Permit	Class C Residence Permit
List which shows company assets.	Memorandum and articles of association or extract from Registrar showing company shareholders, share distribution and nominal capital of the company.	Specific documents for volunteers: <ul style="list-style-type: none"> <li>• Volunteer contract.</li> <li>• Job description.</li> <li>• Evidence of activities of NGO from relevant government institutions i.e. social welfare.</li> <li>• Copy of constitution of the organisation volunteering with.</li> <li>• PVV where necessary.</li> </ul>
PVV where necessary.	Certificate of incorporation or certificate compliance or business name registration or certificate of change of name.	Specific documents for missionaries: <ul style="list-style-type: none"> <li>• Job description.</li> <li>• Registration certificates from various boards i.e. ERB, teaching license, medical practitioner, NBAA depending on the job title (what they will specifically do).</li> <li>• Ordination certificate for missionary priest.</li> <li>• Volunteer contract for missionary volunteer.</li> <li>• Teaching license for teachers.</li> <li>• Registration with the MCT.</li> <li>• Registration with TNMC.</li> <li>• Registration with NBAA (be registered with relevant board).</li> <li>• PVV where necessary.</li> </ul>



## Tanzania

Class A Residence Permit	Class B Residence Permit	Class C Residence Permit
Company current bank statement where necessary.	Letter of no objection (if the application has moved from another company).	Specific documents for retired persons: <ul style="list-style-type: none"> <li>• Evidence of retirements benefits.</li> <li>• Surrendering of previous residence permit.</li> <li>• Letter of retirement.</li> <li>• Evidence of place of occupancy.</li> </ul>
	Tax clearance certificate.	Specific documents for sick persons: <ul style="list-style-type: none"> <li>• Evidence of sickness from government medical hospital (officer).</li> <li>• Evidence of status of their host i.e. local/foreigner.</li> </ul>
	TIN certificate.	Specific documents for those attending cases before the court: <ul style="list-style-type: none"> <li>• Evidence of trial before the court.</li> <li>• Copy of passport.</li> <li>• Application forms.</li> </ul>
		Specific documents for researchers: <ul style="list-style-type: none"> <li>• Research permit from COSTECH.</li> <li>• Curriculum vitae.</li> <li>• Academic certificates.</li> <li>• Letter of introduction from the relevant university/college/institute.</li> </ul>



Tanzania

### How long does a work permit application take to be processed?

It may take anywhere from three weeks or longer depending on the amount of backlog in the applications lodged for work/residence permits.

### What is the cost of a work permit? (Please provide the cost of each class of work permit, if applicable).

Please see below table on costs<sup>1</sup> of obtaining of work permit and their durations:

Work permit class	Non-citizens concerned	Fees in USD	Duration of permit
A	Investors or self employed.	1,000	Beyond 10 years/during existence of the company.
B	Non-citizen in prescribed professions.	500	Five years.
C	Non-citizen in other professions.	1,000	Five years.
D	Non-citizens employed or engaged in approved religious or charitable activities.	500	Five years.
E	Refugees.	Gratis	Five years.

<sup>1</sup> Please note costs may increase depending on the appointment of agent assisting with obtaining the work/residence permit.



## Tanzania

Please see below the costs of obtaining residence permits (which are issued for a maximum of two years).

Residence permit class	Non-citizens concerned/sector/occupation	Fees in USD	EAC Citizens Fees (USD)
A	A-1: Prospecting mining investor .	3,000	1,500
	A-2: Large-scale investments, trade and business including agriculture and animal husbandry.	3,000	1,500
	A-3: Prescribed profession and consultancy services.	3,000	1,500
	A-4: Small-scale trade, artisanship, fishing, farming, or any legally recognised activities.	1,000	500
	A-5: Diaspora investors.	1,000	
B	B-1: Specific employment by specific employer.	2,000	500
	B-2: Specific employment by specific employer (EAC partner states).		500
C	C-1: Researchers.	500	250
	C-2: Retired persons.	500	250
	C-3: Approved religious activities (missionaries).	200	100
	C-4: Winding up affairs.	200	100
	C-5: Volunteers, occupational trainee, intern.	200	100
	C-6: Medical treatment .	200	100
	C-7: NGO employees/professional artists.		
	C-8: Parties and witnesses in courts and tribunals/others.	500	250
		500	250



**Tanzania**

### **Are there any annual compliance requirements that a company must meet?**

Holding of annual general meetings as required under the CA. There might be sector-specific requirements with respect to the frequency of the board meetings. For instance, the boards of banks and financial institutions are required to meet at least once every quarter. Furthermore, listed companies also have similar requirements. Please see other annual requirements below:

- Filing of annual returns as required under section 128 of the CA 2002.
- Renewal of Tax clearance certificate.
- Renewal of business licence.
- Any other renewal of permits/licences issued by government agencies/authorities/regulators according to the conditions of such permit/licence or legislation.





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**Name of the firm**

Engoru, Mutebi Advocates.

**Brief background of the firm and its work**

Engoru, Mutebi Advocates is a full service firm with a team of multi-talented lawyers with both local and international experience. It has firmly established itself as a leader in Banking and Finance, Mergers and Acquisitions, Projects and Infrastructure, Telecommunications and Media, Private Equity, Legal, Regulatory and Compliance matters, Employment Law and Immigration matters, Litigation and general advice to local, international and multinational clients. Engoru Mutebi Advocates is ranked as a leading law firm in recognised legal directories such as IFLR 1000 and Legal500 EMEA.

**Lawyers who worked on this questionnaire**

Mr Robert Apenya, Ms Sarah Zawedde and Ms Elizabeth Nabugo Suubi.



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## Uganda

### What is the legislation that governs companies in your jurisdiction?

The main legislation that governs companies in Uganda is the Companies Act No 1 of 2012 (Act).

There are a number of enabling Regulations which have been passed to enable the implementation of the Act, they include: the Companies (General) Regulations, 2016; the Companies (Powers of the Registrar) Regulations, 2016; and the Companies (Single Member) Regulations, 2016.

### What are the different types of companies that can be incorporated?

The different types of companies include:

A private company limited by shares

- this may be a limited liability company with two or more members not exceeding 100; or
- a single-member company.

A private company restricts the right to transfer its shares and securities and prohibits any invitation to the public to subscribe for any shares or debentures of the company.

The single-member company has only one shareholder who can be a natural person or a corporate person. The single member is required to appoint a nominee and an alternate nominee director. A nominee director is an individual nominated by the single member to act as director in case of the death of the single member (the law does not cater to an instance where the single member is a corporate person) and the alternate nominee director is an individual nominated by the single member to act as nominee director in the event that the nominee director is unavailable or deceased.

### A company limited by guarantee

This is a company having the liability of its members limited by the memorandum to the amount that the members undertake in the memorandum to contribute to the assets of the company if it is being wound up. This is the kind of company set up to carry out non-profit transactions.

### An unlimited company

This is a private company where there is no limit to the liability of the members. All members have unlimited obligation to contribute to the assets of the company when it is being wound up.

### A public company

Generally, public companies have no restriction as to the number of members or shareholders; there is no restriction on the members to transfer shares or securities; and there is no prohibition to the public to subscribe for any shares or debentures of the company. The Code of Corporate Governance



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which is provided for under Table F of the Schedule to the Companies Act, 2012 is of mandatory application to public companies. The code stipulates the roles of the board of directors, chief executive officer and company secretary. There are certain qualifications for the appointment of the board of directors, chief executive officer and company secretary, unlike in private companies.

### Foreign companies or branches

A foreign company is one that is incorporated outside Uganda and establishes a place of business in Uganda. This company is required to appoint a person(s) resident in Uganda authorised to receive notices or accept service of process on behalf of the company.

### What is the process of setting up a company?

When setting up a company in Uganda, the following steps should be undertaken for incorporation:

1. Carry out a name search at the Uganda Registration Services Bureau (URSB) and reserve the desired name for 30 days.

2. Preparation of the necessary documents for incorporation which include:
  - Memorandum and articles of association of the company.
  - Companies registration form (Form S18).
  - The statement of nominal share capital (Form A1).
  - Notice of situation of registered office and the registered postal address or any change therein (Form 18).
  - Notification of appointment of director and secretary of the company (Form 20).
  - Copies of identification cards or passports of all individuals (shareholders/subscriber(s), director(s) and company secretary).
  - In the case of a single member company, Form A1 is omitted and replaced with a notice of nomination of nominee director and alternate nominee director by a single member (Form 1).
3. Payment of all statutory fees.

4. Submission of documents to the URSB.
5. Upon satisfaction that all legal requirements have been complied with, the URSB issues a certificate of incorporation to the company.

The following steps are undertaken for the registration of a foreign company (setting up a branch):

1. Please note that no name reservation is required.
2. Provide certified or notarised copies of the following documents in support of the application:
  - The charter or statute or memorandum and articles of association or constitution of the company.
  - Statement of all subsisting charges created by the company, being charges created by a company registered in Uganda and delivered to the registrar for registration within 42 days after the date of its creation and not being charges comprising solely of property situated outside Uganda.



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- Form 24 (the list of directors and secretaries of the company).
  - Form 25 (the list of name(s) and address(es) of (one or more) persons resident in Uganda authorised to accept service (of process and any notices) on behalf of a company incorporated outside Uganda).
  - Form 26 (Address of the registered or principal office of a company incorporated outside Uganda) (local address).
  - Copies of the passports of the directors and secretary and/or a national identification card for the local representative.
3. Payment of all the statutory fees.
  4. Upon satisfaction that all requirements have been complied with, the URSB issues a certificate of registration to the company.

### How long does the company incorporation process take?

The incorporation of a company in Uganda usually takes two to five working days from the date of submission of the documents to the URSB.

The timelines are based on the assumption that there are no administrative and/or bureaucratic delays attributed to the URSB and the Uganda Revenue Authority (URA) or queries of the documentation by the Registrar of Companies (Registrar).

### How much does it cost to incorporate a company?

The requisite fees when incorporating a private company are:

- UGX 20,000 for name reservation
- UGX 50,000 as registration fees for a company with nominal share capital of between UGX 1 million and UGX 5 million
- 1% of the nominal share capital as registration fees for a company whose nominal share capital exceeds UGX 5 million
- Stamp duty of 0,5% of the share capital for a company having share capital above UGX 5 million
- UGX 20,000 for registration of each of the company forms (except Forms A1 and S18)
- UGX 150,000 for obtaining a postal address.

The requisite fees for registering a foreign company are:

- USD 250 for registering a certified copy of the memorandum and articles of association or their equivalent.
- USD 55 for registration of each of the other forms.
- UGX 150,000 (approximately USD 40) for obtaining a postal address in Uganda.

All of the above fees are less any service or bank charges and any other sundry expenses in the process.

### Is there a requirement to have a local director?

There is no requirement for a local director in Uganda.

### Is there a requirement to have a resident director?

Generally speaking, there is no requirement to have any Ugandan resident directors, except for financial institutions and insurance companies.





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### **Is there a requirement for a company to appoint a company secretary?**

Yes, the Companies Act, 2012 requires every company, except the single member company, to have a company secretary.

### **Is there a requirement for a company to appoint an auditor?**

Yes, the Companies Act, 2012 requires every company to appoint an auditor.

### **Can a company be wholly owned by foreigners?**

Yes, a company in Uganda can be fully owned by foreigners.

### **Is there a requirement to declare beneficial ownership?**

Yes, there is a requirement to declare beneficial ownership to the Registrar of Companies. This is stipulated under Section 6 of the Anti-Money Laundering (Amendment) Act, 2017 which provides for the identification

of beneficial owners after the establishment of the business relationship as well as other anti-money laundering measures.

There are statutory forms provided for this purpose which include the Notice of Beneficial Owner Particulars; the Notice of Beneficial Owner Particulars for legal persons; the Notice of Change of Beneficial Owners' Particulars; and the Notice of Ceasing to be a Beneficial owner.

### **Is there a requirement to register a company address?**

Yes, the Companies Act, 2012 requires a company at incorporation or registration, or within 14 days after the date of incorporation, to notify the Registrar of Companies of the situation of the registered office and the registered postal address.

### **Is there a requirement to have a fully paid-up share capital at the point of incorporation?**

No, there is no such requirement under the law.

### **Are there any filing requirements for a change of directors or a change in shareholding?**

Yes, the Companies Act, 2012 provides for the notification of the Registrar of Companies under prescribed forms and processes, of any changes in the directorship or shareholding of the company.

For a change in the directorship, there is a requirement that an ordinary resolution relating to the change in directorship, a resignation letter in the event that the director resigned, and the notice of change of particulars of directors be filed with the URSB.

For a change in the shareholding, there are two ways this is done: when there has been a transfer or transmission of the shares; and where there has been an increase of the share capital or creation of new shares or allotment of the un-allotted shares.



## Uganda

For a transfer of shares:

- the company is required to file a board resolution approving the transfer;
- this must be accompanied by transfer forms signed by both the transferor and transferee;
- the forms for notification of the new beneficiary owners and the changes in the beneficiary ownership;
- share valuation report by an auditor in regard to the value of shares of the company; and
- copies of the identification documents of the new shareholders (if they are individuals).

In the case of a transmission of the shares (this occurs upon the death of a shareholder), the authorised representative (holding a grant of letters of administration or of probate) shall notify the company of the death and the directors shall pass a resolution approving the transmission which is filed with the URSB, accompanied by a death certificate and a certified grant of the letters of administration or of probate sealed by the court.

For an allotment of the shares:

- if it is an allotment arising from an increase of the share capital and therefore creation of new shares:
  - an ordinary resolution shall be passed by the shareholders increasing the shares of the company and altering the memorandum of association of the company;
  - a board resolution allotting the newly created shares;
  - Form 12 (notice of increase of share capital);
  - Form 10 (return of allotment); and
  - notification of the beneficiary owners.
- For a further allotment of the un-allotted shares:
  - a board resolution allotting the un-allotted shares;
  - Form 10 (return of allotment); and
  - notification of the beneficiary owners of the new shareholders.

### **Are there any post-incorporation requirements that need to be satisfied? For example, registrations for tax purposes or business licences.**

Yes. After incorporation, the company must obtain a trade licence and a taxpayer identification number (TIN) from the relevant municipal authority and Uganda Revenue Authority (URA) respectively.

A TIN application of a company is made online and the URA requires the following:

- at least two Directors' TINs;
- their identification cards or passports;
- a copy of the certificate of incorporation/registration;
- the trade or business name of the company if it is different from the name on the certificate of incorporation;



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- a copy of the company's Form 18 (the notice of situation of the registered office and the registered postal address or any change therein);
- the company's full address including the building name, plot number, district, county, sub-county, parish and village;
- Form 20 (the notification of appointment of director and secretary of the company);
- the telephone number and email address of the entity; and
- details of the bank account.

This should take approximately one week and the application is made free of charge.

For a trade licence, the following documents should accompany the application:

- a copy of the certificate of incorporation/registration;
- a copy of the company's Form 18 (the notice of situation of the registered office and the registered postal address or any change therein);

- the company's Form 20 (the notification of appointment of director and secretary of the company);
- the telephone number and email address of the entity;
- the TIN certificate;
- identification of at least two directors; and
- the certificate of registration and clearance for non-citizens to trade in Uganda in the case of the foreign companies.

Upon receipt of the application, the Kampala Capital City Authority (KCCA) or any other local government office outside Kampala shall organise to visit and inspect the business premises and, if satisfied, issue a TIN certificate. This should take approximately one to two weeks. The fees for the application depend on the type of business investments and the area. An entity can obtain more than one license for each of the different businesses conducted.

Foreign companies are also required to apply for and obtain a certificate of registration and clearance for non-citizens to trade in Uganda from the Ministry of Trade, Industry and Cooperatives.

- a copy of the certificate of registration of the company;
- the TIN Certificate;
- the status of the work permit(s);
- current passport copies of the directors;
- Form 20 (the notification of appointment of director and secretary of the company);
- a copy of the company's Form 18 (the notice of situation of the registered office and the registered postal address or any change therein);
- the investment license, where applicable – this is obtained where an entity shall be making investments with future higher value and such entity qualifies for registration and issuance of a licence under the Investment Code Act, 2019; and



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- the certificate of remittance of foreign currency (applicable to foreign companies that qualify for an investment licence).

If all requirements are duly submitted, the process should take approximately two to three working days and the Certificate shall be issued. There are no statutory costs incurred for the certificate to be issued.

### **If there is no requirement to have a local director or shareholder, what is a foreigner required to do to register a company for tax purposes and other similar post-incorporation registrations?**

In order for a foreigner to register a company for tax purposes:

- either the company must obtain work permits for the resident directors, and these permits will be used in the application for their TIN(s) and thereafter that of the company; or

- the directors will be required to appoint a local representative or resident person who will be given powers of attorney for tax purposes. In the case of a foreign company, the local representative appearing on the company documents may be sufficient. This person's TIN, address and personal information shall be required for the application for the company's TIN.

The documents required for making a TIN application are submitted in the process. However, the appointment of a local representative or resident person is done through a board resolution accompanied by a power of attorney, which documents shall be registered and a copy of the power of attorney included to the application documents for a TIN certificate.

There are no requirements for a local director or shareholder for the other post incorporation registrations.

### **If there is no requirement to have a local director or shareholder, what is the process of obtaining a work permit for foreign employees?**

After collecting all the necessary documents, an application for the work permit is made online via the Ministry of Internal Affairs' website and all the necessary documents are uploaded there.

An assessment is issued for pre-payment before submission.

An approval letter will be generated and emailed to the applicant. Where the approval requires a top-up payment, assessment and payment should be made.

The applicant shall be required to report to the Directorate of Citizenship and Immigration Control at the Ministry of Internal Affairs for biometric capture with all the documents which were uploaded, payment receipts, approval letter and passport.



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## Are there different classes of work permits?

Yes, there are different classes of work permits which include:

- Class A (Diplomatic Service): wherein the applicants hold diplomatic passports.
- Class A (Official): this is for persons holding official passports and who are employees of organisations exempted from payment of immigration fees.
- Class A2 (Government Contractors): the applicant should be a person employed in a government institution and paid by the Government of Uganda.
- Class B1 (Investment in Agriculture): this is issued to shareholders of companies engaged in the business of agriculture or animal husbandry.
- Class B2 (Investment in Agro-processing): this is issued to shareholders of companies engaged in the agro-processing business.
- Class C1 (Mining): this is issued to shareholders of companies engaged in mining other minerals.
- Class C2 (Mining): issued to shareholders of companies engaged in prospecting of minerals or mining of specific mineral (gold, copper, iron ore, silica, phosphate, limestone and marble).
- Class D (Business and Trade): issued to shareholders of entities invested in general trade.
- Class E (Manufacturers): issued to shareholders of entities engaged in the manufacturing business.
- Class F (Professionals): issued to shareholders of entities engaged in specific professions like the medical profession, dentists, legal profession, pharmacists, civil engineers, mechanical engineers, electrical engineers, mining engineers, aeronautical engineers, chemical engineers, accountants, architects and surveyors, veterinary surgeons, estate agents, valuers, land surveyors and land agents, nurses and midwives.
- Class G1 (Volunteers, NGO Workers and Missionaries): issued to employees who are missionaries and volunteers working in NGOs.
- Class G2 (Foreign expatriates/ Employees): issued to expatriates employed in Uganda including salaried employees working in NGOs. The applicants under this category can only enter Uganda after being granted and paying for their work permits.
- Class G3 (Foreign expatriates/ Employees): issued to rare skilled foreign nationals employed in the agro-processing, manufacturing and mining of selected minerals.
- Class H (Ordinary residents): issued to persons who have an assured income derived from sources outside Uganda and that persons undertake not to accept employment of any kind in Uganda.





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### What are the requirements for obtaining a work permit? (Please provide the requirements for each class of work permit, if applicable).

For Class A (Diplomatic Service):

- a copy of the applicant's passport (bio-data page);
- two passport-size photos;
- a cover letter from the Embassy (diplomatic note); and
- a letter from the Ministry of Foreign Affairs.

Permits may be issued for 6 months, 12 months, 24 months or 36 months depending on the application.

For Class A (Official Service):

- a copy of the applicant's passport (bio-data page);
- two passport-size photos;
- a cover letter from the agency;
- a recommendation letter from the Ministry of Foreign Affairs; and
- documents to support official status.

Permits may be issued for 6 months, 12 months, 24 months or 36 months depending on the application.

For Class A2 (Government Contractors):

- a copy of the passport's bio-date page (the passport must be valid for at least six months);
- two recent passport-size photos;
- a covering letter from the organisation (ministry, department or agency); and
- a copy of the contract with the government institution.

Permits may be issued for 6 months, 12 months, 24 months or 36 months depending on the application.

Payments are done after the application has been processed.

For Class B1 (Agriculture):

- a copy of the passport's bio-date page (the passport must be valid for at least six months);
- two recent passport-size photos;
- valid police clearance from Interpol or their home country;

- a cover letter from the company;
- valid tax clearance certificate;
- copy of certificate of incorporation, memorandum and articles of association;
- recommendation letter from the local council or Resident District Commissioner from the area where the business is to be undertaken;
- copy of the land title or agreement;
- bank statements for the last three months;
- work plan/feasibility study of the project to be undertaken;
- current immigration status; and
- recommendation letter from the Ministry of Agriculture, Animal Industry and Fisheries.

Permits may be issued for 6 months, 12 months, 24 months or 36 months depending on the application. There is a pre-payment fee which is non-refundable and an application fee after the application has been processed.



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For Class B2 (Agro-processing):

- a copy of the passport's bio-date page (the passport must be valid for at least six months);
- two recent passport-size photos;
- valid police clearance from Interpol or their home country;
- cover letter specifically pointing out the class of permit and the specific sector involved and the agro-processed product profile of the company;
- valid tax clearance certificate;
- copy of certificate of incorporation, memorandum and articles of association;
- recommendation letter from the local council or Resident District Commissioner from the area where the business is to be undertaken;
- copy of the land title or agreement;
- bank statements of the company for the last three months;
- proof of purchase of agricultural raw materials from Uganda;
- current immigration status;

- certified proof of shareholding by the applicant;
- recommendation letter from the Ministry of Trade, Industry and Cooperatives;
- a licence from Uganda Investment Authority; and
- relevant certifications from the relevant body in Uganda e.g. UNBS (Q-mark of the agro-processed product).

Permits may be issued for 6 months, 12 months, 24 months or 36 months depending on the application. There is an application fee after the application has been processed and approved.

#### For Class C1 (Mining):

- a copy of the passport's bio-date page (the passport must be valid for at least six months);
- two recent passport-size photos;
- valid police clearance from Interpol or home country;
- cover letter from the company;
- valid tax clearance certificate;

- copy of the articles of association, memorandum of association;
- a recommendation letter from the local council or Resident District Commissioner from the area where the business is to be undertaken;
- a copy of the land title or agreement;
- bank statements of the company for the last three months;
- proof of purchase of agricultural raw materials from Uganda;
- current immigration status;
- copy of the licence from the Uganda Investment Authority;
- copy of a mining licence issued in Uganda; and
- a support letter from the Ministry of Energy and Mineral Development.

Permits may be issued for 6 months, 12 months, 24 months or 36 months depending on the application. There is a pre-payment fee which is non-refundable and an application fee after the application has been processed.



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### For Class C2 (Mining):

- a copy of the passport's bio-date page (the passport must be valid for at least six months);
- two recent passport-size photos;
- valid police clearance from Interpol or their home country;
- cover letter specifically pointing out the class of permit and the specific sector involved in the specific mineral profile of the company and the location of the mines;
- valid tax clearance certificate;
- certified copies of the certificate of incorporation, memorandum and articles of association;
- recommendation letter from the local council or Resident District Commissioner from the area where the business is to be undertaken;
- copy of the land title or agreement;

- bank statements of the company for the last three months;
- current immigration status;
- copy of the licence from the Uganda Investment Authority;
- copy of a valid mining licence issued in Uganda; and
- support letter from the Ministry of Energy and Mineral Development and any other relevant government agency.

Permits may be issued for 6 months, 12 months, 24 months or 36 months depending on the application.

There is a pre-payment fee which is non-refundable and an application fee after the application has been processed.

### For Class D (Business and Trade):

- a copy of the passport's bio-date page (the passport must be valid for at least six months);
- two recent passport-size photos;
- valid police clearance from Interpol or their home country;
- cover letter from the company;
- valid tax clearance certificate;

- copy of certificate of incorporation and memorandum and articles of association;
- recommendation letter from the local council or Resident District Commissioner from the area where the business is to be undertaken;
- certified copy of the company's bank statements for the last three months;
- current immigration status;
- copy of a valid trade licence; and
- copy of the licence from the Bank of Uganda as a money remitter (where applicable).

Permits may be issued for 6 months, 12 months, 24 months or 36 months depending on the application.

There is a pre-payment fee which is non-refundable and an application fee after the application has been processed.

### For Class E (Manufacturing):

- a copy of the passport's bio-date page (the passport must be valid for at least six months);
- two recent passport-size photos;
- valid police clearance from Interpol or their home country;



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- cover letter specifically pointing out the class of permit and the specific sector involved and the specific manufacturing product profile of the company;
- valid tax clearance certificate;
- copy of certificate of incorporation and memorandum and articles of association;
- recommendation letter from the local council or Resident District Commissioner from the area where the business is to be undertaken;
- certified copy of the company's bank statements for the last three months;
- current immigration status;
- copy of the licence from the Uganda Investment Authority; and
- copy of a valid trade licence.

Permits may be issued for 6 months, 12 months, 24 months or 36 months depending on the application. There is a pre-payment fee which is non-refundable for the 6-month and 12-month permits and an application fee after the application has been processed for the 24-month and 36-month permits.

For Class F (Professionals):

- a copy of the passport's bio-date page (the passport must be valid for at least six months);
- two recent passport-size photos;
- valid police clearance from Interpol or their home country;
- cover letter from the company;
- valid tax clearance certificate;
- copy of certificate of incorporation, memorandum and articles of association;
- certified copy of the company's bank statements for the last three months;
- current immigration status; and
- registration certificate with the relevant professional body in Uganda e.g. Association of Medical Practitioners, Association of Media Practitioners, among others.

Permits may be issued for 6 months, 12 months, 24 months or 36 months depending on the application. There is a pre-payment fee which is non-refundable for the

6-month permit and then both the prepayment fee and application fee after the application has been processed for the 12, 24 and 36-month permits.

For Class G1 (Volunteers, NGO Workers and Missionaries):

- a copy of the passport's bio-date page (the passport must be valid for at least six months);
- two recent passport-size photos;
- valid police clearance from Interpol or their home country;
- cover letter from the organisation;
- valid NGO permit for the NGO volunteers or employees;
- appointment letter from the organisation;
- certified copy of the qualifications;
- current immigration status;
- recommendation letter from the NGO Bureau;
- the criminal record report (from home country) or Interpol letter from home country); and
- list of employees in the organisation indicating the nationality and position held.



## Uganda

Permits may be issued for 6 months, 12 months, 24 months or 36 months depending on the application. Application fee payment is done after the application has been processed.

For Class G2 (Foreign Expatriates):

- a copy of the passport's bio-date page (the passport must be valid for at least six months);
- two recent passport-size photos;
- valid police clearance from Interpol or their home country;
- cover letter from the entity;
- valid tax clearance certificate of the entity;
- appointment letter from the entity;
- certified copies of the qualifications;
- current immigration status;
- copy of certificate of incorporation, memorandum and articles of association;
- certified copy of company bank statement for the last three months;
- proof of failure to employ a Ugandan;

- a valid copy of the trade license; and
- list of employees in the organisation indicating the nationality and position held.

Permits may be issued for 6 months, 12 months, 24 months or 36 months depending on the application. There is a pre-payment fee which is non-refundable for the 6-month permit and then both the prepayment fee and application fee after the application has been processed for the 12, 24 and 36-month permits.

For Class G3 (Rare Skilled Expatriate Employees):

- a copy of the passport's bio-date page (the passport must be valid for at least six months);
- two recent passport-size photos;
- valid police clearance from Interpol or their home country;
- cover letter specifically pointing out the class of permit, nature of rare skills and their applicability in the job description of the applicant in the entity;

- valid tax clearance certificate of the entity;
- appointment letter from the entity;
- job description of what the applicant does in the entity;
- certified copies of the qualifications e.g. graduate certificate or apprentice certificates;
- current immigration status;
- certified copies of certificate of incorporation and memorandum and articles of association;
- certified copy of the company's bank statements for the last three months;
- proof of failure to employ a Ugandan and that such skills are not readily available in the country;
- a valid copy of the trade license;
- a list of employees in the organisation indicating the nationality and position held; and
- National Council for Higher Education equivalence certificate from their home country.





Uganda

Permits may be issued for 6 months, 12 months, 24 months or 36 months depending on the application. There is an application fee after the application has been processed and approved.

For Class H (Ordinary Residents):

- a copy of the passport's bio-date page (the passport must be valid for at least six months);
- two recent passport-size photos;
- valid police clearance from Interpol or home country. Should be issued within the last 6 months;
- cover letter/application from the Applicant;
- letter of undertaking not to accept any employment, paid or unpaid or any income generating activity;
- documentary evidence of assured income of not less than USD 36,000 per annum; and
- current immigration status.

Permits may be issued for 6 months, 12 months, 24 months or 36 months depending on the application. The application fee is paid after the

application has been processed and approved for the 6 and 12-month permits and there is a pre-payment fee which is non-refundable for the 24 and 36-month permits.

### **How long does a work permit application take to be processed?**

There is no specific period of time within which the work permit application is processed. However, it is usually processed in approximately two to three weeks.

### **What is the cost of a work permit? (Please provide the cost of each class of work permit, if applicable).**

It is important to note that Kenyan and Rwandan nationals are exempted from paying these fees or any other immigration fees even though they are required to obtain a work permit.

Also, for Tanzanian nationals, the fees have been revised to USD 1,500 per year.

As a result, the following are the statutory fees required for the process:

For Classes A (Diplomatic) and A (Official): there are no permit fees charged.

For Class A2 (Government Contractors):

- USD 250 (6 months).
- USD 500 (12 months).
- USD 1000 (24 months) .
- USD 1,500 (36 months).

Fees are to be paid after the application has been processed and approved.

For Class B1 (Agriculture):

- USD 1,250 (6 months) – before processing the application.
- USD 2,500 (12 months) – USD 1,500 (pre-payment fee paid before processing (prepaid)) and USD 1,000 (application fee paid after approval (after approval)).
- USD 5,000 (24 months) – USD 1,500 (prepaid) and USD 3,500 (after approval).
- USD 7,500 (36 months) – USD 1,500 (prepaid) and USD 6,000 (after approval).



## Uganda

For Class B2 (Agro-processing):

- USD 400 (6 months).
- USD 400 (12 months).
- USD 800 (24 months).
- USD 1,200 (36 months).

Fees to be paid before processing the application.

For Class C1 (Mining):

- USD 1,250 (6 months) – before processing.
- USD 2,500 (12 months) – USD 1,500 (prepaid) and USD 1,000 (after approval).
- USD 5,000 (24 months) – USD 1,500 (prepaid) and USD 3,500 (after approval).
- USD 7,500 (36 months) – USD 1,500 (prepaid) and USD 6,000 (after approval).

For Class C2 (Mining):

- USD 400 (6 months).
- USD 400 (12 months).
- USD 800 (24 months).
- USD 1,200 (36 months).

Fees to be paid before processing the application.

For Class D (Business and Trade):

- USD 1,250 (6 months) – before processing.
- USD 2,500 (12 months) – USD 1,500 (prepaid) and USD 1,000 (after approval).
- USD 5,000 (24 months) – USD 1,500 (prepaid) and USD 3,500 (after approval).
- USD 7,500 (36 months) – USD 1,500 (prepaid) and USD 6,000 (after approval).

For Class E (Manufacturing):

- USD 400 (6 months).
- USD 400 (12 months).
- USD 800 (24 months).
- USD 1,200 (36 months).

Fees to be paid before processing the application.

For Class F (Professionals):

- USD 1,500 (6 months) – before processing.
- USD 3,000 (12 months) – USD 1,500 (prepaid) and USD 1,500 (after approval).
- USD 6,000 (24 months) – USD 1,500 (prepaid) and USD 4,500 (after approval).
- USD 9,000 (36 months) – USD 1,500 (prepaid) and USD 7,500 (after approval).

For Class G1 (Volunteers, NGO Workers and Missionaries):

- USD 250 (6 months).
- USD 250 (12 months).
- USD 500 (24 months).
- USD 750 (36 months).

Fees to be paid after the application processed and approved.



Uganda

For Class G2 (Foreign Expatriates):

- USD 1,250 (6 months) – before processing.
- USD 2,500 (12 months) – USD 1,500 (prepaid) and USD 1,000 (after approval).
- USD 5,000 (24 months) – USD 1,500 (prepaid) and USD 3,500 (after approval).
- USD 7,500 (36 months) – USD 1,500 (prepaid) and USD 6,000 (after approval).

For Class G3 (Rare Skilled Expatriate Employees):

- USD 400 (6 months).
- USD 400 (12 months).
- USD 800 (24 months).
- USD 1,200 (36 months).

Fees to be paid before processing the application.

For Class H (Ordinary Residents):

- USD 750 (6 months).
- USD 1,500 (12 months).
- USD 3,000 (24 months).
- USD 4,500 (36 months).

Fees are to be paid after the application has been processed and approved.

### **Are there any annual compliance requirements that a company must meet?**

Yes.

The Companies Act, 2012 requires all companies incorporated or registered in Uganda, having or not having a share capital to file an annual return once every year within 42 days after the annual general meeting for the year with the Registrar.

Foreign companies are required in every calendar year to file a balance sheet and profit and loss account, and if the company is a holding

company, the group accounts, in the required form and containing the particulars and documents as if it is a local company within the meaning of the Companies Act, 2012 with the Registrar.

A foreign company is also required to apply for the renewal of the certificate of registration and clearance for non-citizens to trade in Uganda. This application is done within 12 months from the date of issuance.

There is a requirement to apply for renewal of the trade licence from the local municipality authority with the mandate of issuing the said licenses. Renewal is done within 12 months from the date of issuance.

The company is also required to file its annual tax returns which requirement should be fulfilled in accordance with the chosen financial year. Being by 30 June (also the Government's financial year) or by 30 September.





**Zambia**





**Name of the firm**

Simeza, Sangwa & Associates.

**Brief background of the firm and its work**

Simeza, Sangwa & Associates (SSA) is a full-service, Lusaka based law firm with a focus on both contentious and non-contentious business. As one of the largest and fastest-growing firms in Zambia, we provide the highest levels of client service, skill and expertise to both corporate and individual clients. The SSA team consists of 18 advocates, 10 legal support staff and eight administrative staff. Simeza, Sangwa & Associates is part of TAGLaw and through that membership we are able to offer our clients access to more than 150 quality legal firms in over 80 countries.

SSA has found success both from international and local Zambian corporate clients in the property, energy, mining and infrastructure, insolvency, banking, and finance sectors.

**Lawyers who worked on this questionnaire**

Robert Simeza, S.C, Patricia Simeza-Nkhoma and Sula C Ching'ambu.

**Simeza | Sangwa**  
AND ASSOCIATES



**Zambia**







## Zambia

### **What is the legislation that governs companies in your jurisdiction?**

Companies Act No 10 of 2017,  
Corporate Insolvency Act.

### **What are the different types of companies that can be incorporated?**

#### **Public company**

This is a company which, if it so wishes, can have members of the public subscribe to its shares by being listed on the Lusaka Stock Exchange. The articles of the company do not place a restriction on the transfer of shares of the company (section 7 of the Companies Act).

#### **Private company limited by shares**

This is a company in which a member, in the event of the winding-up of the company, shall be liable to contribute an amount not exceeding the amount, if any, unpaid on the shares held by that member (section 9 of the Companies Act).

#### **Private company limited by guarantee**

This is a company in which a subscriber in the company makes a declaration of guarantee specifying the amount that the subscriber undertakes to contribute to the assets of the company in the event of the company being wound up (section 10 of the Companies Act). This type of company is only incorporated for non-profit making purposes.

#### **An unlimited private company**

This is a company in which a member, in the event of the winding-up of the company, shall be liable to contribute without limitation of liability (section 11 of the Companies Act).

### **What is the process of setting up a company?**

The Patents and Companies Registration Agency (PACRA) is the relevant regulatory body for companies in Zambia. All company related applications are made to the Registrar of Companies (Registrar) at PACRA.

First, an application needs to be submitted to the Registrar for name clearance of the proposed name.



**Zambia**

On approval of the proposed name the promoters of the company to be incorporated must make an application for incorporation to the Registrar by completing the prescribed form to register a company. This must include:

- a copy of the proposed articles of association or statement that has adopted standard articles;
- declaration of compliance;
- signed consent from each director or secretary of the company;
- statement of beneficial ownership including full names, date of birth, nationality/nationalities, country of residence, residential address and other particulars that may be prescribed;
- declaration by the applicants that the stated particulars of the beneficial owners have been submitted to the Registrar;
- proposed name of the company;
- physical address of the office to be the registered office of the company;
- registered postal address, email address, phone numbers;
- type of company formed;
- the particulars of the persons who shall be the first directors of the company;
- the particulars of persons who shall be the first secretary or joint secretaries of the company;
- the nature of the company's proposed business or proposed activities;
- the amount of share capital of the company, including the division of the share capital into shares of a fixed amount and the number of shares each subscriber has agreed to take;

- date of first financial year of the company shall end; and
- name and address of the individual lodging the application.

On approval of the application and acceptance of all accompanying forms, a certificate of incorporation and certificate of share capital will be issued in the name of the company by the Registrar.

### **How long does the company incorporation process take?**

The time frame for registering a company is approximately seven business days.



## Zambia

### How much does it cost to incorporate a company?

Registration of a private company limited by shares with a minimum nominal capital of ZMW 15,000, including an application for name clearance – ZMW 1,090.

Registration of company limited by guarantee, including application for name clearance ZMW 1,090.

Registration of a public company with minimum nominal capital ZMW 1,5 million, including application for name clearance – ZMW 38,215.

### Is there a requirement to have a local director?

A local private company must have a minimum of two directors, while a local public company must have a minimum of three directors (section 85 of the Companies Act).

A foreign company must have a minimum of one local director (section 303 of the Companies Act).

### Is there a requirement to have a resident director?

The number of directors, including an executive director, resident in Zambia, must not be less than half the number of directors appointed (section 91 of the Companies Act).

### Is there a requirement for a company to appoint a company secretary?

All companies must appoint a company secretary (section 82(a) of the Companies Act).

### Is there a requirement for a company to appoint an auditor?

A company is required to appoint an auditor, within three months of incorporation, to hold office until the company's first annual general meeting (section 253 of the Companies Act).

Note that only companies deemed small private companies are exempt from this requirement (section 263 of the Companies Act). Small private companies are those with fewer than 100 employees, an annual turnover of less than ZMW 800,000 and a total investment, excluding land and buildings, of less than ZMW 500,000 if the company is a manufacturing company or less than ZMW 300,000 if the company is a trading or services company (Regulation 3 of the Companies (General) Regulations 2019).



**Zambia**

### **Can a company be wholly owned by foreigners?**

The law does not prescribe the nationality of the shareholders, therefore, a company can have a 100% foreign shareholding.

### **Is there a requirement to declare beneficial ownership?**

Yes. Beneficial ownership of shares in a company must be declared at incorporation (section 12(e) of the Companies Act), must be expressly declared (section 123 of the Companies Act) and a company must maintain a register of beneficial owners (section 195 of the Companies Act).

### **Is there a requirement to register a company address?**

Yes, a registered office or principal place of business is required (section 12(4)(iii) of the Companies Act).

### **Is there a requirement to have a fully paid up share capital at the point of incorporation?**

There is no requirement for shares to be fully paid up at incorporation.

### **Are there any filling requirements for a change of directors or a change in shareholding?**

A notice of change of directors must be filed with the Registrar of Companies within 20 days of the change (section 100 of the Companies Act).

Depending on the nature of the change in shareholding, the relevant forms must be filed with the Registrar. These changes include alteration of share capital (section 140); variation of class rights (section 143); forfeiture or surrender (section 148); allotment (section 149); reduction (section 150); transfer of shares (section 188); transmission (section 190); and conversion of shares (section 296).

### **Are there any post-incorporation requirements that need to be satisfied? For example, registrations for tax purposes or business licences.**

Companies must obtain a taxpayer identification number from the Zambia Revenue Authority and register for the relevant taxes applicable to their industry or type of business.



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Business licences are dependent on the industry of the company and will include business levy and fire licences from the local council. Companies are also required to register their employees with the National Pension Scheme Authority (NAPSA), National Health Insurance Management Authority (NHIMA) and the Worker's Compensation Fund Control Board.

**If there is no requirement to have a local director or shareholder, what is a foreigner required to do to register a company for tax purposes and other similar post-incorporation registrations?**

Not applicable as a local director is required under the Act.

**If there is no requirement to have a local director or shareholder, what is the process of obtaining a work permit for foreign employees?**

A local director or shareholder is required.

**Are there different classes of work permits?**

No

**What are the requirements for obtaining a work permit? (Please provide the requirements for each class of work permit, if applicable).**

All work permit applications are made to the Zambia Department of Immigration through an online system. The first step is to register a

user account on the system: <https://eservices.zambiaimmigration.gov.zm/#/home> After creating the account, the next step is to fill out an online registration form. However, only an employer, a practicing lawyer, or a registered immigration consultant can apply for the permit. An expatriate cannot apply for the permit on their own.

Furthermore, a person is required to submit the following documents to the Zambia Department of Immigration before they obtain a work permit:

- a duly completed application form (Form 23);
- cover letter of the application for an employment permit (which should be on the employer's letterhead) and addressed to the Director General of Immigration;
- employment contract or letter of offer;





**Zambia**

- police clearance from employee's country of residence;
  - curriculum vitae;
  - registration certificate from the relevant professional body (required if the employee is a professional who ought to be registered with a professional body in Zambia);
  - certified copies of qualification (academic or professional);
  - copy of marriage certificate (if applicable) and birth certificate;
  - employee's certified copy of passport;
  - employer's certified certificate of share capital and list of directors;
  - copy of succession plan, which shall include an understudy training program to be conducted by the foreign employee to transfer knowledge and/or skills to the Zambian worker;
  - employer's certificate of incorporation;
  - where employment is project based, a letter specifying the project on which the employee would be employed and a copy of the letter of award for the project specifying the completion date and value of the project;
  - press advertisements for the employment, if any;
  - two recent passport-size photos; and
  - a prescribed fee.
- How long does a work permit application take to be processed?**
- Approximately one to two months.

**What is the cost of a work permit? (Please provide the cost of each class of work permit, if applicable).**

ZMW 18,090 for the private sector and ZMW 8,040 for government, quasi government, non-governmental organisations and non-profit making organisations.

**Are there any annual compliance requirements that a company must meet?**

A company must file an annual return to avoid penalties and deregistration.



**Zimbabwe**



**Name of the firm**

Mushoriwa Pasi Corporate Attorneys.

**Brief background of the firm and its work**

Mushoriwa Pasi Corporate Attorneys is a Zimbabwean corporate law practice based in Harare, which provides highly specialised and bespoke legal services to its respective clients. The firm has specific specialty in commercial and investment law, project finance, transactional advisory, banking law, energy, mining and infrastructure law, agriculture and land law, conveyancing and civil law practice.

**Lawyers who worked on this questionnaire**

Farai Mushoriwa and Beatrice Moyo.



**Zimbabwe**

**MUSHORIWA | PASI** | CORPORATE ATTORNEYS



Zimbabwe

### What is the legislation that governs companies in your jurisdiction?

1. Companies and Other Business Entities Act [Chapter 24:31]
2. Labour Act [Chapter 28:01]
3. Insolvency Act [Chapter 6:07]
4. Public Entities Corporate Governance Act [Chapter 10:31]
5. Capital Gains Tax Act [Chapter 23:01]
6. Competition Act [Chapter 14:28]
7. Income Tax Act [Chapter 23:06]
8. Securities and Exchange Act [Chapter 24:25]
9. Finance Act [Chapter 23:04]
10. Cyber and Data Protection Act [Chapter 12:07] (No 5 of 2021)
11. Manpower Planning and Development Act [Chapter 28:02]
12. Consumer Protection Act [Chapter 14:14]
13. Zimbabwe Investment and Development Agency Act [Chapter 14:37]

14. Money Laundering and Proceeds of Crime Act [Chapter 9:24]

15. Public Procurement and Disposal of Public Assets Act [Chapter 22:23]

16. Trade Marks Act [Chapter 26:04]

17. Banking Act [Chapter 24:20]

18. Shop Licences Act [Chapter 14:17]

19. The Constitution of Zimbabwe, 2013

There are a number of other statutes that are industry and sector based, which will apply depending on the industry/sector a company is operating in.

### What are the different types of companies that can be incorporated?

#### Public limited company

This is a limited liability company whose shares can be bought and sold publicly on the stock exchange.

#### Private limited company

This is a company which by its articles:

- restricts the right to transfer its shares; and
- limits the number of its shareholders to 50, not including persons who are in the employment of the company and persons who, having been formerly in the employment of the company, were while in that employment and have continued, after the termination of that employment, to be members of the company; and
- prohibits any invitation to the public to subscribe for any shares or debentures of the company.

#### Company limited by guarantee

A company having no share capital but having the liability of its members limited by the memorandum to such amount, as the members (guarantors) may respectively thereby undertake to contribute to the assets of the company, in the event of its being wound up. It is most commonly used by non-profit organisations such as sports clubs, societies and charities.



**Zimbabwe**

The personal assets of its members (guarantors) are protected from being used for company debts, and they are liable only for the amount agreed by their guarantees.

### **Co-operative company**

This is a company that:

- In its memorandum states that its main object is one or other or both of the following:
  - the provision for its members, of a service facilitating the production or marketing of agricultural produce or livestock; and
  - the sale of goods to its members.
- By its articles:
  - restricts the right to transfer its shares;
  - provides that its ordinary shares shall be of one class only;
  - fixes a limit to the number of shares which may be held by any one member;
  - regulates the voting rights of its members in accordance with section 89;

- limits the dividend which may be paid on its shares to a rate not exceeding 10% per annum on the amounts paid up thereon; and
- provides for the distribution of a part or the whole of its profits amongst its members on the basis of certain or all of their business transactions with the company.

### **Foreign company**

A company or other association of persons incorporated outside Zimbabwe which has established a place of business in Zimbabwe.

### **Private business corporation**

This is a company incorporated by one or more persons, not exceeding 20, subscribing their names to an incorporation statement. A private business corporation does not have any directors, shareholders or guarantors; instead it has members, and is typically ideal for small businesses or home industries and professionals who normally operate as individuals such as lawyers, doctors, or architects but whose members require limited liability.

Voluntary registration of agreements pertaining to partnerships, syndicates, joint ventures and certain associations of persons.

### **What is the process of setting up a company?**

The procedure for registering a public limited company, co-operative company or private limited company in Zimbabwe generally follows two stages:

#### **1. Name search**

A request is made to the office of the Registrar of Companies and Other Business Entities (Registrar) for a search to be made of the preferred company names, to ensure the names are available. The request is made together with payment of a prescribed fee. The purpose of an application for the reservation of a name is to get the authority of the Registrar to use a particular name. If the Registrar approves the application to reserve a name, they will reserve that name for a period of up to one month to enable registration of the company under that name. During that reservation period, no other company can be registered under the same name.





## Zimbabwe

The Registrar will not accept a name which is similar to that of another company, is likely to mislead the public, or is indecent. The Registrar will give a written notice of whether any of the names were accepted or if they were all rejected. This process takes three to six working days.

### 2. Incorporation and registration

After the company name has been successfully reserved, the memorandum and articles of association signed by the shareholders, together with the list of directors and notice of situation of the company signed by either a director or secretary of the company are submitted to the Registrar of Companies. Each shareholder must sign in their own handwriting and specify the number of shares they have been allocated. The Registrar will then register the entity and assign to it a registration number. A certificate of incorporation is also issued. The Registrar will put their seal, stamp and signature to the certificate of incorporation, memorandum and articles of association, list of

directors and notice of situation of the company to signify their authenticity. The company is also entered into the Company Registry and becomes searchable in the Registrar's database. This process takes up to two weeks.

The procedure for registering a company limited by guarantee in Zimbabwe generally follows these stages:

#### 1. Name search

A request is made to the office of the Registrar for a search to be made of the preferred company names, to ensure the names are available in the manner described above.

#### 2. Documentation submission

After the name has been successfully reserved, the memorandum signed by the members, the articles of association of the company limited by guarantee, the form for the registered place of business, and the list of members and secretaries, must be submitted to the Chief Registrar together with the prescribed fees, within 30 days of the name reservation.

### 3. Licence issuing

The Registrar then submits a recommendation to the Minister for the issuing of a licence to dispense with "*Limited*" in the company's title. Following the Registrar's recommendation, the Minister, if they approve the recommendation, will issue an approval letter to the Chief Registrar, whereupon the Registrar shall notify the company to advertise, at its own expense, the approval in the Government Gazette, not later than the second week after being notified by the Registrar. (The advertisement must specify the objects of the proposed company and notify potential objectors that they must lodge any objection in writing with the Chief Registrar no later than 14 days after the publishing of the advertisement). If, as a result of the advertisement, any person objects to the licensing of the proposed company, they may give notice in writing to the Registrar of their objection and the grounds on which the objection is based, and the company is given an opportunity to respond and make a submission for determination by the Registrar. If no



**Zimbabwe**

objection is received or the objection has been disposed with by the Registrar, the Registrar will write to the Minister requesting that they issue the appropriate licence.

#### **4. Certificate issued**

Upon issuance of the licence, the Chief Registrar will issue the company with a certificate of incorporation for registration of a company limited by guarantee.

The procedure for registering a foreign company in Zimbabwe generally follows three stages:

##### **1. Documentation submission**

A foreign registered company intending to operate its business in Zimbabwe must submit notarised copies of its charter, statutes or memorandum and articles or other instrument constituting or defining its constitution. If the instrument is in a foreign language, a certified translation must be included together with the list of documents required for registration by a foreign company, its registered place of business in Zimbabwe and its list of directors and secretaries, together with the prescribed fee.

##### **2. Company certificate**

The Minister shall issue to a successful applicant for a foreign registered company a certificate authorising the foreign company to establish a place of business in Zimbabwe.

##### **3. Certificate of registration**

The Registrar issues a certificate of registration of the foreign company.

The procedure for registering a private business corporation in Zimbabwe generally follows these stages:

##### **1. Name search**

A request is made to the office of the Registrar for a search to be made of the preferred company names, to ensure the names are available.

##### **2. Documentation submission**

After successful reservation of the company name, the applicant must within 30 days of receiving such notice, submit in duplicate the private business corporation incorporation statement together with the accounting officers' professional certificate and the prescribed fee.

##### **3. Certificate of incorporation**

The Registrar will issue a certificate of incorporation to the successful applicant for registration of a private business corporation.

#### **How long does the company incorporation process take?**

Two to three weeks unless it is a foreign company, which can take up to six months.

#### **How much does it cost to incorporate a company?**

The statutory fees payable to the Registrar of Companies as at August 2022, for the different entities are currently:

- Public limited company – USD 15.
- Private limited company – USD 7.
- Company limited by guarantee – USD 15.
- Co-operative company – USD 15.
- Foreign company – USD 1,300.
- Private business corporation – USD 3.
- Voluntary registration of agreements pertaining to partnerships, syndicates, joint ventures and certain associations of persons – USD 3.



## Zimbabwe

In addition to the above, there may be professional service fees payable to professionals engaged to assist in the registering of companies, and these fees vary from time to time and depending on the company being registered.

### Is there a requirement to have a local director?

There is no requirement to have a local director. In terms of the Companies and Other Business Entities Act, there is only a requirement that there needs to be at least one director, who is ordinarily a resident of Zimbabwe. The term resident director is not defined in the act, however, one is considered resident in Zimbabwe, in terms of the Citizenship Act [4:01], if they have lawfully and voluntarily established their usual place of residence in Zimbabwe, otherwise than as a visitor, with the intention of remaining therein. The immigration regulations state that "*resident*" means any person who is lawfully within Zimbabwe otherwise than for the purpose of:

- journeying through Zimbabwe in direct transit from one country to another; or
- making a temporary visit.

### Is there a requirement to have a resident director?

Yes, there must be one resident director. The term resident director is not defined in the Companies and Other Business Entities Act, however, one is considered resident in Zimbabwe, in terms of the Citizenship Act [4:01], if they have lawfully and voluntarily established their usual place of residence in Zimbabwe, otherwise than as a visitor, with the intention of remaining therein. The immigration regulations state that "*resident*" means any person who is lawfully within Zimbabwe otherwise than for the purpose of:

- journeying through Zimbabwe in direct transit from one country to another; or
- making a temporary visit.

### Is there a requirement for a company to appoint a company secretary?

Yes. Every company must have at least one company secretary ordinarily resident in Zimbabwe. The company secretary must be either:

- a natural person who has reached the age of majority and who must ordinarily be resident in Zimbabwe; or
- a firm or corporation of which at least one member or director is ordinarily resident in Zimbabwe and accepts responsibility for the work of the firm or corporation as secretary.

### Is there a requirement for a company to appoint an auditor?

Yes. Every company must appoint an auditor within one month of commencing business, and the appointed auditor shall hold office until the conclusion of the first annual general meeting. Every company shall, at each annual general meeting, appoint an auditor to hold office from the conclusion of that annual



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general meeting until the conclusion of the next annual general meeting. Therefore, the company must appoint and retain an auditor for the duration of its existence.

However, a private company will not be required to appoint an auditor if:

- the number of members in the company does not exceed 10; and
- none of the shareholders of the company is:
  - a public company, whether incorporated under this Act or the law of a foreign country; or
  - a private company which is a subsidiary of a public company;
- the company is not a subsidiary of a holding company which has itself appointed auditors; and
- all the shareholders in such company agree that an auditor shall not be appointed.

### **Can a company be wholly owned by foreigners?**

Yes.

### **Is there a requirement to declare beneficial ownership?**

Yes. Every company must maintain an accurate and up-to-date register of the beneficial owner or owners of the company. The company must declare beneficial ownership to the Registrar of Companies, where a nominee holds more than 20% shareholding on behalf of a principal.

### **Is there a requirement to register a company address?**

Yes. Every registered business entity must have a postal address in Zimbabwe and a registered office at a physical address in Zimbabwe at which legal process may be served on the entity.

### **Is there a requirement to have a fully paid-up share capital at the point of incorporation?**

Yes. No share can be issued for less than the aggregate of its nominal value and any premium is to be paid to the company in consideration for its issue.

### **Are there any filling requirements for a change of directors or a change in shareholding?**

Yes. The company must notify the Registrar of Companies when there is a change of directors or shareholding by filing the statutory form.

### **Are there any post-incorporation requirements that need to be satisfied? For example, registrations for tax purposes or business licences.**

- A company must submit an annual return no later than 21 days after the date of the anniversary of its incorporation.
- If after the formation of a private company any shareholder of a private company becomes the nominee shareholder for a beneficial owner who holds more than 20% of the shares of that company, the nominee shareholder shall within 30 days of becoming the nominee shareholder, disclose the particulars of such beneficial ownership to the company secretary who shall transmit such particulars to the Registrar.



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- A company must hold its first annual general meeting after a period of 12 months from incorporation. Once a company has held its first annual general meeting, the company secretary must file a declaration of the meeting.
- Every company shall file with the Commissioner in charge of the department of the Zimbabwe Revenue Authority a copy of the memorandum and articles of association constituting the company within 30 days of its incorporation or registration for tax purposes.
- Where the company commences trading, it is considered 'active' for income tax purposes and it must be registered with the Zimbabwe Revenue Authority within 30 days of any form of business activity taking place.
- The company must also register for any relevant business licences before commencing trading.

### **If there is no requirement to have a local director or shareholder, what is a foreigner required to do to register a company for tax purposes and other similar post-incorporation registrations?**

- All companies, except foreign companies, must have a resident director. The term resident director is not defined in the Companies and Other Business Entities Act, however one is considered resident in Zimbabwe, in terms of the Citizenship Act [4:01] if they have lawfully and voluntarily established their usual place of residence in Zimbabwe, otherwise than as a visitor, with the intention of remaining therein. The immigration regulations states that "resident" means any person who is lawfully within Zimbabwe otherwise than for the purpose of:
  - journeying through Zimbabwe in direct transit from one country to another; or
  - making a temporary visit.

A foreign company must have a principal officer who will be the person responsible for the management of its business in Zimbabwe, being a person who is ordinarily resident or a citizen of Zimbabwe and who shall accept on its behalf, service of process and any notice required to be served on it.

### **If there is no requirement to have a local director or shareholder, what is the process of obtaining a work permit for foreign employees?**

Work permits for foreign employees are applied for through the Department of Immigration, upon the submission of the required documentation, which includes a letter containing a job offer from a Zimbabwean company; proof of the applicant's qualifications for the position, including prior work experience; police clearance; and two passport photos.

The application may be done by the expatriate seeking employment in Zimbabwe or the employer (whether or not they are a resident or carrying





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on business in Zimbabwe who wishes to introduce as an employee into Zimbabwe a person for the purpose of engaging in an occupation) and both may engage an immigration practitioner of their choice for assistance and at a separate cost.

### **Are there different classes of work permits?**

There is only a temporary employment permit, which can be issued for a period not exceeding five years, by the Department of Immigration. Where a permit has been granted for a period of less than five years, the permit may be extended by application to the Department of Immigration, and payment of the prescribed fee, for a period not exceeding five years.

The temporary permit may be extended any number of times, and for any period which, together with the previous period or periods for which it has been in force, does not exceed five years. Once an individual who holds a temporary employment permit has been resident in Zimbabwe for a continuous period of not less than five years, they may apply for a residence permit.

### **What are the requirements for obtaining a work permit? (Please provide the requirements for each class of work permit, if applicable).**

In terms of the regulations to the Immigration Act [Chapter 4:02] one must complete a form provided by the Department of Immigration, and submit the completed form together with the following, to apply for a work permit:

- A letter containing a job offer from a Zimbabwean company.
- Proof of the applicant's qualifications for the position, including prior work experience.
- Two passport photos of the applicant, the spouse and each child younger than 18 years of age, if their spouse and children are accompanying the applicant or joining them later.
- A certified copy of their marriage certificate, if applicable.
- Payment of the application fee.
- Passport of applicant.
- Valid radiological certificate of freedom from active pulmonary tuberculosis.

- A certified copy of the birth certificate of the applicant and, if applicable, of their spouse and children.
- Documentary evidence, in English, of qualifications and experience in the proposed occupation of the applicant.

### **How long does a work permit application take to be processed?**

Four to six weeks.

### **What is the cost of a work permit? (Please provide the cost of each class of work permit, if applicable).**

There is a cost of USD 500 per applicant and USD 300 per dependent of the person seeking a work permit. The applicant can be the expatriate or the employer, there are different application forms where the applicant is the expatriate or the employer. Dependents include, for example, a wife/husband, children, parents and the relationship will need to be proved by the relevant documents.



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### Are there any annual compliance requirements that a company must meet?

Yes. For private companies, public companies, co-operative companies and companies limited by guarantee, the following must be done post formation:

- No later than 21 days after the date of the anniversary of its incorporation, the company must submit an annual return together with the prescribed fee.
- When the company intends to:
  - Change its address – the company secretary must file a notice of change of address.
  - Change the list of its directors and secretaries – the company secretary must file such notice.
  - Change its name – the company secretary must file a notice of change of company name and the special resolution, together with proof of advertisement of the change.
  - Amend or substitute its memorandum and articles of association – the company secretary must file such notice and special resolution.
- Vary its share capital – the company secretary must file such notice of variation notice of conversion, consolidation and split of share capital, accompanied by special resolution.
- Increase its share capital – the company secretary must file such notice of increase of share capital and special resolution.
- Allot shares – the company secretary must file such notice of allotment of share.
- Change the address at which the register of mortgages and debentures is kept or any change in that place – the company secretary must file such notice of change in address of Register of mortgages and debentures.
- Change the address at which the branch register of members is kept or any change in that place – the company secretary must file such notice of change in address in the branch register of members.
- Voluntarily wind up – the company secretary must file such notice.
- Convert from a private company to a private business corporation – the company secretary must file such notice.
- If after the formation of the company any shareholder of a private company becomes the nominee shareholder for a beneficial owner who holds more than 20% of the shares of that company, the nominee shareholder shall within 30 days of becoming the nominee shareholder, disclose the particulars of such beneficial ownership to the company secretary who shall transmit such particulars to the Registrar together with the prescribed fee.
- In addition, and in relation to a private company and a co-operative, after the annual general meeting, the company secretary must file a declaration that the annual general meeting has been held (to be submitted by a company that has more than one shareholder) accompanied by the prescribed fee.



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- In addition, and in relation to a public company, within one month of its formation and not more than three months after formation, it must hold a statutory instrument meeting and the directors of the company are required to cause the certification of a statutory report to be filed before the meeting, with the registrar together with the prescribed fee.
- In addition, and in relation to a company limited by guarantee, it must no earlier than the anniversary of its incorporation or no later than 30 days thereafter submit to the registrar a declaration of the continuance of its existence together with the prescribed fee. If such declaration is not timeously filed the registrar shall give to the association notice in writing of his or her intention to cause the Minister to withdraw the licence, and shall afford it an opportunity to submit in writing arguments in opposition to revocation before advising the Minister to withdraw the licence.

For a foreign company the following must be done post formation:

- A foreign company must notify the office of the Registrar no later than 21 days after the date of the anniversary of its incorporation, of its annual returns together with the prescribed fee.
- When a foreign company intends to:
  - change its address, the company secretary must file a notice of change of address; or
  - change the list of its principal officer, must file such notice.
- A foreign company must notify the office of the Registrar of any pending liquidation proceedings and changes made to its name, memorandum or charter, together with the prescribed fee no later than 30 days after such changes.

For voluntary registration of partnership agreements etc. the following must be done post formation:

- No later than 14 days after any changes made to the constitutive document of an association registered voluntarily the responsible person shall submit an original or copy of the change to the constitutive document together with applicable form indicating amendments or changes to constitutive documents and the prescribed fee.
- The registration shall be valid for 12 months and may be renewed upon receipt by the Registrar of a form of declaration of continuance of existence of association confirming that the association is still in existence.









**BBBEE STATUS: LEVEL ONE CONTRIBUTOR**

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

**PLEASE NOTE**

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