



PN/01: Incorporation of Companies

This publication is not a legal document. It contains general information intended as a basic guide on the main requirements for the incorporation of a limited company under the Companies Act 2015 (“Companies Act”) and searching and reservation of company names. This guide should not be deemed to substitute any need to take specialist professional advice.

This guide will be relevant to you if you want to incorporate a company.

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

CHAPTER 1: HOW TO INCORPORATE A COMPANY

1. What is incorporation?

Incorporation is the process by which a new or existing business registers as a company. A business cannot be registered as a company unless it has been incorporated and registered at the Companies Registry under the Companies Act, 2015.

2. Who can incorporate a company?

One or more legal persons (which includes individuals, companies, government owned entities, non-profit organizations and other legal persons excluding an unincorporated Trust) can form a company by subscribing their names to a memorandum of association.

3. Which types of companies are available?

There are five types of companies:

- (a) **Private company limited by shares:** This type of company has share capital and the liability of each member is limited to the amount, if any, unpaid on their shares. A private company cannot offer its shares for sale to the general public and may not have more than fifty (50) members.
- (b) **Unlimited company:** This type of company has no limit on the liability of its members.
- (c) **Public limited company:** A public company has share capital and limits the liability of each member to the amount unpaid on their shares. It may offer its shares for sale to the general public and may be listed at the securities exchange.
- (d) **Company limited by guarantee:** This type of company does not have share capital and its members are guarantors rather than shareholders. The liability of members is limited to the amount they agree to contribute to the company's assets if it is liquidated.
- (e) **Foreign Companies:** This type of a Company is a Branch of a Company registered outside of Kenya, that has established a place of business in Kenya (*For more details, see PN/07 – Foreign Companies*).

4. What documents are required to incorporate a company?

To incorporate a company the following documents should be lodged at the Companies Registry for registration:

- (a) company registration form (Form CR1)
- (b) application for reservation of a company name (Form CR14)
- (c) memorandum of association
- (d) particulars of the directors and secretary (Form CR2 and Form CR10)
- (e) statement of nominal capital
- (f) articles of association (however if model articles are adopted in entirety, there is no need for a copy to be lodged at the Companies Registry for filing)
- (g) notification of the residential address of directors and company secretary (Form CR8 and CR12)
- (h) copy of the Kenyan national identification of each director and secretary or, copy of the Kenyan foreigner certificate, or in the case of a director who is not a Kenyan citizen and is not resident in Kenya, a copy of that director's passport,
- (i) a passport-sized photograph of each director and the company secretary (please see Note 11 below on requirement to appoint a company secretary).

5. Choosing a company name

The incorporation of a Company is a one step, one day process. This is done online on the eCitizen website <https://www.brs.ecitizen.go.ke> or <https://services.brs.go.ke>.

It is important to note the following when choosing a company name (s):

- (a) A company name may not contain more than 160 characters.
- (b) The name of a limited company that is a private company must end with "Limited" or "Ltd".
- (c) The name of a limited company that is a public company incorporated under the 2015 Act must end with "plc" or "Public Limited Company".
- (d) Offensive or abusive words are not allowed either. Offensive words in vernacular (mother tongue) are not allowed either.
- (e) Political names
- (f) The name should not be identical to an already reserved name or to the name of an already registered company, business name, LLP, partnership. (Unless the existing company, business, LLP or partnership is part of the same group as the company and consents in writing to the use of the proposed name).

- (g) The name should not be the same as or similar to that of a registered trademark. (it may therefore be important to also conduct a search at the trademarks registry)
- (h) Names containing the words “co-operative”, “society”, or “trade union” are not allowed
- (i) Numbers may be used in any part of a name
- (j) A full stop, comma, colon, semi-colon or hyphen may be used
- (k) The following punctuation marks may be used: an apostrophe (‘), brackets/parenthesis (), exclamation mark (!), Guillemet (<<>>), inverted comma, question mark, solidus (\ /)
- (l) The following signs and symbols may be used only if they are not one of the first three letters of a company name: *; =; #; %
- (m) The name should not start with the words “Kenya” as the same is reserved for government owned entities.

6. What are the articles of association?

Although members can determine their own articles, they can also choose to adopt standard model articles set out in the Companies Act (General Regulations) 2015. You are not obliged to adopt the provisions of the model articles but they are suitable for most standard companies and provide useful guidance. There are different prescribed model articles for private companies limited by shares, private companies limited by guarantee and for public companies.

When you complete the Company Registration Form (CR 1), you will need to specify whether the proposed company is adopting:

- (a) model articles in their entirety (the model articles should not be filed with the CR1)
- (b) model articles with amendments (only the amended articles should be filed with the CR 1)
- (c) bespoke articles that it has prepared for itself (copy of the articles should be filed with the CR1)

Currently there are no model articles for unlimited companies, but an unlimited company can choose to use the existing model articles for limited companies as the basis for its own articles. The articles of association of an unlimited company must not

include the provision for the liability of members to be limited. It is advisable to obtain professional legal advice if you are thinking of incorporating an unlimited company.

7. Where can I obtain articles of association which are appropriate for my company?

The Companies Registry does not supply articles of association but you may obtain these from an advocate or a certified secretary. Alternatively, you can find the model articles for your company in the schedules to the Companies Act (General Regulations).

8. What is the registered office?

Every company must have a registered office. The registered office must be a physical location where notices and other communication can be delivered to the company. The registered office does not need to be the place where the company carries on its day-to-day business.

9. How many shareholders should a company have?

A company may have one natural shareholder. A private company must not have more than 50 members. There is no limit on the number of members that a company limited by guarantee, a public company or an unlimited company may have.

10. How many directors can a company have?

A private company may have one director while a public company or a company limited by guarantee must have at least two directors. At least one company director must be a natural person. All directors who are natural persons must be at least 18 years old.

11. Must a company have a Company secretary?

Private companies with a share capital of less than KES 5,000,000 are not required to have a secretary. However, all public companies must have a secretary.

A company secretary must be qualified under the Certified Public Secretaries of Kenya Act.

12. Certificate of incorporation

- (a) The certificate of incorporation is conclusive evidence that the requirements of the Companies Act 2015 as to registration have been complied with and that the company is duly registered under the Act. The certificate will state: the name and registration number of the company

- (b) the date of incorporation
- (c) whether it's a limited or unlimited company, and if limited whether it is limited by shares or by guarantee
- (d) whether it is a private or public company
- (e) With a verifiable security feature.

The certificate of incorporation must be signed, sealed and authenticated by the Registrar of Companies.

13. How much does it cost to register a company?

The total registration fees for all companies is KES. 10,750/= (or as statutorily prescribed), and is regardless of the nominal share capital, where applicable. This comprises of the registration fee, Official Search Results and convenience fee. No stamp duty is payable at the point of incorporation of a company.

14. Review of this Practice Note.

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

15. Effective Date.

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

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