



### **30% Local Shareholding Requirement for Foreign Companies in Kenya**

With effect from 15 June 2016, when the second and last part of the Companies Act, 2015, (the Act) came into force, foreign companies seeking registration in Kenya are required under section 975 (2) (b) of the Act, to ensure that at the time they are making the application for registration, at least 30% of their shareholding is held by Kenyan citizens by birth. The 30% local shareholding threshold however only applies in respect of branch office registrations in Kenya and does not apply to locally incorporated companies which may be 100% foreign owned. There are no local shareholding requirements for locally incorporated companies, unless the company operates in specific regulated industries such as, banking, telecommunications, insurance and mining.

#### **Registration Process**

Under the Act, a foreign company that establishes a place of business in Kenya is required to apply to the Registrar of Companies for a certificate of registration. This is commonly referred to as establishing a “branch.”

#### **Offences**

A foreign company that carries on business in Kenya without proper registration commits an offence and on conviction, the company or its officers may be liable to a fine not exceeding five million shillings.

#### **Our Interpretation**

In our opinion, the local shareholding requirements for foreign company branch registrations in Kenya are unworkable as it is commercially unviable for a foreign company, which may have operations in many countries to cede 30% of its shareholding to Kenyan citizens by birth in the country of origin where the foreign company is registered. In addition this requirement is not aligned to the Government of Kenya’s foreign investment policy which seeks to offer a liberalised economy to foreign investors. Furthermore in our view, the provision may breach the fundamental rights granted under the Constitution of Kenya.

#### **Way Forward**

There has been considerable resistance from stakeholders, both in the private sector and within the Government to this provision, and we understand consultations are ongoing between the stakeholders and the office of the Attorney General in this regard. Indications are that this requirement will be removed.

In the meantime, foreign companies seeking to register branch offices in Kenya must comply with the 30% Kenyan citizens by birth shareholding requirement. However this does not apply to locally incorporated companies which may

be 100% foreign owned unless they are in a regulated industry.

Should you require any further information please contact [Phillip Coulson](#) or [Richard Harney](#).

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