INTRODUCTION TO BUSINESS COMPLIANCE

Outcomes

By the end of the training, participants should be able to: -

- Understand the key aspects of business compliance
- Understand the different business structures/entities
- Determine the right structures for their business
- Initiate/complete their business registration

Business Structures

Sole Proprietorship

Sole proprietorship is a business structure operated and owned by one person. The owner is the sole decision maker in the business and is liable for all the losses and returns of the business. In most cases it is usually a business structure for small and medium sized enterprises (SMEs).

- Registration
  - Register a business name with one proprietor
  - E-Citizen
- Process
  - Register in the form of a Business Name
  - Conduct a name search for a business name (Three names required)
  - Carry out Registration

german cooperation
DEUTSCHE ZUSAMMENARBEIT
Co – funded by the European Union
Implemented by giz Deutsche Gesellschaft für Internationale Zusammenarbeit (GIZ) GmbH
DIGITAL TRANSFORMATION CENTER KENYA
GFA CONSULTING GROUP
INVEST IN AFRICA

Sole Proprietorship

Advantages

01 Simplified Startup and Management

02 Taxation Benefits

03 Flexibility & Autonomy

04 Privacy and Confidentiality

05 Lower Operational Costs

06 Personal Touch and Direct Relationships

Disadvantages

01 Unlimited Personal Liability

02 Limited Capital and Resources

03 Potential Growth Limitations

04 Limited Expertise

05 Continuity Concerns

Partnerships

Business with multiple owners each of whom have invested in the business.

Types of partnerships include:

- General Partnerships
- Limited Partnerships
- Limited Liability Partnerships

General Partnerships

- All General Partners
- Easy to set up – Register a business name
- Partners combine resources and share financial commitment
- Does not require separate tax filings

Limited Partnerships

- One or more general partners and one or more limited partners
- General Partners participate in management and have 100% liability
- Limited Partners do not participate in management and do not have liability beyond their capital contribution.

Limited Liability Partnerships

Limited liability partnerships commonly referred to as LLPs are unique forms of business association that combines elements of a company with those of a partnership. Partners not liable for negligence of other partners.

- Upon registration, an LLP becomes a body corporate with a legal personality separate from its partners.
- Characteristics of LLPs include:
  - Limited liability for all partners.
  - Partners participate in management.
  - Partners are liable for personal negligence or negligence of employees working directly under them.
  - Partners not liable for negligence of other partners.

Companies

Companies in Kenya may be registered as public or private companies. A private company may be limited by shares and guarantee. Additionally, persons may also incorporate a private unlimited company in which the liability of members for the debts of the company is unlimited.

Types of companies include:

1. Private Limited Company
2. Companies limited by guarantee
3. Public Limited Company

PRIVATE LIMITED COMPANY

A company is limited by shares if the liability of its members is limited by the memorandum to the amount, if any, unpaid on the shares respectively held by them. A Private Company is also a company that is restricted from inviting the public to subscribe to

its shares. The membership of a Private Company is restricted to a maximum of 50 members.

- Registration
  - eCitizen
  - Conduct a Name search
  - Register the Company

- Requirements
  - Directors (Can be one according to Companies Act 2015
  - Shareholders
  - Registered Office

COMPANIES LIMITED BY GUARANTEE

A company limited by guarantee (CLG) is an alternative type of corporation used primarily for non-profit organizations that require legal personality. 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.

Characteristics include:

- Does not have any shares and shareholders
- Owned by guarantors who agree to pay a set amount of money towards company debts.
- Mostly formed by Non-Profit organizations, Non-Governmental Organizations and Charitable Trusts.

BUSINESS REGISTRATION FEES

Service Offered	Fees	Document Lodged	Document Issued	Time
Registration of Business name	Kshs 950	BN 2	Certificate of Registration	1 day
Limited Liability Partnership	Kshs 25000	New Registration LLP 1	Certificate of Incorporation	1 day
Private Limited Company	Kshs 10,650	CR 1, CR 2, Cr 8, Statement of Nominal Capital	Certificate of Incorporation	3-5 days
Foreign Company	Ksh 7550	FC2,FC4,FC6, Certificate of Incorporation, Copy of constitution, Notarized Memarts, Acceptance letter from Local Rep	Certificate of Compliance	3-5 days
Public Limited Company	Kshs 10,650	CR 1, CR 2, CR8, CR 10, CR 12 and Statement of Nominal Capital	Certificate of Incorporation	3-5 days
Unlimited Companies	Kshs 20,050	Cr 1, CR 4, Cr 8 Statement of Nominal Capital	Certificate of Incorporation	3-5 days
Company Limited by guarantee	Kshs 10,000	CR1, CR 3 and CR 8	Certificate of Incorporation	3 days upon receipt of vetting report from NIS

Business Compliance

LINK A BUSINESS

- Mandatory requirement for all companies registered in Kenya to link their business online.
- Linking done on eCitizen by a Director or company secretary.
- Enables complete company management online.

ANNUAL RETURNS – REGISTRAR OF COMPANIES

- **Filing Company Annual Returns in Kenya**, If you do not **file company annual returns in Kenya** for a period of time you can be penalized and your company struck off by the Registrar of Companies.
- *Annual returns* indicate the changes that have occurred within the company throughout the year like change of shareholding, directorships and registered office of the company.
- Section 125 of the Companies Act states that every company having a share capital shall, once at least in every year, make a return, and the said return shall be in the form and shall be made up to the date of the fourteenth day after the date of the annual general meeting.

Filing Annual Returns

- The annual Company returns forms Kenya should be made and filed at least once every calendar year.
- New company 1.5 years after incorporation
- CR29 – Available on Business Registration Service website
- Penalty KES 500

Once a company fails to comply with this requirement, the company and every officer of the company who is in default shall be liable to a default fine as may be prescribed by the registrar.

In filing the Annual Return, the completed annual returns form is submitted at the Companies Registry Kenya with the requisite fees (KES 1,000) before acceptance.

NSSF

- The NSSF Act, 2013 provides for a mandatory registration of an employer with the Fund. Section 19 provides-

  ”Every employer who, under a contract of service, employs one employee or more shall register with the ‘Fund as a contributing employer and shall, register his employee or employees, as members of the Fund”

- The Act which comes into operation through staggered implementation establishes two funds known as Pension Fund and Provident fund. The Pension Fund is mandatory and covers all workers in formal economy while the provident fund is voluntary and would cover the self employed.

- Failure to comply with the requirements attract penalties specified in section 55 of the NSSF Act being either to a fine not exceeding Kshs 500,000 or imprisonment of up to 3 years. Each Director of a Company is personally liable for the offence whereas each partner is liable if employer is a firm.

NSSF

- Registration
  - Register as an employer
  - Fill prescribed form and submit it to nearest NSSF office
- Requirements:
  - Certificate of Incorporation
  - KRA PIN Certificate
- Rates as prescribed as per salary scale

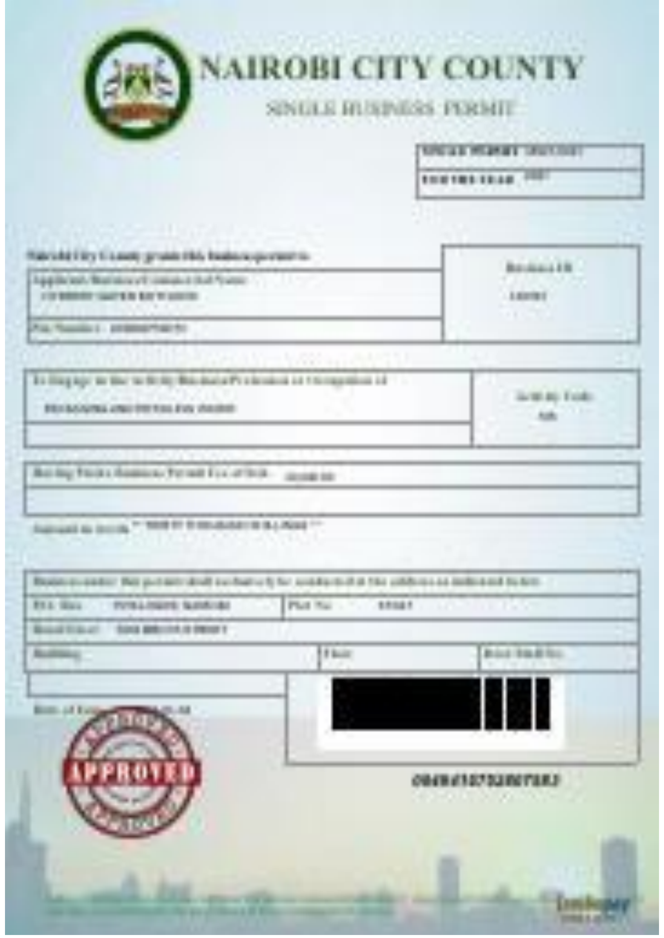
Returns filed before the 15th day of the month and payment made by the 15th day of the month.

NHIF

- Register as an employer
  - Certificate of Incorporation
  - KRA PIN Certificate
  - Fill the prescribed form and present it at the nearest NHIF office.
- File returns online before the 9^{th} day of every month and submit payment by the 9^{th} day of each month
- Penalty for late submission of returns and payment
- Prescribed rates as per salary scale

Business Permits

- The various county governments in Kenya are responsible for issuing single business permits to the various business types operating within the counties.
- The type of business permit to be issued depends on factors such as the geographical location of the business, the number of employees, business type, activities of the business among others.



HIGHLIGHTS ON KENYAN LABOUR LAWS

- EMPLOYMENT ACT

➢ Hours of work. Shall be regulated by the employer in a favorable manner and the employee shall be entitled to at least one day of rest per week (7 days)

➢ Annual leave. Not less than 21 days after every 12 consecutive months of service.

➢ Maternity leave – 3 months with full pay.

➢ Sick leave – not less than 7 days (after 2 consecutive months of service)

➢ Housing – Employer shall provide housing to the employee or provide such sum that can cater for rent unless otherwise stated in the contract of service.

HIGHLIGHTS ON KENYAN LABOUR LAWS

- Water- Employer shall provide sufficient supply of wholesome water for use by employees at the place of employment.
- Food – Employer shall ensure that an employee is properly fed and supplied with sufficient and proper cooking utensils and means of cooking, at the employer’s expense (where expressly agreed on in the contract of employment).
- Medical Attention - employer shall ensure the sufficient provision of proper medicine for his employees during illness and if possible medical attendance during serious illness.

Record Keeping

Introduction: Record Keeping

- One of the foremost challenges SMEs in Kenya often face is the need to clean up their financial records. Over time, as transactions pile up, inaccuracies and discrepancies can creep in, leading to financial statements that lack credibility and potentially triggering tax-related complications.
- Cleaning up financial records involves meticulously reviewing past transactions, identifying errors, and rectifying them. This process not only ensures accurate financial reporting but also aids in understanding the financial health of the business and mitigates the risks associated with tax compliance.
- Maintaining accurate and transparent financial records is paramount to success. For small and medium-sized enterprises (SMEs) in Kenya, this practice becomes even more crucial.

Types of Financial Records

- Financial records encompass a range of documents that provide a comprehensive overview of a business's financial activities and are broadly categorized into **primary** and **secondary** sources.
- Primary sources, as the name suggests, are the initial documents generated during a financial transaction. These include receipts, invoices, and payment vouchers.
- Secondary records, on the other hand, include journals, ledgers, trial balances, and financial statements. These are formal documents that summarize and present the financial data derived from primary sources.
- These records are used by stakeholders, including investors and regulators, to gain insights into the financial health of the business. Maintaining accurate secondary records is key to building trust and credibility with external parties

Why Maintaining Clear Financial Records is Important for SMEs

I. **Accuracy:** Clear financial records ensure that the reported financial data is accurate and reliable. This accuracy is essential for preparing tax returns, financial statements, and other compliance-related documents.

II. **Transparency:** Transparent financial records allow stakeholders, including investors, creditors, and regulatory bodies, to understand the true financial position of the business. This transparency fosters trust and credibility.

III. **Accountability;** Clear financial records make a business accountable for its financial activities. By having transparent records that can be audited and verified, SMEs demonstrate their commitment to ethical practices and responsible financial management. This accountability builds trust with stakeholders and ensures compliance with regulatory requirements.

IV. **Decision-Making:** Well-kept financial records provide valuable insights for informed decision-making. Whether it's planning for expansion, managing cash flow, or evaluating the viability of a new project, accurate financial data is essential.

Introduction to Taxation

Introduction

- Understanding the intricacies of taxation is crucial for small enterprises in Kenya to maintain financial stability and adhere to legal requirements.
- Taxes can often seem overwhelming, but with the right knowledge and preparation, small business owners can navigate the complex world of taxes more effectively.
- In this presentation, we will cover the key aspects of taxation that small enterprises in Kenya should be aware of in order to manage their tax obligations efficiently.
- The first step in understanding your tax obligations is to determine the legal structure of your small enterprise. In Kenya, common structures include sole proprietorships, partnerships, limited liability companies (LLCs), and corporations.
- Each structure has different tax implications, so it's important to choose the one that best suits your business needs and consult with a tax professional if necessary.

How to Register for KRA PIN

- PIN registration for both companies and partnerships is initiated online via iTax.

Follow these easy steps;

1. Visit **iTax (https://itax.kra.go.ke/KRA-Portal/)**
2. Select "**New PIN Registration**".
3. Fill the **online form** appropriately.
4. **Upload** relevant documents (business registration certificate details, PINs of the company directors and the National IDs)
5. **Submit** online application

What is Tax Compliance Certificate (TCC)?

- A TCC, otherwise known as a Tax Clearance Certificate is an official document issued by KRA, as proof of having filed and paid all your taxes.
- KRA issues Tax Compliance Certificates because it is a requirement when, among others:
  I. Applying for a job. For jobs however, a TCC is required upon being offered the job.
  II. Applying for a government tender
  III. Applying for renewal of Work Permit
  IV. Applying for clearing and forwarding agents license
- Tax Compliance Certificates are valid for twelve months only.
- Application for a TCC is done through iTax platform and the certificate is sent to applicants' email address.

Tax Returns

- A tax return is a declaration made by a taxpayer of all income earned during a year of income, detailing the tax payable or refund claimable in the year of income.
- A tax return summarizes the income earned and taxes paid (if any) in a year of income. In Kenya, the year of income for individuals runs from 1st January to 31st December and they are required to file their returns between 1st January to 30th June following the year of income.
- For companies, the filing is done within six months after the end of the accounting period.
- Where a return is filed after the due date, late filing penalty of five percent of the tax due or **Ksh.2000,** whichever is higher, for individuals is chargeable. The late filing penalty for non-individuals is five percent of the tax due or **Ksh. 20,000** whichever is higher. Late payment interest at 1% per month is also applicable until the tax is fully paid.

Why is it important to file tax returns?

- First, it is a legal requirement according to section 52B of the Income Tax Act cap 470. The law provides that every person with taxable income is required to file their returns. Kenya operates on a self-assessment tax regime where every person is required to assess himself or herself and declare the income earned during the year and pay any taxes due. Filing of returns and payment of taxes therefore ensures that one is compliant with the Kenyan tax laws.
- Secondly, filing returns enables a person establish whether there are taxes due and payable or any refund due at the end of a year of income. Where a person has not accrued any income in a year, one is required to file a **nil return**.
- Finally, for employment income purposes, filing returns enables Kenya Revenue Authority reconcile the tax deducted from employees' income under the Pay As You Earn (PAYE) system and the declarations made by employees at the end of the year. Return filing therefore enhances accountability of taxes deducted from employees.

Income Tax

- Small businesses in Kenya are subject to income tax, which is calculated based on the net profit of the business.
- The income tax rates vary depending on the taxable income brackets set by the KRA. It's important to keep accurate records of your business income and expenses to accurately determine your taxable income and fulfill your income tax obligations.

Withholding Taxes

- Small enterprises in Kenya may be required to withhold taxes on certain payments made to suppliers, contractors, and employees.
- Withholding tax rates vary depending on the nature of the payment, and it is the responsibility of the business to deduct and remit the withheld taxes to the KRA.

Value-Added Tax (VAT)

- If your small enterprise's annual turnover exceeds a certain threshold (currently KES 5 million), you are required to register for Value Added Tax (VAT) with the KRA.
- VAT is a consumption tax levied on the value added at each stage of the supply chain. It is important to understand the VAT rules and obligations, including charging VAT on taxable supplies, filing VAT returns, and remitting the collected VAT to the KRA.

Digital Service Tax

- Income from the provision of services through a business carried out over the internet or an electronic network including through a digital market place. The due date for filing the returns is on or before 20th of the following month.
- A digital marketplace is a platform that enables direct interaction between buyers and sellers of goods and services through electronic means.

THANK YOU