

CONTRIBUTOR



## Kenya: Immigration Comparative Guide

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by [Matthew Magare](#) and [Elainer Mogoa](#)

Matthew and Partners Advocates LLP



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### 1 Legal framework

#### 1.1 Which legislative and regulatory provisions govern corporate immigration in your jurisdiction?

Kenya has a sound legal framework governing migration. The national laws include:

- the Kenya Citizenship and Immigration Act, 2011;
- the Kenya Citizenship and Immigration Regulations, 2012;
- the Kenya Citizens and Foreign National Management Service Act, 2011; and
- the Kenya Citizens and Foreign National Management Service Regulations, 2016.

The immigration laws are implemented by the Directorate of Immigration Services, a directorate under the Ministry of Interior and Coordination of National Government.

#### 1.2 Do any special regimes apply in specific sectors?

The immigration laws govern all citizens and foreigners. However, specific laws apply to certain groups of people, which may affect immigration controls in Kenya. These include:

- the Refugees Act, 2006;
- the Prevention, Protection and Assistance to Internally Displaced Persons and Affected Communities, 2016; and
- the Counter Trafficking in Persons Act, 2010.

#### 1.3 Which government entities regulate immigration in your jurisdiction? What powers do they have?

Immigration is regulated by the Directorate of Immigration Services, a directorate under the Ministry of Interior and Coordination of National Government. The directorate provides information on all permits and passes available for foreign nationals who wish to enter the country. The directorate is mandated to:

- control and regulate the entry and exit of all persons at Kenya's airports, seaports and land border posts;
- issue passports and other travel documents;
- control and regulate residency through the issuance and renewal of work permits, residence permits and other passes;
- consider and grant Kenyan citizenship to qualified foreigners;
- register and issue entry visas to all non-citizens resident in Kenya;
- declare and remove prohibited immigrants;
- provide consular services to Kenyan nationals and foreigners at all missions abroad;
- offer quasi-consular functions to Commonwealth countries not represented in Kenya;
- investigate and prosecute persons who contravene the immigration laws and regulations; and
- collaborate with other ministries, departments and agencies regarding the collection of relevant primary data.

#### 1.4 What is the government's general approach to immigration in your jurisdiction?

The Directorate of Immigration Services implements and strictly adheres to the Kenya Citizenship and Immigration Act and has established a platform – the Electronic Foreign Nationals Services Portal – for the submission of applications. All applications are submitted online and communication is done via the notifications section on the portal.

Payments are also made online. A few services are provided physically. All queries and complaints are addressed via the emergency contacts provided by the Immigration Department or in person at the headquarters of the Directorate of Immigration Services.

Applications undergo a rigorous security check. The Kenyan authorities clearly outline visa eligibility criteria on the government's eVisa website. The visa application programme is available online for non-referred visa categories, including ordinary visas issued for single or multiple entries, transit, courtesy or official, diplomatic and East Africa single tourist visas. The Kenya Citizenship and Immigration Act includes various work permit categories that allow immigrants to work in Kenya.

## 2 Business travel

### 2.1 Do business visitors need a visa to visit your jurisdiction? What restrictions and exemptions apply in this regard?

Business visitors require a visa to visit Kenya. It is illegal to work in Kenya without a work permit. Depending on the business sector, they can apply for a temporary three-month business visa and several other long-term visas.

Exceptions from this requirement apply to the following:

- the holders of United Nations Organization *laissez-passers* while on official United Nations business;
- the holders of African Union *laissez-passers* while on official African Union business;
- the holders of African Development Bank *laissez-passers* while on official bank business;
- the holders of Arab Bank for Economic Development in Africa *laissez-passers* while on official bank business;
- the holders of International Red Locust Control Organization for Central and Southern Africa *laissez-passers* while on official organisation business;
- the holders of Desert Locust Control Organization *laissez-passers* while on official organisation business;
- the holders of Common Market for Eastern and Southern Africa (COMESA) *laissez-passers* while on official COMESA business;
- the holders of International Monetary Fund (IMF) and World Bank *laissez-passers* while on official IMF/World Bank business;
- the holders of Inter-Governmental Authority on Development (IGAD) *laissez-passers* whilst on official IGAD business;
- the holders of African Airlines Travel Association *laissez-passers* while on official association business;
- the holders of Environment Liaison Centre International *laissez-passers* while on official centre business;
- the holders of Union of Radio, Television Network of Africa *laissez-passers* while on official union business;
- the holders of International Labour Organization *laissez-passers* while on official organisation business;
- the holders of Preferential Trade Area (PTA)/COMESA Bank *laissez-passers* while on official PTA/COMESA business;
- the holders of EU *laissez-passers* while on official EU business;
- the holders of International Potato Centre *laissez-passers* while on official centre business;
- the holders of African Reinsurance Corporation *laissez-passers* while on official corporation business;
- the holders of diplomatic and service passports from Iran for a stay not exceeding 30 days;
- the holders of diplomatic, official, special and service passports from Turkey while in transit or for a stay not exceeding 90 days;
- the holders of diplomatic, official or service passports from Brazil for a stay not exceeding 90 days; and
- serving members of the British military.

### 2.2 Do the requirements vary depending on sector or purpose?

All business visa requirements are similar.

### 2.3 What is the maximum stay allowed for business visitors?

The maximum stay for business visitors is 180 days,

### 2.4 What activities are business visitors allowed to conduct while visiting your jurisdiction?

Business visitors are allowed to:

- operate in a working environment;
- attend business and sales meetings;
- visit clients;
- conduct site visits; and

- attend conferences, workshops and trade shows.

## 2.5 Is authorisation required for business visitors to provide or receive short-term training?

Business visitors require a long-term business visa or a special pass to provide or receive training for a short-term period not exceeding 180 days. If this period will be longer than 180 days, they must apply for the relevant long-term work permit.

Whether paid or unpaid, the following activities generally constitute 'work' under Kenyan law:

- conducting training;
- performing audits; and
- presenting at a conference.

This list is not exhaustive and many other professional activities are considered 'work' in Kenya, even when conducted for a short duration.

## 3 Work permits

### 3.1 What are the main types of work permit in your jurisdiction? What restrictions and exemptions apply in this regard?

The main work permits are listed from Class A to M, as set out in the Kenya Citizenship and Immigration Regulations, 2012. They include:

- employment permits;
- work permits issued for specific sectors such as agriculture and animal husbandry, prospectors for minerals and specific manufacturers;
- investor or business permits;
- retiree permits; and
- refugee permits.

The Class D employment permit and the Class G investor permit are the most common permits.

**Exemptions:** Special ministerial exemptions include permits issued to any person or class or description of person exempted by the cabinet secretary from the requirement to obtain a work permit by notice in the *Gazette* (Section 34 (3)(g) of the Kenya Citizenship and Immigration Act, 2011).

People with documented refugee status can also obtain a Class M work permit at no financial cost.

**Restrictions:** While there are no explicit restrictions based on sector, activity or linguistic ability that prevent migrants from applying for a Class D work permit, employers must prove that no Kenyan citizen with the required qualifications was available for the same position. Employers must also prove that they have an understudy – that is, a Kenyan employee designated to learn via apprenticeship from the incoming foreign employee to obtain the qualifications lacking for that position.

### 3.2 What is the maximum stay allowed under each type of work permit? Can this be extended?

The maximum duration for each type of permit is five years. No permit will be issued or renewed under the Kenya Citizenship and Immigration Act for a period exceeding five years from the date of issue or renewal, as the case may be. The prevailing understanding is that the employer must hire a Kenyan citizen as an understudy to take over from the foreign national once his or her permit expires. The best way to obtain an extension is to justify why this is not the case.

### 3.3 What criteria must be satisfied to obtain each kind of permit?

**Class A licence to prospect for minerals:** Class A licences are issued to persons:

- who:
  - intend to engage, whether alone or in partnership, in prospecting for minerals or mining in Kenya;
  - have obtained a prospecting or mining right or licence that may be necessary for that purpose; and
  - have in their own right and at their full and free disposition sufficient capital and other resources for the purpose; and
- whose engagement in the prospecting or mining will be of benefit to Kenya

**Class B - agriculture or animal husbandry:** Class B permits are issued to persons:

- who intend to engage, whether alone or in partnership, in the business of agriculture or animal husbandry in Kenya;
- who have acquired or obtained all permissions that may be necessary to acquire an interest in land of sufficient size and suitability for the purpose;
- who have in their own right and at their full and free disposition sufficient capital and other resources for the purpose; and
- whose engagement in that business will be of benefit to Kenya.

**Class C – prescribed professions:** 'Prescribed professionals', as set out in the Kenya Citizenship and Immigration Regulations, 2012, are:

- doctors;
- dentists;
- legal professionals;
- surveyors;
- estate agents;
- valuers and land agents;
- architects and quantity surveyors;
- pharmacists;
- veterinary surgeons;
- engineers;
- nurses;
- physiotherapists;
- accountants;
- chartered secretaries;
- actuaries;
- scientists; and
- information and communication technology experts.

Class C permits are issued to members of a prescribed profession:

- who intend to practise that profession, whether alone or in partnership, in Kenya;
- who have in their own right and at their full and free disposition sufficient capital and other resources;
- who are registered with the professional body, association or institute to which they belong in their own country; and
- whose practice of that profession will be of benefit to Kenya

**Class D – employment by a specific employer, the government, the United Nations or other approved agencies:** These permits are issued to persons:

- who have been offered specific employment by a particular employer, the government of Kenya or any other person or authority under the control of the government, or through an approved technical aid scheme under the United Nations or some other approved agency;
- who possess skills or qualifications that are not available in Kenya; and
- whose engagement in that employment will be of benefit to Kenya.

The individual must also have a Kenyan understudy – an individual who the employer undertakes to train to take over the position of the foreign national once the work permit expires.

**Class F – specific manufacturing:** Class F permits are issued to persons:

- who intend to engage, whether alone or in partnership, in specific manufacturing in Kenya;
- who have obtained a licence, registration or other authority or permission that may be necessary for that purpose;
- who have in their own right and at their full and free disposition sufficient capital and other resources for the purpose; and
- whose engagement in that manufacturing will be of benefit to Kenya.

**Class G – specific trade, business or consultancy:** Class G permits are issued to persons:

- who intend to engage, whether alone or in partnership, in a specific trade, business, consultancy or profession (other than a prescribed profession) in Kenya;
- who have obtained any licence, registration or other authority or permission that may be necessary for that purpose;
- who have in their own right and at their full and free disposition sufficient capital and other resources for the purpose; and
- whose engagement in trade, business, consultancy or profession will benefit Kenya.

**Class I – approved religious or charitable activities:** Class I permits are issued to persons:

- who are:
  - members of an institution registered under the Societies Act and engaged as a missionary; or
  - members of a company limited by guarantee or of a trust registered under the Trustees Act, and approved by the government of Kenya; and
- whose presence in Kenya will be of benefit to Kenya.

**Class K – ordinary residents/retirees:** Class K permits are issued to persons:

- who are at least 35 years of age; and
- who have in their own right and at their full and free disposition an assured annual income of not less than the prescribed amount derived from sources other than employment, occupation, trade, business

or profession that has its own category in Kenya, and which:

- is derived from sources outside and will be remitted to Kenya; or
- is derived from pension or annuity payable from sources in Kenya;
- who undertakes not to accept employment, paid or unpaid, or engage in any income-generating activity of any kind without a permit of the relevant class; and
- whose presence in Kenya will be of benefit to Kenya.

**Class M – refugees:** Class M permits are issued to persons who have been granted refugee status in Kenya under the Refugee Law and the spouses of such refugees intending to take up employment or engage in a specific occupation, trade, business or profession.

### 3.4 Do any language requirements apply for each kind of permit?

Documents in foreign languages should be translated into English by the embassy, a public notary or an authorised/recognised institution.

### 3.5 Are any work permits subject to quotas?

This applies only to organisations that have already filled the same position previously with a foreigner, as the understudy should take over the role once the work permit expires.

### 3.6 Do any specific rules apply with regard to the following: (a) Work in specific sectors? (b) Shortage occupations? (c) Highly skilled workers? (d) Investors and high-net worth individuals?

#### *(a) Work in specific sectors?*

Yes, a licence, registration or other authorisation or permission must be obtained to operate in certain sectors (eg, mining, agriculture and manufacturing).

#### *(b) Shortage occupations?*

A foreign national employee must also have a Kenyan understudy – an individual whom the employer undertakes to train to take over the position of the foreign national once the work permit has expired.

#### *(c) Highly skilled workers?*

A foreign national highly skilled worker must also have a Kenyan understudy – an individual whom the employer undertakes to train to take over the position of the foreign national once the work permit has expired.

#### *(d) Investors and high-net-worth individuals?*

Investors must:

- show that they have sufficient capital to invest in Kenya;
- have obtained any licence, registration or other authorisation or permission that may be necessary for the relevant purpose; and
- show that their engagement in trade, business, consultancy or profession will benefit Kenya.

### 3.7 What are the formal and documentary requirements for obtaining each kind of permit?

**General documentary requirements:** For all permits, the standard requirements are as follows:

- a duly completed and signed application Form 25;
- a signed cover letter from the employer/organisation/self-employed individual addressed to the director of immigration services;
- copies of the individual's national passport;
- two recent colour passport photographs;
- the individual's current immigration status if already in the country;
- a valid organisation tax compliance certificate for new cases;
- valid organisation and individual tax compliance certificates for renewals;
- previous permits and/or passes held;
- if applicable, proof of payment of the processing fee; and
- police clearance certificate for renewals.

The following documents are also required for specific permits:

- Class A – licence to prospect for minerals:
  - Proof of funds for investment (minimum \$100,000);
  - A current licence and a copy of the individual's personal identification number (PIN) certificate (for renewals); and
  - Signed audited accounts for the past year (for renewals).
- Class B – agriculture or animal husbandry:
  - Proof of land ownership/leasehold;
  - Proof of capital availability (bank statement);

- Clearance/licence from the relevant bodies;
- A copy of the individual's PIN certificate; and
- Current audited accounts (for renewals).
- Class C – prescribed professions:
  - Proof of membership of a prescribed profession;
  - Copies of certified academic and professional qualifications; and
  - A copy of the individual's PIN certificate.
- Class D – employment by a specific employer, the government, the United Nations or other approved agencies:
  - Duly certified copies of academic and professional certificates;
  - The individual's CV;
  - A duly completed, signed and stamped application Form 27;
  - The name of the Kenyan understudy and his or her CV, certified copies of academic certificates, full contact details (email, address, mobile phone number) and national identification card;
  - The certificate of registration of the organisation;
  - A clearance letter from the relevant institutions; and
  - A copy of the advertisement for the position in Kenya; and
  - Where the employer is a non-governmental organisation (NGO), an endorsement form from the NGO's coordination board.
- Class F – specific manufacturing:
  - A copy of the licence held;
  - Proof of funds for investment (manufacturing) (minimum \$100,000);
  - The company's registration certificate;
  - The memorandum of understanding;
  - The articles of association;
  - Signed current audited accounts (for renewals);
  - The shareholders' certificate (CR12); and
  - A copy of the individual's PIN certificate.
- Class G – specific trade, business or consultancy:
  - Documentary proof of capital to be invested (minimum \$100,000);
  - The company's certificate of incorporation;
  - The memorandum of understanding;
  - The articles of association;
  - A copy of the individual's PIN certificate;
  - Signed current audited accounts (for renewals); and
  - A duly completed Form 27.
- Class I – approved religious or charitable activities:
  - The registration certificate of the organisation; and
  - Certified copies of the individual's academic and professional certificates.
- Class K – ordinary residents/retirees:
  - Documentary proof of annual assured income of at least \$24,000.
- Class M – refugees:
  - A recommendation letter from the Department of Refugee Affairs

### 3.8 What fees are payable to obtain each kind of permit?

- Class A – licence to prospect for minerals:
  - Proof of funds for investment (minimum \$100,000);
  - Signed audited accounts for the past year (for renewals);
  - Non-refundable processing fee (KES 10,000); and
  - Issuance fees (KES 250,000 per year).
- Class B – agriculture and animal husbandry:
  - Non-refundable processing fee (KES 10,000); and
  - Issuance fees (KES 100,000 per year).
- Class C – prescribed professions:
  - Non-refundable processing fee (KES 10,000); and
  - Issuance fees (KES 100,000 per year).
- Class D – employment by a specific employer, the government, the United Nations or other approved agencies:
  - A clearance letter from the relevant institution;
  - Non-refundable processing fee (KES 10,000); and
  - Issuance fees (KES 200,000 per year) (usually issued for two years at a time).
- Class F – specific manufacturing:
  - Non-refundable processing fee (KES 10,000); and
  - Issuance fees (KES 100,000 per year).
- Class G – specific trade business or consultancy:
  - Documentary proof of capital to be invested (minimum \$100,000);
  - Non-refundable processing fee (KES 10,000); and
  - Issuance fees (KES 100,000 per year).
- Class I – approved religious or charitable activities:

- Non-refundable processing fee (KES 10,000); and
- Issuance fees (KES 5,000 per year).
- Class K – ordinary residents/retirees:
  - Documentary proof of annual assured income of at least \$24,000; and
  - Non-refundable processing fee (KES 10,000).
- Class M – refugees:
  - No fees payable.

### 3.9 What is the process for obtaining a permit? How long does this typically take?

Applications are made via the government of Kenya's Single Sign-On Portal:

- On logging in, applicants gain access to a dashboard that allows them to make applications, submit documents, receive notifications and make payments. Having finalised the application process online, applicants will receive communications and automatic notifications through their online account about the progress of their applications.

Submitting the application documents takes between one and two days. From submission of the application to issuance of the permit usually takes between four and six weeks, and may take up to three months.

### 3.10 Once a work permit has been obtained, what are the rights and obligations of the permit holder? What are the penalties in case of breach?

#### Rights:

- Permit holders can work freely in Kenya at the organisation they work or are employed in.
- They can leave and enter the country as they please, as long as their permit remains valid.
- Their spouses can apply for dependant passes.
- Notwithstanding any other provision of the Immigration Act, and subject to the provisions of any other written law, a person to whom a Class M permit is issued may engage in any occupation, trade, business or profession.

#### Obligations:

- With the written approval of the Directorate of Immigration Services, they must engage within 90 days of the date of issue of the permit or of their entry into Kenya, whichever is earlier, in the employment, occupation, trade, business or profession in respect of which the permit was issued or take up residence.
- They must engage only in the employment, occupation, trade, business or profession in respect of which the permit was issued, whether or not for remuneration or profit.

#### Penalties:

- The work or residence permit will be invalidated if the holder breaches any of the obligations above or if he or she:
  - violates any of the terms of his or her stay under the permit;
  - violates any provisions of the Immigration Act or regulations made thereunder;
  - is declared a prohibited immigrant or inadmissible person;
  - becomes an undesirable immigrant;
  - is found to have acquired the permit by fraud, false representation or concealment of any material fact; or
  - during any war in which Kenya was engaged, unlawfully traded or communicated with an enemy, or engaged in or was associated with any business that knowingly carried on in such a manner as to assist an enemy in that war.
- If, after acquiring the permit, the holder is convicted of an offence and sentenced to imprisonment for a term of three years or longer, the permit ceases to be valid and his or her presence in Kenya becomes unlawful, unless otherwise authorised under the Immigration Act.
- Any entry permit, pass, certificate or other authority, whether issued under the Immigration Act or its predecessors, which was obtained by, or was issued in consequence of, fraud or misrepresentation, or through the concealment or non-disclosure – whether intentional or inadvertent – of any material fact or circumstance, will be deemed to be void and of no effect from the outset and must be surrendered to the service for cancellation.
- Additionally, anyone convicted for non-compliance with the terms and conditions of a work permit, including the employer, will be liable to a fine of up to KES 500,000, imprisonment for up to three years or both. In addition to the prescribed fine and/or term of imprisonment, as the case may be, the employer will be liable to pay the costs of maintenance and removal of the person employed.

## 4 Settlement

### 4.1 What are the criteria for obtaining settlement in your jurisdiction? What restrictions apply in this regard?

In Kenya, 'settlement' is referred to as 'permanent residency'. Immigrants can apply for permanent residency after seven years of legally living and working in Kenya. Applicants must:

- have resided in Kenya for the three years preceding the application; and
- demonstrate skills, education and finances that contribute to the country's overall development.

Applicants can be granted permanent residence status if they fall within one of the following categories:

- **Ex-citizens of Kenya:** Kenyan citizens by birth who have since renounced or lost citizenship status and are denied the opportunity by their countries of domicile to hold dual citizenship. Children and spouses of these applicants can also apply.
- **Work permit holders:** Persons who:
  - have held Kenyan work permits for at least seven years; and
  - have been continuously resident in the country for the three years immediately preceding the permanent residence application.

Spouses and children can also apply. Applicants must demonstrate a solid position to make tangible contributions to the country's socio-economic development; hence, priority will be given to investors and highly qualified professionals. Within this framework, applicants may be required to appear in person for an interview to confirm or verify these facts.

- **Children of ex-citizens:** Children of Kenyan citizens who were born outside the country and have acquired foreign citizenship of their country of residence/domicile.
- **Spouses of Kenyan citizens:** Spouses of Kenyan citizens married for at least three years. Applicants must provide ample proof of marriage and family life besides the documentation furnished. Within this framework, applicants may be required to appear in person for an interview to confirm or verify these facts.

**Restrictions:** Permanent residents are not allowed to

- own a Kenyan passport;
- own a Kenyan ID;
- vote; or
- own agricultural land.

#### 4.2 Do any specific rules apply to foreign citizens with ancestral connections?

No.

#### 4.3 What are the formal and documentary requirements for obtaining settlement?

- Ex-citizens of Kenya:
  - An application letter;
  - A printout of the duly completed permanent residence application form (Form 23), signed and stamped by a magistrate/commissioner for oaths;
  - A printout of the duly completed Category A Questionnaire for Intending Applicants;
  - Proof of previous Kenyan citizenship ( eg, copy of birth certificate/identity card or passport);
  - Two recent passport photographs (a soft copy will also be required during the application process);
  - A police clearance certificate issued in the country of domicile;
  - Proof of current citizenship (registration/naturalisation certificate and passport); and
  - A copy of the police clearance certificate.
- Work permit holders:
  - An application letter;
  - A printout of the duly completed permanent residence application form, signed and stamped by a magistrate/commissioner for oaths;
  - A completed Category B Questionnaire for Intending Applicants;
  - A duly completed residence status form, which is generated automatically after completion of the application;
  - A copy of a valid passport;
  - Two passport photographs (a soft copy will also be required during the application process);
  - A police clearance certificate;
  - A copy of a valid tax compliance certificate;
  - A copy of a valid foreigner certificate (alien card);
  - An introductory letter from the employer (in the case of employees); and
  - A copy of the police clearance certificate.
- Spouses of permit holders:
  - An application letter;
  - A printout of the duly completed permanent residence application form, signed and stamped by a magistrate/commissioner for oaths;
  - A completed Category B Questionnaire for Intending Applicants;
  - A duly completed residence status form, which is generated automatically after completion of the application;
  - A certified copy of the marriage certificate; and
  - A copy of any dependant passes/work permits.
- Children of permit holders:
  - An application letter;



- A printout of the duly completed permanent residence application form, signed and stamped by a magistrate/commissioner for oaths;
- A completed Category B Questionnaire for Intending Applicants;
- A certified copy of the birth certificate;
- Certified copies of the parents' birth certificates;
- Two passport photographs (a soft copy will also be required during the application process);
- A copy of the dependant pass; and
- A copy of a valid passport.
- Children of Kenyan citizens:
  - An application letter;
  - A printout of the duly completed permanent residence application form, signed and stamped by a magistrate/commissioner for oaths;
  - A completed Category C Questionnaire for Intending Applicants, which is generated automatically on completion of the online application;
  - A certified copy of the birth certificate;
  - Certified copies of the parents' birth certificates/Kenyan passports/identity cards (proof of Kenyan citizenship);
  - A certified copy of the current passport;
  - Two passport photographs (a soft copy will also be required during the application process); and
  - A copy of the police clearance certificate.
- Spouses of Kenyan citizens:
  - An application letter from the Kenyan spouse;
  - A printout of the duly completed permanent residence application form, signed and stamped by a magistrate/commissioner for oaths;
  - A duly completed Category D Questionnaire for Intending Applicants;
  - A duly completed residence status form, which is generated automatically upon completion of the online application;
  - A police clearance certificate;
  - Evidence of marriage and family life;
  - A certified copy of the marriage certificate;
  - A copy of the passport/identity card/birth certificate of the Kenyan spouse;
  - A copy of the passport/birth certificate of the foreign spouse;
  - A copy of the spouse's work permit/dependant pass;
  - Two passport photographs (a soft copy will also be required during the application process);
  - A copy of a valid foreigner certificate (alien card); and
  - A copy of the police clearance certificate

#### 4.4 What fees are payable to obtain settlement?

- Ex-citizens of Kenya:
  - Processing fee (KES 10,000); and
  - Issuance fee (KES 15,000).
- Children of Kenyan citizens:
  - Processing fee (KES 10,000); and
  - Issuance fee (KES 500,000).
- Spouses of Kenyan citizens:
  - Processing fee (KES 5,000); and
  - Issuance fee (KES 50,000).
- Work permit holders:
  - Processing fee (KES 10,000); and
  - Issuance fee (KES 500,000).
- Spouses of permanent residence holders:
  - Processing fee (KES 10,000); and
  - Issuance fee (KES 500,000).
- Children of permanent residence holders:
  - Processing fee (KES 10,000); and
  - Issuance fee (KES 500,000).

#### 4.5 What is the process for obtaining settlement? How long does this typically take?

- Submit an application through the government of Kenya's Single Sign-On Portal.
- After completion of the application form, an invoice will be generated to make payment.
- Applicants will receive automatic notifications through their online account about the progress of their applications.
- The process can take up to six months.
- The applicant must have a valid pass or permit before and during the application process until the application is approved.

#### 4.6 Is the settlement process the same for EU citizens?

The settlement process is the same for all categories of applicants.

## 5 Dependants

### 5.1 What are the criteria to qualify as a dependant? What restrictions apply in this regard?

A dependant pass is issued to a person whose spouse, parent or guardian is lawfully entitled to enter Kenya (Section 27(1) of the Kenya Citizenship and Immigration Regulations, 2012).

'Dependants' are persons who are dependent on:

- Kenyan citizens;
- permit holders;
- exempted persons; and
- permanent residents.

Dependants are restricted from engaging in any form of business or employment without the requisite permit or pass; this would constitute an offence.

A dependant pass does not entitle the holder to receive education or training in any establishment in Kenya without a valid pupil pass (Section 30(1) of the Kenya Immigration and Citizenship Regulations, 2012).

### 5.2 What rights do dependants enjoy once admitted as such?

Dependants can live in Kenya with their spouses or parents. They are also free to move in and out of the country if their dependant pass is still valid and they have obtained a re-entry pass.

### 5.3 How are civil/unmarried partners and same-sex partners treated in this regard?

Same-sex marriage is illegal in Kenya. Partners must submit a marriage certificate to obtain a dependant pass.

## 6 Intra-company transfers

### 6.1 Is there a specific regime for the transfer of employees from an overseas branch of a multinational to your jurisdiction?

No. Kenya has no laws on the intra-company transfer of employees. Foreign employees must apply for a special pass for three months, which can be extended for another three months; or apply for a Class D work permit if they plan to work for a Kenyan organisation beyond six months.

### 6.2 What is the maximum stay allowed under this regime? Can this be extended?

N/A.

### 6.3 What criteria must the employer satisfy to obtain a permit under this regime?

N/A.

### 6.4 What are the formal and documentary requirements to obtain a permit under this regime?

N/A.

### 6.5 What fees are payable to obtain a permit under this regime?

N/A.

### 6.6 What is the process for obtaining a permit? How long does this typically take?

N/A.

## 7 New hires

### 7.1 Are employers in your jurisdiction bound by labour market testing requirements before hiring from overseas? Do any exemptions apply in this regard?

Yes, the employer must demonstrate that it could not find a suitable employee for the job locally before employing a foreigner.

### 7.2 If labour market testing requirements apply, how are these satisfied and what best practices should employers follow in this regard?

The employer must:

- provide proof of advertising submitted with an application for a Class D work permit or a Class I permit; and
- allow adequate time for Kenyans to apply for the advertised positions in the organisation.

If a suitable employee cannot be found locally, the employer can hire a foreign national and a Kenyan understudy for the role – that is, a Kenyan citizen who is trained up to take over the position in which the foreign national is employed once the work permit has expired.

### 7.3 Which work permits are primarily used for new hires? What is the process for obtaining them and what fees are applicable, for both employer and employee?

**Permits:**

- Class D – employment permit;
- Class I – approved religious and charitable activities; and
- Class M – refugee permit.

**Process:**

- Applications are made via the government of Kenya's Single Sign-On Portal.
- On logging in, applicants gain access to a dashboard that allows them to make applications, submit documents, receive notifications and make payments.
- Once the application process has been finalised online, the applicants receive automatic notifications through their online accounts about the progress of their applications.

**Fees:** The employer pays the fees applicable for new hires.

**Class D – employment permit:**

- Non-refundable processing fee (KES 10,000);
- Issuance fees (KES 200,000 per year) (usually issued for two years at a time);
- Alien card fee (KES 2,050); and
- Security bond fee (between KES 7,000 and KES 10,000, depending on the insurance company).

**Class I – approved religious and charitable activities:**

- Non-refundable processing fee (KES 1,000);
- Issuance fees (KES 5,000 per year);
- Alien card fee (KES 2,050); and
- Security bond fee (between KES 7,000 and KES 10,000, depending on the insurance company).

**Class M – refugee permit:**

- None.

**7.4 Is labour market testing required if the new hire is to extend his or her residence?**

Kenya has no labour market testing requirements.

**7.5 Can new hires apply for permanent residence?**

Hires who have stayed for seven years or more in the country can apply for permanent residence, which is also subject to renewal of the permit more than twice (which is unlikely).

**8 Sponsorship****8.1 Are any licences or authorisations required to sponsor foreign nationals? What other criteria apply in this regard?**

- The organisation must be duly registered under Kenyan law and have a valid tax compliance certificate.
- The foreign national must hold any licences or other approvals required for the relevant industry (eg, a licence for mineral prospecting; leasehold or proof of ownership for agriculture and animal husbandry; a licence for manufacturing; and a relevant certificate for a prescribed profession).
- For some permits, a directors'/shareholders' certificate is required showing proof of shareholding and audited accounts.
- If the organisation is a non-governmental organisation, the foreign national must obtain an endorsement from its coordination board.
- Understudies must be available for the foreign nationals being hired. An 'understudy' is a Kenyan citizen who is trained up to take over the position in which the foreign national is employed once the work permit has expired.

**8.2 What obligations do sponsoring employers have to ensure continued immigration compliance?**

Every employer must apply for and obtain a work permit or a pass conferring upon a foreign national the right to engage in employment before granting him or her employment.

Employers must ensure that their employees have a valid work permit for the entire time of employment. They must also train up an understudy to take over this role on the expiry of the work permit.

In case of dismissal, the employer should notify the Directorate of Immigration Services, which will revoke the work permit.

If a work permit holder ceases to work in the role for which the work permit was issued, the employer must report this in writing to the director of immigration services within 15 days.

After termination, the employer should keep each employee's records for two years and file a report with the Directorate of Immigration Services on:

- the foreign nationals under its employment; and
- any breach by such foreign nationals with regard to their employment.

### 8.3 Are sponsoring employers subject to any local training requirements?

No answer submitted for this question.

### 8.4 How is compliance with the sponsorship regime monitored? What are the penalties for non-compliance?

The director of immigration services may at any time request the submission of records on all employees who are foreign nationals.

The director may, where necessary and to better enforce the regulations, visit (with or without prior notice) places of employment, business, training and education or residence in order to:

- verify the information contained in applications; and
- monitor compliance with the terms and conditions contained in permits or passes issued to the owners, residents or persons in charge of the premises.

If a foreign national who entered Kenya illegally is found on any premises where a business is conducted behaving in such a manner as to suggest that he or she is employed at those premises, it will be presumed that the illegal foreign national is employed by the person that controls the premises, unless evidence to the contrary is provided.

**Penalties:** Anyone that contravenes any provision or requirement of an order issued to a foreign national commits an offence and is liable upon conviction to a fine not exceeding KES 100,000, imprisonment for a term of up to three years or both.

## 9 Trends and predictions

### 9.1 How would you describe the current immigration landscape and prevailing trends in your jurisdiction? Are any new developments anticipated in the next 12 months, including any proposed legislative reforms?

**Approval of work permits:** The prevailing trends are:

- slower work authorisation approvals;
- an increased number of rejections; and
- more onerous documentation requirements.

The Directorate of Immigration Services is aligned with the government's effort to protect the local labour market by making it more difficult for foreign nationals to enter Kenya for work.

**Technological advancements:** The digitisation of immigration services has continued apace since the outbreak of the COVID-19 pandemic. Since then, immigration services have mostly been provided digitally, including the extension of visitor passes, work permits and alien IDs. All entry visas must be applied for online and before boarding the aircraft. Passes and permits are now also downloaded online.

**Geo-strategic partnerships:** Kenya is a member of several organisations that promote continuous inclusive migration policy frameworks across Africa and continues to implement a number of these policies, including:

- the Joint Africa-EU Partnership on Migration, Mobility and Employment (2007);
- the East African Community Common Market Protocol, which emphasises the importance of the free movement of goods, persons and labour, as well as the rights of establishment and residence, as critical elements to accelerate economic growth and development in the common market;
- the Intergovernmental Authority on Development's Regional Migration Policy Framework (2012);
- the Joint Labour Migration Programme (2015), an African Union-led initiative – supported by the International Labour Organization, the International Organization for Migration and the United Nations Economic Commission for Africa – to ensure effective migration and mobility in Africa and prioritise migration as a transformative force for Africa's development; and
- the Common Market for Eastern and Southern Africa Protocol on the Free Movement of Persons, Labour, Services, Rights of Establishment and Residence (2001).

**Proposed legislative reforms:** The Kenya Citizenship and Immigration (Amendment) Bill, 2021 will incentivise members of the Kenyan diaspora to invest back home, including through wealth protection.

The bill proposes to enhance the participation of Kenyans living abroad in the country's socio-economic development agenda and governance processes.

## 10 Tips and traps

### 10.1 What are your top tips for businesses seeking to recruit talent from abroad and what potential sticking points would you highlight?

- Tips:
  - Ensure that you have the relevant licences for operation.

## ARTICLE

Kenyan has been found to qualify for such a hire. It is paramount to prove that the hire from abroad is more qualified than the Kenyans who applied for the position.

- When hiring from abroad, train a Kenyan understudy to take over the role from the foreign national after two or four years.
- Remain cognisant of the tax implications associated with recruited talent.
- Potential sticking points:
  - Every foreign national should have the necessary permit or pass to work in Kenya at all times when in Kenya.
  - Hired foreign nationals should be able to procure police clearance certificates from their countries of origin for new applications and from Kenya for renewals.
  - The foreign nationals whom you hire should be highly skilled individuals in their fields who will train their Kenyan understudies.
  - Permits, visas and passes should be endorsed on the passport to ensure ease of entry to and exit from Kenya. For dependant passes, the re-entry pass must be endorsed on the passport.

*The content of this article is intended to provide a general guide to the subject matter. Specialist advice should be sought about your specific circumstances.*

## AUTHOR(S)



**Matthew Magare**  
Matthew and  
Partners  
Advocates LLP



**Elainer Mogoia**  
Matthew and  
Partners  
Advocates LLP

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