Limited Liability Company (Private)

Joining together to create value: Limited Liability Company as a Tool for Wealth Management

Limited liability companies allow like minded individuals to pool resources to create, build value and generate wealth. A business should be able to sustain itself, generate enough cashflow to cover its liabilities, give a return to shareholders and build its own asset base.

ITEM		REQUIREMENT	COMMENT
Company set up and key features		➢ Limited by shares ➢ Share capital required ➢ Easy to set up: -can be set up with a single director ➢ Kenya Revenue Authority PIN is obtained at the time of incorporation. However, at this stage, ensure that appropriate tax obligations are selected. • Corporation tax obligations are the bare minimum. • If you already have staff or you shall be drawing a salary as the executive Director, this obligation can be added at the point of registration. If not, this can be added at later. • Value Added Tax (VAT) is applicable for those that deal with Vatable goods and services and whose threshold is above KES. 5 million per year. • Withholding Tax on Dividends	Setting up a company may limit your personal liability unless there is a crime that requires lifting of the veil to apportion the responsibility to both Directors and Shareholders
Statutory Obligations	1. Registrar of companies	Annual Returns	The recommendation here is full compliance.
	2. Kenya Revenue Authority	Corporation Tax-Quarterly Instalments	
		Pay As You Earn Obligations-Monthly returns and payments	

		Withholding Tax-Due at the point of Payment but in any event, no later than the 20th of the Month in which the transaction took place.	Take note to apply all allowable deductions, VAT inputs and excise rebates that are due to you.
		VAT-Monthly Returns and Payment. Due no later than the next 20th of the month in which the transaction took place, but any VAT claims are allowed up to six months from the date of the transaction.	
		Excise Tax-Monthly tax on or before the 20th of the month after the transaction has taken place.	
Risks	Non filing of Registrar of Companies Returns	Penalties and possible deregistration	
	Non-filing/non-payment of taxes	Penalties, interest, distress proceedings	
	Transfer of Shares	This requires to be defined in the Memorandum of Association but can be challenged in court. If it is not defined properly, the shares can be transferred to third parties who may not have the founders' interest at heart and therefore Assets brought into the company by the founders: • may end up getting diluted and most likely lost in the process • assets are tied into the liabilities of the company and if the same are family assets, then there is loss of value to the family. Family Wealth is in essence reduced.	The most important decision in this section on how the founders/shareholders opt to bring in assets acquired that were not acquired through the normal trading operations. The other risks can be managed through strict compliance.
ADVANTAGES AND DISADVANTAGES OF USING A LIMITED LIABILITY COMPANY FOR WEALTH MANAGEMENT			

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Tax Advantages	The Treasury and Kenya Revenue Authority have provided for various allowable deductions, tax breaks and incentives available to companies. Study the Tax Laws and if not able to do so, engage a tax consultant to identify all avenues that are available for your sector/company. It is my mantra that Tax Planning is best done through compliance and not through all other schemes. The shareholders are paid through issuance of dividends.	If all expenses are properly documented and accounted for and all allowable deductions are claimed, you will be surprised to note that complicated tax schemes are not necessary. A lot of wealth is wasted through payment of interest and penalties when companies are caught up in these schemes. There is also risk of reputational loss and reduction of value of the company.
Equity Financing Advantage	A Limited Liability Company can raise equity financing through ceding shareholding or issuing new shares both Preference and Ordinary shares	
Limited Liability Advantage	The Company's liability is tied to the share ownership	
Transition Management-disadvantage	Transition and succession require either a Will or a court adjudicated process.	This could impact on management and decision making especially if there is dispute.

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Co-mingling of Family Assets with Company Assets-disadvantage	Assets acquired by the Family, or the key shareholders could co-mingle with assets and liabilities of the company and could inadvertently be “swallowed” by the liabilities of the company. It is therefore very important to ring-fence the personal assets to prevent this.	A business should be able to sustain itself, generate enough cashflow to cover its liabilities, give a return to shareholders and build its own asset base.