

DISCLOSURE OF BENEFICIAL OWNERSHIP OF KENYA COMPANIES

In 2019 a significant amendment was made to the Companies Act, 2015 requiring companies to provide details of their beneficial owners (a **Register**) to the Registrar of Companies. However, to give effect to the new disclosure requirements operating regulations were required. These regulations are now in place with the enactment of the Companies (Beneficial Ownership) Regulations, 2020 (the **Regulations**).

To assist companies to comply with the new disclosure requirements we have highlighted below the main aspects of the Regulations as currently being implemented.

Who is a “beneficial owner”?

The Regulations broadly define a beneficial owner as an individual “who ultimately owns or controls a legal person or arrangements or the natural person on whose behalf a transaction is conducted, and includes those persons who exercise ultimate effective control over a legal person or arrangement”. The phrase “ultimately owns or controls” is defined in the Regulations as “where ownership is exercised through a chain of ownership or by means of control other than direct control”.

The Regulations however only apply to a beneficial owner being an individual who in relation to a Kenya company directly or indirectly:

- (i) holds at least 10% of the issued shares of the company, or
- (ii) directly or indirectly exercises at least 10% of the voting rights of the company, or
- (iii) holds any rights to appoint or remove directors of the company, or
- (iv) exercises significant influence or control over the company, that is “participation in the finances and financial policies of a company without necessarily having full control over them” as defined in the Regulations.

What information should be maintained and disclosed?

The Register must contain the following particulars of its beneficial owners: (i) full name; (ii) national identity card number/passport number;



(iii) personal identification number; (iv) nationality; (v) date of birth; (vi) postal address; (vii) residential address; (viii) current telephone number; (ix) current email address; (x) occupation; (xi) date on which any person became a beneficial owner; (xii) date on which any person ceased to be a beneficial owner and (xiii) nature of ownership or control

A copy of the Register should be lodged with the Registrar in a form prescribed under the Regulations. The form should be completed online at the Business Registration Services online portal. Any changes in the Register must also be filed with the Registrar in prescribed form.

Timing for filing

Each company must lodge a copy of its Register within 30 days after preparation of the Register. The Registrar has granted all companies a grace period of up to 31st January 2020 to prepare and lodge an initial Register.

With the exception of public listed companies, companies are required to file changes to the Register within 14 days after the date of the amendment. This includes notifying the Registrar when a person ceases to be a beneficial owner.

Restrictions on disclosure

Use of information relating to a beneficial owner is restricted as follows under the Regulations:

- (i) The information shall not be made available to the public although it may be provided to a competent authority (that is the AG, any criminal investigation agency established by law, law enforcement agencies and authorities supervising the and monitoring the financial sector including the Kenya Revenue Authority and Financial Reporting Center.
- (ii) A company may only use the information to communicate with the beneficial owner

or in order to comply with the Regulations or a court order.

- (iii) The Registrar may use the information to communicate with the beneficial owner.

Obligation to obtain beneficial owner particulars

The obligation to obtain particulars of beneficial owners is placed on a company with consequences to any person who fails to provide any such particulars when requested by the company.

The Regulations impose a general duty on a company to take reasonable steps to identify its beneficial owners and to note in the Register that it knows or has reason to believe that there is a beneficial owner in relation to the company but has not yet identified the person or has not been able to obtain the relevant particulars or there is a pending matter before court in relation to beneficial ownership.

In order to fulfil the obligation, a company is required to issue a notice to any person that it knows or has reasonable cause to believe that the person is a beneficial owner to provide the relevant information required for compliance with the Regulations within no more than 21 days. Where a person does not comply with such a notice, a company must issue a warning to the person and if the person does not comply with the warning within 14 days, the company shall be obliged to restrict the relevant interests of the person in the company. The effect of a restriction would be that any transfer of the interest would be void, no rights would be exercisable in respect of the interest, no shares may be issued to the person and no payment of any sums due from the company in relation to the interest (e.g. dividends on shares) may be made to the person. A restriction must be registered in the Register and filed with the Registrar and may be withdrawn if and when there is compliance in providing the required information.

Failure to comply with maintaining a Register as required would be an offence punishable by a fine of up to KES 500,000 on the company and any officer in default and KES 50,000 for any day of non-compliance.

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