



THE COMPANIES (BENEFICIAL OWNER INFORMATION) REGULATIONS; 2020

The Registrar of Companies has given notice that the Beneficial Owner (BO) E-Register has been operationalised with effect from 13th October 2020. This is pursuant to the **Companies (Beneficial Owner Information) Regulations; 2020**. Every company is now required to keep a register of its beneficial owners and submit a copy of it to the Registrar within 30 days of its preparation. This article gives a summary of the regulations and their requirements.

Who is a Beneficial Owner?

A beneficial owner is defined as a natural person who ultimately owns or controls a legal person or arrangement. The regulations further expound that a BO shall be a natural person who meets any of the following conditions in relation to the company:

- (a) Holds at least 10% of the issued shares in the company either directly or indirectly;
- (b) Exercises at least 10% of the voting rights in the company either directly or indirectly;
- (c) Holds a right, directly or indirectly, to appoint or remove a director of the company; or
- (d) Exercises significant influence or control, directly or indirectly, over the company.
- (e) Significant influence means participation in finances and financial policies of a company without necessarily having full control over them.

What details are entered in the Register of Beneficial Owners?

A company shall take reasonable steps to identify its beneficial owners and enter in the register the following particulars relating to the beneficial owners:

- (a) full name;
- (b) national identity card number / passport number;
- (c) personal identification number;
- (d) nationality;
- (e) date of birth;
- (f) postal address;
- (g) business address;
- (h) residential address;
- (i) telephone number;
- (j) email address;
- (k) occupation or profession;
- (l) nature of ownership or control;
- (m) date on which any person became a beneficial owner;
- (n) date on which any person ceased to be a beneficial owner; and
- (o) any other detail the Registrar may from time to time require.



Company's duty to investigate and obtain beneficial owner particulars

A company shall give notice to a person it knows or has reasonable cause to believe that the person is its beneficial owner, requiring the person to provide the above particulars. A person is required to comply with the notice within twenty-one days.

A company shall issue a warning notice to a person who fails to comply and keep a copy of the warning notice in its register of beneficial owners. A company shall notify a person in writing and *restrict* the relevant interest of a person if the person has not complied with the warning notice within fourteen days of the notice.

Where the notice is subsequently complied with, a company shall withdraw the restriction placed on the relevant interest within fourteen days of compliance of the notice.

Effect of Restriction

The effect of a restriction on the relevant interest is as follows—

- a) any transfer of the interest is void;
- b) no rights are exercisable in respect of the interest;
- c) no shares may be issued in right of the interest or in pursuance of an offer made to the interest-holder;
- d) no payment may be made of sums due from the company in respect of the interest.

Filing with the Registrar of Companies

A company is required to:

- a) Lodge with the Registrar a copy of its register of beneficial owners in the prescribed form.
- b) Lodge with the Registrar the particulars of any changes of its beneficial owners in the prescribed form.
- c) File notice of a person ceasing to be a beneficial owner in the prescribed form.
- d) File a copy of any restriction issued under the regulations within fourteen days of issuance of the restriction.
- e) File a copy of withdrawal of restriction issued under the regulations within fourteen days of issuance of withdrawal



Disclosure of beneficial owner information

A company shall not use or disclose any information of its beneficial owner except for communicating with the beneficial owner concerned, complying with the requirements of these regulations and in order to comply with a court order.

Beneficial owner information shall not be made available to the public. The Registrar may however avail it to a competent authority upon written request. Competent authority means the Attorney General, any criminal investigation agency, law enforcement agencies and authorities that supervise and monitor the financial sector including The Financial Reporting Centre and the Kenya Revenue Authority.

The Way Forward

Companies need to embark on obtaining beneficial owner information and compiling their BO register as soon as possible. A copy of the register should be lodged with the Registrar within 30 days of its preparation.

Our secretarial service arm is available to offer guidance and assist in the process of ensuring compliance with these regulations.

For more information, contact;

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