



## ABOUT KENYA'S BENEFICIAL OWNERSHIP LAW

In August 2017, the Parliament of Kenya adopted legislation that introduces a beneficial ownership registry as a means to promote good governance as well as to combat corruption, money laundering and the financing of terrorism.



### WHAT IS THE NAME OF THE LAW?

The Companies Act was amended in 2017 and introduced beneficial ownership requirements. Following a 2019 amendment, beneficial ownership requirements are now housed within **section 93A of the Companies Act**. The Companies (Beneficial Ownership Information) Regulations operationalizes and provides detailed guidance on the implementation of beneficial ownership registry in Kenya.

### WHY IS IT IMPORTANT TO IDENTIFY THE BENEFICIAL OWNER?

Identifying the person that beneficially owns a company can help fight corruption, tax evasion, terrorist financing and money laundering. Large corruption scandals in Kenya, such as the **KES 55 billion (US\$770 million)** Anglo Leasing scheme in the early 2000s, and the **KES 10.5 billion (US\$78 million)** National Youth Service scandal in 2015, took place because criminals were able to hide their identity behind companies and other legal entities. Beneficial ownership regulations help law enforcement with investigations by ensuring that the Kenyan government has access to the necessary information at all times.

### HOW DOES THE LAW DEFINE BENEFICIAL OWNERSHIP?

Kenyan law defines the beneficial owner as the individual that ultimately owns or controls a legal entity. The Companies Regulations provide further guidance specifying that this includes any individual who, directly or indirectly, owns 10% of the shares or voting rights in the company, can appoint or remove a director, or has significant influence over the company.

### WHAT TYPES OF ENTITIES ARE COVERED UNDER IT?

The legislation is directed towards companies "incorporated and registered" in Kenya under the Companies Act. This includes private and public limited companies.

### WHAT TYPES OF ENTITIES ARE NOT COVERED UNDER IT?

Limited Liability Partnerships (LLPs), trusts and foreign companies are currently not required to disclose their beneficial owners.

### FOREIGN COMPANIES AND ILLICIT FINANCIAL FLOWS

The Anglo Leasing scandal in the early 2000s involved government funds being paid to foreign phantom firms for services that were never delivered. Through 18 different contracts, a total of **KES 55 billion (US\$770 million)** was awarded to shadow companies with undisclosed owners. This included companies registered in the UK, France and Switzerland.

### TRUSTS AND ILLICIT FINANCIAL FLOWS

In a huge corruption scandal that was revealed in 2007, former Kenyan president Daniel Arap Moi and his entourage were accused of funneling millions in government money into foreign real estate and bank accounts using a complex web of shell companies, frontmen and secret trusts. A significant amount of the funds was transferred to a Kenya-registered trust on behalf of the Moi family.





## WHO COLLECTS THIS INFORMATION?

The new legislation requires companies to keep a register of their beneficial owners, and lodge a copy of its register with the Registrar of Companies.



## HOW WILL THE INFORMATION BE STORED?

The e-Register for Beneficial Ownership is operational as of October 13, 2020 and is housed by the Business Registration Service (BRS). The BRS operationalized the e-register for private limited companies first, and shall progressively operationalize the e-Registers for public companies and companies limited by guarantee.

## WHAT KIND OF INFORMATION MUST BE DECLARED?

The Companies Regulations 2020 require that a company must take reasonable steps to identify beneficial owners, and obtain:

- Q Full name,
- Q Birth certificate number, national identity card number or passport number,
- Q Personal identification number,
- Q Nationality,
- Q Date of birth,
- Q Postal address,
- Q Business address,
- Q Residential address,
- Q Telephone number,
- Q Email address,
- Q Occupation or profession,
- Q Nature of ownership or control, and
- Q The date on which the person became or ceased to be a beneficial owner of the company.



## WHEN IS THE INFORMATION UPDATED?

Companies are required to update their beneficial ownership e-register by July 31, 2021. Subsequently, a company has to notify the Registrar within 14 days of any change in beneficial ownership registration.



## WHAT IS THE PENALTY FOR FAILURE TO COLLECT THIS INFORMATION?

If a company fails to register its beneficial owners and lodge a copy with the Registrar, it risks a fine up to **KES 500,000 (approximately US\$4500)** levied by Kenya's Business Registration Services.

## WHO HAS ACCESS TO THIS INFORMATION?

The beneficial ownership information is not available to the public, but a competent authority may request access in writing to the Registrar of Companies. This includes the Attorney General, any criminal investigation agency established by law, law enforcement agencies and authorities that supervise and monitor the financial sector including the Financial Reporting Centre and the Kenya Revenue Authority. Companies are also not allowed to disclose beneficial ownership information to the public without consent of the beneficial owner.

## WHAT'S NEXT?

The law is currently being implemented. All new companies are now required to provide beneficial ownership information upon registration. Companies that were already incorporated prior to the Regulations have to enter this information in the e-register by July 31, 2021.

FOR ANY ENQUIRIES OR MORE INFORMATION ON BENEFICIAL OWNERSHIP IN KENYA, KINDLY CONTACT US AT:

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