

**THE COMPANIES (BENEFICIAL
OWNERSHIP INFORMATION) REGULATIONS**

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THE COMPANIES (BENEFICIAL OWNERSHIP INFORMATION) REGULATIONS

[Legal Notice 12 of 2020, Legal Notice 32 of 2022]

1. Citation

These Regulations may be cited as the Companies (Beneficial Ownership Information) Regulations.

2. Interpretation

In these Regulations, unless the context otherwise requires—

"Act" means the Companies Act (Cap. 486);

"arrangement" refers to an artificial entity, without legal personality, associating one or more natural or legal persons together in an ownership or control relationship, but without implying that the parties to this arrangement have any other form of collective legal identity;

"beneficial owner" means the natural person 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;

"competent authority" means the Attorney-General, any criminal investigation agency established by law, law enforcement agencies, authorities that supervise and monitor the financial sector, including the Financial Reporting Centre and the Kenya Revenue Authority;

"contracting authority" has the meaning assigned to it under the Public Private Partnership Act (Cap. 430).

"personal identification number" means the personal identification number issued under section 12 of the Tax Procedures Act (Cap. 469B).

"procuring entity" has the meaning assigned to it under the Public Procurement and Asset Disposal Act (Cap. 412C);

"public private partnership" has the meaning assigned to it under the Public Private Partnership Act (Cap. 430);

"public procurement" has the meaning assigned to it under the Public Procurement and Asset Disposal Act (Cap. 412C);

"Registrar" means the Registrar of Companies appointed under section 831 of the Act;

"relevant interest" means—

- (a) shares held by a person in a company;
- (b) voting rights exercised by a person in the company; or
- (c) the right to appoint or remove any member of the board of directors of the company;

"significant influence or control" means participation in the finances and financial policies of a company without necessarily having full control over them; and

"ultimately owns or controls" means a situation which ownership is exercised through a chain of ownership or by means of control other than direct control.

[L.N. 32/2022, r. 2.]

3. Beneficial owner particulars

(1) In accordance with section 93A of the Act, every company shall have a beneficial owner.

[Subsidiary]

(2) For the purpose of these Regulations, a beneficial owner of a company shall be a natural person who meets any of the following conditions whether individually or jointly in relation to the company—

- (a) holds at least ten percent of the issued shares in the company either directly or indirectly;
- (b) exercises at least ten percent 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.

(3) A company shall take reasonable steps to identify its beneficial owners and shall enter in its register of members following particulars in respect of its beneficial owner—

- (a) full name;
- (b) birth certificate number, national identity card number or 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) the date on which any person became a beneficial owner of the company;
- (n) the date on which any person ceased to be a beneficial owner; and
- (o) any other relevant detail the Registrar may from time to time require.

(4) The information on the nature of ownership or control referred to in sub regulation (3)(1) is as specified in regulation 3(2).

(5) A company shall lodge with the Registrar a copy of its register of beneficial owners in Form BOF1 set out in the First Schedule in accordance with section 93A(3) of the Act.

(6) A company shall lodge with the Registrar the particulars of change of its beneficial owners in Form BOF2 set out in the First Schedule and shall pay the fees set out in the Second Schedule.

(7) A company shall file a notice of a person ceasing to be beneficial owner to the Registrar in Form BOF3 set out in the Second Schedule in accordance with section 93A(4) of the Act and pay the fee set out in the Third Schedule.

[L.N. 32/2022 r. 3.]

4. Company's duty to investigate and obtain beneficial owner particulars

(1) A company shall give notice to a person it knows or has reasonable cause to believe that the person is a beneficial owner of company, requiring the person to provide the particulars set out in Regulation 3(3).

(2) A person who receives a notice under this regulation shall comply with the requirements of the notice not later than twenty one days from the date of the notice.

(3) A person who receives a notice under sub regulation (1) is not required to disclose any information in respect of which the Court has directed not to be disclosed.

5. Warning notice

A company shall issue a warning notice to a person who fails to comply with the provisions of regulation 4 and keep a copy of the warning notice in its register of beneficial owners.

6. Content of a warning notice

A warning notice issued under regulation 5 shall—

- (a) specify the date on which the warning notice is issued and the date of compliance;
- (b) be accompanied by a copy of the notice issued under regulation 4;
- (c) require the person to comply with the notice issued under regulation 4;
- (d) state that it is proposing to restrict the relevant interest the person holds in the company; and
- (e) explain the effect of the restriction.

7. Restriction

(1) A company shall restrict the relevant interest of a person if the person has not complied with the warning notice within fourteen days from the date of the warning notice.

(2) A company shall make a note in the company's register to indicate the restriction issued under sub regulation (1).

(3) A company shall file a copy of the restriction issued under this regulation with the Registrar within fourteen days from the date of the issuance of the restriction.

8. Content of a restriction

Where a company restricts the relevant interest of a person it shall notify the person affected by the restriction, in writing of the—

- (a) date the warning notice under regulation 5 was issued;
- (b) date on which the restriction was issued; and
- (c) effect of the restriction.

9. Effect of restriction

The effect of a restriction issued under regulation 7 respect to a 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.

10. Withdrawal of the restriction

(1) Where a notice issued under regulation 5 is complied with after the time specified in the notice, the company shall, within fourteen days of compliance of the notice, withdraw the restriction placed on the relevant interest of the beneficial owner.

(2) A company shall note in its register of beneficial owners—

- (a) the date on which the withdrawal was issued;
- (b) the date on which the company became required to withdraw the restriction; and
- (c) the person's relevant interest in the company.

(3) The company shall file a copy of the withdrawal issued under this regulation with the Registrar within fourteen days from the date the withdrawal was issued.

[Subsidiary]

11. Identification

The company shall note in its register of beneficial owners that it knows or has reasonable cause to believe that there is a beneficial owner in relation to the company but—

- (a) has not identified the beneficial owner;
- (b) has not been able to obtain the beneficial owner particulars;
- (c) has issued a warning notice which has not been complied with;
- (d) has issued a restriction notice; or
- (e) there is a matter pending before court in relation to beneficial ownership.

12. Offence

A person who discloses beneficial ownership information in any manner other than for the purpose for which such information is obtained commits an offence and shall be liable upon conviction to a fine not exceeding twenty thousand shillings or to imprisonment for a period not exceeding six months, or to both.

13. Disclosure of beneficial owner information

(1) A company shall not use or disclose any information about its beneficial owner, except—

- (a) for communicating with the beneficial owner concerned;
- (b) in order to comply with any requirement of these Regulations; or
- (c) in order to comply with a court order.

(2) Notwithstanding sub regulation (1) information relating to a beneficial owner may be disclosed with written consent of the beneficial owner.

(2A) Notwithstanding sub-regulation (1), a company shall disclose its beneficial ownership information to—

- (a) the procuring entity, where the company participates in public procurement and assets disposal under the Public Procurement and Asset Disposal Act (Cap. 412C); or
- (b) the contracting authority, where the company participates in a public private partnership arrangement under the Public Private Partnership Act (Cap. 430).

(3) The Registrar may use information relating to a beneficial owner for communicating with the beneficial owner.

(4) Beneficial ownership information shall not be made available to the public.

(5) Notwithstanding sub regulation (4), beneficial ownership information maintained by the Public Procurement Regulatory Authority in the Government Portal, in relation to entities that have been awarded a tender by the procuring entity as part of contract award, shall be published and made publicly available.

(6) Information relating to a beneficial owner shall only be made available to a competent authority, the Public Procurement Regulatory Authority or the Public Private Partnership Committee upon a written request by the competent authority, the Public Procurement Regulatory Authority or the Public Private Partnership Committee to the Registrar.

(7) Notwithstanding the provisions of this regulation, the Government may seek, publish and publicise any important information regarding a company if such information affects the country.

[L.N. 32/2022, r. 4.]

FIRST SCHEDULE

[r. 3(3)]

FORMS

[L.N. 32/2022]

FORM BOF 1

REGISTER OF BENEFICIAL OWNERS*

[Section 93A of the Companies Act (Cap. 486)]

Name of company :

Number of company:

To the Registrar of Companies:

The above company hereby lodges, the register of beneficial owners in accordance with section 93A of the Companies Act (Cap. 486) that the following person is a beneficial owner of the company.

Date that the person became a beneficial owner: ____/____/____ [dd/mm/yyyy]

BENEFICIAL OWNER

Full Name

Birth Certificate Number, National identity card

number or Passport number

Personal identification number

Nationality

Date of birth [dd/mm/yyyy]

Postal address

Business address

Residential address

Telephone number

Email address

Occupation or profession

NATURE OF OWNERSHIP OR CONTROL

Nature of ownership or control the beneficial owner has in the company

€ The percentage of shares a person holds in the company

€ Directly ____ % of shares

€ Indirectly ____ % of shares

€ The percentage of voting rights a person holds in the company

€ Directly % of voting rights

€ Indirectly % of voting right

€ A person holds a right to appoint or remove a majority of the board of directors of the company; and/or
Directly
Indirectly

Companies

[Subsidiary]

€ A person exercises
significant influence or
control over the company
Directly
Indirectly

[Note: Please enter particulars of every beneficial owner in a separate form]

LINK OF BENEFICIAL OWNER WITH THE COMPANY IN INDIRECT OWNERSHIP

Specify—

- (a) Name of shareholder holding shares on behalf of the beneficial owner of the company;
(b) Name of director appointed by the beneficial owner;

Lodged on behalf of the company by:

Name:

National identity card number / Passport number

Address:

Telephone number

Email address

Signature:

Capacity**:

Source***:

Date:

NOTES

- * This form is used to notify the Registry of the particulars of company beneficial owners.
- ** Please indicate whether director, certified secretary or advocate of the company.
- *** Please indicate whether the information obtained was
(a) provided by the beneficial owner or their authorised representative;
(b) taken from an official register; or
(c) provided by a third party not directly related to the beneficial owner.

FORM BOF 2

CHANGE OF BENEFICIAL OWNERS' PARTICULARS*

[Section 93A of the Companies Act (Cap. 486)]

Name of company:

Number of company

To the Registrar of Companies:

The above company hereby gives notice in accordance with section 93A of the Companies Act (Cap. 486), that the registered particulars ** of the beneficial owners of the company, as specified in column 1 of the table below, have changed as indicated in column 2 of that table.

Column 1

Name of the beneficial owner concerned

Column 2

Particulars of change

Lodged on behalf of the company by:

Name:

National identity card number / Passport number

Telephone number

Postal Address:

Email address

Signature

Capacity***:

Source****:

Date:

NOTES

- * This form is used to notify the Registry of changes in the particulars of company beneficial owners.
- ** The particulars to be notified are of changes occurring in the company's register of beneficial owners.
- *** Please indicate whether director, certified secretary or advocate of the company.
- **** Please indicate whether the information obtained was (a) provided by the beneficial owner or their authorised representative; (b) taken from an official register; or (c) provided by a third party not directly related to the beneficial owner

FORM BOF 3 (r. 3(5))**NOTICE OF CEASING TO BE A BENEFICIAL OWNER***

[Section 93A of the Companies Act (Cap. 486)]

Name of Company

Number of the company

To the Registrar of Companies:

The above company hereby gives notice in accordance with section 93A of the Companies Act (Cap. 486) that the beneficial owners of the company, as specified in column 1 of the table below, ceased to be beneficial owners of the company on the date(s) specified opposite that/those name(s) in column 2 of that table.

<i>Column 1</i>	<i>Column 2</i>	<i>Column 3</i>
<i>Name of the beneficial owner concerned</i>	<i>Date on which a person ceased to be a beneficial owner</i>	<i>Reason(s) for cessation</i>
	____/____/____ [dd/mm/yyyy]	
	____/____/____ [dd/mm/yyyy]	
	____/____/____ [dd/mm/yyyy]	
	____/____/____ [dd/mm/yyyy]	
	____/____/____ [dd/mm/yyyy]	

Lodged on behalf of the company by:

Name:

National identity card number / Passport number:

Telephone number

Companies

[Subsidiary]

Postal Address:

Email address

Signature:

Capacity**:

Source***:

Date:

* This form is used to notify the Registry when a person ceases to be a beneficial owner.

** Please indicate whether director, certified secretary or advocate of the company.

*** Please indicate whether the information obtained was:—

- (a) provided by the beneficial owner or their authorised representative;
(b) taken from an official register; or
(c) provided by a third party not directly related to the beneficial owner.

SECOND SCHEDULE

[r. 4]

FEES

<i>Item</i>	<i>Fee</i>
Notice of ceasing to be a beneficial owner	500
