

BUSINESS SUPPORT & ADVISORY

COMPANY SECRETARIAL SERVICES

BUSINESS REGISTRATION SERVICES

BENEFICIAL OWNERSHIP E-REGISTER



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OWUOR OGADA & | ASSOCIATES
CERTIFIED PUBLIC
ACCOUNTANTS

INTRODUCTION

“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 arrangements;

The Business Registration Service, BRS, a semi-autonomous body under the Office of the Attorney General and Department of Justice has operationalized section 93A of the Companies Act, 2015 ("the Act") and the Companies (Beneficial Ownership Information) Regulations, 2020 that requires companies registered under the Act to keep register of all its beneficial owners and lodge the same with the Registrar of Companies.

13th October, 2020

effective date

The Beneficial Ownership Register will create greater transparency in the ownership of companies in Kenya and support the government in the fight against corruption, money laundering and financing of terrorism

THE AIM

BRS MANDATE

BRS was established by the Business Registration Service Act, 2015 with a mandate to oversee the operations of the Companies Registry, Movable Property Security Rights Registry (Collateral Registry), Insolvency (Official Receivers) Registry and the Hire Purchase Registry in Kenya.



SCOPE OF APPLICATION

That the requirement to register beneficial ownership apply to beneficial owners defined in the Regulations of all companies in Kenya whether Public or Private and where Private whether limited or unlimited including companies that were formed before 2015.

More specially, the Regulations apply to a beneficial owner who:

- + holds at least 10% of the issued shares in the company either directly or indirectly;
- + exercises at least 10% of the voting rights in the company either directly or indirectly;
- + holds a right, directly or indirectly, to appoint or remove a director of the company; or
- + exercises significant influence or control, directly or indirectly, over the company. Significant influence or control under the Regulations means ‘the ability to participate in decision making when it comes to matters relating finances and financial policies of a company without necessarily having full control over them.’

The Registrar of Companies is requiring all companies to comply with the Regulations and submit their respective beneficial ownership registers to the Companies Registry’s BO Register within 30 days of its preparation.

The details companies are required by the Regulation to track & keep of its beneficial owners include;

- | | |
|---|----------------------------|
| + full name | + nationality |
| + Kenya Revenue Authority PIN | + date of birth |
| + ID number, Passport number or Alien ID | + occupation or profession |
| + telephone number | + postal address |
| + nature of ownership or control; the date on which any person became and/or ceased to be a beneficial owner; and | + residential address |
| | + email address |
| + any other relevant detail that the Registrar of Companies may from time to time require. | |

NON-COMPLIANCE

Failure to provide a register of beneficial owners effectively curtails the enjoyment of any rights or interest granted to that beneficial owner. The rights and interests that would be restricted

- + any transfer of interest is void
- + no rights are exercisable in respect of interest (in relation to holding shares, exercising voting rights or participating in the appointment or removal of Board of directors
- + no shares may be issued in the right of interest or in pursuance of an offer made to the interest holder
- + no payment may be made of sums due from the company in respect of interest

CONFIDENTIALITY OF BENEFICIAL OWNERSHIP E-REGISTER

The information held for beneficial owners may not be shared in any manner other than for the purpose(s) envisaged by the Regulation. Any one who contravenes commits an offence and shall be liable upon conviction to a fine not exceeding KES 20000 or to imprisonment for a period not exceeding six months or both. The exceptions for sharing beneficial owner (s) information include;

- + for communicating with beneficial owner concerned
- + in order to comply with a court order
- + upon a written request by a competent authority to the office of the attorney and an investigative agency
- + with written consent of the beneficial owner

NEXT STEP

We would be pleased to assist your company with the requirements of the Regulation. Please contact [Marvin Odhiambo](#) on +254 723 94 6615 or marobdao@gmail.com or [Belinda Awino](#) on +254 702 89 2456 or belindaawino5@gmail.com.



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