

*Disclosure of the Beneficial Ownership in Kenya*



# ***Disclosure of the Beneficial Ownership in Kenya***

## **Introduction**

Kenyan companies are now required to submit details of their beneficial owners to the Registrar of Companies (ROC). In 2019, the Companies Act, 2015 was amended to introduce a requirement for every company to maintain a register of its beneficial owners and to submit a copy of this register to the Registrar. In February 2020, Companies (Beneficial Ownership Information) Regulation 2020 was published and the submission of the register with the ROC became operational from 13 October 2020.

## **Changes introduced**

Every company in Kenya, where ownership or control in a company is exercised through direct or indirect chain will have to maintain a register of beneficial owners. All companies are required to submit a copy of their beneficial ownership register within 30 days of its preparation on to the E-Register of ROC.

## **Beneficial Owner**

A beneficial owner is defined in the Regulation as any natural person who:

- 1) Either directly or indirectly holds at least 10% of the issued shares in a company
- 2) Exercises at least 10% of the voting rights in the company
- 3) Holds a right to appoint or remove a director of the company
- 4) Exercises significant influence or control over the company

## **Information required**

The register of beneficial owners should contain particulars of each beneficial owner as follows:

1. Full Name
2. Birth certificate number, ID / Passport number
3. Nationality
4. Date of birth
5. Postal, business and residential address
6. Occupation / Profession
7. PIN/TIN number
8. Nature of ownership or control
9. Date when the natural person became a beneficial owner

The Company shall not disclose the information except for the purposes of communicating with the Beneficial Owner, for the purposes of complying with the Regulations or to comply with a court order.

The Registrar of Companies is also obligated to keep the information confidential and shall only make the information available to a competent authority upon written request.

It is now compulsory for new companies to provide these details at the time of incorporation.

### **Subsequent changes**

Except in case of listed companies, the company is required to notify the ROC of any subsequent changes in beneficial ownership within 14 days of any change by filing an 'amended register of beneficial owners'.

### **Implications**

The ROC has configured the eCitizen portal such that existing companies are not able to submit any corporate changes unless they have first submitted their beneficial ownership details. The operationalisation of the E-Register is likely to impact significant delays in transactions like getting CR12, changes in directorship or changes in shareholding etc.

Failure by the beneficial owner to provide the required details within 14 days of the company's request will result in the company restricting the shares' voting rights and board rights of the non-compliant beneficial owner.

If a company fails to comply, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding Kenya Shillings five hundred thousand (KES 500,000) for a first offence and an additional fine of KES 50,000 per day for continuing non-compliance.

### **Actions required**

We recommend that companies begin by identifying the natural persons that constitute beneficial owners of the company, and consider the basis of classification, as the required particulars under the Regulations must include a statement of the nature of the interest.

If not complied with, the company has the authority, under the Regulations, to serve a warning notice to the beneficial owner requesting them to comply with the notice within 14 days, or the interest of the beneficial owner in the Company will be restricted.

For any clarification, please contact *Ameesha Chalise* or *Keval Haria* in our office.

Prepared by B. C. Patel & Co for client service and internal use only.  
The analysis/views in this booklet do not purport to be and should not be treated  
as professional opinion. Nothing contained herein can substitute professional  
opinion for specific situations that may affect you or your organization.

Email: [audit@resources.co.ke](mailto:audit@resources.co.ke)  
Nairobi, Kenya  
25.10.2020