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REGISTER OF BENEFICIAL OWNERSHIP – FAQ

Who is a beneficial owner?

The beneficial owner is a natural person who meets any of the following conditions in relation to the company:

- 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;
- holds a right to directly or indirectly appoint or remove a director of the company; or
- exercises significant influence or control over the company (whether directly or indirectly).

Is a company owned by individual shareholders required to prepare and lodge beneficial ownership information with the Registrar of Companies?

Yes. Disclosure of beneficial ownership applies to all companies whether the shareholders are individuals or corporate shareholders.

How does one identify the beneficial owners where shares in a company are held by corporate shareholders?

One is supposed to trace the natural persons who are the ultimate beneficial owners.

Example:

Company B is a shareholder in Company A. Company B owns 20% shareholding in Company A. The owners of Company B are Mr. X, Mr. Y and Mr. Z. The percentage shareholding in Company B is as follows:

Mr. X = 50%
Mr. Y = 25%
Mr. Z = 25%

The e-citizen platform is configured in such way that it picks the percentage shareholding of Company B in Company A as 20%. The percentage shareholding of Mr. X in Company A is 50% * 20% = 10%. In this case, Mr. X will qualify as a beneficial owner on the basis of owning 10% of Company A (indirectly).

Mr. Y and Mr. Z each have a 5% shareholding and will not be considered as beneficial owners.

Who qualifies as a beneficial owner in the instances below?

a) Shares held in trust where there is no identifiable beneficial owner as the shares are held in trust for a wider public

The trustees qualify as beneficial owner(s) on the basis of exercising significant influence or control over the trust.

b) Shares held in trust through nominated trustees

The ultimate beneficial owner is the person for whom the shares are held in trust.

In a case where there are many shareholders and no shareholder holds 10% of the issued shares, or where the shares are held on behalf of the community.

The four conditions stipulated under the regulations would guide on the identification of the beneficial owners of the Company. If the first condition is not applicable, you move to the next until all the conditions are covered. Ideally, there will be one or two shareholding directors who ultimately control the day-to-day operations of the company or have the mandate to manage the company. These would be the beneficial owners.

Who holds the right to appoint or remove a Director of the company?

The Directors of the company can be appointed through any of the following methods:

- Provisions of the Companies Act
- Provisions in the Articles of Association
- Shareholders Agreements

The beneficial ownership disclosure requirement is applicable to which types of companies?

The Beneficial Ownership disclosure regulations apply to all Companies incorporated or registered under the Companies Act, 2015, namely:

- Companies limited by shares (private or public)
- Companies limited by guarantee

Is a branch of a foreign company operating on a certificate of compliance required to disclose the beneficial ownership details?

Branches are not covered under the requirements to disclose details of the beneficial ownership.

However, where a branch owns shares in a Kenyan company, it may be required to disclose the beneficial ownership details if the criteria given for identification of beneficial owners are met.

Is it possible to have a registered company without a beneficial owner?

The conditions given for identification of the beneficial owners are such that at least one or more persons meet the stipulated criteria.

Where shares are held jointly, who qualifies as a beneficial owner?

Under Section 9 (3) of the Companies Act, 2015, two or more persons who hold shares in a company jointly are taken to be a single member. Section 93 (4) further requires the name of each joint holder to be registered in the members' register separately. All joint shareholders qualify as beneficial owners.

What are the penalties for non-compliance?

Except in the case of listed companies, any subsequent changes in beneficial ownership information should be notified to the Registrar within 14 days by way of filing an amended register of beneficial owners.

In the event of failure to comply with these requirements, the company and every officer who is in default will each be liable on conviction to a fine of up to KShs 500,000 for a first offence and an additional fine of KShs 50,000 each per day for continuing non-compliance.

Is the beneficial ownership information accessible by the public?

Access to and disclosure of beneficial ownership information is restricted to the following circumstances:

- Disclosure to the registrar
- Communication by the company to the beneficial owner
- With written consent of the beneficial owner
- Upon a written request from a competent authority
- If required by the Regulations or a Court Order

What are the penalties for unlawfully disclosing beneficial ownership information?

The fine is upon conviction. The fine shall not exceed KShs 20,000 or imprisonment for a period not exceeding six months or both.

Does it mean all Directors are automatically beneficial owners on the grounds that they exercise significant influence?

If the Directors of a company exercise the significant influence as defined in the regulations, they will qualify as beneficial owners. In case of private companies, such Directors are usually shareholding directors, who despite owning 10% or more of the shares, would have the mandate to manage the company.



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