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Register of beneficial ownership

Introduction

During the 2016 London Anti-Corruption Summit, Kenya made a commitment to fighting corruption which included the establishment of the Register of Beneficial Ownership Information for companies, which led to the amendment of the Companies Act, through the Companies (Amendment) Act, 2017 which came into force on 3rd August 2017, to introduce the concept of Beneficial Ownership Register.

The Companies Act was further amended in 2019 making it a requirement for every company to keep a register of its beneficial owners and to submit a copy of the register to the Registrar of Companies.

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).



The required information includes the following details:

- Full name (of the beneficial owner)
- Birth certificate number, national identity card number or passport number; personal identification number (PIN)
- Nationality
- Date of birth
- Postal and business address
- Residential address, telephone number and email address
- Occupation or profession
- Nature of ownership or control
- The date on which any person became a beneficial owner of the company
- The date on which any person ceased to be a beneficial owner; and
- Any other relevant detail the Registrar may require from time to time.

If the shareholder is a corporate shareholder then it means the shares are indirectly held, hence the corporate shareholder should provide the names of the natural persons who are the ultimate beneficiary.

On the instances where the shares are held in trust, the details of the principal/beneficial owner should be disclosed



What are companies required to do?

Companies are required to take reasonable steps to identify its beneficial owners and to enter their information in its Register of Beneficial owners.

All companies are expected to issue "warning notices" to beneficial owners who fail to provide the information required by the regulations and to restrict the relevant interest of that person if he or she fails to disclose the information within fourteen days from the date of receiving the warning notice. Such restrictions would include restrictions on the transfer of shares and payment of dividends.

A copy of the Beneficial Ownership Register information must be submitted to the Registrar within 30 days of preparation.

What are the implications to companies?

During incorporation details of beneficial owners are required to be submitted.

Existing companies will be restricted to effect any changes in shareholding and directorship unless the beneficial ownership register is updated.

Subsequent changes

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.

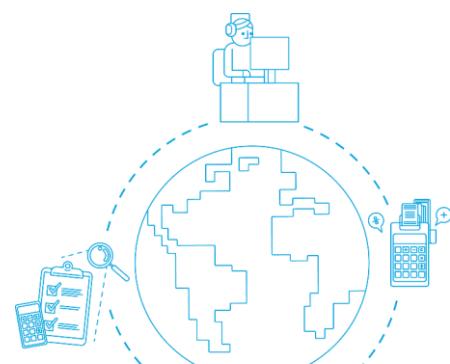
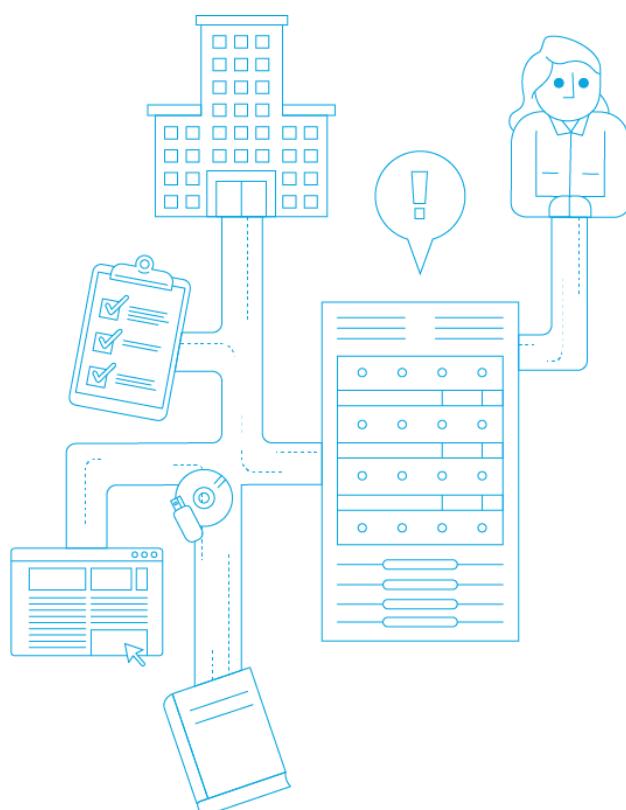
Penalties for non-compliance

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.

Timeline

Every company should update their beneficial ownership register before 31st January 2021 to ensure compliance with the Companies Act, 2015.

Note: The guidelines guiding on the process of identifying and verifying the identity of the beneficial owners are not yet out.



Caveat

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