



## Register of Beneficial Ownership

### Introduction

Section 93A of the Companies Act, 2015 (“the Act”) requires all companies to keep and lodge with the Registrar of Companies, a register with details of their beneficial owners.

The Companies (Beneficial Ownership Information) Regulations, 2020 (the “Regulations”) provides guidance on how to maintain the register of the beneficial owners. The Business Registration Services platform has now been configured to allow companies to lodge their register of beneficial owners with effect from **13 October 2020**.

### Obligations under the new Regulations

The Regulations define a beneficial owner as the natural person who **ultimately owns or controls** a legal person or arrangement or the natural person on whose behalf a transaction is conducted, and includes persons who exercise ultimate effective control over a legal person or arrangement.

The Regulations apply to a beneficial owner who:

- a) holds at least 10% of the issued shares of the company either directly or indirectly;
- b) exercises at least 10% of the voting rights in the company;
- c) holds a right to directly or indirectly appoint or remove a director of the company; or
- d) exercises significant influence or control over the company (whether directly or indirectly).

The Regulations require a company to take reasonable steps to identify its beneficial owners and enter their details in its register of members. The particulars to be included in the register include; the full name, birth certificate number, national identity card or passport number, personal identification number, nationality, date of birth, postal address, business address, residential address, telephone number, email address, occupation or profession, nature of ownership or control and the date on which a person ceased to be a beneficial owner.

To operationalise the above requirements, the Registrar of Companies has updated the Business Registration Services platform to include an E-Register for lodging the particulars of the beneficial owners using a prescribed form.

Companies are required to comply with the above provisions within 30 days of collating information of their beneficial owners and to update the register for any subsequent changes. Enforcement is largely in the hands of companies who are required to restrict interests of corporate shareholders who fail to disclose their beneficial owners. This includes restricting transfer of shares, payment of dividends and voting rights. On the other hand, companies and their officers (director, manager or secretary) face a penalty of up to **USD 5,000** for failure to comply with this requirement.

### Our comments

Many governments across the world have introduced legislation that requires companies to maintain and disclose to government details of their ultimate beneficial owners as one way to fight social ills such as money laundering, corruption and tax evasion. Through the Companies (Beneficial Ownership Information) Regulations, 2020 Kenya has joined this global effort.

KPMG is happy to discuss the implication of the new regulations and to assist you to comply.

Regards

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