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THE COMPANIES ACT AND BENEFICIAL OWNERSHIP

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Disclaimer: This Article does not form part of a Legal Opinion and is purely informative.

INTRODUCTION

The Statute Laws (Miscellaneous Amendments) Act No. 12 of 2019 was assented to on 5th July 2019. The law amends Section 93A of the Companies Act 2015 by making it a requirement for all companies incorporated in Kenya to register its beneficial owners. In a legal notice dated 18th February 2020, the Companies (Beneficial Ownership Information) Regulations 2020 were gazetted to give effect to Section 93A of the Companies Act.



BENEFICIAL OWNERSHIP DEFINED

The beneficial owner of a company is defined as a natural person who is the ultimate owner or controls a legal person or arrangements or the natural person on whose behalf a transaction is conducted, including persons who exercise ultimate effective control over a legal person or arrangement. Such a person may directly or indirectly –

- hold at least 10% of the shares issued;
- exercise at least 10% of the voting rights;
- holds a rights to appoint or remove a director; or
- exercise significant influence or control over a company

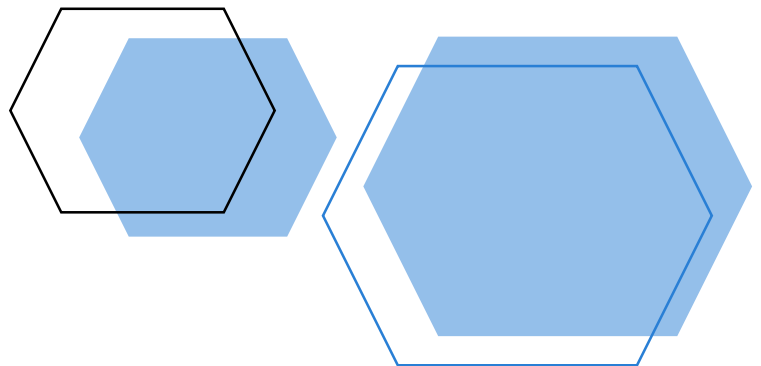
BENEFICIAL OWNER'S PARTICULARS

A company is required to submit a copy of its beneficial owners' register within 30 days of its preparation. Such register must contain the particulars of each beneficial owner including, full names; birth certificate, national I.D. or passport numbers; KRA PIN; nationality; date of birth; postal address; business address; residential address; phone number; email; occupation; nature of ownership or control; date on which they became a beneficial owner; date on which any person ceased to be a beneficial owner and any other relevant detail the Registrar may require.

DUTY TO INVESTIGATE AND OBTAIN PARTICULARS

The regulations impose a duty on the company to investigate and obtain the particulars of its beneficial owners. In the first instance it must issue a notice to the person believed to be a beneficial owner. Compliance with such notice is required within 21 days of its issue.

If there is a failure to comply, the company is obligated to issue a warning notice and maintain a copy of the same in its register of beneficial owners.





RESTRICTION

The company is required to restrict the relevant interest of a person who fails to comply with a warning notice within 14 days of the date of issue. A note of the restriction is made in the company's register. Additionally, a copy of the restriction is to be filed with the Registrar within 14 days of the date of issuance of the restriction.

Generally the effect of such a restriction with respect to a relevant interest is that –

- any transfer of interest is void;
- the person may not exercise rights in respect of the interest;
- no shares may be issued in an allotment to that person; and
- no payment may be made *viz.* the interest they hold in the company.

WITHDRAWAL OF RESTRICTION

Where the warning notice is complied with, after the time specified in the notice, the company is required to withdraw the restriction placed on the relevant interest within 14 days. In addition, the company is required to make a note in its register the date of withdrawal; the date the company became required to withdraw the restriction; and the person's relevant interest.

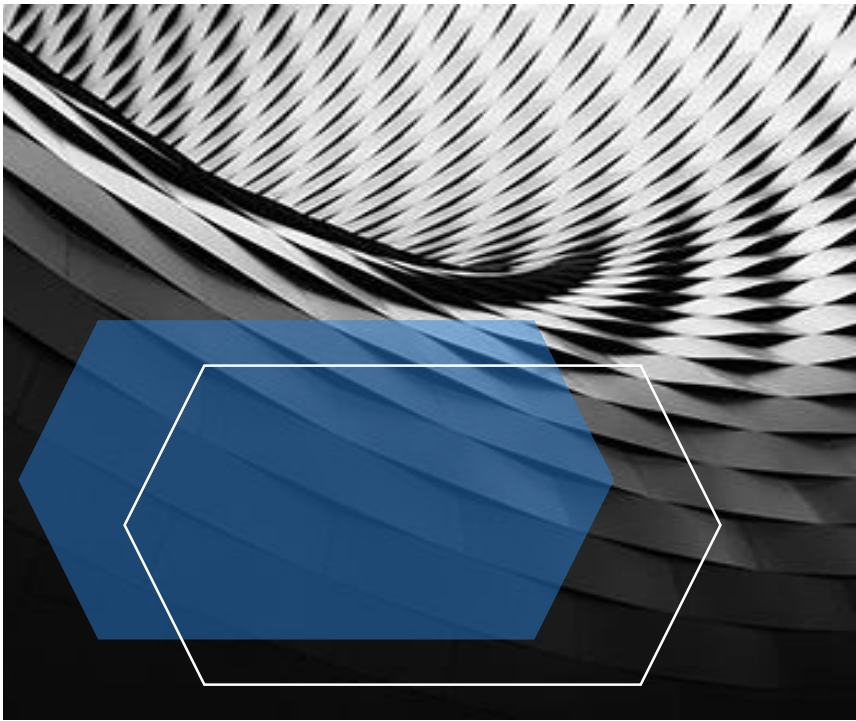
DISCLOSURE OF INFORMATION

In line with the provisions of the Data Protection Act 2019, the regulations require that companies do not disclose information on the beneficial owner to the public at large unless the beneficial owner has consented to such disclosure. Disclosure is only permitted for the purposes of communication with the beneficial owner; compliance with the regulations or a court order.

Disclosure of such information attracts a penalty not exceeding Kshs. 20,000 or imprisonment for a term not exceeding 6 months or to both.

PENALTIES FOR NON-DISCLOSURE

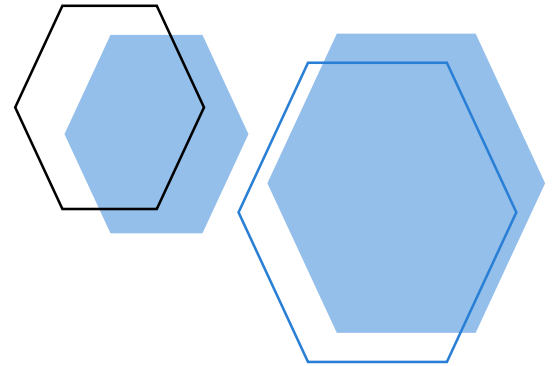
Pursuant to Section 93A of the Companies Act, a company that fails to comply with the disclosure requirements commits an offence subject to a fine of Kshs. 500,000 payable by the company and each of the officers in default. If non-compliance continues, the company and its officers are liable to additional penalties not exceeding Kshs. 50,000 daily.



CONCLUSION

The e-register has been operational since 13th October 2020. The deadline for submission of beneficial ownership has been extended to 31st July 2021. Failure to disclose the relevant beneficial ownership information by such date will be subject to the penalties listed above.

We will publish any further updates.



YOUR CORPORATE AND COMMERCIAL TEAM



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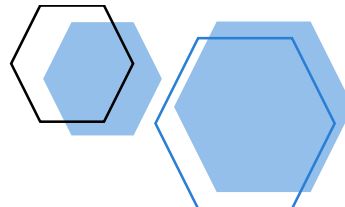
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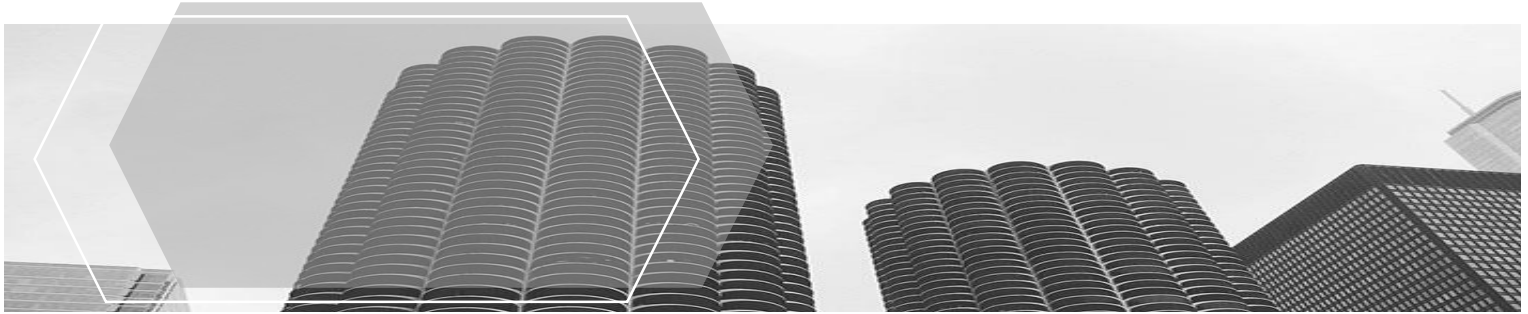


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