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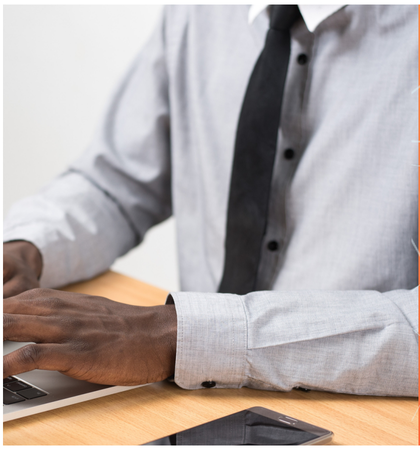

FREQUENTLY ASKED QUESTIONS:

THE BENEFICIAL OWNERSHIP REGISTER IN KENYA, 2021

1 Who is considered a 'Beneficial Owner' in Kenyan companies?

A beneficial owner is an individual who meets any of the following requirements:

- Holds at least 10% of the issued shares in the company, directly or indirectly.
- Exercises at least 10% of the voting rights in the company.
- Can exercise significant influence in a company either directly or indirectly.

2 Which kind of companies in Kenya must be in compliance with the 'BO' regulations?

All companies in Kenya that have been incorporated or registered under the Companies Act, 2015 must be in compliance with the BO regulations; this includes:

- Private and public companies limited by shares.
- Private or other companies that are limited by guarantee.

3 What are the penalties applicable to companies and officers for non-compliance?

If a unlisted company doesn't conform with the requirements of the beneficial ownership declaration, the company and every officer who is in default will be liable to:

- A fine of upto Ksh 500,000 on the first offense of non-compliance.
- A daily fine of Ksh 50,000 is payable until compliance with the law.

4 Who will be able to access any data relating to the beneficial ownership of companies?

'BO' data access, as always, will be strictly restricted, and only given access in the following circumstances:

- Disclosure to the registrar.
- Communication by the company to the 'BO'.
- Having written consent by the 'BO'.
- If required by regulation, or court order.

5 What are the <u>penalties applicable</u> for unlawfully disclosing 'BO' data?

In a situation where a persons unlawfully discloses private beneficial ownership data, they will be subjected to a fine upon conviction:

- A monetary fine of up to Ksh 20,000.
- A prison sentence not exceeding a period of 6 months.
- Or both of the above.

6 Do the 'BO' requirements apply to <u>branches</u> of foreign companies operating under 'certificate of compliance' in Kenya?

'Branches of foreign companies operating under a 'Certificate of Compliance' are not subjected to the beneficial ownership requirements.

However, if the branch holds any shares in a Kenyan company, it may be required to comply, should the criteria of identifying 'BOs' are not met by the local company.

7 Who holds the <u>rights to appoint</u> or remove a director of a company? Also, by <u>what date must all companies comply</u> with the regulations by?

The directors of a company can be appointed or removed by way of:

- Provisions as outlined in the Companies Act, 2015.
- Provisions as outlined in the Articles of Association of the company.
- Shareholder agreements in place.

Companies must comply with regulations by the <u>31st of January 2021</u>.

8 What happens in a situation where there are <u>many shareholders</u>, none of who hold more than or equal to 10% of shares, or where shares are held on <u>behalf of a community?</u>

There are 4 conditions stipulated under law that must be chronologically followed. If the first condition is not met by the company, the next condition must be considered, until all the 4 conditions are considered. There should ideally exist at least one or two <u>shareholding</u> directors, who would be controlling the day to day operations of the company, or have a mandate to do so - These individuals would be the 'BO'.

9 What is the procedure of complying with the requirements, in a situation where the company shares are held by <u>corporate shareholders?</u>

The correct procedure is to fully trace the natural persons who are the ultimate beneficial owners of the shares in the company. Consider the following example for clarification:

<u>For Example:</u>
Company X is a shareholder of Company Y, with Company X having a 25% ownership. The shareholders of Company X are Mrs. A,B,C.
Mrs A = 50%
Mrs B = 25%
Mrs C = 25%

<u>The Solution:</u>
The e-Citizen platform will treat the percentage shareholding of Company X in Company Y as 25%. The holdings of Mrs A in Company Y is: 50 *0.25=12.5%. As this is a indirect ownership of more than 10%, Mrs A will count as a BO. Mrs B and C will have: 25%*0.25=6.25%, thus not count.

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