



GUIDE ON DISCLOSURE OF BENEFICIAL OWNERSHIP INFORMATION

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CONTENTS

GUIDE ON DISCLOSURE OF BENEFICIAL OWNERSHIP INFORMATION

PART I—PRELIMINARY	7
1. BACKGROUND	7
2. PURPOSE AND OBJECTIVES OF THIS GUIDE	8
3. INTERPRETATION	8
PART II: SCOPE OF BENEFICIAL OWNERSHIP INFORMATION DISCLOSURE REQUIREMENTS	9
A. Applicability	9
PART III– BENEFICIAL OWNERSHIP INFORMATION DISCLOSURE REQUIREMENTS	10
A. Legal Persons	10
1. Beneficial Ownership Information Disclosure Requirements	10
2. Detailed Processes for Identification of Beneficial Owners – Legal Persons	10
2.1 Criteria of identifying a Beneficial Owner	10
2.2 Reasonable steps that a company should take to identify its beneficial owners	11
2.3 How to Identifying a Beneficial Owner in a Legal Person	12
A. Companies	12
1. Company limited by shares	12
2. Company Limited by Guarantee	13
3. Joint Shareholding	14
4. Nominee Shareholdings	14
5. Complex Ownership Structures	14
B. Legal Arrangements	15
1. Identification of Beneficial Owners – Legal Arrangements	15
2. Determining the BO when natural persons and legal arrangements are combined	15
C. Professionals acting in a Professional Capacity	16
D. Case Studies on Ownership Structures	16
PART IV - OBTAINING THE BO INFORMATION	16
1. Information to be noted in the BO register	16
2. Additional Information to be noted in BO Register	17
3. Requirements of a company in relation to BO Information	17
4. Due process to further Obtain Beneficial Ownership Information	18
5. Compliance with the Warning Notice	18
PART V: VERIFYING THE ACCURACY OF BO INFORMATION	18
1. Verification of BO Information	18
2. Verification Documents	19
PART VI: LODGING OF THE BO INFORMATION WITH THE REGISTRAR	19
PART VII: KEEPING THE BO INFORMATION AT THE REGISTERED OFFICE AND ACCESSIBILITY	19

1. Keeping of the BO Information	19
2. Disclosure of BO Information	20
PART VIII: COMPLIANCE PROCESSES: ROLES, RESPONSIBILITIES AND SANCTIONS	21
1. Officers of the Company	21
2. Members of the company (Shareholders)	21
3. Persons who are not members of the Company (non-shareholders)	21
4. Authorized Persons	22
5. Failure to comply with BO Regulations	22
ENQUIRIES	22
GLOSSARY OF TERMS	23
REFERENCES	23
APPENDIX A	24
PROCESSES FOR IDENTIFYING, OBTAINING, AND RECORDING BENEFICIAL OWNERSHIP INFORMATION	24
APPENDIX B	26
ACTIVITY CHART FOR LODGING BO INFORMATION	26
APPENDIX C	27
CASE STUDIES ON DETERMINING OWNERSHIP AND CONTROL UNDER PART II REGULATION.....	27
A. Companies	28
Scenario 1 - Direct Interest – Simple Ownership structure	28
Scenario 2 - Direct Interest - Complex Ownership Structure	28
Scenario 3 - Direct and Indirect Ownership	29
Scenario 4 - Significant Influence or Control, (Ultimate Effective Control).	30
Scenario 5: Joint interest – Shareholding.....	30
Scenario 6: Joint arrangement - Voting Rights	31
Scenario 7 - Shares held by nominees	31
B. TRUSTS AND LEGAL ARRANGEMENTS	32
Scenario 8 - Difference between ownership structures of a legal person and legal arrangement	32
Scenario 9 - Combination of Legal Persons and Trusts	33
Scenario 10 – Identifying BOs or Controlling persons of a trust in chain of ownership	34
APPENDIX D.....	36
SAMPLES OF NOTICES PURSUANT TO THE BO REGULATIONS	36
1. Notice to Members identified as BOs to submit the required BO Information pursuant to Regulation 3 (4)	36
2. Notice to members to provide information on agreements or arrangements governing voting rights carried by any voting shares held by the member	38
3. Warning Notice to defaulting members to provide Beneficial information within 14 days	40
4. Notice Restricting a Relevant Interest Pursuant to Regulation 8 and 9.....	41
5. Notice of Withdrawal of Restriction on Relevant Interest Pursuant to Regulation 10.....	41



Guide On Disclosure Of Beneficial Ownership

This guide is issued pursuant to Section 876 of the Companies Act, No 17 of 2015 (CA 2015). It contains general information intended as a basic guide on the requirements for the submission of beneficial ownership information under the CA 2015 and the Companies (Beneficial Ownership Information) Regulations 2020 (BO Regulations).

PART I—PRELIMINARY

I. BACKGROUND

I.1 Legal persons and Legal arrangements are potentially at risk of being misused to facilitate criminal activity such as corruption, money laundering, financing of terrorism, proliferation tax evasion, and other criminal activities. Legal persons and legal arrangements may also be exploited by persons who wish to retain anonymity that enables illegal activities to take place while hidden from law enforcement authorities.

I.2 It is therefore critical to ensure transparency in corporate structures by establishing the beneficial ownership of such structures at the formation stage. Accordingly, companies and relevant legal entities and arrangements as well as gatekeepers such as company secretaries, must be cognisant of these risks and implement the necessary controls to ensure that due diligence is carried out to establish beneficial ownership at entry-level and in ongoing relationships.

I.3 In developing the Beneficial Ownership disclosure requirements, Kenya adopted the recommendations developed by the Financial Action Task Force (FATF) which ensures a coordinated global response to prevent organised crime, corruption and terrorism. With specific regard to Beneficial Ownership, the FATF Recommendations 25 – 24 requires countries to take measures to prevent the misuse of legal persons and arrangements for criminal purposes, including the following:

- Assessing the risks associated with legal persons and legal arrangements,
- Making legal persons and legal arrangements sufficiently transparent, and
- Ensuring that accurate and up-to-date basic and beneficial ownership information is available to competent authorities in a timely fashion; e.g through a central register with prescribed information on its beneficial owners.

1.4 The FATF Recommendations have been incorporated in the CA 2015 and BO Regulations, to ensure transparency in business registration processes and transactions involving companies, through the provision of Beneficial Ownership Information. The BO Regulations provide a general framework for companies to obtain and utilize the BO information.

2. PURPOSE AND OBJECTIVES OF THIS GUIDE

2.1 This Guide is aimed at providing guidance to entities incorporated and registered under the CA 2015 and any other enabling legislation on the operation of the BO disclosure framework. It must therefore be read together with the relevant statutory provisions under the CA 2015, BO Regulations and other enabling legislation.

2.2 This Guide covers the following requirements under the CA 2015, BO Regulations and other enabling legislation:

- Identification and verification of the beneficial owners of a legal entity and arrangements;
- Keeping the beneficial ownership information (BO information) that is adequate, accurate, up to-date and that can be accessed rapidly and efficiently; and
- Notification to the Registrar of Companies (Registrar) of the BO information including any changes thereof as well as providing access of the BO information to the prescribed persons.

2.3 In order to promote transparency of beneficial ownership, entities should adopt a self-regulated approach in implementing the BO Regulations.

3. INTERPRETATION

In this Guide, except where the context otherwise requires;

“Arrangement” shall have the meaning assigned under BO Regulations.

“Beneficial owner” shall have the meaning assigned under the BO Regulations

“Beneficial Ownership Information” shall mean the information required to be submitted to the Registrar as prescribed under the BO Regulations

“BRS Platform” shall mean the BRS online platform where companies and entities are required to lodge the BO information - www.brs.ecitizen.go.ke

“Constitutive Documents” refers to the Memorandum and Articles of Association, Shareholders Agreement, Trust Deed, By-Laws and any resolution, agreement or other document that affects but does not form part of the foregoing documents.

“Legal Person” refers to any entities other than natural persons and includes companies, and other bodies corporate, limited liability partnerships, or associations and other

relevantly similar entities.

“Legal Arrangements”, include express trust and fiduciary relationships.

“Natural Person” refers to an individual person other than a legal person/corporate body

“Registrar” shall mean the Registrar of Companies

“Relevant interests” shall have the meaning assigned under the BO Regulations

“Shell companies” are companies that are incorporated that have no significant operations or related assets. “Trusts” are structures in which a person (the settlor) transfers assets to another person (the trustee) who manages the entrusted assets following the settlor’s instructions, but for the benefit of the beneficiaries (either persons named by the settlor to receive income or the entrusted assets at some point, or a defined class of unnamed persons)

“Ultimate Ownership or Control” shall have the meaning assigned under the BO Regulations

PART II: SCOPE OF BENEFICIAL OWNERSHIP INFORMATION DISCLOSURE REQUIREMENTS

A. Applicability

I.1 The BO Disclosure framework under the BO Regulations shall apply to incorporated or registered entities under the CA 2015:

- Companies limited by shares. (Private or public)
- Companies limited by guarantee.
- Unlimited Companies

I.2 The regulations shall also apply to the following entities to the extent that they are shareholders in the companies outlined under I.1 above, and qualify as beneficial owners as outlined in Part IV below:

- Foreign Companies
- Limited Partnerships
- Limited Liability Partnerships
- Trusts
- Co-operative Societies
- Any other corporate bodies

NB: See Explanatory Note under Part IV section 2.2 below on Identification of beneficial owners

PART III– BENEFICIAL OWNERSHIP INFORMATION DISCLOSURE REQUIREMENTS

A. Legal Persons

Companies

A company is required to keep the following registers, among others:

- a) A register of members with the ownership information lodged with the Registrar as stipulated in the Act and BO Regulations
- b) A register of Directors lodged with the Registrar as stipulated in the Act and Regulations
- c) A Register of Beneficial Owners with the beneficial owners' information lodged with the Registrar as stipulated in CA 2015 and BO Regulations.

The registers should be updated whenever there is a change in the registered particulars in the CA 2015, and the BO Regulations.

I. Beneficial Ownership Information Disclosure Requirements

1.1 The Beneficial Ownership Information Disclosure requirements are set out under CA 2015, Section

93 A, BO Regulations and any other enabling provision under the CA 2015.

1.2 A Company is required to:

- a) Take reasonable steps or measures to identify its beneficial owners;
- b) Keep a register of its beneficial owners;
- c) Enter in that register information relating to its beneficial owners as prescribed in the BO Regulations;
- d) Submit a copy of this register to the Registrar of Companies within 30 days of preparation;
- e) Notify persons whom they know or have reasonable cause to believe are beneficial owners to submit the prescribed information within 21 days;
- f) Issue a warning notice to such persons if they do not submit the required information;
- g) Restrict the relevant interests of such persons in the event that they do not comply with the warning notice within 14 days;
- h) Submit a copy of the restriction notice with the registrar within 14 days;
- i) Update any changes in the beneficial ownership information, and notify the Registrar within 14 days of such change. (Public listed companies are however exempted from the requirement to submit amendments within 14 days); and
- j) Only disclose the information to the Registrar or otherwise as prescribed under regulation 13 of the BO Regulations.

A summary of these steps is provided in Appendix A.

2. Detailed Processes for Identification of Beneficial Owners – Legal Persons

2.1 *Criteria of identifying a Beneficial Owner*

Under the BO Regulations 2) 3) the test of beneficial ownership includes any natural person who whether individually or jointly satisfies any one or a combination of the following criteria:

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

2.2 *Reasonable steps that a company should take to identify its beneficial owners*

Companies may identify their BO(s) by employing at least one or more of the following measures:

- i. Review and identify all interests held in the company by individuals, corporate entities and/or Guide on Beneficial Ownership Information Requirements 4 trusts, including nominee interests;
- ii. Identify all natural persons who hold at least %10 of the issued shares of the company, either directly, jointly or cumulatively (in the chain of ownership);
- iii. Identify voting rights that attach to the shares (including voting rights that arise only in certain circumstances) and identify natural persons who hold at least %10 of the voting rights, either directly, jointly or indirectly;
- iv. Review any evidence that may show interests or rights held through a variety of means that may ultimately be controlled by the same person, and identify all natural persons holding such rights e.g rights to dividends or distributions attached to the shares or rights to participate in a return of capital and rights to exercise options to redeem their shares;
- v. Review all documents and information available at the company's level (e.g. register of members, constitutive documents, certificates of incorporation/compliance/registration, proxy arrangements, etc);
- vi. Send out notices to identified persons to submit BO information pursuant to Regulation 4 of the BO Regulations;
- vii. Incorporate BO Disclosure requirements in its Articles of Association and annual compliance processes;
- viii. Any other actions that may have to be taken depending on the circumstances of each company to achieve any of the foregoing requirements.

2.3 How to Identify a Beneficial Owner in a Legal Person

A. Companies

A BO of a legal person must always be a natural person(s).

Neither nominees nor chains of companies should prevent the BO from being identified.

I. Company limited by shares

For companies limited by shares, “the beneficial owner of the legal person” is an individual (natural person) who meets one or a combination of any of the following criteria:

- a) Directly or indirectly holds at least %10 of the issued shares of the company;
 - Directly - This information can be obtained from the Register of Members of the Company. It therefore follows that any member (whether individual or jointly) who holds %10 or more of the issued shares in their own right (directly) must be disclosed as a beneficial owner
 - Indirectly – (1) Any member above who holds the shares on behalf of someone else must disclose who the natural person is.

(2) where the %10 or more of the issued shares are held by a corporate body, the natural persons who ultimately owns %10 or more of the issued shares in that corporate body must be disclosed as the BO's.

Care should be taken to identify those who's directly shareholding may be below the threshold but are also holding interest indirectly through a chain of ownership. In this case, their shareholding should be considered cumulatively.

NB: where the issued shares meet the threshold and are held jointly, then all the joint owners will appear as separate beneficial owners.

NB: For corporate shareholders including Trusts who fit this criteria, it would be necessary to identify the natural persons who are the beneficial owners or have ultimate control of these entities, using the same criteria set in the BO Regulations for the identification of a BO.

- b) Directly or indirectly exercises at least %10 of the voting rights in the company; In circumstances where shares confer the right of the holder to vote on resolutions, either at general meetings or otherwise, on all or substantially all matters; and the right may vary depending on the class of shares (ordinary, preference etc). The right to vote may also be conferred by debentures.

Directly - This information can be obtained in the Register of Members and the Constitutive Documents which determine if an individual or corporate entity has an interest in at least %10 in the voting rights of the company. It therefore follows that any member (whether individual or jointly) who exercises directly a %10 or more of the voting rights must be disclosed as a beneficial owner.

Indirectly -

- (a) Any member who exercises voting rights on behalf of someone else should disclose who the natural person is.
- (b) where the %10 or more of the voting rights are exercised by a corporate body, the natural persons who ultimately holds %10 or more of the voting rights in that corporate body must be disclosed as the BOs.
- (c) A shareholder can also exercise these rights through a joint voting agreement with another member of the company, so that together they control more than %10 of the voting rights of the company. (See Scenario 6 in Appendix C - Case Studies)
- c) Directly or indirectly holds a right to appoint or remove a director of the company
Any individual who has a right to directly or indirectly appoint or remove a director of a Company must be declared as a beneficial owner. The information in the Constitutive Documents will guide in determining whether any person has a unilateral right to exercises this right . (See Scenario 3-I in Appendix C - Case Studies).
- d) Directly or indirectly exercises "significant influence or control" over the company

Where no natural person is identified under (a) (b) or (c) above, the company should identify the natural person who exercises control whether formal or informal through connections to persons with ownership interests, or through positions held by the natural person in the company, e.g.

- i. Person(s) who give directions to or the Board of Directors are accustomed to seeks their directions prior to making any material decisions in the company; such as Founders, key investors,
- ii. person(s) responsible for strategic decisions that fundamentally affect the business practices or general direction of the legal person; or
- iii. persons who exercise control or exercise significant authority over a legal person, over the operations of the legal person and or by participating in the financing of the enterprise and other financial relationships without the control and oversight of the Board of Directors of the company.

2. Company Limited by Guarantee

A natural person is deemed to be a BO of a company limited by guarantee, if he/she meets any one or a combination of the following criteria:

- a) Directly or Indirectly exercises at least %10 of the voting rights of the Company; as illustrated in I b) above.
- b) Directly or indirectly has the right or power to appoint or remove a director(s); and as illustrated in I c) above.

- c) Directly or indirectly exercises “significant influence or control” over the company as illustrated in 1 d) above.

In assessing whether an individual meets the criteria, companies may refer to the information kept by the company including the Constitutive Documents, the Register of Members and the Register of Directors, and internal policies and procedures which stipulate the roles and responsibilities of any advisors to the Board of Directors of the Company. An individual may exercise significant control over a company even when such individual is not or is no longer a member or a director of the company. (See Scenario 4 - 1 and 6 in Appendix C -. Case Studies).

3. Joint Shareholding

Under Section 3) 9) CA 2015, two or more persons who hold shares in a company jointly are taken to be a single member i.e. each person is taken as holding the full interest, even where the interest is unidentifiable (section 8) 562) CA 2015). Section 4) 93) further requires the name of each joint holder to be registered in the register of members.

In the context of beneficial ownership, if the shareholding qualifies under any of the criteria in section 1 above, each of the joint shareholders is treated as a beneficial owner of the joint interest and must be entered individually in the register of beneficial owners and disclosed accordingly.

(See Scenario 5 in Appendix C -. Case Studies)

4. Nominee Shareholdings

This is where the ultimate BO uses nominee arrangements such as corporate nominees, lawyers, company secretaries, friends, family members or associates who act as the legal owners of corporate vehicles. It is therefore important when identifying such beneficial owners, to ascertain whether the subject shares are held by nominees, who should be required to maintain and to disclose the identity of the person on behalf of whom they are acting i.e the nominator.

Regulation 3) 42) b) of the Companies (General) Regulations 2015 requires Directors reports for a financial year to include the particulars of directors' shareholdings, including nominee shareholdings held on behalf of Directors. This information can be used to identify beneficial owners using the criteria in section 1 above. (See Scenario 7 in Appendix C -. Case Studies)

5. Complex Ownership Structures

Companies with complex structures may be prone to misuse, as complexity makes it difficult for the Competent Authorities to obtain accurate beneficial ownership information. In identifying a BO in complex structures companies may follow the chain through to a natural person as illustrated in section 1 above.

(See Scenario 3-2 in Appendix C -. Case Studies)

B. Legal Arrangements

In Kenya legal arrangements take the form of trusts and similar legal arrangements. In a Trust, the legal title and control of an asset are separated from the equitable interests in the asset. This means that different persons might own, benefit from, and control the trust, depending on the applicable trust law and the provisions of the document establishing the trust (for example, the trust deed).

Under the CA 2015, beneficial ownership requirements apply to legal arrangements to the extent that they are shareholders in a legal person registered under the CA 2015. In this context, a Trust that is a shareholder in a legal person is required to disclose the identity of the settlor, trustee(s), protector (if any), beneficiary or class of beneficiaries, and any other natural person(s) exercising ultimate effective control over the Trust.

1. Identification of Beneficial Owners – Legal Arrangements

1.1 The transparency requirement for legal arrangements goes beyond focusing on one BO and requires the trustee (or similar agent) to obtain information on any settlor, other trustees, the protector, beneficiaries (or class of beneficiaries), and any other natural person exercising ultimate effective control over the Trust, subject to the criteria set under the BO Regulations.

1.2 The following parties to a trust or other legal arrangement are therefore identified as beneficial owners, to the extent that they meet the criteria set under the BO regulations, as follows:

- a) The settlor (the person donating the assets);
- b) The trustee(s) (the custodian of the assets);
- c) The protector or enforcer (an intermediary between the settlor and trustee), if any;
- d) The beneficiaries to the trust or classes of beneficiaries; and/or
- e) any other person exercising effective control or influence over the Trust.

NB: Trust deeds may contain provisions that impact where ultimate control over the trust assets lies, including clauses under which the settlor reserves certain powers (such as the power to revoke the trust and have the trust assets returned). This may assist in determining the beneficial ownership of a trust and its related parties. In other jurisdictions, trusts are usually complex structures that can include additional parties. Some trusts may have no beneficiaries, and others may comprise confidential documents; such as a will with the settlor's instructions. The above circumstances may make it difficult to determine who has effective control over the Trust, hence the requirement to exercise caution where the legal shareholder in a reporting entity is a Trust.
(See Scenario 9-8 in Appendix C - Case Studies)

2. Determining the BO when natural persons and legal arrangements are combined

A trust may have ownership of a company, with the trustee holding the shares or other rights as the legal owner. In such situations, the trustee or settlor may be a legal person itself (such as a "corporate trustee").

When a party to a trust (such as the trustee) is not a natural person (such as a company or foundation), the qualifying BOs of that legal person (but not the legal person itself) should be identified as BO's of the Trust. In other words, legal persons who are party to a trust should be treated to the same threshold tests outlined in the BO Regulations in determining ultimate control and ownership and identify the BOs. (See Scenario 10 in Appendix C - Case Studies)

C. Professionals acting in a Professional Capacity

Notwithstanding the foregoing paragraphs, an individual who provides advice, or makes recommendations or a proposal in his professional capacity, including but not limited to a Director, a Company Secretary, lawyer, or external auditors, shall not be considered on this basis alone as having the right to exercise significant influence or ultimate control over a company.

D. Case Studies on Ownership Structures

Detailed examples and case studies of ownership structures of legal persons and legal arrangements are provided in APPENDIX C.

PART IV - OBTAINING THE BO INFORMATION

1. Information to be noted in the BO register

1.1 Under Regulation 3) 3) of the BO Regulations 2020, a company is required to take reasonable measures to identify its beneficial owners and obtain the following information from them:

- a) full name; (as indicated in the person's Identity card (ID), passport or birth certificate)
- b) birth certificate number; national identity card number; foreigner certificate number or passport number;
- c) KRA-personal identification number (PIN), where applicable;
- d) nationality;
- e) date of birth;
- f) postal address;
- g) business address;
- h) residential address;
- i) telephone number;
- j) e-mail address;
- k) occupation or profession;
- l) nature of ownership or control
- m) the date on which any person became a beneficial owner of the company;
- n) the date on which any person ceased to be a beneficial owner; and
- o) any other relevant detail the Registrar may from time to time require.

1.2 Under the BO Regulations, such information may be obtained from:

- i. the beneficial owner or their authorised representative
- ii. an official register such as the IPRS or the KRA database; or
- iii. a third party not directly related to the beneficial owner.

2. Additional Information to be noted in BO Register

Where a company has requested for the BO's information but has failed to obtain these, the following details should be noted in the BO Register:

- i. The date a warning notice under regulation 5 was issued;
- ii. The date on which a restriction was issued; and the effect of the restriction (i.e restriction of the relevant interests)
- iii. The date on which the company became required to withdraw the restriction;
- iv. The date on which a withdrawal notice for the restriction was issued;
- v. The person's relevant interest in the company.

3. Requirements of a company in relation to BO Information

3.1 A Company is further required to:

- a) Keep a register of its beneficial owners separate from the register of members: The BO information can be kept either in a manual register or in an electronic register. Please note that the said register is different from the Form BOF 1.
- b) Enter in the BO register information relating to its beneficial owners as prescribed under regulation 3.
- c) Submit a copy of the BO register to the Registrar of Companies within 30 days of the preparation of the register, using the prescribed form BOF 1 under the BO Regulations. In this regard, the Company shall lodge the information electronically via the BRS Platform.

These requirements refer to the first time the BO Register is submitted by a newly registered company or by an existing company in compliance with the BO regulations. In this regard, companies should fill the information and sign and upload the auto-generated Form BOF 1.

The Step-by-Step Process for lodging the information on the BRS Platform may be accessed on https://brs.go.ke/assets/downloads/Beneficial_Ownership_eRegister_Manual.pdf

- d) Notify persons whom they know or have reasonable cause to believe are beneficial owners to submit their BO information to the company within 21 days. A sample notification for this purpose can be found in Appendix D.
- e) Ensure the beneficial information is accurate by verifying the same in accordance with Part VII herein and update any changes thereto in a timely manner; and notify the Registrar within 14 days of such change through the prescribed Form BOF2 (change of beneficial owner particulars). Public listed companies are however exempted from the requirement to notify the Registrar of a change in the particulars in the Register of BOs within 14 days.

3.2 Notify the Registrar in the event of a person ceasing to be a beneficial owner by filing a notice in the prescribed format in Form BOF 3 (notice of ceasing to be a beneficial owner).

4. Due process to further Obtain Beneficial Ownership Information

The company should take the following further measures in identifying its BO:

- 1) Issue a notice to a person it knows or has reasonable cause to believe to be its BO. The person who receives this notice shall comply within 21 days.
- 2) Failure to comply with 1 above, the company shall issue a warning notice requiring the person to submit the information within 14 days. Such warning should highlight the consequences of the person failing to submit the information within the stipulated period as detailed in (3) below. A sample notification for this purpose can be found in Appendix D.
- 3) Further failure to comply with 2 above, the company shall restrict the person's relevant interests relating to the shares held e.g. voting rights, the right to transfer shares and to receive the benefit of additional shares and the right to appoint a director. In regards to the restricted interest, any transfer of the shares or an allotment of additional shares in right of the shares shall be null and void.
- 4) Note in the company's register of BOs to indicate the restriction issued and file a copy of the Restriction Notice with the Registrar within 14 days of its issuance.

NB: The register of BO kept by the companies shall not be left blank. Where the BO particulars of the company have not been provided or obtained, the company shall note in its BO register that it knows or has reasonable cause to believe that there is a BO in relation to the company but a) has not identified the BO;

- b) has not been able to obtain BO particulars;
- c) has issued a warning notice which has not been complied with;
- d) has issued a restriction notice; or
- e) there is a matter pending before court in relation to the relevant interest.

5. Compliance with the Warning Notice

If the warning notice is complied with after a restriction of the relevant interest, the company is required to remove the restriction within 14 days from the date of compliance and notify the Registrar within 14 days from the update of the Register.

PART V: VERIFYING THE ACCURACY OF BO INFORMATION

1. Verification of BO Information

1.1 Companies should verify BO Information to confirm its accuracy and authenticity through due diligence.

1.2 A company is obliged to conduct verification of the BO information when any of the following situations occurs:

- a) When entering the name of a BO in the register of BO;
- b) When entering changes to the particulars of BO information in the register of BO;
- c) As and when instructed by the Registrar from time to time

1.3 Notwithstanding the foregoing, companies may voluntarily conduct verification of BO information in the BO register from time to time.

2. Verification Documents

2.1 In identifying and verifying a BO, a company must rely on sufficient information or supporting documentation as a basis upon which the BO is identified and verified. The documentation is necessary to confirm the information entered into the register.

2.2 Such supporting documents may include, but are not limited to,

- a) Copies of the BO's national identification card, passport or other similar identity documents.
- b) PIN Certificate of the BO,
- c) Photograph of the BO,
- d) Constitutive Documents regulating the voting rights and the power to bind the company.

2.3 The supporting documents must be kept by the company at the same location with the register of BO.

2.4 Such supporting documents must be kept:

- a) in the English language;
- b) either in physical or electronic form; and
- c) from the day the individual becomes a BO and up until 10 years after such individual ceases to be a BO

PART VI: LODGING OF THE BO INFORMATION WITH THE REGISTRAR

The BO Information should be obtained and lodged with the Registrar within the timelines set out in the CA 2015 and the BO Regulations.

A summary of the timelines for lodging BO information is set out in the Activity Chart under Appendix B

PART VII: KEEPING THE BO INFORMATION AT THE REGISTERED OFFICE AND ACCESSIBILITY

1. Keeping of the BO Information –

1.1 The company must ensure that the BO information is kept at the registered office, or at the

Offices of the named Company Secretary or Authorized Person.

1.2 The BO information and the supporting documents must be kept for at least 10 years from the date a person ceases to be a BO.

1.3 The BO information must be kept in the English language and may be kept either in physical or electronic form.

2. Disclosure of BO Information

Disclosure of BO Information is restricted to the following circumstances:

a) Disclosure by the company

A company shall disclose its BO information-

- to the Registrar of Companies,
- to a procuring entity where the company participates in public procurement,
- to a contracting authority where the company participates in public private partnerships arrangement; or
- to the Court

NB. In addition to the above circumstances, BO information may be disclosed to a third party following a written consent of the BO.

b) Disclosure by the Registrar

The Registrar may disclose BO Information to -

- a competent authority;
- Public Procurement Regulatory Authority;
- Public Private Partnership Committee;
- To the Court

The Registrar in striking a balance between the right to access information and right to privacy, shall ensure that personal data is processed in accordance with the right to privacy of the data subject in line with the Data Protection Act, 2021.

c) Disclosure by Public Procurement Regulatory Authority PPRA shall publish in its public portal the BO information of the entities that have been awarded tender by a procuring entity or a contracting authority.

d) Disclosure by the Government

The government may disclose to the public BO information of any entity if such information affects the country.

Data Privacy Statement

The Registrar of Companies will only collect your information in line with relevant regulations and laws and these may relate to any of our services you apply for, currently hold or have held in the past.

You are responsible for making sure you give us accurate and up to date information.

If you provide information for another person (you must have obtained that person's consent to both disclose, and the processing of that personal data in accordance with the privacy notice, you will need to tell them how to find the Privacy Notice and make sure they agree to us using their information for the purposes set out in it.

PART VIII: COMPLIANCE PROCESSES: ROLES, RESPONSIBILITIES AND SANCTIONS

As a general rule, a company has a duty to obtain the BO information and to keep the information together with the supporting documents relating to the BO information. In addition, the company must ensure that the BO information is adequate, accurate and up-to-date and is lodged with the Registrar in a timely manner.

Companies should incorporate Beneficial Ownership Information Disclosure in their compliance processes and ensure any changes are updated regularly.

The roles and responsibilities of the various parties with regards to the BO information disclosure and maintenance are as follows:

1. Officers of the Company

The Officers of the Company, being the Directors and where applicable, the Company Secretary, are ultimately responsible in ensuring that the company has exercised its powers under section 93A of the CA2015 in obtaining the BO information. The obligation also extends to ensuring that the information is entered into the Register of Beneficial Owners and that such information is duly submitted to the Registrar as required under section 93A within 30 days of preparation and thereafter any updates are submitted to the Registrar within 14 days of a change.

2. Members of the company (Shareholders)

If a member of a company has received a notice issued under regulation 4 (notice to submit BO Information) or regulation 5 (warning notice) of the BO Regulations, the member has an obligation to inform the company whether he is the BO as defined by the CA2015. The obligations of a member under the BO Regulations also extends to the need to provide the particulars of the persons for whom the member holds the shares as a nominee, voting rights or the parties to the agreements or arrangements, as the case may be.

3. Persons who are not members of the Company (non-shareholders)

If a person who is not a member of a company (e.g. a Trustee, or a nominee shareholder, a Director, persons with significant influence) receives a notice from the company, notice issued under regulation 4 (notice to submit BO Information) or regulation 5 (warning notice) of the BO Regulations, the person has the obligation to inform the company whether he is the BO of the company as defined under the CA2015. Similarly, the

obligations of such person also extend to the need to provide the identity of the beneficial owner, if they know him/her and/or to provide the BO's prescribed particulars.

4. Authorized Persons

Where a company has not appointed a Company Secretary, the Board of Directors may appoint an authorized person, usually a Lawyer, to properly keep and regularly maintain the Register of BOs.

The Authorized Person must ensure that the BO information is entered into the Register and lodged with the Registrar in accordance with the requirements set out under the BO Regulations. The appointment instrument will be required to be filed with the Registrar.

5. Failure to comply with BO Regulations

A company and each officer that fails to comply with the requirement to submit the beneficial ownership information as required under Section 93A of the Act commits an offence as stipulated under Section 93A.

ENQUIRIES

Enquiries on any aspect of this Guide shall be referred to;
The Registrar of Companies,
Business Registration Service,
PO Box 00100 - 30404
Nairobi

Email: registrar@brs.go.ke

Joyce C. Koech
REGISTRAR OF COMPANIES



Implemented by



GLOSSARY OF TERMS

AML	Anti-money Laundering
BO	Beneficial Ownership
BOI	Beneficial Ownership Information
BRS	Business Registration Services
CA	2015 Companies Act No. 17 of 2015
FATF	Financial Action Task Force
IPRS	Integrated Population System Register
KRA	Kenya Revenue Authority
ML/TF	Money Laundering and Terrorist Financing
OECD	Organisation for Economic Co-operation and Development
POCAMLA	Proceeds of Crime and Anti-money Laundering Act

REFERENCES

1. Companies Act No. 17 of 2015
2. Companies (General) Regulations 2015
3. Companies (Beneficial Ownership Information) Regulations, 2020
4. FATF Recommendations 24 and 25
5. FATF Guidance Note on Transparency and Beneficial Ownership
6. FATF Best Practices on Beneficial Ownership of Legal Persons
7. Financial Crimes Enforcement Network (FinCEN) Beneficial Ownership Rule 2016 (USA)
8. OECD Beneficial Ownership Tool Kit

APPENDIX A

PROCESSES FOR IDENTIFYING, OBTAINING, AND RECORDING BENEFICIAL OWNERSHIP INFORMATION

Companies are required to take reasonable steps to identify their beneficial owners through the implementation of various measures illustrated in Table 1 and 2 below. Table 1 illustrates various steps or processes a company should implement to enable it to identify and obtain BO Information. Table 2 illustrates measures that a company should implement to enable it to identify BO Information.

Table 1 - Processes for Identifying, Obtaining, and Recording Beneficial Ownership Information

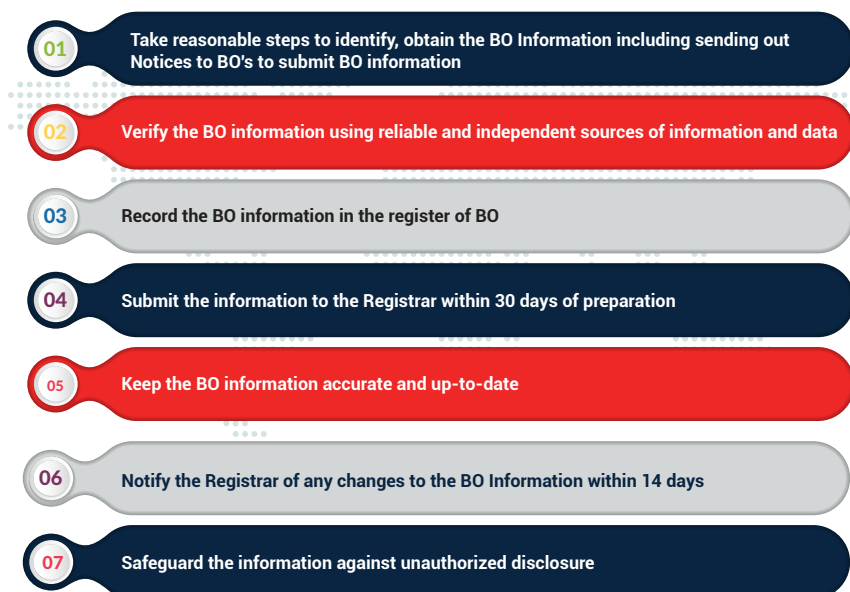


Table 2 : MEASURES FOR IDENTIFYING BOS



APPENDIX B

ACTIVITY CHART FOR LODGING BO INFORMATION

Deadlines for Submission of BO Information activity

Obtain and Verify BO Info		Submit BO Information to Registrar	Update BO Information and Submit to Registrar
1st Notice to BO	Warning Notice		
21 days	14 days	30 days	14 days

APPENDIX C

CASE STUDIES ON DETERMINING OWNERSHIP AND CONTROL UNDER PART II REGULATION 4

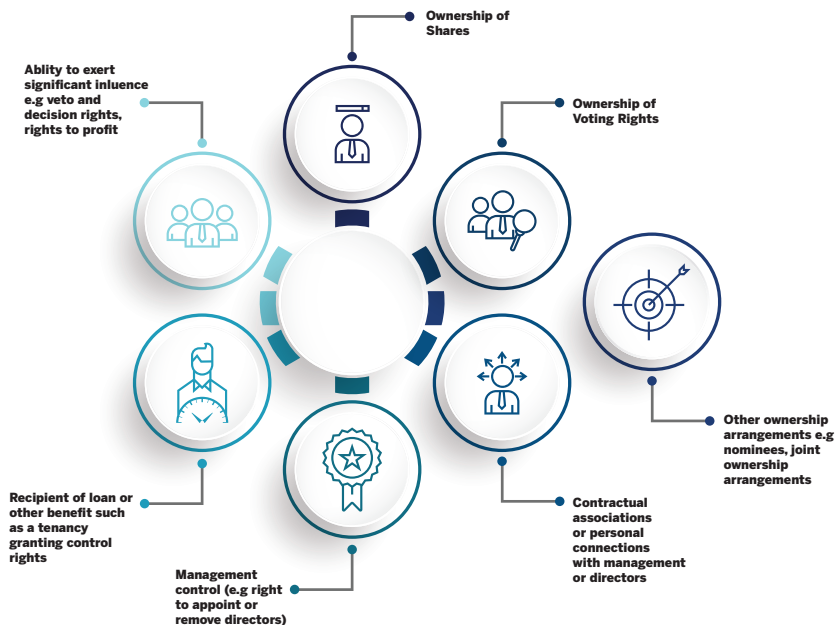
(These examples are intended to serve as illustrations for general guidance only and depict various ownership structures.)

IDENTIFYING THE BENEFICIAL OWNER

Direct or Indirect Control based on Shareholding

A beneficial owner can exercise ownership or control over a company in numerous ways, both direct and indirect.

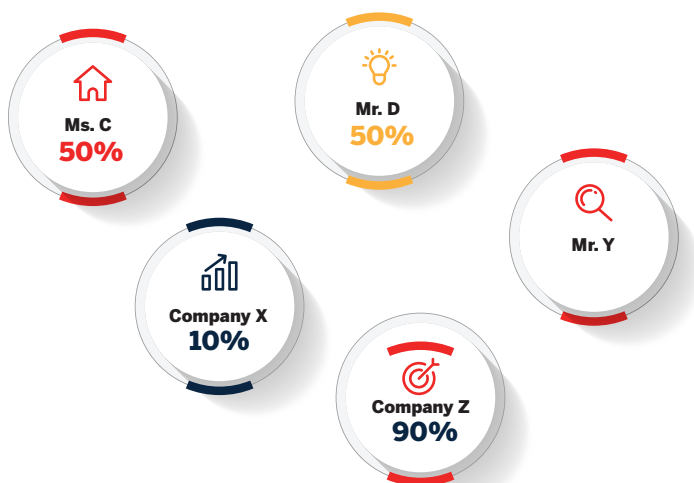
A common form of indirect control is through chains of ownership. Common examples of both direct and indirect ownership and control are illustrated in the diagram below.



A. Companies

Scenario 1 - Direct Interest – Simple Ownership structure

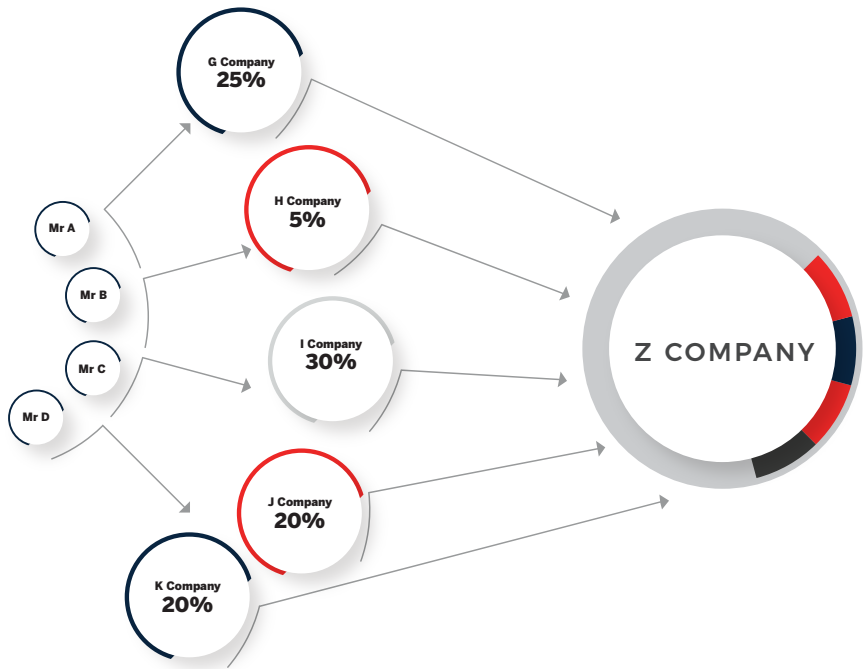
1. In the scenario below, Company Z is directly owned by a natural person, Mr.Y, who owns %90, and Company X, which owns %10.
2. Company X is in turn owned equally by Ms. C and Mr D.
3. Based on this ownership structure, Mr.Y, ultimately owns and controls Company Z. Thus, Mr.Y should be deemed the beneficial owner of Company Z.
4. Ms. C and Mr. D are also deemed beneficial owners of Company Z as both of them are beneficial owners of Company X.
5. Accordingly, the beneficial owners of Company Z are therefore Y, Ms C and Mr D.



Scenario 2 - Direct Interest - Complex Ownership Structure

1. Company Z in figure 2 below, has 5 direct owners who are legal persons (Companies G, H, I, J, K) who hold varying share holdings as indicated
2. In order to determine the Beneficial owners of Z, the Company must determine if there are any natural persons who own at least %10 of the issued share capital of G, H, I, J and K Companies.
3. In this case, Mr A has beneficial ownership of G Company; H Company is owned by Mr. B; I Company is owned by Mr C and J and K Company are both wholly owned by Mr. D; and. Mr. D, who effectively owns %40 of Company Z.
4. The beneficial owners in this case are Mr A, Mr C and Mr D who each control more than %10 shares in Company Z, through Company G, K, I and J respectively. Mr B however is not a beneficial owner as he only hold %5 shareholding in Company Z through H company

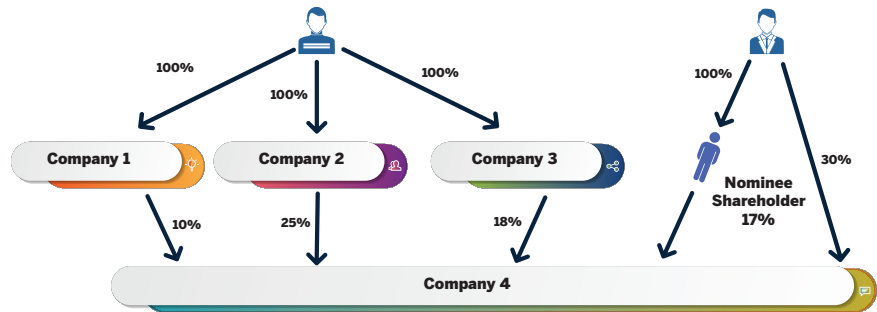
Figure 2



Scenario 3 - Direct and Indirect Ownership

As Figure 3 below shows, the company 4 has two BOs; a woman with 53 % shareholding through three commercial companies 1,2, and 3 and a man with 47 %, including %17 held through a nominee.

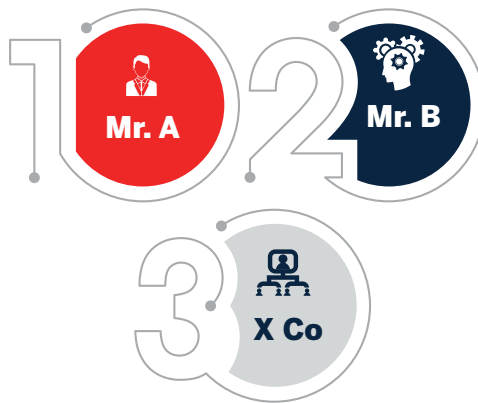
Figure 3



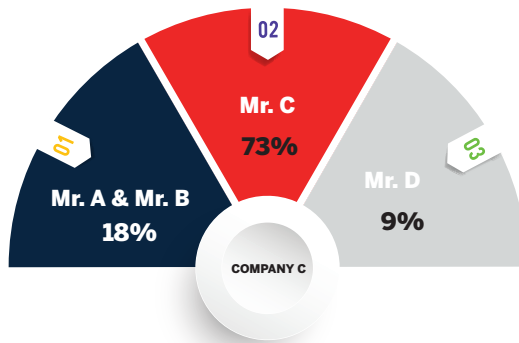
Scenario 4 - Significant Influence or Control, (Ultimate Effective Control).

In order to determine who has effective control over the customer it is necessary to review the legal person's management and governance structure.

An example of Ultimate Effective Control is an individual with significant responsibility to control, manage, or direct a legal person, including an executive officer or senior manager. In Figure 4 below, Mr. A holds all the voting rights in the X Company, while Mr. B gives directions to the Board of Directors and determines the overall direction of X Company. Both Mr. A and Mr. B should be identified as beneficial owners because they both have effective control over the Company through their voting rights and significant influence respectively.

Figure 4**Scenario 5: Joint interest – Shareholding**

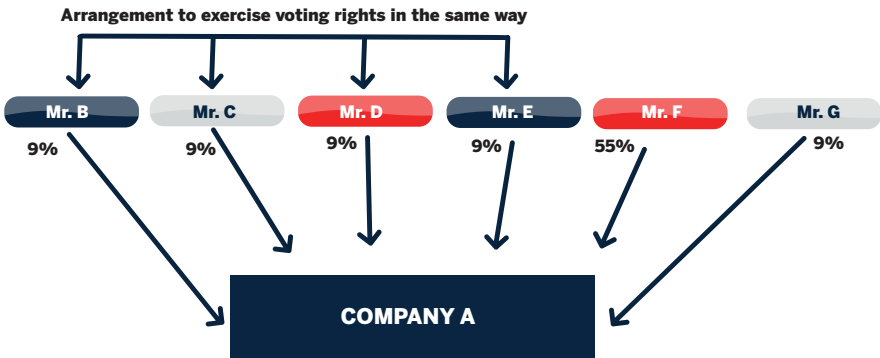
In scenario 5 below, Mr. A and Mr. B hold jointly more than %10 of the voting rights in Company C. Therefore, both are deemed to be BOs of the Company C together with Mr. C.

Figure 5

Scenario 6: Joint arrangement - Voting Rights –

In scenario 6 below, each share holds one vote and there is a pre-arrangement to exercise voting rights in Company A jointly between Mr. B, Mrs. C, Mrs. D and Mr. E. The arrangement covers more than %10 of the shares or voting rights - %36. Therefore, Mr. B, Mrs. C, Mrs. D and Mr. E are deemed the BOs of Company A and their names must be entered in the register of BO together with Mr. F who holds more than %10 of the shares in Company A. (%55)

Figure 6



Scenario 7 - Shares held by nominees

If a nominee is acting on behalf of an individual or corporate entity, the company is required to take steps to identify the individual who is the ultimate owner of the shares or has ultimate significant influence or dominant control over the company. In scenario 7(a) below, Mr. Z has %10 interest in Company B through the %10 ownership of Mr. X who is acting on his behalf as a nominee in the company. Therefore, Mr. Z is deemed the BO of Company B

Figure 7 a) – Simple Nominee Structure

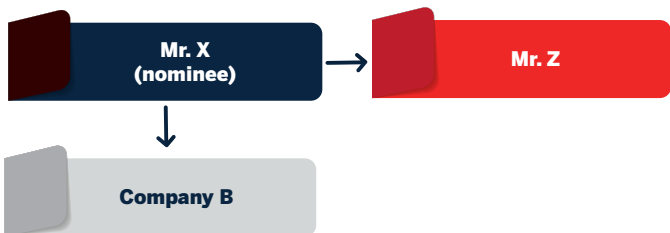
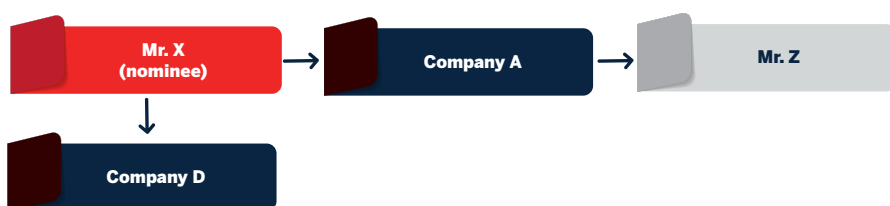


Figure 7 (b) Complex Nominee Structure 20

In scenario 7(b) below, Mr. Z holds %10 interest in Company D through the %10 ownership of Mr. X who is acting as a nominee for Company A which is wholly owned by Mr. Z. Therefore, Mr. Z is deemed the BO of Company D.

It should be noted that any Shareholder of Company A, who is holding at least %10 issued shares, has at least %10 voting rights, can appoint/remove a director or has effective influence or control of Company A, is a BO of Company D.



B. TRUSTS AND LEGAL ARRANGEMENTS

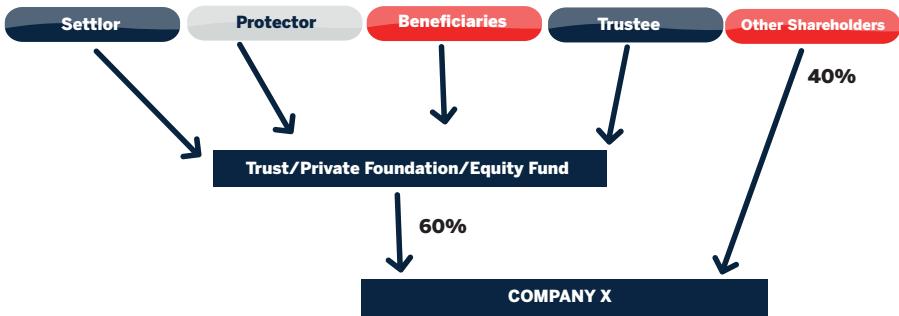
Scenario 8 - *Difference between ownership structures of a legal person and legal arrangement Identification of BOs in a company is straightforward when ownership and control are exercised by shareholders or members who are of equal standing (e.g are natural persons, or corporate bodies with clearly identifiable BO's. as indicated in the previous scenarios.*

However identification of beneficial owners where the shareholder is a trust, a private foundation or equity fund, is more difficult as these arrangements have much more complex structures because they usually do not have owners but parties with different roles, rights, and obligations.

The transparency requirement for the legal arrangements under FATF recommendation 25 requires the trustee (or similar agent) to obtain information on any settlor; other trustees, the protector, beneficiaries (or class of beneficiaries), and any other natural person exercising ultimate effective control over the arrangement. i.e no threshold can be applied to exempt identifiable beneficiaries from being identified as a beneficial owner.

All the parties to a trust or other legal arrangement are therefore identified as beneficial owners irrespective of whether or not any of them exercises control over the trust. Figure 8 below shows the difference between the control structures of a company and a trust

Figure 8. Difference in the Control Structure between a Company and a Trust or Private Foundation



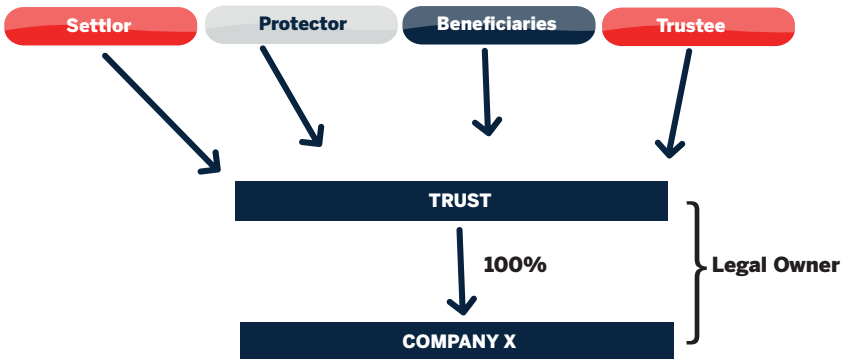
Scenario 9 - Combination of Legal Persons and Trusts

A trust may have ownership of a company, with the trustee holding the shares or other rights as the legal owner. In such situations, the trustee or settlor may be a legal person itself (such as a “corporate trustee”). When a party to a trust (such as the trustee) is not a natural person (such as a company or foundation), the BOs of that legal person (but not the legal person itself) should be identified as BOs of the trust, and ultimately the BOs of the Company.

In the scenario depicted by Figure 9, the BOs of the trust are the two BOs of the corporate trustee shown in the left hand panel (shareholder 1 and 2) and the settlor and beneficiaries shown in the right hand panel

Figure 9

Beneficial Owners

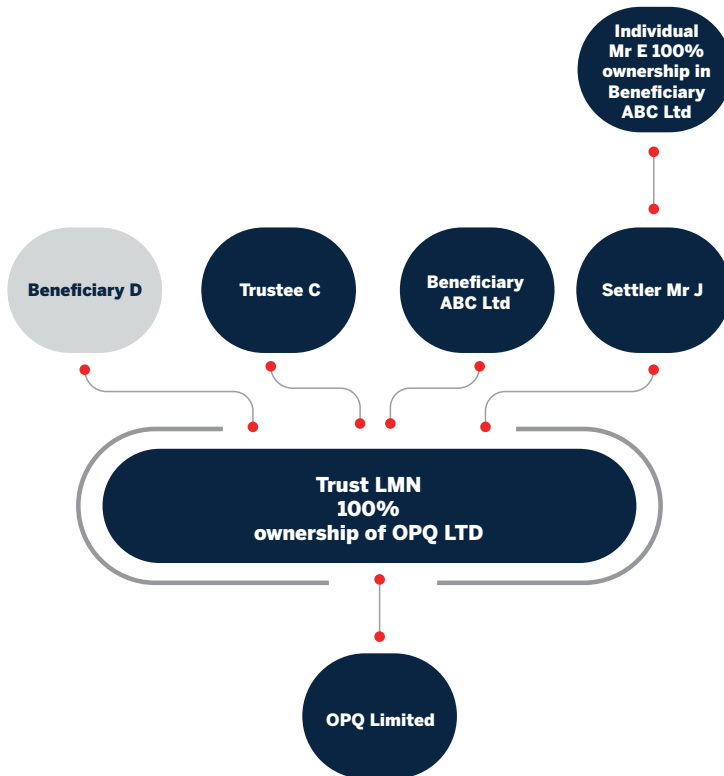


Scenario 10 – Identifying BOs or Controlling persons of a trust in chain of ownership

In the case of a trust (and Entities equivalent to trusts), the term Controlling Persons is explicitly defined to mean the settlor(s), the trustee(s), the protector(s) (if any), the beneficiary(ies) or class(es) of beneficiaries, and any other natural person(s) exercising ultimate effective control over the trust.

The Table below shows the chain of ownership for a Trust OPQ. Here the ultimate BO's are Mr E, Beneficiary D,

Trustee C and the Settler of trust LMN which owns OPQ %100
Figure 10. Controlling Persons of a trust in chain of ownership





APPENDIX D

SAMPLES OF NOTICES PURSUANT TO THE BO REGULATIONS 2020

The sample notices set out hereunder are for guidance purposes, are in no way prescriptive in nature, and are intended to be used in the following circumstances:

- a) When requesting members or third parties (e.g. nominees) whom a company knows or has reasonable cause to believe are beneficial owners using the criteria set out under the BO Regulations 2) 3) and in Part IV herein to submit the prescribed information within 21 days pursuant to Regulation 4) 3), including notifications on any changes; and
- b) When issuing warning notices to persons who have failed to submit the required information within the stipulated deadlines.
- c) When issuing a Restriction Notice with respect to relevant interests
- d) When issuing a Notice for Withdrawal of a restriction with respect to relevant interests

I. Notice to Members identified as BOs to submit the required BO Information pursuant to Regulation 4) 3) (On Company Letterhead) Date.....

Dear Member

Re: Notice to Provide Beneficial Ownership Information

Pursuant to section 93A of the Companies Act 2015 (CA 2015) and Regulation 3) 3) of the Companies (Beneficial Ownership Information) Regulations, 2020 (BO Regulations), [Enter the Name of the Company] ("the Company") is required to submit information on its Beneficial Owners, to the Registrar of Companies.

In this regard, we hereby request you to provide the required information by completing the form on the reverse side of this letter.

Nominees

Please note that where you are holding the shares indirectly for the benefit of a third party, and this indirect holding is more than 10% of the issued shares of the Company, you need to complete the particulars of that third party as a Beneficial Owners on the provided form on the reverse of this letter.

Kindly return the duly completed form together with copies of the Beneficial Owner's PIN Certificate and ID to the [Company Secretary, or to Mr/Ms.....] at [e-mail address] or to the registered office of the company at on or before...[enter the deadline] (date to be within 21 days from the date of this letter)

Please NOTE that a person who fails to comply with this notice or provides false or misleading information commits an offence under section 93A of the CA 2015.

Yours faithfully,

[Director/Company Secretary]

BENEFICIAL OWNERSHIP INFORMATION FORM – (Please complete all the details in capital letters)

BENEFICIAL OWNER	
Full Name	
Birth Certificate Number, National identity card number or Passport number	
Personal identification number	
Nationality	
Date of birth [dd/mm/yyyy]	
Postal address	
Business address	
Residential address	
Telephone number	
Email address	
Occupation or profession	

NATURE OF OWNERSHIP OR CONTROL (As Owner, Nominee or Trustee)	
Nature of ownership or control the beneficial owner has in the company*	<input type="checkbox"/> The percentage of shares a person holds in the company <input type="checkbox"/> Directly % of shares <input type="checkbox"/> Indirectly % of shares <input type="checkbox"/> The percentage of voting rights a person holds in the company <input type="checkbox"/> Directly % of voting rights <input type="checkbox"/> Indirectly % of voting rights
	<input type="checkbox"/> A person holds a right to appoint or remove a majority of the board of directors of the company; and/or <input type="checkbox"/> Directly <input type="checkbox"/> Indirectly <input type="checkbox"/> A person exercises significant influence or control over the company , <input type="checkbox"/> Directly <input type="checkbox"/> Indirectly

[Note: Please enter particulars of every beneficial owner in a separate form]

LINK OF BENEFICIAL OWNER WITH THE COMPANY IN INDIRECT OWNERSHIP

Specify—

- a) Name of shareholder holding shares on behalf of the beneficial owner of the company;
- b) Name of director appointed by the beneficial owner;

NOTES:

Under Regulation 2) 3) of the CA 2015 (Beneficial Ownership Information) Regulations, 2020, a beneficial owner of a company shall be a natural person who meets any of the following conditions in relation to the company :

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

2. Notice to members to provide information on agreements or arrangements governing voting rights carried by any voting shares held by the member (On Company Letterhead) Date.....

Dear Member

Re: Notice to Provide Information on Voting Arrangements

Pursuant to regulation 93A of the Companies Act 2015 (CA 2015) and Regulation 3) 3) of the Companies (Beneficial Ownership Information) Regulations, 2020 (BO Regulations), we hereby request you to confirm within 21 days from the date of this notice; the following information:

1. Whether or not you have entered into any agreement or arrangement with another person in respect of the exercise of the voting rights attached to your voting shares (Tick below).

YES	NO

2. If the answer to 1) above is yes, kindly provide the following particulars:

- a) Details of the agreement or arrangement (including title of the agreement and date);

- b) The following particulars in relation to each of the parties to the agreement or arrangement:
- (i) Full name
 - (ii) Citizenship;
 - (iii) ID/ Passport No: (attached a copy)
 - (iv) PIN Certificate, if applicable (attached a copy)
 - (v) Postal address, to include Postal code
 - (vi) Telephone number and E-mail address;
 - (vii) Residential Address
 - (viii) Nature of the agreement or arrangement;
e.g rights to majority control etc

Please NOTE that a person who fails to comply with this notice or provides false or misleading information commits an offence under regulation 93A of the CA 2015.

Yours faithfully,

[Director/Company Secretary]

3. Warning Notice to defaulting members to provide Beneficial information within 14 days

(On Company Letterhead) Date.....

Dear Member

Re: Warning Notice pursuant to Regulation 5 and 6 of the Companies (Beneficial Ownership Information) Regulations, 2020

We refer to our letter dated requesting you to provide your beneficial ownership information by or before pursuant to section 93A of the Companies Act 2015 and Regulation 3) 3) of the Companies (Beneficial Ownership Information) Regulations, 2020 ("BO Regulations").

We note that you have not submitted the required information within the timeline given and in the circumstances, pursuant to Regulations 5 and 6, we hereby put you on Notice that unless the information is received within 14 days from the date of this notice i.e by or before.....; we shall proceed to restrict any rights held by you with respect to the shares you hold in the Company, including voting rights and any rights to transfer the shares or receive additional shares, pursuant to Regulations 8 and 9 of the BO Regulations. Please NOTE that a person who fails to comply with this notice or provides false or misleading information commits an offence under section 93A of the CA 2015

Yours faithfully,

[Director/Company Secretary]

. cc Registrar of Companies

4. Notice Restricting a Relevant Interest Pursuant to Regulation 8 and 9

(On Company Letterhead)

Dear Member

Re: Notice of Issuance of Restriction on Relevant Interest pursuant to Regulation 8 and 9 Companies Beneficial

Ownership Information Regulations 2020

We refer to our Warning Notice dated requesting you to provide your beneficial ownership information by or before... pursuant to regulation 93A of the Companies Act, 2015 (CA 2015) and Regulation 5 and 6 of the Companies (Beneficial Ownership Information) Regulations, 2020 (BO Regulations).

We note that you have not submitted the required information within the timeline given and in the circumstances, pursuant to Regulations 8 and 9 of the BO Regulations, we hereby put you on Notice of the immediate restriction of your relevant interests in the Company relating to the following rights:

- a) Any rights held by you under the shares you hold in the company;
- b) Voting rights exercised by you in respect of shares held by you directly or otherwise at General Meetings or through written resolutions; or
- c) The right to appoint or remove any member of the board of directors of the company.

Please further note that effective from the date of this Notice :

- a) any transfer of the above interests shall be null and void;
- b) no rights shall be exercisable in respect of the said shareholding;
- c) no shares may be issued with respect to the interest or in pursuance of an offer made to the you as a shareholder;
- d) no payment may be made of sums due from the company in respect of the shareholding, to include dividends or bonus issue.

Please NOTE that the restrictions under this Notice shall remain in force pending your compliance with the requirements under regulation 3) 3) of the BO Regulations.

Yours faithfully,

[Director/Company Secretary]

cc. Registrar of Companies - Kindly take note of the Restriction Notice issued herein

5. Notice of Withdrawal of Restriction on Relevant Interest Pursuant to Regulation 10 (On Company Letterhead) Date.....

Dear Member

Re: Notice of Withdrawal of Restriction on Relevant Interest pursuant to Regulation 10 of the Companies (Beneficial Ownership Information) Regulations, 2020

We refer to our Notice dated advising you of the restriction placed on your relevant interests in the company pursuant to Regulations 8 and 9 of the Companies (Beneficial Ownership Information) Regulations, 2020 ("BO Regulations»)

Following your submission of the requisite information under Regulation 3) 3) on [enter the date of submission], we hereby Notify you of the withdrawal of the said Restriction Notice effective

Yours faithfully,

[Director/Company Secretary]

cc. Registrar of Companies

Kindly take note of the Withdrawal of the restriction with respect to the member's relevant interests

PREPARED BY:

MERCY W BUKU (LLB, LLM, CAMS, ACIB)

ADVOCATE/CONSULTANT



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