



LEGAL NOTICE NO.....

THE COMPANIES ACT
(No. 17 of 2015)

IN EXERCISE of the powers conferred by section 1022 of the Companies Act, 2015, the Attorney-General makes the following Regulations—

THE COMPANIES (BENEFICIAL OWNERSHIP INFORMATION) REGULATIONS, 2019

Citation. **1.** These Regulations may be cited as the Companies (Beneficial Ownership Information) Regulations, 2019.

Interpretation. **2.** In these Regulations, unless the context otherwise requires—

“Act” means the Companies Act, 2015;

“addressee” means the person to whom a notice, warning notice, restriction notice and a withdrawal notice is addressed to;

“arrangement” refers to an artificial entity, without legal personality, associating one or more natural or legal persons together in an ownership or control relationship, but without implying that the parties to this arrangement have any other form of collective legal identity;

“beneficial owner” means the natural person who ultimately owns or controls a legal person or arrangements or the natural person on whose behalf a transaction is conducted, and includes those persons who exercise ultimate effective control over a legal person or arrangement;

“competent authority” means the Attorney-General of the Republic of Kenya, any criminal investigation agency established by law, law enforcement agencies, authorities that supervise and monitor the financial sector, including the Financial Reporting Centre and the Kenya Revenue Authority;

“control” means the ability to direct or influence the actions of a legal person or arrangement;

“personal identification number” means the personal identification number issued by the Kenya Revenue Authority;

“protected information” means—

- (a) identity card number / passport number;
- (b) personal identification number;
- (c) residential address
- (d) current email address; and
- (e) current telephone number;

“relevant interest” means a person who—

- (a) holds shares in the company;
- (b) exercises voting rights in the company; or
- (c) holds the right to appoint or remove any member of the board of directors of the company.

Beneficial owner
Particulars.

3. (1) A company shall, where applicable, enter in its register of members the following particulars in respect of its beneficial owner —

- (a) full name;
- (b) national identity card number / passport number;
- (c) personal identification number;
- (d) nationality;
- (e) date of birth;
- (f) postal address;
- (g) residential address;
- (h) current telephone number;
- (i) current email address;
- (j) occupation;
- (k) date on which any person became a beneficial owner;
- (l) date on which any person ceased to be a beneficial owner
- (m) nature of ownership or control; and
- (n) any other detail the Registrar may from time to time require.

(2) The particulars of the nature of control as provided in sub regulation 3(1)(m) are set out in the First Schedule.

(3) A notice of beneficial owner particulars to the Registrar shall be as prescribed in

Form BOF1 set out in the Second Schedule.

(4) A notice of change of beneficial owner to the Registrar shall be as prescribed in Form BOF2 set out in the Second Schedule.

(5) A notice of ceasing to be a beneficial owner to the Registrar shall be as prescribed in Form BOF3 set out in the Second Schedule.

(6) A company shall keep its register of beneficial owner particulars and lodge the updated register with the Registrar within six months from the date of publication of these Regulations.

Request for search.

4. (1) A person may conduct a basic search on a company from the companies registry for the purposes of obtaining the name of the beneficial owner of that company.

(2) A person who intends to conduct an official search of the registry records on beneficial owner particulars shall apply to the Registrar in Form BOF4 set out in the Second Schedule and pay the prescribed fees set out in the Third Schedule.

(3) The Registrar shall issue a beneficial ownership search certificate to the applicant under sub regulation (2).

Disclosure of Protected Information

5. (1) A company shall not use or disclose protected information about its beneficial owner, except—

- (a) for communicating with the beneficial owner concerned;
- (b) in order to comply with any requirement of these Regulations; or
- (c) in order to comply with a court order.

(2) Sub regulation (1) does not prohibit protected information relating to a beneficial owner from being used or disclosed with written consent of the beneficial owner.

(3) The Registrar shall omit protected information from the material on the register that is available for inspection if—

- (a) it is contained in a document lodged with the Registrar in which the information is required to be stated; and
- (b) in the case of a document having more than one part, it is contained in a part of the document in which the information is required to be stated.

(4) The Registrar may use protected information relating to a beneficial owner for communicating with the beneficial owner.

(5) The Registrar may, upon a written request, disclose protected information to a competent authority.

(6) The Court may make an order for the disclosure of protected information by the company or by the Registrar if—

- (a) there is evidence that service of documents at a service address other than the beneficial owner's usual residential address is not effective to bring them to the notice of the beneficial owner; or

(b) it is necessary or expedient for the information to be provided in connection with the enforcement of an order or decree of the Court, and the Court is otherwise satisfied that it is appropriate to make the order.

(7) The Court may make an order for disclosure by the Registrar only if the company—

- (a) does not have the beneficial owner's usual residential address; or
- (b) has been dissolved.

(8) Any of the following persons may make an application for an order under this regulation —

- (a) a liquidator of the company;
- (b) a creditor or member of the company; or
- (c) any other person appearing to the Court to have a sufficient interest in the matter concerned.

Company's duty to investigate and obtain beneficial owner particulars.

6. (1) A company shall take reasonable steps to find out and identify its beneficial owner.

(2) Where the particulars required under regulation 3 are not within the company's knowledge, the company shall give notice to anyone whom it knows or has reasonable cause to believe to be a beneficial owner of it.

(3) The notice must require the addressee—

- (a) to state whether or not the addressee is a beneficial owner of the company; and
- (b) if so, to confirm or correct any particulars of the addressee that are included in the notice, and supply any other particulars as required by these Regulations.

(4) A company may also give notice to a person if it knows or has reasonable cause to believe that the person—

- (a) knows the identity of a beneficial owner of the company; or
- (b) knows the identity of someone likely to have the knowledge of the identity of the beneficial owner.

(5) A notice under sub regulation (4) may require the addressee—

- (a) to state whether or not the addressee knows the identity of—
 - (i) the beneficial owner; or
 - (ii) any person likely to have that knowledge; and
- (b) to supply any particulars of the beneficial owner that are within the addressee's knowledge, and state whether or not the particulars are being supplied with the knowledge of the beneficial owner.

(6) A notice under this regulation must state that the addressee is to comply with the

notice not later than twenty one days from the date of the notice.

(7) An addressee is not required by that notice to disclose any information in respect of which a claim to legal professional privilege relating to beneficial ownership particulars has been upheld or is pending before court.

Failure to comply with the notice.

- 7.** (1) Where a person fails to comply with the provisions of regulation 6, the company may issue a warning notice informing that person that it is proposing to issue the person with a restriction notice with respect to any interest they hold in the company.
- (2) The company may issue the restriction notice if, not later than fourteen days from the date of the warning notice—
- (a) the addressee has not complied with the notice; or
 - (b) the company has not been provided with a valid reason sufficient to justify the addressee's failure to comply with the notice.
- (3) A company may take into account any mental or physical incapacity of the addressee of a notice given under sub regulation (2)(b) in deciding what amounts to a valid reason sufficient to justify the addressee's failure to comply with the notice.
- (4) In deciding whether to issue a restriction notice, the company may have regard to the effect of the notice on the rights of third parties in respect of the relevant interest.
- (5) A company shall file a copy of the restriction notice issued under this regulation with the Registrar within fourteen days from the date of the restriction notice.
- (6) The effect of a restriction notice is set out in regulation 10.

Content of a warning notice.

- 8.** A warning notice given under regulation 7 shall—
- (a) specify the date on which the warning notice is given and the date of compliance;
 - (b) be accompanied by a copy of the notice given under regulation 6;
 - (c) identify the addressee's relevant interest in the company;
 - (d) state that the company will consider reasons provided to it as to why the addressee failed to comply with the notice given under regulation 6;
 - (e) explain the effect of a restriction notice; and
 - (f) state that, by virtue of a restriction notice, certain acts or failure to act may constitute an offence under the Act.

Content of a restriction notice.

- 9.** A restriction notice issued under regulation 7 shall—

- (a) specify the date on which the restriction notice is issued;
- (b) be accompanied by a copy of the warning notice which preceded the restriction notice;
- (c) identify the addressee's relevant interest in the company;
- (d) explain the effect of the restriction notice;
- (e) state that, by virtue of the restriction notice, certain acts or failure to act may constitute an offence under the Act; and
- (f) state that an aggrieved person may apply to the court for an order directing that the relevant interest cease to be subject to restrictions.

Effect of
restriction notice.

10. (1) The effect of a restriction notice issued under regulation 7 with respect to a relevant interest is as follows—

- (a) any transfer of the interest is void;
- (b) no rights are exercisable in respect of the interest;
- (c) no shares may be issued in right of the interest or in pursuance of an offer made to the interest-holder;
- (d) no payment may be made of sums due from the company in respect of the interest.

(2) An agreement to transfer an interest that is subject to the restriction in sub-regulation (1)(a) is void.

(3) Sub-regulation (2) does not apply to an agreement to transfer the interest on the making of an order under regulation 11.

(4) An agreement to transfer any associated right, otherwise than in liquidation, is void.

(5) Sub-regulation (4) does not apply to an agreement to transfer any such right on the making of an order under regulation 11.

(6) An “associated right”, in relation to a relevant interest, is—

- (a) a right to be issued with any shares issued in right of the relevant interest, or
- (b) a right to receive payment of any sums due from the company in respect of the relevant interest.

(7) The provisions of this regulation are subject to any orders given under regulation 11.

Protection of
third party rights.

11. (1) The court may give an order under this regulation if, on application by any person aggrieved, the court is satisfied that a restriction notice issued by the company under regulation 7 unfairly affects the rights of third parties in respect of

the relevant interest.

- (2) The order under sub regulation (1) is given for the purpose of protecting third party rights that certain acts will not constitute a breach of the restrictions placed on the relevant interest by the restriction notice.
- (3) The order under sub regulation (1) may be given subject to such terms as the court deems fit.

Instances where a company may withdraw a restriction notice.

- 12.** A company that issues a person with a restriction notice under regulation 7 shall by notice withdraw the restriction notice if—
 - (a) it is satisfied that there is a valid reason sufficient to justify the person's failure to comply with the notice served under regulation 6;
 - (b) the notice served under regulation 6 is complied with; or
 - (c) ordered by the court.

Procedure for withdrawal of a restriction notice.

- 13.** (1) Where a company is required to withdraw a restriction notice under regulation 12, the withdrawal notice shall—
 - (a) be given not later than fourteen days from the date on which the company became required to withdraw the restriction notice;
 - (b) specify the date on which the withdrawal notice is given;
 - (c) identify the addressee's relevant interest in the company; and
 - (d) state that the relevant interest is no longer subject to restrictions.
- (2) A company shall file a copy of the withdrawal notice issued under this regulation with the Registrar within fourteen days from the date of the withdrawal notice.

Details to be recorded by a company in its register where there is unidentified beneficial owner.

- 14.** (1) This regulation applies where a company knows, or has reasonable cause to believe, that there is a beneficial owner in relation to the company and—
 - (a) has not been able to identify the beneficial owner;
 - (b) has identified the beneficial owner but has not been able to obtain the beneficial owner 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 beneficial ownership.
- (2) The company shall note in its register of beneficial owners that it knows or has reasonable cause to believe that there is a beneficial owner in relation to the

company but—

- (a) has not identified the beneficial owner;
- (b) has not been able to obtain the beneficial owner 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 beneficial ownership.

Additional details to be recorded where a warning notice has been issued.

15. Where a note has been placed in a company's register for an addressee's failure to comply with a warning notice under regulation 7(1) and the addressee of the notice to which the note relates has complied with the notice after the time specified in the notice, the company shall note in its register of beneficial owners—

- (a) that the notice has been complied with after the time specified in the notice; and
- (b) the date on which the notice was complied with.

Additional details to be recorded where a restriction notice has been issued.

16. (1) Where a note has been placed in a company's register following the issuance of a restriction notice under regulation 7(2) and the company withdraws a restriction notice, the company shall note in its register of beneficial owner—

- (a) that it has withdrawn the restriction notice by issuing a withdrawal notice; and
- (b) the date specified in the withdrawal notice as the date on which the withdrawal notice was issued.

(2) Where a court makes an order under regulation 11 directing that a relevant interest in the company ceases to be subject to restrictions, the company shall note in its register of beneficial owners—

- (a) that the court has made an order under regulation 11 directing that a relevant interest in the company cease to be subject to restrictions; and
- (b) the date on which that order takes effect.

Mode of delivery of notices.

17. Any notice issued pursuant to these Regulations may be made to an addressee's postal address, residential address or email address.

**FIRST SCHEDULE
NATURE OF CONTROL**

r3(2)

1. The particulars required by regulation 3(1)(m) are as follows—
 - (a) Holds at least 10% of the issued shares in the company either directly or indirectly;
 - (b) Exercises at least 10% of the voting rights in the company either directly or indirectly;
 - (c) Whether a person holds a right, directly or indirectly, to appoint or remove a director of the company; or
 - (d) Whether a person exercises significant influence or control, directly or indirectly, over the company.

**SECOND SCHEDULE
FORMS**

**FORM BOF1
NOTICE OF BENEFICIAL OWNER PARTICULARS*
[Section 93 of the Companies Act, 2015]**

r.3(3)

Name of company:
Number of company:

To the Registrar of Companies:

The above company hereby gives a notice in accordance with section 93 of the Companies Act, 2015 that the following person is a beneficial owner of the company

Date that the person became a beneficial owner: ____/____/____ [dd/mm/yyyy]

BENEFICIAL OWNER

Full Name	
National identity card number/ Passport number	
Personal identification number	
Nationality(ties)	
Date of birth [dd/mm/yyyy]	
Residential address	
Postal address	
Current Email address	
Current Telephone number	
Occupation	

NATURE OF OWNERSHIP OR CONTROL

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"/> Unknown <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"/> Unknown <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"/> Unknown <input type="checkbox"/> Whether a person exercises significant influence or control over the company. <input type="checkbox"/> Directly <input type="checkbox"/> Indirectly <input type="checkbox"/> Unknown
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[Note: Please enter particulars of each and every beneficial owner in a separate form]

UNSPECIFIED OR UNKNOWN BENEFICIAL OWNER

Reason**	
Description ***	

LINK OF BENEFICIAL OWNER WITH THE COMPANY

Specify how the beneficial owner is linked to the company	(a) Name of shareholder; (b) Name of director appointed by the beneficial owner;

Lodged on behalf of the company by:

Name:	
ID/ Passport number	
Address:	
Signature:	
Capacity****:	
Source*****:	
Date:	

NOTES

- * This form is used to notify the Registry of the particulars of company beneficial owners.
- ** Please indicate the position in accordance with regulation 13.
- *** Please give a description and attach evidence of the steps taken to acquire the particulars.
- **** Please indicate whether director, certified secretary or advocate of the company
- ***** Please indicate whether the information obtained was (a) provided by the beneficial owner or their authorised representative; (b) taken from an official register; or (c) provided by a third party not directly related to the beneficial owner.

FORM BOF2
NOTICE OF CHANGE OF BENEFICIAL OWNERS' PARTICULARS*
 [Section 93 of the Companies Act, 2015]

r.3(4)

Name of company:	
Number of the company:	

To the Registrar of Companies:

The above company hereby gives notice in accordance with section 93 of the Companies Act, 2015, that the registered particulars** of the beneficial owners of the company, as specified in column 1 of the table below, have changed as indicated in column 2 of that table.

<i>Column 1</i> <i>Name of the beneficial owner concerned</i>	<i>Column 2</i> <i>Particulars of change</i>

Lodged on behalf of the company by:

Name:	
ID/ Passport number	
Postal Address:	
Signature:	
Capacity***:	
Source****:	
Date:	

NOTES

- * This form is used to notify the Registry of changes in the particulars of company beneficial owners.
- ** The particulars to be notified are of changes occurring in the company's register of beneficial owners.
- *** Please indicate whether director, certified secretary or advocate of the company.
- **** Please indicate whether the information obtained was (a) provided by the beneficial owner or their authorised representative; (b) taken from an official register; or (c) provided by a third party not directly related to the beneficial owner.

FORM BOF3
NOTICE OF CEASING TO BE BENEFICIAL OWNER*
 [Section 93 of the Companies Act, 2015]

r.3(5)

Name of company:	
Number of the company:	

To the Registrar of Companies:

The above company hereby gives notice in accordance with section 93 of the Companies Act, 2015 that the beneficial owners of the company, as specified in column 1 of the table below, ceased to be beneficial owners of the company on the date(s) specified opposite that/those name(s) in column 2 of that table.

<i>Column 1 Name of the beneficial owner concerned</i>	<i>Column 2 Date on which a person ceased to be a beneficial owner</i>	<i>Column 3 Reason(s) for cessation</i>
	___/___/___ [dd/mm/yyyy]	
Lodged on behalf of the company by:		
Name:		
ID/ Passport number:		
Postal Address:		
Signature:		
Capacity**:		
Source***:		
Date:		

NOTES

* This form is used to notify the Registry when a person ceases to be a beneficial owner.

** Please indicate whether director, certified secretary or advocate of the company.

*** Please indicate whether the information obtained was (a) provided by the beneficial owner or their authorised representative; (b) taken from an official register; or (c) provided by a third party not directly related to the beneficial owner.

**FORM BOF4
BENEFICIAL OWNERSHIP OFFICIAL SEARCH REQUEST
[Section 93 of the Companies Act, 2015]**

r.4(1)

Name of company:

Number of company:

Reason(s) for conducting a search

Lodged by:	
Name:	
ID/ Passport number:	
Postal Address:	
Signature:	
Date:	

THIRD SCHEDULE

FEES PAYABLE TO THE REGISTRAR

(r.4)

<i>Column 1 Item no.</i>	<i>Column 2 Matter</i>	<i>Fee (KSh)</i>
1.	Notice of beneficial owner particulars	500
2.	Notice of change of beneficial owners' particulars	500
3.	Notice of ceasing to be a beneficial owner	500
4.	Beneficial Owner Official Search Request	800

Made on the....., 2019.

**P. KIHARA KARIUKI,
Attorney-General.**