



**To: The Director General, Business Registration Service (BRS)
316 Upper Hill Chambers, 17th Floor
P. O. Box 30404-00100
2nd Ngong Avenue,
Nairobi, Kenya**

19 July 2022

Dear Sir:

RE: STAKEHOLDER COMMENTS ON THE REVIEW OF BENEFICIAL OWNERSHIP FRAMEWORK FOR IMPROVED INFORMATION DISCLOSURE

This submission is made by the East African Tax and Governance Network (EATGN) together with Open Ownership and Tax Justice Network Africa (TJNA) as part of ongoing initiatives to assist authorities in Kenya with technical guidance in relation to improving the beneficial ownership framework and standards. Specifically, the aim is to enhance the use of beneficial ownership data to advance information disclosure to prevent fraud or corruption; improve service delivery; verify supplier eligibility; enhance accountability; improve policy effectiveness; and improve procurement processes as well as support Kenya in meeting the minimum requirements of the Financial Action Task Force and following emerging international best practice.

We commend the Kenya government and the Business Registration Service (BRS) in the progress made thus far in implementing beneficial ownership transparency. We welcome this consultation as another milestone for Kenya's progress towards a more comprehensive legislative framework.

Open Ownership (OO) is a not-for-profit organisation which provides support and guidance on all aspects of beneficial ownership transparency reforms. Since 2017, OO has worked with over 40 countries to advance implementation of beneficial ownership reforms, as well as supporting the creation of over 15 new central and sectoral registers. OO has been providing legislative and policy support on beneficial ownership implementation in Kenya since 2018.

The East African Tax and Governance Network (EATGN) is a civil society collaborative initiative of individuals and non-state actor institutions in the East Africa Community (EAC) that share the understanding that taxation is fundamental in achieving social justice and development goals. EATGN champions for tax justice in governance, through public policy advocacy, research, and capacity building to create links between various constituencies in the region to improve tax policy while deepening democratic governance.

Tax Justice Network Africa (TJNA) is a pan-African research and advocacy organisation established in 2007 and a member of the Global Alliance for Tax Justice (GATJ). Through its Nairobi Secretariat, TJNA collaborates closely with its member organisations and other civil society partners across Africa to

curb Illicit Financial Flows (IFFs) and promote progressive taxation systems. TJNA advocates for pro-poor tax policies and the strengthening of tax systems to promote Domestic Resource Mobilization (DRM).

In line with the BRS's request for stakeholder comments, Open Ownership, EATGN and TJNA have examined the following legislations:

1. The Business Laws (Amendment) Bill, 2022,
2. The Companies (Beneficial Ownership Information) Regulations, 2022,
3. The Partnerships (Beneficial Ownership Information) Regulations, 2022, and
4. The Registrar of Companies Forms Rules, 2022

We hereby provide comments that will help improve information disclosure based on OO's experience developing the Beneficial Ownership Data Standard and the Principles for effective disclosure, that will continue to facilitate achieving Kenya's Open Government Partnership commitments and international obligations under FATF.

Our submission also offers an endorsement and support for the recommendations submitted by Global Financial Integrity (GFI), our partner in our efforts to improve the beneficial ownership framework in Kenya.

Thank you for your consideration.

Yours sincerely,

Leonard Wanyama, Coordinator, EATGN,

Also on behalf of OO and TJNA



Date: 19 July 2022

NAME OF THE BILL/REGULATIONS: THE BUSINESS LAWS (AMENDMENT) BILL, 2022

SECTION	PROPOSED AMENDMENT(S)	COMMENT(S)	RECOMMENDATIONS
3	Business Laws (Amendment) Act, 2022 proposes to amend the Companies Act, 2015 by inserting a new section (f) after section 19(e) (f) the persons named in the statement of initial beneficial owners shall be the beneficial owners of the company.	This is confusing as there is already a section (f)	This section should be renamed to section (g)
6	Section 854 of the Companies Act is amended by inserting the following new subsection immediately after subsection 1(j) -- (k) the contents of a document sent to the Registrar containing any information disclosed in accordance with section 93A.	This implies that there should be no circumstances under which beneficial ownership information should be made available for public inspection. This contradicts Regulation 13(5) in the Companies (Beneficial Ownership Information) (Amendment) which specifies the publication of beneficial ownership information of awardees of public contracts.	A proviso should be included to indicate that this does not apply to public private partnerships and public procurement contracting
6	Section 854 of the Companies Act is amended by inserting the following new subsection immediately after subsection 1(j) -- (k) the contents of a document sent to the Registrar containing any information disclosed in accordance with section 93A.	This implies that there should be no circumstances under which beneficial ownership information should be made available for public inspection. This contradicts Regulation 13(7) of the Beneficial Ownership Information (Amendment) Regulations, 2022, which would allow for Competent Authorities to publish any such information if it “affects the country”	The phrase “affects the country” should be clarified or replaced with “is in the public interest” to maintain consistency with the drafting language used in the Principal Act (sections 219, 221, and 222). This also applies to the Beneficial Ownership Information Regulations 2022. A proviso should be included to indicate that this does not apply when this is in the public interest.

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6	<p>Section 854 of the Companies Act is amended by inserting the following new subsection immediately after subsection 1(j) --</p> <p>(k) the contents of a document sent to the Registrar contain any information disclosed in accordance with section 93A.</p>	<p>FATF Recommendation 24 states that countries should consider facilitating public access to BO information. Public access expands direct access data to new user groups – including FIs and DNFBCs, investigative journalists and foreign law enforcement – which all play a role in countering ML/TF.</p> <p>Public access can also complement verification approaches to improve BO data quality.</p>	<p>Consider removing section 6 following international best practice, as suggested by FATF Recommendation 24.</p>
N/A	N/A	<p>In order for sanctions to be “effective, proportionate and dissuasive” as required by the FATF, they should include both financial and non-financial sanctions for noncompliance, including being struck off the register.</p>	<p>In order to ensure compliance, it is proposed that companies be struck off for (persistent) noncompliance with the requirement to collect and provide beneficial ownership information to the Registrar</p>
N/A	N/A	<p>The FATF requires jurisdictions to obtain beneficial ownership of foreign legal entities where they have a sufficient link with the country.</p> <p>In the current amendments this applies to “foreign companies carrying on business in Kenya” in section 974(2) of the Companies Act, 2015, which is defined narrowly and ambiguously. This should be widened in order to cover all foreign entities that may pose a ML/TF risk.</p>	<p>In line with the FATF's description of a "sufficient link" the definition of a foreign company in Kenya should be defined as follows:</p> <p>A foreign company doing business in Kenya should be defined as follows:</p> <p>“When a company has permanent establishment/branch/agency, has significant business activity or has significant and ongoing business relations with financial</p>

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			institutions or DNFBPs, subject to AML/CFT regulation, has real estate/other local investment, employs staff, or is a tax resident, in the country.”
8	This section aims to amend section 975 of the Companies Act is amended by inserting a new subsection 3(h) immediately after subsection 3(g) which require the furnishing of beneficial ownership information before a foreign company can be registered	In order to mitigate the challenges of verifying the BO of foreign entities, information provided by the company should be required to be verified by a domestic regulated entity (such as a notary public). This entity should be liable for inaccuracies and covered by the sanctions regime, in order to ensure the accuracy and veracity of such information.	The section should be amended to include a verification requirement by a domestic regulated entity such as a notary public, for foreign companies.
8	Section 975 of the Companies Act is amended by inserting the following new subsection immediately after subsection 3(g) -- (h) a statement of initial beneficial owners of the foreign company.	There should be uniformity between the requirements for local and foreign companies when providing “initial beneficial ownership” information. At present the proposed amendment for local companies in the proposed 13(4) (d) makes it clear that this disclosure is to be made subject to section 93A	The new section 975(3)(h) should include the phrase “in accordance with section 93A of the Act.”
11	Section 1006 of the Companies Act is amended by inserting the following new subsection immediately after subsection 2(j) --	This amendment appears to have been intended to be made to section 1007	Reword the amendment to apply to section 1007
N/A	Under the Companies Act, 2015, there are sanctions for not providing beneficial ownership information under section 93A(5)	This section only has criminal penalties that can only be levied upon conviction. Given that court cases take on average a period of 2 years to be completed this is an unduly long period that may not encourage compliance. In order for sanctions to be “effective, proportionate and dissuasive” as required by the FATF, sanctions should include	Both financial and non-financial administrative penalties should form part of the sanctions regime. The registrar should be given the legal power and mandate to issue and enforce these sanctions. Automatic sanctions should be automated where possible (e.g. for late filings).

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		both criminal and administrative penalties.	
N/A	The Limited Liability Partnership Act is amended by inserting a new section 31A immediately after section 31.	As above.	As above.
15	The Limited Liability Partnership Act is amended by inserting a new section 31A immediately after section 31.	The new section 31A(8) refers to subsection 5. It appears that this was done in error.	The section should refer to subsection (7)
N/A	N/A	FATF Recommendations 24 contains a requirement for countries to verify BO information. However, there are no provisions for verification in any of the amendments.	There should be a legal requirement for information to be verified in the Companies Act, 2015 as well as sanctions for providing wrong information. The Registrar should be provided with the legal power and mandate to query and change information.

NAME OF THE BILL/REGULATIONS: THE COMPANIES (BENEFICIAL OWNERSHIP INFORMATION) (AMENDMENT) REGULATIONS, 2022

SECTION	PROPOSED AMENDMENT(S)	COMMENT(S)	RECOMMENDATIONS
2 (a)	The regulations define “joint arrangements” as arrangements between the holders of shares (or rights) in a company that they will exercise all or substantially all the rights conferred by their respective shares (or rights) jointly in a way that is predetermined by the arrangement.	This definition does not explicitly capture informal arrangements. The act should specify when joint arrangements are assumed.	The definition of arrangements should cover both formal and informal arrangements. Joint arrangement should be assumed to exist where shares are held by family members or where persons have similar voting patterns
2 (a)	N/A	The definition of beneficial ownership does not capture deriving economic benefits without shareholdership. The definition of "significant influence or control" is restrictive in that it focuses only on finances and financial policies.	The Companies (Beneficial Ownership Information) Regulations, 2020 should be amended to widen the definition of significant influence and control. The following wording may be used: “significant influence or control” means the ability to direct or materially influence the finances, financial policies, management, operations, structure of a company or limited liability partnership, or derive significant economic benefits from the company unless where these powers solely derived from an individual's employment status”
3	This regulation proposes to amend the The Companies (Beneficial Ownership Information) Regulations, 2020 by adding 3 (2) (e) which states that a person that holds the highest percentage of the issued shares in the company, either directly or indirectly, where no individual person meets the conditions under paragraphs (a), (b), (c) and (d).	Legal ownership is already held by the BRS as part of basic company information, and this amendment both confuses the definition of BO, and places a burden on BRS to ensure conditions under paragraphs (a), (b), (c) and (d) have not been met.	Delete the provision.

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N/A	N/A	The definition of beneficial ownership in regulation 3(2) of the Companies (Beneficial Ownership Information) Regulations, 2020 could be widened to take a risk based approach.	The amendments could set lower thresholds for companies in specific sectors that have higher risks, e.g. 5% for the extractive industry. Lower thresholds may also be used for individuals that have higher risks, e.g. between 0- 5% for politically exposed persons. The regulations should consider referring to the definition of politically exposed persons in the Proceeds of Crime and Anti-Money Laundering Act
3	N/A	Regulation 3 (2) of the the Companies (Beneficial Ownership Information) Regulations, 2020 should be amended to specify that beneficial owners of a trust that holds a stake in a company should disclose their identity	Regulation 3 (2) of the the Companies (Beneficial Ownership Information) Regulations, 2020 should be amended to include: (e) being the settlor(s), trustee(s), protector(s), beneficiary/ies, or in any other way exercising significant control over a trust or firm, whether or not it is a legal entity, but would itself satisfy any of the first four conditions in relation to the Company if it were an individual If any of these are a corporate entity then the beneficial owners of those companies should be disclosed.
5	Regulation 5 aims to amend Regulation 4 (5) of the principle regulations to require any person acting as a nominee shareholder or a trustee of a trust holding shares in a company to disclose to the company the nominee or trust status and maintain relevant ownership and identity information set out under regulation 3, and including accounting information, when acting as legal owners on behalf	This amendment is welcomed, although falls short of the FATF Recommendation 24 requirements. There should be an obligation to identify and disclose at minimum the name of the nominator to the registry, and the requirements should extend to nominee directors. The term “trust status” should be clarified.	Nominees and nominee directors should be required to disclose their nominee status and the name of their nominator (on whose behalf they are holding shares or are a director) to both the company and the Registrar. Where BO is held through a nominee or a trust, information on the

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	<p>of other persons and to ensure that the information is complete and up to date.</p>	<p>In addition, this Regulation does not clarify what is meant by accounting information.</p>	<p>nominee arrangement and the trust should be disclosed to the Registrar (see recommendations regarding BOFi).</p> <p>Nominee status of both shareholders and directors should be published as part of publicly available basic company information.</p> <p>The term “trust status” should be clarified. The trustee of a trust that holds shares in a company should disclose their status, and also disclose to the company the identities of additional trustee(s), settlor(s), protector(s), beneficiary/ies, and any other person in any other way exercising significant control over a trust. If any of these are a corporate entity then the beneficial owners of those companies should be disclosed.</p> <p>Additionally, a definition of what is meant by accounting information should be provided.</p>
6	<p>The principal Regulations is amended by the insertion of the new regulation 4A which provides that a person who becomes a beneficial owner of a company other than through direct ownership of shares shall notify the Company of their status as a beneficial owner, indicate the date they became a beneficial owner and provide the information set out under regulation 3(2).</p>	<p>Not all beneficial owners will be aware of their status as beneficial owner and it may not always be possible for an individual to be aware of this, especially in the event that BO is held indirectly. Nevertheless, it is reasonable to place a requirement on the individual to notify the Company where they are aware of their status as beneficial</p>	<p>The act should specify this applies to individuals who are aware of their status as beneficial owner. The act should be amended to clarify what sanctions exist for noncompliance. The timeframe should be shortened to 14 days.</p>

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		owner, which may be helpful for the Company in complying with the requirements. In this event, the time period of 30 days is unnecessarily long.	
8	Proposes to amend regulation 13 of the principal Regulations by inserting the following new paragraphs under paragraph 2A;	There is no paragraph 2A in the principal regulations	The regulation should clarify what section of the principle amendment is corrected.
8(b)	Aims to amend the regulation 13(4) of the principal regulations by providing that Beneficial ownership information maintained by the company, by the Registrar or disclosed under sub-regulation 2A shall not be made available to the public	FATF Recommendation 24 states that countries should consider facilitating public access to BO information. Public access expands direct access data to new user groups – including FIs and DNFBPs, investigative journalists and foreign law enforcement – which all play a role in countering ML/TF. Public access can also complement verification approaches to improve BO data quality.	There should be public access to beneficial ownership information.
8(b)	Add an additional sub-regulation at regulation 13 to provide exemption from publication in limited cases, the publicly available data should note that beneficial ownership information is held by authorities but has been exempt from publication	The regulations and amendments do not currently provide for a narrowly defined set of circumstances where a credible threat to an individual may be reasonable grounds for non-publication of one or more fields. In exceptional circumstances, the regulations may provide for	Add an additional sub-regulation at regulation 13. Where an exemption is permitted, this should be clearly reflected in the published contract.

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		an exemption from publication.	
N/A	N/A	The Regulations at present do not provide for the verification of the information collected.	The verification of information should be included in the regulation
8(d)	Attempts to amend the principal regulations in paragraph 13(6) by inserting the words “the procuring entity, the contracting authority,” immediately after the words “competent authority”	The principal regulations do not have a corresponding regulation	The regulation should clarify what section of the principle amendment is corrected
8(e)	The amendment inserts the following new paragraph 6A; “6A The publication of the beneficial ownership information under sub-regulation 6 shall be made pursuant to the provisions of the Data Protection Act, No 24 of 2019, and at a minimum shall include the full name, postal address, month and year of birth, country of residence and nationality, and	The sentence is incomplete, and there is no provision for the disclosure of public information of the nature and extent of the interest held. The amendment does not account for an individual who holds more than one nationality. All nationalities should be disclosed.	Proposed wording: “The publication of the beneficial ownership information under sub-regulation 6 shall be made pursuant to the provisions of the Data Protection Act, No 24 of 2019, and at a minimum shall include the full name, postal address, month and year of birth, country of residence and nationalities, and the nature and extent of the interest held.”
N/A	N/A	Regulation 13(5) provides that notwithstanding sub regulation (4), information relating to a beneficial owner shall only be made available to a competent authority upon a written request by the competent authority to the Registrar. This is insufficient to meet the FATF requirement of “timely” and “rapid and efficient access” for competent authorities. FATF also recommends countries to consider facilitating “timely access” for financial institutions and DNFBPs, and requires	Competent authorities should have direct access to the BO register, without needing to submit a written request. Financial institutions and DNFBPs also require direct access to the register. The act should include a provision for foreign competent authorities to be provided with BO information upon a written request. It should be noted that all FATF access requirements can be addressed by

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		countries to “rapidly, constructively and effectively provide the widest possible range of international cooperation in relation to basic and beneficial ownership information”	making BO information publicly accessible.
8(f)	This regulation attempts to amend regulation 13(7) of the principal regulations	These do not exist	Clarity should be given on what is being referred to.
8	This regulation refers to regulation 2A of the principal regulation which is to be amended	Regulation 13(2)A does not exist in the Act	It is possible that a new regulation 2A is being introduced. This should be clarified to reduce confusion and ensure clarity
Form BOF1	This requires the names of beneficial owners in one field	There is a single field that does not specify the number of names to be provided as well as the order in which they should be provided. This can cause confusion when verifying information.	We would recommend either explaining the format required or separating out any name fields to avoid any confusion by creating separate fields for the first name and family name. Separating out the fields would be in line with the best practices for high-quality BO data collection that OO has documented as part of our Beneficial Ownership Data Standard .
Form BOF1	This requires the provision of information of nationality	It is a single field that does not cater to people with multiple nationalities.	In the nationality field, it should be clear what users should do if they hold dual or multiple nationalities. People with multiple nationalities should be required to fill out all nationalities, and the form should provide multiple nationality fields in line with the best practice for BO data collection set out in OO’s example beneficial ownership declaration form .
Form BOF1	This section provides for a declaration of the nature of ownership and control	Although there is scope for declaring indirect beneficial ownership, the field does not allow for sufficient	The form should be expanded to allow for sufficient detail to be captured. The form should

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		<p>detail on indirect ownership to be captured by, for example, identifying the companies through which indirect ownership is held.</p> <p>Open Ownership understands that this field is intended to capture nominee arrangements (nominee shareholdership and nominee directorship) but indirect ownership as a concept extends beyond just these types of arrangements. Where BO of a registered private company is exercised indirectly (via intermediaries, including legal owners), OO advises that sufficient information about intermediaries should be collected to reveal full ownership/control chains.</p>	<p>include a section where BO is exercised through a firm or trust, in line with earlier recommendations.</p> <p>The form should collect information on how indirect ownership and control are exercised. We would recommend inserting a new section – or expanding the section LINK OF BENEFICIAL OWNER WITH THE COMPANY IN INDIRECT OWNERSHIP – capturing information on the legal owners through which BO is exercised. Information captured should be sufficient to match these to legal ownership information already held by BRS.</p> <p>For individuals (e.g. in the event of a nominee arrangement) this should include the same amount of information that is collected on beneficial owners (including PINs and TINs).</p> <p>For companies this should include the same amount of information as is captured on the reporting company, including company number and jurisdiction under which the company number is issued.</p>
Form BOF1	The PIN number is required to be provided	Although this allows for the collection of Kenyan PINs, it fails to account of foreigners who may use Tax Identification Numbers.	An additional field should be provided to capture Tax Identification Numbers for foreigners.
Form BOF1	The Birth Certificate and Passport and National ID numbers is required	Although this allows for the collection of this information, it does not distinguish between Birth Certificates and National ID numbers. There may be confusion as to what	Where an individual is required to provide a birth certificate number, national identity card number or passport number, Open Ownership would advise creating one

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		<p>number refers to what identifier.</p> <p>As it will not be possible to automatically cross-check passport numbers issued by foreign countries, foreign beneficial owners should be required to submit a notarised copy of their passport.</p>	<p>field or tick box where the individual can indicate which type of ID they will provide followed by a separate field for the number. This will support better quality data collection and would support easier automated checks of the IDs provided via the online version of Form BOF1 as the ID numbers could be checked for correct length and formatting.</p> <p>Foreign beneficial owners should be required to submit a notarised copy of their passport.</p>
Form BOF1	Provide definitions of legal ownership and beneficial ownership	The concept of legal ownership is not the same as the concept of beneficial ownership, but they are related.	Providing a definition of legal ownership to explain how it is different from beneficial ownership could be a useful addition to Form BOF1.
Form BOF1	Clarify type of company number to provide in BOF1 form		<p>Where the company number is requested at the top of Form BOF1, it would be good to clearly indicate that this should be the company number from the BRS Company Registry in case there is any chance of misunderstandings where perhaps a tax ID might be mistakenly provided by an individual or company. From the BRS Company Registry, it seems like valid company numbers can be of varying length and formatting including examples like C.140512, CPR/2011/41483 and PVT/2016/025014.</p> <p>Additional text guidance could be useful here to explain whether or not - for example - companies should enter the full stops or backslashes in their company numbers or just</p>

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			<p>the letters and numbers. Again, this will improve the quality of the company identifier data which will make it easier to connect the collected BO data to other data like that collected during public procurement processes.</p> <p>Foreign companies should also be required to specify which jurisdiction has issued their company number.</p>
Form BOF1	State clearly which fields are required and which are optional	Form BOF1 currently provides no indication next to fields as to whether they are required or optional for individuals or companies to fill in. Adding these indications is a useful signal to individuals and companies required to fill out the form and will help ensure compliance with more complete data collection.	Add markers or asterisks next to every required field with a note to explain which are essential.
Form BOF1	Update BOF1 form with option to declare that person has tried but failed to gather required beneficial ownership information	<p>In certain cases, BO forms should provide a way for the individual or company filling out the form to declare that they have tried and failed to collect the required information. In Kenya, the legal basis for this is set out in regulation 11 of the Companies (Beneficial Ownership Information) Regulations, 2020.</p> <p>For instance, a beneficial owner whose details are unknown could be flagged as an “unknown person”. Open Ownership’s Beneficial Ownership Data Standard provides guidance on best practices for the capturing of data on such unspecified or unknown beneficial owners via the unspecified field in an</p>	<p>We would recommend the inclusion of an additional field allowing people to choose from a list of the reasons set out in the 2020 regulations for why full BO information cannot be provided:</p> <ul style="list-style-type: none"> • The company has not identified the beneficial owner • The company has not been able to identify the beneficial owner particulars • The company has issued a warning notice which has not been complied with • The company has issued a restriction notice • There is a matter pending before court

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		<p>ownership or control statement, unspecifiedEntityDetails field in a entity or company statement and the unspecifiedPersonDetails field in a person statement.</p> <p>If Form BOF₁ could be updated to collect information on unknown persons or unknown ownership or control relationships, additional guidance should be provided to explain how a field should be correctly filled in as unknown.</p>	<p>in relation to beneficial ownership</p>
Form BOF ₁	State which information is for internal use only and will not be openly published	<p>There will be information collected about individual beneficial owners and other people which should not be published widely. Some private addresses, private contact details and identification details may be disclosable but not widely shareable due to limits in the legal mandate for publishing or sharing data, or reasons of personal privacy or security.</p>	<p>We recommend that Form BOF₁ should make it clear what information is being collected for agency and state use only and will not be made public. For example, such information could be annotated with a message “This will not be made public”.</p>

NAME OF THE BILL/REGULATIONS: THE PARTNERSHIPS (BENEFICIAL OWNERSHIP INFORMATION) REGULATIONS, 2022

SECTION	PROPOSED AMENDMENT(S)	COMMENT(S)	RECOMMENDATIONS
2	<p>Introduces a definition of beneficial owner as a natural person who ultimately owns or controls an arrangement or includes persons who exercise ultimate effective control over an arrangement.</p> <p>It also defines an arrangement as 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</p>	<p>This section attempts to bring legal arrangements within the scope of beneficial ownership regulation. Limited Liability Partnerships are not arrangements as these are bodies corporate with perpetual succession with a legal personality separate from that of its partners pursuant to section 6(2) of the Limited Liability Partnership Act, 2011.</p>	<p>The regulation of arrangements such as trusts should be done under an act that covers Trusts. Should the aim of the regulation be to capture information on trusts to the extent that they have a stake in a partnership then this should be expressly indicated.</p>
2	<p>The definition of “personal identification number” is that of a personal identification number being issued under section 12 of the Tax Procedures Act, 2015</p>	<p>While Form <i>BOF1</i> requires the collection of personal identification information, the Regulations restrict the collection of personal identification numbers to only Kenyan LLPs</p>	<p>The definition of personal identification numbers should be widened to include tax identification numbers or their equivalent in order to ensure that foreign LLPs are covered as well</p>
2	<p>The phrase “ultimately owns or controls” is defined as a situation in which ownership is exercised through a chain of ownership or by means of control other than direct control.</p>	<p>While this definition when read together with the definition of “beneficial owner” attempts to capture all the scenarios in which ultimate ownership or control is exercised, it does not adequately do so</p>	<p>A non-exhaustive list of examples should be given of what scenarios are envisioned under this section and better information collected in the form on how indirect ownership and control is exercised</p>
3(1)	<p>This Regulation provides that every partnership shall have a beneficial owner.</p>	<p>This section seems to imply that partnerships should have just one beneficial owner. The contradicts the definition which specifies that any person who meets any of the criteria is considered a beneficial owner.</p>	<p>Delete provision.</p>
3(2) (b)	<p>The regulation provides that: a reportable beneficial owner of a partnership shall be a natural person who meets any of the</p>	<p>While this definition attempts to set a threshold for beneficial ownership with respect to the ability to exercise</p>	<p>The regulations should either remove this requirement or clarify how voting rights should be determined</p>

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	<p>following conditions, whether individually or jointly:</p> <p>b) exercises at least ten percent of the voting rights in the partnership either directly or indirectly;</p>	<p>voting rights it should be noted that the paragraph 7(2) of the First Schedule to the Limited Liability Partnership Act, 2011 provides that “For the purpose of deciding a matter relating to a limited liability partnership, each partner shall have one vote.” As such, voting rights in LLPs do not operate in the same way as it does for companies.</p>	
3(2)	<p>e) holds the highest percentage of the share in the capital or profits of the partnership, either directly or indirectly, where no individual person meets the conditions under paragraphs (a), (b), (c) and (d).</p>	<p>Legal ownership is already held by the BRS as part of basic company information, and this amendment both confuses the definition of BO, and places a burden on BRS to ensure conditions under paragraphs (a), (b), (c) and (d) have not been met.</p>	<p>Delete the provision</p>
3(2)	N/A	<p>Regulation 3 (2) of the the Partnership (Beneficial Ownership Information) Regulations, 2022 should be amended to specify that beneficial owners of a trust that holds a stake in the partnership should disclose their identity</p>	<p>Regulation 3 (2) of the the Partnerships (Beneficial Ownership Information) Regulations, 2022 should be amended to include:</p> <p>(e) being the settlor(s), trustee(s), protector(s), beneficiary/ies, or in any other way exercising significant control over a trust or firm, whether or not it is a legal entity, but would itself satisfy any of the first four conditions in relation to the Partnership if it were an individual</p> <p>If any of these are a corporate entity then the beneficial owners of those companies should be disclosed.</p>
3(6)	<p>This Regulation requires that a partnership shall lodge with the Registrar a copy of its register of beneficial owners in Form BOF1</p>	<p>This section provides that a partnership shall lodge with the Registrar a copy of its beneficial owners.</p>	<p>The regulations should require a designated person to provide beneficial</p>

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		This Regulation will be difficult to enforce foreign partnerships are operating in Kenya.	ownership information for LLPs.
4(3)	This Regulation provides that a person who receives a notice under sub regulation (1) is not required to disclose any information in respect of which the Court has directed not to be disclosed.	This section is silent on whether it also covers orders that have been made by foreign Courts	A definition of what Courts are referred to should be made
4(5)	This Regulation provides that any person acting as a nominee partner or a trustee of a trust holding a stake in a partnership shall disclose to the partnership the nominee or trust status and maintain relevant ownership and identity information set out under regulation 3, and including accounting information, when acting as legal owners on behalf of other persons and ensure that the information is complete and up to date.	<p>This amendment is welcomed, although falls short of the FATF Recommendation 24 requirements. There should be an obligation to identify and disclose the name of the nominator to the registry, and the requirements should extend to nominee directors. The term “trust status” should be clarified.</p> <p>In addition, this Regulation does not clarify what is meant by accounting information.</p>	<p>Nominees and nominee directors should be required to disclose their nominee status and the name of their nominator (on whose behalf they are holding shares or are a director) to both the partnership and the Registrar.</p> <p>Where BO is held through a nominee or a trust, information on the nominee arrangement and the trust should be disclosed to the Registrar (see recommendations regarding BOF1).</p> <p>Nominee status of both shareholders and directors should be published as part of publicly available basic information on partnerships.</p> <p>The term “trust status” should be clarified. The trustee of a trust that holds a stake in a partnership should disclose their status, and also disclose to the company the identities of additional trustee(s), settlor(s), protector(s), beneficiary/ies, and any other person in any other way exercising significant control over a trust. If any of these are a corporate entity then the beneficial owners of those companies should be disclosed.</p>

SECTION	PROPOSED AMENDMENT(S)	COMMENT(S)	RECOMMENDATIONS
			Additionally, a definition of what is meant by accounting information should be provided.
5	This Regulation provides that any person who becomes a beneficial owner of a partnership other than through direct ownership of a stake in the capital or profits shall notify the partnership of their status as a beneficial owner, indicate the date they became a beneficial owner and provide the information set out under regulation 3(2) with 30 days	Not all beneficial owners will be aware of their status as beneficial owner and it may not always be possible for an individual to be aware of this, especially in the event that BO is held indirectly. Nevertheless, it is reasonable to place a requirement on the individual to notify the Partnership where they are aware of their status as beneficial owner, which may be helpful for the Partnership in complying with the requirements. In this event, the time period of 30 days is unnecessarily long.	The act should specify this applies to individuals who are aware of their status as beneficial owner. The act should be amended to clarify what sanctions exist for noncompliance. The timeframe should be shortened to 14 days.
14(7)	This Regulation provides that the publication of the beneficial ownership information under sub-regulation 6 shall be made pursuant to the provisions of the Data Protection Act, 2019 and at a minimum shall include the full names, postal address, month and year of birth, country of residence and nationality.	There is no provision for the disclosure of public information of the nature and extent of the interest held. The amendment does not account for an individual who holds more than one nationality. All nationalities should be disclosed.	Proposed wording: "The publication of the beneficial ownership information under sub-regulation 6 shall be made pursuant to the provisions of the Data Protection Act, 2019 and at a minimum shall include the full names, postal address, month and year of birth, country of residence and nationalities, and the nature and extent of the interest held."
14(9)	This Regulation provides that notwithstanding the provisions of this regulation, the Competent Authority may seek, publish and publicize any important	This Regulation is vague as it does not clarify what information that affects the country is.	The phrase "affects the country" should be clarified or replaced with "is in the public interest" to maintain consistency with the

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	information regarding a partnership if such information affects the country.		drafting language used in other relevant acts.
Form BOF1	This form provides for the provision of full names	There is a single field that does not specify the number of names to be provided as well as the order in which they should be provided. This can cause confusion when verifying information.	We would recommend either explaining the format required or separating out any name fields to avoid any confusion by creating separate fields for the first name and family name. Separating out the fields would be in line with the best practices for high-quality BO data collection that OO has documented as part of our Beneficial Ownership Data Standard .
Form BOF1	This form provides for the provision of the nationality of beneficial owners	It is a single field that does not cater to people with multiple nationalities.	In the nationality field, it should be clear what users should do if they hold dual or multiple nationalities. People with multiple nationalities should be required to fill out all nationalities, and the form should provide multiple nationality fields in line with the best practice for BO data collection set out in OO's example beneficial ownership declaration form .
Form BOF1	The form does provides that the Birth Certificate Number, National identity card number or Passport number should be provided	<p>Although this allows for the collection of this information, it does not distinguish between Birth Certificates and National ID numbers. There may be confusion as to what number refers to what identifier.</p> <p>As it will not be possible to automatically cross-check passport numbers issued by foreign countries, foreign beneficial owners should be required to submit a notarised copy of their passport.</p>	Where an individual is required to provide a birth certificate number, national identity card number or passport number, Open Ownership would advise creating one field or tick box where the individual can indicate which type of ID they will provide followed by a separate field for the number. This will support better quality data collection and would support easier automated checks of the IDs provided via the online version of Form BOF1 as the ID numbers could be checked

SECTION	PROPOSED AMENDMENT(S)	COMMENT(S)	RECOMMENDATIONS
			<p>for correct length and formatting.</p> <p>Foreign beneficial owners should be required to submit a notarised copy of their passport.</p>
Form BOF1	This section provides for a declaration of the nature of ownership and control	<p>Although there is scope for declaring indirect beneficial ownership, the field does not allow for sufficient detail on indirect ownership to be captured by, for example, identifying the companies through which indirect ownership is held.</p> <p>Open Ownership understands that this field is intended to capture nominee shareholdership and nominee directorship) but indirect ownership as a concept extends beyond just these types of arrangements. Where BO of a Partnership is exercised indirectly (via intermediaries, including legal owners), OO advises that sufficient information about intermediaries should be collected to reveal full ownership/ control chains.</p>	<p>The form should be expanded to allow for sufficient detail to be captured. The form should include a section where BO is exercised through a firm or trust, in line with earlier recommendations.</p> <p>The form should collect information on how indirect ownership and control are exercised. We would recommend inserting a new section – or expanding the section LINK OF BENEFICIAL OWNER WITH THE PARTNERSHIP IN INDIRECT OWNERSHIP – capturing information on the legal owners through which BO is exercised. Information captured should be sufficient to match these to legal ownership information already held by BRS.</p> <p>For individuals (e.g. in the event of a nominee arrangement) this should include the same amount of information that is collected on beneficial owners (including PINs and TINs).</p> <p>For companies this should include the same amount of information as is captured on the reporting company, including company number and jurisdiction under which the company number is issued.</p>

SECTION	PROPOSED AMENDMENT(S)	COMMENT(S)	RECOMMENDATIONS
Form BOF1	Update BOF1 form with option to declare that person has tried but failed to gather required beneficial ownership information	<p>In certain cases, BO forms should provide a way for the individual or Partnership filling out the form to declare that they have tried and failed to collect the required information.</p> <p>For instance, a beneficial owner whose details are unknown could be flagged as an “unknown person”. Open Ownership’s Beneficial Ownership Data Standard provides guidance on best practices for the capturing of data on such unspecified or unknown beneficial owners via the unspecified field in an ownership or control statement, unspecifiedEntityDetails field in a entity or company statement and the unspecifiedPersonDetails field in a person statement.</p> <p>If Form BOF1 could be updated to collect information on unknown persons or unknown ownership or control relationships, additional guidance should be provided to explain how a field should be correctly filled in as unknown.</p>	<p>We would recommend the inclusion of an additional field allowing people to choose from a list of the reasons set out in the 2020 regulations for why full BO information cannot be provided:</p> <ul style="list-style-type: none"> • The Partnership has not identified the beneficial owner • The Partnership has not been able to identify the beneficial owner particulars • The Partnership has issued a warning notice which has not been complied with • The Partnership has issued a restriction notice • There is a matter pending before court in relation to beneficial ownership
Form BOF2	The form requires information to be provided on the change of Beneficial Ownership	At present no information is to be provided on the date on which the beneficial ownership changed	The form should include a field that requires the input of information on the date the change of beneficial ownership changed

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N/A	N/A	The form at present does not provide for joint arrangements	It is recommended that the definition of arrangements be included and to ensure that such a definition covers formal and informal arrangements. Informal arrangements can cover tacit agreements to vote in a similar manner which can be deduced from the voting history of the parties. Joint arrangement can also be assumed to exist where shares are held by family members or where persons have similar voting patterns
Form BOF1, BOF2, and BOF3	State clearly which fields are required and which are optional	Forms BOF1, BOF2 and BOF3 currently provide no indication next to fields as to whether they are required or optional for individuals or companies to fill in. Adding these indications is a useful signal to individuals and companies required to fill out the form and will help ensure compliance with more complete data collection.	Add markers or asterisks next to every required field with a note to explain which are essential.
Form BOF1, BOF2 and BOF3	State which information is for internal use only and will not be openly published	There will be information collected about individual beneficial owners and other people which should not be published widely. Some private addresses, private contact details and identification details may be disclosable but not widely shareable due to limits in the legal mandate for publishing or sharing data, or reasons of personal privacy or security.	We recommend that Forms BOF1, BOF2 and BOF3 should make it clear what information is being collected for agency and state use only and will not be made public. For example, such information could be annotated with a message “This will not be made public”.

NAME OF THE BILL/REGULATIONS: THE REGISTRAR OF COMPANIES (FORMS) RULES, 2017

SECTION	PROPOSED AMENDMENT(S)	COMMENT(S)	RECOMMENDATIONS
Part 4A	Annual return to be amended to include certification that the beneficial ownership information has changed since the last return but is yet to be notified to the Registrar	A wider range of options should be included in this section	This section should also include declaration of whether: <ul style="list-style-type: none"> beneficial ownership information has not changed since the last return and the information held by Registrar is accurate and up to date that the beneficial ownership information has changed since the last return and the Registrar has since been notified beneficial ownership has changed since the last return, but is yet to be notified to the Registrar
Part 4A	N/A	Part 4A currently provides no indication next to fields as to whether they are required or optional for individuals or companies to fill in. Adding these indications is a useful signal to individuals and companies required to fill out the form and will help ensure compliance with more complete data collection.	Indicate clearly that Part 4A is an obligatory field.