

Annex

To facilitate the provision of information on legislation, policies, practices and institutions on promoting beneficial ownership information transparency, including existing registry(ies) and mechanism(s) to make requests for such information, the Secretariat has prepared the following questionnaire as a guide that States parties may wish to use.

Collecting the information for this questionnaire may require cooperation by several different agencies/authorities. States parties may wish to send the questionnaire to the following agencies/authorities, depending on their national system for obtaining and recording information on legal persons and legal arrangements in their country, e.g.:

- Company registry and any other relevant registry(ies)
- Agency(ies)/authority(ies)/body(ies) responsible for obtaining and maintaining beneficial ownership information
- National competent authorities responsible for international cooperation in criminal matters, including freezing and confiscation of criminal proceeds

Questionnaire on Beneficial Ownership Information

1. Definition of beneficial ownership & mechanisms for obtaining beneficial ownership information

- 1.1 Please provide the definition of “beneficial ownership” in your country for: (a) legal persons; and (b) legal arrangements, including the relevant legislation (if applicable). Please describe criteria and thresholds that are applied to determine beneficial ownership, including any criteria for exercising control without legal ownership (e.g. voting rights, right to appoint or remove board of directors).

The Companies Act 2015 defines a “beneficial ownership” to mean 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;

The criteria for determining a beneficial owner is provided in the Regulation –

- (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.

2. Access to basic information on legal persons

- 2.1 Please describe the **process** for obtaining *basic information* on legal persons created or registered in your country, including the role of the company registry.

- a) Create an account on e-citizen if you do not have it already. If you have an account, log in using your credentials.
- b) Select the Business Registration Service option.
- c) Click on make application and select official search (3rd party applications).
- d) Select view more then apply now.
- e) Enter the Business name or the Business Registration Number then select search to proceed.
- f) Once the name appears, select it and then click on next to enter the postal address and the postal code of the business. Save then continue.
- g) Proceed to pay for the service (Kshs. 650) and click complete once payment is complete.
- h) The Official Search will be auto-generated.

The role of the registry is to issue the Official Search which contains basic information of the company.

- 2.2 Please list the **categories** of *basic information* on legal persons that is obtained and recorded by the company registry (or other relevant registries), e.g. name of entity, date of incorporation, tax ID number, etc.

The basic information obtained and recorded by the registrar include –

1. Name of the Company
2. The unique identifier of the company
3. Date of Incorporation
4. Legal form and status of the company
5. The Articles of Association
6. The Memorandum of Association (CR2)
7. List of Directors and their postal and residential address.
8. List of the shareholders, postal address and number of shares held by each shareholder and the category of shares.
9. Statement of Nominal Capital
10. The registered office of the company
11. Any debentures, charges, and encumbrances registered against the company.
12. Where a company has a company secretary, their particulars and residential address.
13. The Kenya Revenue Authority Personal Identification number of the company

- 2.3 Is the company registry available publicly & online in your country? **YES**

If **YES**, please provide links to the company registry and any other relevant registries of legal persons, or provide details about how the public can access them.

brs.ecitizen.co.ke

<https://brs.go.ke/>

3. Access to beneficial ownership information of legal persons

3.1 Through which mechanism(s) can competent authorities (such as law enforcement, police, financial intelligence unit and tax agencies) access *beneficial ownership information* on companies and other legal persons created or registered in your country. Please select all that apply.

Through a registry/registries with beneficial ownership information

Through a different mechanism

Competent authorities do not currently have access to beneficial ownership information

All Competent Authorities can access BO information from the Registrar upon written request, however Kenya Revenue Authority, the Public Procurement Regulatory Authority, the Ethics and Anti-Corruption Commission and the Financial Reporting Center have read only access through an Application Programming Interface.

If **REGISTRY**, please provide further details on such registry(ies) including:

- Authority(ies)/agency(ies) responsible for obtaining and maintaining beneficial ownership information and for maintaining the register(ies). Please list if more than one; **THE COMPANIES REGISTRY**
- Categories of beneficial ownership information (data fields) obtained, recorded and maintained on the registry(ies), e.g. name, nationality, date of birth, address, etc.;
- full name;
- national identity card number / passport number;
- personal identification number;
- nationality;
- date of birth;
- postal address;
- residential address;
- current telephone number;
- current email address;
- occupation;
- date on which any person became a beneficial owner;
- date on which any person ceased to be a beneficial owner
- nature of ownership or control
- Types of legal entities covered within the scope of the beneficial ownership registry(ies), including any exempt entities;

Companies in Kenya are required to keep and submit a copy of their beneficial ownership register to the registrar.

Amendments are currently underway to include disclosure of Limited Liability Partnerships through Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Bill 2023.

- Details of the registry's(ies)' access policy:
 - Is the information on the registry(ies) available to the public? **YES / NO**
 - If **YES**, please include a link(s) to the registry(ies).
 - If **NO**, please list the authorities/agencies that have access to this information, or that can request access.

NO, Beneficial Ownership information is only accessible to Competent Authorities 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, the Kenya Revenue Authority, Public Procurement Regulatory Authority and Public Private Partnership Committee.

○ Does accessing beneficial ownership information in the registry(ies) entail any costs?
Access by Competent Authority is free.

- Does the registry(ies) provide features to search information by different types of information, e.g. legal entity name, name of director, name of beneficial owner, by first or last name, by business address, by registered agent? Is it possible to search for a combination of information (Boolean searches)?

The registry has features to search using either the unique identifier or name of the company, the unique identifier of the director or shareholder

- Frequency of updates of information and triggers for updates;
BO information is updated within 14days of the change of the beneficial ownership information.

- Any mechanisms to verify beneficial ownership information submitted to the registry(ies) by legal persons or their representatives (if they exist).

The registry queries various data systems including the registry of persons and the tax authorities.

Any person who is entered as a beneficial owner the name of the entity will appear under ones e-citizen account and should there be inaccuracy of the same it can be raised with the registrar.

3.2 Please describe any other sources (mechanisms) through which competent authorities/agencies can access beneficial ownership information in your country. In each case, please describe how beneficial ownership information on companies and other legal entities is made available to authorities and/or the public (if applicable).

Examples may include through private-public partnerships (e.g. involving financial institutions, notaries and/or corporate service providers), though stock exchange or security exchange commission, or disclosure obligations for participation in public procurement processes, etc.

3.3 Are foreign legal persons, foreign (express) trusts or foreign legal arrangements allowed to operate in/own assets/ and/or register in your country? **YES / NO**
If **YES**,

- how is basic information on these arrangements recorded (if at all)?
- how is beneficial ownership information on these arrangements recorded (if at all)? Please provide details of the relevant legislation and practices.

4. Access to basic information and beneficial ownership information of (express) trusts and other similar legal arrangements

- 4.1 Does your country recognize (express) trusts or other similar legal arrangements? **YES / NO**
- If **YES**, please provide a broad overview of your country's system and mechanisms for obtaining beneficial ownership information on (express) trusts and other similar legal arrangements created or registered in your country.
 - If **NO**, please skip to question 5
- 4.2 How is *basic information* on (express) trusts and other legal arrangements obtained and recorded in your country?
- 4.3 How is *beneficial ownership information* on (express) trusts and other legal arrangements obtained and recorded in your country?
- Y Through a registry/registries with beneficial ownership information
 - Y Through a different mechanism
 - Y Competent authorities do not currently have access to beneficial ownership information

If **REGISTRY**, please provide details on the registry(ies), authority(ies)/agency(ies) in charge of maintaining the registry(ies), type of information collected, and details on the access policy. If **ALTERNATIVE MECHANISM**, please provide details on the mechanism, type of information collected, and details on the access policy.

5. Sanctions

- 5.1 Please describe the types of sanctions, sanctionable conduct, and targets of sanctions for non-compliance with beneficial ownership disclosure regulations (whether on the registry(ies) or through an alternative mechanism).

A company and its officers must keep a copy and submit the same with the registrar, the company, and each officer of the company who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings.

A person who lodges or causes to be lodged with the Registrar for registration a document containing information; or makes to the Registrar a statement for any purpose that the person knows, or has reason to suspect, is false or misleading in a material respect commits an offence and on conviction is liable to a fine not exceeding one million shillings or imprisonment for a term not exceeding two years, or to both.

A company shall take reasonable steps to find out and identify its beneficial owner. Where the particulars required 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. Where a person fails to comply with this response, the company may restriction the rights with respect to any interest they hold in the company.

- 5.2 Please describe the powers available to the designated authority(ies)/agency(ies) to enforce sanctions for non-compliance with the beneficial ownership disclosure requirements, **including any statistics on enforcement of such sanctions.**

6. International Cooperation, asset recovery and challenges

- 6.1. Does your country make beneficial ownership information available to foreign competent authorities (directly or upon request)? Please provide details of the relevant legislative and

regulatory framework in your country that allows for the international exchange of such information.

- 6.2.** Please describe how foreign competent authorities may request or access beneficial ownership information on legal persons and legal arrangements formed in your country. Which agency(ies)/authority(ies) is/are responsible for receiving and responding to foreign requests? **Please provide contact information and instructions.**
- 6.3. In your opinion, what are the main challenges faced by *foreign competent authorities* to access beneficial ownership information held in your country?
- 6.4. In your opinion, what are the main challenges faced by *competent authorities of your country* to access/receive beneficial ownership information held in a foreign country?
- 6.5. Do you have any case studies or examples where the transparency of beneficial ownership has *enabled or enhanced the effective recovery and return of proceeds of crime in (or for) your country*?

7. Good Practices for Beneficial Ownership Transparency

- 7.1. Has your country implemented any specific good practices relating to Beneficial Ownership Transparency that you wish to highlight? *Examples could include good practices in verification,*

data format, searchability, use of technology, enforcement of sanctions, automatic red flagging, use or risk-based approach.

8. Follow-up to the special session of the General Assembly against corruption

- 8.1. Please describe any other measures, if any, that your country may have taken to implement paragraph 16¹ of the political declaration adopted by the General Assembly at its special session against corruption held in June 2021.

¹ 16. We commit to making efforts in international cooperation and taking appropriate measures to enhance beneficial ownership transparency by ensuring that adequate, accurate, reliable and timely beneficial ownership information is available and accessible to competent authorities and by promoting beneficial ownership disclosures and transparency, such as through appropriate registries, where consistent with the fundamental principles of domestic legal systems and using as a guideline the relevant initiatives of regional, interregional and multilateral organizations against money-laundering. To this end, we will develop and implement the measures necessary to collect and share such information on the beneficial ownership of companies, legal structures and other complex legal mechanisms, and we will enhance the ability of competent authorities in this regard.