

GOVERNMENT NOTICE NO. 46

COMPANIES ACT  
(CAP. 46:03)

COMPANIES (BENEFICIAL OWNERSHIP) REGULATIONS, 2022

IN EXERCISE of powers conferred by section 382 of the Companies Act, I, TITUS EDWARD SONGISO MVALO, Minister of Justice, make the following Regulations—

1. These Regulations may be cited as the Companies (Beneficial Citation Ownership) Regulations, 2022.
2. In these Regulations, unless the context otherwise requires— Interpretation
  - “authorized agent” means a natural person authorized by a—
    - (a) company to act for, and on behalf of, the company in accordance with its constitution; or
    - (b) shareholder to act for, and on behalf of, the shareholder in accordance with its constitution;
  - “beneficial owner” means a natural person who—
    - (a) directly or indirectly owns or controls more than five percent of shares of a company or other body corporate;
    - (b) directly or indirectly owns or controls more than five percent of a company’s voting rights; or otherwise exercises control over a company or its management;
    - (c) directly or indirectly, has a substantial economic interest in or receives substantial economic benefit from, a company, whether acting alone or together with other persons;
    - (d) has a significant stake in a company and on whose behalf activity of a company is conducted; or
    - (e) exercises significant control or influence over a person through a formal or informal agreement,

and where such ownership, control or interest is through a trust, the trustee (s), beneficiaries or anyone who controls the trust; and

“company” includes any other body corporate, a subsidiary of a company, any business arrangement associated or related with the company or such other body corporate.
3. An application for incorporation of a company shall be accompanied by particulars of a beneficial owner in Form BO1 in the Schedule. Particulars of beneficial owner
- 4.—(1) A company, through its authorized agent, shall maintain a register of particulars of beneficial owners of the company. Companies to maintain a register

(2) Where shares of a company are held by another company incorporated in Malawi, the company shall maintain a register of particulars of beneficial owners of that other company.

(3) Where shares of a company are held by another company incorporated outside Malawi, the company shall maintain a register of particulars of beneficial owners of the other company.

Notice of ceasing or becoming a beneficial owner

- 5. Where a person—
  - (a) ceases to be a beneficial owner; or
  - (b) becomes a beneficial owner,

of a company, the company shall, through its authorized agent, within thirty days from the date of the person ceasing to be a beneficial owner or becoming a beneficial owner, as the case may be, and upon payment of the prescribed fee, file a notice of ceasing or becoming a beneficial owner in Form BO2 in the Schedule, with the Registrar.

Notice of change of beneficial ownership through acquisition of shares

6.—(1) A company shall, through its authorized agent and upon payment of the prescribed fee, file a notice of change, with the office of the Registrar, of particulars of individuals who have acquired shares and have become new shareholders by completing Form BO3 in the Schedule, within thirty days from the date of acquisition.

(2) The Registrar shall not register any acquisition of shares or any other document relating to changes in issued share capital or voting rights, unless the requirement in subregulation (1) is complied with.

Register of beneficial owners

7. The Registrar shall maintain a register of beneficial owners which shall be updated from time to time.

Refusal of registration

- 8.—(1) The Registrar shall not register—
  - (a) any document of a company which is required to be registered under the Act, if the company has not filed beneficial ownership information as prescribed under these Regulations; or
  - (b) a form filed under these Regulations, if the Registrar is satisfied that the information contained in the form is not accurate or is not up to date.

(2) A person who, knowingly, submits incorrect information or information that is not up to date under these Regulations commits an offence.

Power to deregister a company

9.—(1) The Registrar may, where a company fails to comply with these Regulations, deregister the company from the register of companies.

(2) The Registrar may, not later than ninety days, upon payment of a prescribed penalty and rectification of the breach under subregulation (1), restore in the register of companies any company deregistered pursuant to subregulation (1).

Submission of documents

10. Any form required to be filed under these Regulations may be filed in such format and by such means including in electronic format as the Registrar may prescribe.

11.—(1) Any beneficial ownership information shall be treated as public information and may be accessible to the public.

Public access to information on beneficial owners of companies

(2) A person may submit an application to the Registrar in Form BO4 prescribed in the Schedule to request for beneficial ownership information.

(3) The Registrar may, on good grounds, taking into account the objectives of these Regulations, refuse the application.

(4) Where the Registrar refuses the application under subregulation (3), the Registrar, shall, within fourteen days of receipt of the application, notify the requesting person in writing stating grounds for the refusal.

12.—(1) A company already incorporated or registered under the Act on the date these Regulations come into force shall, not later than six months from the date these Regulations shall come into force, file with the Registrar, in the prescribed form, particulars of its beneficial owners.

Existing companies

(2) A person who contravenes subregulation (1) commits an offence.

13.—(1) A person who commits an offence under these Regulations, shall, on conviction, be liable to a fine of K5,000,000 and imprisonment for twelve months.

Offence and penalty

(2) A person who, upon accessing information under these Regulations, misuses or otherwise abuses the information commits an offence and shall, upon conviction, be liable to a fine of K5,000,000 and imprisonment for twelve months.

SCHEDULE

FORM BO1

(r. 3)

PARTICULARS OF BENEFICIAL OWNER

Name of company.....

Number of company:.....

Name and particulars of the Beneficial Owner:

A. Full Name.....

B. Date of birth [...../...../..... [dd/mm/yyyy]

C. Nationality.....

D. Legal Identification Type..... No. ....

E. Postal address.....

.....

F. Current Residential address .....

.....

.....

G. Previous residential addresses for the past five years.....  
.....  
.....  
.....

H. Contact details;  
(i) Telephone.....  
(ii) Mobile phone numbers.....  
(iii) Email address.....

I. Occupation .....

J. Nature and extent of beneficial ownership;  
(i) The percentage of shares a person holds (directly and/or indirectly) in the company .....

.....

(ii) Level and/or description,- of beneficial interest or economic interest in the company.....  
.....  
.....

(iii) Level and/or description, of control or influence (directly and/or indirectly) on the board of directors and/or management of the company.....  
.....  
.....

I. Any previous criminal conviction (excluding road traffic offence):  
Yes  No.   
If yes, state the nature and details of offence and penalty.....  
.....  
.....

Date that the person became a beneficial owner; ...../...../.....[dd/mm/yyyy]

DECLARATION

The information given in this form is correct and complete to the best of my knowledge and belief.

Completed by—  
Full Name : .....

Date : .....

Address : .....

Source of information\* : .....

Signature : .....

\*Please indicate the source of information:

- (a) Whether provided by the beneficial owner or his/her authorized representative; or
- (b) By a third party not directly related to the beneficial owner.

FORM BO 2

(r. 5)

NOTICE OF CEASING TO BE/BECOMING A BENEFICIAL OWNER

To the Registrar of Companies:

Notice is hereby given in terms of regulation 3 of the Companies (Beneficial Ownership) Regulations, that the beneficial owner of the company specified below, ceased to be/ the person specified below became a beneficial owner of the company on the date specified.

Name of company:.....

Number of the company:.....

Name of the beneficial owner concerned:.....

Date on which a person ceased to be/ became a beneficial owner:  
.....

Reason(s) for cessation/ becoming beneficial owner:  
.....  
.....

For any new beneficial owner, is there any previous criminal conviction (excluding road traffic offence):

Yes  No.

If yes, state the nature and details of offence and penalty.....  
.....  
.....

DECLARATION

The information given in this form is correct and complete to the best of my knowledge and belief.

Completed by—

Full Name : .....

Date : .....

Address : .....

Source of information\* : .....

Signature : .....

\*Please indicate the source of information—

- (a) Whether provided by the beneficial owner or his/her authorized representative; or
- (b) By a third party not directly related to the beneficial owner.

FORM BO3

(r. 6(1))

NOTICE OF CHANGE IN PARTICULARS OF BENEFICIAL OWNERSHIP

To the Registrar of Companies:

Notice is hereby given of change of particulars of beneficial owner of the company as specified below, on the date specified.

Name of company:.....

Number of the company:.....

Name of the beneficial owner concerned:.....

Change(s) of the Particulars of Beneficial Ownership:.....

.....

.....

Date on which change(s) of Particulars of beneficial owner occurred ...../...../.....  
[dd/mm/yyyy]

DECLARATION

The information given in this form is correct and complete to the best of my knowledge and belief.

Completed by—

Full Name .....

Date : .....

Address : .....

Source of information\* : .....

Signature : .....

\*Please indicate the source of information—

(a) Whether provided by the beneficial owner or their authorized representative; or

(b) Whether provided by a third party not directly related to the beneficial owner.

FORM BO4

(r. 11(2))

OFFICAL SEARCH REQUEST FOR BENEFICIAL OWNERSHIP INFORMATION

To the Registrar of Companies:

I hereby request information on particulars of the beneficial owner(s) of the company as specified below on the date specified:

Name of company:.....

\*Number of the company:.....

Reason(s) for conducting the search

.....

.....

Name: .....

ID number: .....

Postal Address: .....

Signature: .....

Date: [...../...../.....] [dd/mm/yyyy]

\*if the company registration number is known, provide the registration number.

Made this 22nd day of December, 2022.

(FILE NO. SUB. D. 46:03)

T. E. S. MVALO  
*Minister of Justice*