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**STRENGTHENING FINANCIAL
TRANSPARENCY: THE NEW
REQUIREMENTS ON
DISCLOSURE OF BENEFICIAL
OWNERSHIP INFORMATION**

LEGAL ALERT

JANUARY 2024

Strengthening Financial Transparency: The New Requirements on Disclosure of Beneficial Ownership Information

In an era marked by rapid globalization and the growing interconnectedness of financial systems, the fight against money laundering and terrorism financing has assumed a pivotal role on the global stage.

The Kenyan Government has not lagged behind in recognizing the need to strengthen its anti-money laundering and combating of terrorism financing measures, to safeguard its financial systems and protect the citizens against the ever-evolving threats posed by illicit financial activities.

To this end, on 1st September 2023, the President signed into law the Anti-Money Laundering and Combating of Terrorism Financing Laws (Amendment) Act, 2023 (“the **AML Amendment Act**”), which introduced a series of substantial reforms aimed at enhancing transparency, accountability, and vigilance in the financial sector. The AML Amendment Act came into force on 15th September 2023.

At the heart of these reforms lies the mandate to disclose beneficial ownership information for both local and foreign companies and limited liability partnerships (“LLPs”), an important step towards fortifying the financial ecosystem.

This alert discusses the key amendments introduced by the AML Amendment Act in relation to the disclosure of beneficial ownership information of companies and LLPs and also highlight the implications of the amendments to these entities.

Key Amendments

Before delving into the various amendments introduced by the AML Amendment Act, it is important to acknowledge that this law introduces measures geared towards detecting and preventing money laundering and terrorism financing. These measures include enhanced customer due diligence, strengthened reporting obligations, expanded coverage of money laundering activities and increased penalties to combat illicit financial activities.

The AML Amendment Act tasks the Central Bank of Kenya (“**CBK**”) with the responsibility of regulating, supervising, and ensuring compliance with anti-money laundering, combating terrorism financing and countering proliferation financing measures for all reporting institutions regulated and supervised by it.

In executing this role, CBK has the authority to scrutinize proposed significant shareholders, beneficial owners, directors, and senior officers of these reporting institutions. CBK can also conduct onsite inspection, undertake consolidated supervision of an institution and its group, and impose monetary, civil, or administrative sanctions for violations related to anti-money laundering and terrorism financing.

Below are some of the key legislations amended by the AML Amendment Act –

a) The Limited Liability Partnership Act, 2011

The AML Amendment Act introduces new provisions under section 31 of the Limited Liability Partnership Act, 2011 (“the **LLP Act**”). Section 33B of the LLP Act requires LLPs to maintain a register of their beneficial owners.

A beneficial owner, as defined in the Companies Act 2015, refers to “the natural person who ultimately owns or controls a legal person or arrangement or the natural person on whose behalf a transaction is conducted, and includes that person who exercises ultimate effective control over a legal person or arrangement.” (Emphasis provided).

Section 31B (3) and (4) of the LLP Act now requires LLPs to lodge a copy of their register of beneficial owners with the Registrar in the following circumstances: when submitting documents for the registration of a proposed LLP and within sixty (60) days of the AML Amendment Act coming into force with respect to existing LLPs, with a potential extension of thirty (30) days upon application.

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Should an existing LLP fail to submit the register of its beneficial owners within the prescribed period, the Registrar may issue a directive specifying the statutory violation, necessary actions to rectify it and a fourteen (14) days' compliance period.

LLPs are also mandated to maintain a register of their nominee partners at their registered office, with existing LLPs required to lodge a copy of this register with the Registrar within 60 days of the provision coming into force.

The AML Amendment Act also introduces new sections under section 34 of the LLP Act, such as section 34A which requires foreign LLPs not to carry on business in Kenya without proper registration under the LLP Act. Foreign LLPs must also appoint at least one local representative who is either a permanent resident in Kenya or a Kenyan citizen ordinarily residing in Kenya for purposes of operations.

Further, foreign LLPs are required to have a registered office in Kenya and to file annual returns with the Registrar within thirty (30) days of the anniversary of their registration. Lastly, in the event a foreign LLP ceases its operations in Kenya, it is required to notify the Registrar of such cessation within seven (7) days.

b) The Companies Act, 2015

The AML Amendment Act introduces section 13(4)(d) of the Companies Act, which requires applications for the registration of a company to be accompanied by a statement detailing the particulars of each beneficial owner of the proposed company. This requirement extends to an application for the registration of a foreign company.

Similar to LLPs, section 93A of the Companies Act now obliges companies to maintain a register of beneficial owners and lodge a copy with the Registrar within the specified period.

Furthermore, companies are required to keep a record of their beneficial ownership information at their registered office. They are also required to maintain a register of nominee directors, which is not open to inspection by members of the public. Moreover, companies are obliged to disclose the particulars of their members who are nominee shareholders in two instances: at the time of incorporation when submitting the statement of capital and initial shareholding and in their register of members.

The new section 243A of the Companies Act requires a private company or a company limited by guarantee not having a company secretary or a resident director to appoint a contact person who is a natural person with a permanent residence in Kenya. Existing private companies or companies limited by guarantee are therefore required to comply with this provision within sixty (60) days of the provision coming into force.

These companies are also required to lodge a notice of the appointment of the contact person with the Registrar, specifying the person's name and residential address. Additionally, the contact person is obliged to maintain a record of the directors, shareholders and beneficial owners of the company and make these available to competent authorities and the Registrar.

Conclusion

The recent legislative amendments embodied in the AML Amendment Act carry significant implications for companies and LLPs operating in Kenya. These amendments necessitate a proactive response from entities as they adapt to new compliance requirements, adhere to deadlines, and maintain accurate records of beneficial ownership.

Through these measures, entities operating within Kenya's jurisdiction play an essential role in upholding the integrity of the financial ecosystem and contributing to a more transparent and resilient economic environment for all stakeholders.

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In light of the new amendments introduced by the AML Amendment Act, entities are advised to observe the following –

- All companies and LLPs should adhere to the new amendments and take note of the specific deadlines set out for such adherence.
- All companies and LLPs should maintain a register of their beneficial owners and nominee directors or partners respectively.
- All companies and LLPs should regularly update their registers and records and notify the Registrar of any changes.



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Disclaimer

This alert is for informational purposes only and should not be taken to be or construed as a legal opinion. If you have any queries or need clarifications, please do not hesitate to contact Jacob Ochieng, Partner, (jacob@oraro.co.ke) and Blenda Nyahoro, Associate, (blenda@oraro.co.ke) or your usual contact at our firm, for legal advice.



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