



REPUBLIC OF KENYA  
FINANCIAL REPORTING CENTRE  
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## FINANCIAL REPORTING CENTRE CIRCULAR NO. 5 OF 2023

October 31, 2023

TO: CHIEF EXECUTIVES OF REPORTING INSTITUTIONS

Dear Sirs/Madams,

### **BENEFICIAL OWNERSHIP REQUIREMENTS FOR REPORTING INSTITUTIONS**

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#### **1. Introduction**

- 1.1 Legal persons and legal arrangements may be used by criminals as a means of concealing identities for the purposes of conducting illicit activities including money laundering (ML), terrorism financing (TF) and proliferation financing (PF). The Financial Action Task Force (FATF), which is the global standard setter for measures to combat ML, TF and PF requires countries to implement measures to prevent the abuse of legal structures, including requiring Reporting Institutions to identify and verify the identity of Beneficial Owners (BOs) of their customers.
- 1.2 In 2021, Kenya underwent an Anti-Money Laundering and Countering the Financing of Terrorism Mutual Evaluation (ME), a peer review process, conducted by the Eastern and Southern Africa Anti-Money Laundering Group (ESAAMLG) where the level of the country's compliance with the FATF Standards was assessed. The ME Report identified a number of deficiencies,

including gaps in the identification and verification of the identity of BOs by Financial Institutions and Designated Non-Financial Businesses and Professions.<sup>1</sup>

- 1.3 The purpose of this Circular is to bring to the attention of the reporting institutions the deficiencies highlighted in the ME Report with regards to BOs and remind them of the obligations that relate to BOs. These requirements include:
- i. Conducting adequate Customer Due Diligence (CDD) and
  - ii. Ongoing CDD monitoring on the business relationships with customers.
  - iii. Scrutinising transactions throughout the course of that relationship to ensure that they are being conducted and are consistent with the institution's knowledge of the customer and its business and risk profiles, including, where necessary, the customer's source of funds; and
  - iv. Recording CDD procedures performed to maintain these records; and
  - v. Reporting suspicious transactions and activities to the Financial Reporting Centre (Centre) where applicable.

## **2. Beneficial Ownership Requirements**

### **2.1 Who is a Beneficial Owner?**

**2.1.1** A Beneficial Owner is a natural person who ultimately owns or controls a customer or the natural person on whose behalf a transaction is being conducted, and includes any natural person who ultimately exercises effective control over a legal person or arrangement.<sup>2</sup>

**2.1.2** Control in this case includes having the power to make decisions about the customer or entity's finances and operations. It may be direct, for example a

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<sup>1</sup> Kenya's Mutual Evaluation Report available on the FRC Website <https://www.frc.go.ke/>

<sup>2</sup> Regulation 2 of the Proceeds of Crime and Anti-Money Laundering Regulations, 2023

person who can hire or terminate a member of senior level management or dismiss directors; or indirect, where a person exercises influence without possessing any direct power, e.g. as an associate of a legal owner.

## **2.2 Requirement to Identify and Verify the Identity of the Beneficial Owner**

2.2.1 All Reporting Institutions are required to identify and verify the identity of BOs using relevant information or data obtained from a reliable source. This requirement applies to BOs of customers who are legal persons (including companies and limited liability partnerships) and legal arrangements (trusts).<sup>3</sup>

2.2.2 When identifying who the BO is, Reporting Institutions may require the customer to provide this information and use a variety of sources to establish their identity(ies). Reporting Institutions should take reasonable measures to verify the identity of BO information depending on the assessed risks posed by the customer and the BO.<sup>4</sup> Sources of information to identify the BO could include open source information, Government databases, consulting commercially available information, amongst others.

2.2.3 Once the BO's identity has been established, the RI should verify the identity of the BO by requiring the production of an official record reasonably capable of establishing the true identity of the BO such as a certificate of birth, a national identity card, passport or a driver's licence. This information should be maintained for at least 7 years from the date of transaction or following the termination of business.<sup>5</sup>

2.2.4 For purposes of verification of BO information, the attention of Reporting Institutions is drawn to, amongst others:

2.2.4.1 Regulation 7 of the Companies (Beneficial Ownership Information) (Amendment) Regulations, 2023, which amends Regulation 13(2)(d)(1) of

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<sup>3</sup> Section 45 (4) (b) of the Proceeds of Crime and Anti-Money Laundering Act, 2009 (POCAMLA), Regulation 14 (2) (b) and Regulation 22 (1) of the Proceeds of Crime and Anti-Money Laundering Regulations

<sup>4</sup> Regulation 14 (2) (b) of POCAMLR

<sup>5</sup> Section 46 of POCAMLA

the Companies (Beneficial Ownership Information) Regulations, 2020 to provide that BO Information may be disclosed to Reporting Institutions; and

2.2.4.2 Regulation 8 of the Companies (Beneficial Ownership Information) (Amendment) Regulations, 2023 which introduced Regulation 14 in the Companies (Beneficial Ownership Information) Regulations, 2020 whereby, in sub-regulation (c), Reporting Institutions may apply to the Registrar for BO Information.

2.2.5 Where the Reporting Institution is unable to identify the BO who owns, or controls the customer, the Reporting Institution is required to identify the relevant natural person who holds the position of senior management official.<sup>6</sup>

### **2.3 BO Information for Trusts**

Reporting institutions should identify and take reasonable measures to verify information about a trust, including, the identities of the settlor (author of the trust), the trustees, the protector (if any) the beneficiary or class of beneficiaries and any other natural person exercising ultimate effective control over the trust (including those who control through the chain of control or ownership).<sup>7</sup>

### **2.4 Keeping BO Information Up-to-date**

Reporting institutions are required to keep BO information up-to-date through conducting due diligence on the BO on an ongoing basis. The frequency of the due diligence conducted on the BO should be guided by the risks posed by the BO and should be indicated in the Reporting Institution's internal policies and procedures.

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<sup>6</sup> Regulation 16 (2) (c) of POCAMLR

<sup>7</sup> Regulation 18(4) of POCAMLR

## **2.5 Risk Based Approach when identifying BOs**

**2.5.1** Reporting Institutions are required to apply mitigation measures commensurate to the Money Laundering (ML) and Terrorism Financing risks faced by the institution. As such, Reporting Institutions are required to conduct an institutional risk assessment and to update it regularly, at least after every two years.<sup>8</sup> The institutional risk assessment should inform the internal policies and controls of the reporting institutions, including CDD measures for BOs.

**2.5.2** Reporting Institutions are required to apply enhanced measures where the risks are higher.<sup>9</sup> This extends to the application of CDD measures for BOs and the frequency and intensity of monitoring transactions for BOs.

**2.5.3** Identifying beneficial ownership of a customer is an obligation that should be satisfied, regardless of the level of risk associated with that customer. However, when deciding what reasonable steps should be taken to satisfy that the customer's identity and information is correct, one may vary the approach depending on the risk assessment of the customer.<sup>10</sup>

**2.5.4** Where the BO of a legal person or legal arrangement is either a foreign or high risk domestic politically exposed person (PEP), the Reporting Institution, in addition to conducting CDD, should:

**2.5.4.1** Obtain senior management approval before establishing such business relationships; or continuing such business relationships for existing customers;

**2.5.4.2** Take reasonable measures to establish the source of wealth and the source of funds of the customer and the BO identified as politically exposed person; and

**2.5.4.3** Conduct enhanced ongoing monitoring on that relationship.

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<sup>8</sup> Regulation 7 of POCAML

<sup>9</sup> Regulation 20 (2) of POCAML

<sup>10</sup> Regulation 16 (2) and 18 (4) of POCAML

## 2.6 Reporting Suspicious Transactions and Suspicious Activities

2.6.1 Where the RI forms suspicion that any of the transactions or activities relating to a BO could constitute or be related to ML, TF, PF or to the proceeds of crime, they should report the suspicious or unusual transaction or activity to the Centre within two days after the suspicion arose.<sup>11</sup>

2.6.2 Submission of Suspicious Transaction Reports (STRs) and Suspicious Activities Reports (SARs) should be done through the goAML Platform and all Reporting Institutions are required to register on the platform to facilitate reporting through a secure channel.<sup>12</sup>

## 3. Way Forward for Reporting Institutions

3.1 In light of the above, when conducting Customer Due Diligence, Reporting Institutions are required to:

- i. Put adequate measures in place to identify the BO at first instance, and to update CDD on the BO where necessary;
- ii. Verify the identity of the BO using information from reliable sources, including information from a single source, or a combination of sources;
- iii. Assess the level of risks posed by the BO in addition to those posed by the customer, and apply appropriate measures to mitigate the risks identified;
- iv. Conduct enhanced due diligence on the BO of a legal person or arrangement where the risks are higher including where the BO is a foreign PEP or high risk domestic PEP; and
- v. Report suspicious transactions and suspicious activities to the FRC through the goAML Platform.

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<sup>11</sup> Section 44(2) of POCAMLA

<sup>12</sup>GoAML is accessible through [https://goaml.frc.go.ke/goAML\\_Prod/Home](https://goaml.frc.go.ke/goAML_Prod/Home)

3.2 **NOTE** that the requirement to conduct CDD on the customer and the BO are separate although interlinked.

#### 4. Mechanism to Determine Suitability of Reporting Institutions

4.1 Supervisory Bodies and Self-Regulatory Bodies have oversight of Reporting Institutions and are hereby reminded of the requirement of Regulation 47 of the POCAMLA Regulations namely, the requirement to put in place mechanisms to determine the suitability of:

- (i) the reporting institution for the grant of a licence or authority by the supervisory body; and
- (ii) persons managing or controlling the reporting institution.

4.2 In determining the suitability of persons controlling the Reporting Institutions, regard should be had to the requirement to determine the identity of the BO or the Ultimate Beneficial Owner.

4.3 For any clarifications or further guidance, please contact the Centre through 0709858000 or [compliance@frc.go.ke](mailto:compliance@frc.go.ke).

Please be guided accordingly.



**SAITOTI K. MAIKA, MBS**  
**DIRECTOR GENERAL, FINANCIAL REPORTING CENTRE**

cc **The Governor**  
Central Bank of Kenya  
**NAIROBI**

**The Chief Executive Officer**  
Insurance Regulatory Authority  
**NAIROBI**

**The Chief Executive Officer**  
Betting Control and Licensing Board  
**NAIROBI**

**The Chief Executive Officer**  
Capital Markets Authority  
**NAIROBI**

**The Chief Executive Officer**  
Sacco Societies Regulatory Authority  
**NAIROBI**

**The Chief Executive Officer**  
Retirement Benefits Authority  
**NAIROBI**

**The Chairperson**  
Estate Agents Registration Board  
**NAIROBI**

**The Chief Executive Officer**  
Institute of Certified Public Accountants of Kenya  
**NAIROBI**