



CM ADVOCATES LLP



KENYA'S BENEFICIAL OWNERSHIP LAW: YOUR INVESTMENT COMPLIANCE GUIDE?

The introduction of **Beneficial Ownership (BO)** <https://new.kenyalaw.org/akn/ke/act/ln/2020/12/eng@2023-10-19> laws in Kenya has fundamentally changed the landscape for foreign investors, particularly concerning **land ownership** and **corporate transparency**. This legal framework acts as a "detective," looking beyond legal paperwork, trusts, and companies to identify the actual human being who owns, controls, or profits from assets, like land, in Kenya.

1. The Land Rule: The "Who Really Benefits?" Test

Article 65(3)(a) of Kenya's Constitution sets a strict rule for companies seeking to own land with the same rights as a Kenyan citizen (freehold or long-term lease): the company must be **100% owned and 100% controlled by Kenyan citizens**. <https://kenyalaw.org/kl/index.php?id=398>

The BO rules apply the "Who is the Beneficial Owner?" test. <https://brs.go.ke/wp-content/uploads/2023/03/Guide-on-Disclosure-of-Beneficial-Ownership-Information.pdf>

The Trap: If a foreigner funds a deal, controls the company's bank account(s), and makes the strategic decisions - even if a local partner holds all the shares on paper - the foreigner is considered the **Beneficial Owner**.

The Verdict: If a foreigner holds **any** beneficial interest, the company is instantly classified as a **non-citizen** (See Article 65(3)(b) of the Constitution) <https://kenyalaw.org/kl/index.php?id=398>

The Restriction: A non-citizen company loses the right to citizen-level land tenure and is legally restricted to a 99-year leasehold limit. (See Article 65(1) <https://kenyalaw.org/kl/index.php?id=398>

Attempting to use a local person as a front to bypass the Constitution is unlawful, and the Beneficial Ownership rules are designed to expose this practice.

2. The Corporate Rule: Mandatory Transparency

Even for legally acquiring a 99-year leasehold, compliance with the second layer of BO law—focused on global transparency—is mandatory.



Kenya's Companies Act demands that every company maintain and file a register detailing the natural persons behind the legal entity.

Criteria for a Beneficial Owner

A natural person qualifies as a beneficial owner if they meet a low threshold for ownership or control, directly or indirectly. This includes anyone who:

- Holds **10% or more** of the shares or voting rights.
- Has the right to **hire or fire a director**.
- Wields "**significant influence or control**" (meaning they are "calling the shots").

The Bottom Line: If you are the foreign investor who bought the property, you are the beneficial owner, and your Kenyan company is legally obligated to file your personal details (name, passport number, KRA PIN, and residential address) with the government.

3. Consequences of Non-Compliance

The Kenyan government is serious about tracking the ultimate beneficial owner. Failure to comply is a high-risk gamble that the law is specifically designed to penalize.

Violation	Penalty for the Company & Directors
Failing to declare beneficial ownership (file the BO register)	Initial fine of upto KES. 500,000 (approx. USD 3,800)
Ignoring the filing requirement	Additional daily fines of up to KES 50,000 until you comply
Long-term Non-Compliance	The company can be struck off the corporate register, meaning it legally ceases to exist and all its assets (including the land) become vulnerable

Final Word: Play by the Rules

In conclusion, the Beneficial Ownership framework has definitively removed the legal ambiguity surrounding foreign investment in Kenya, acting as a mandatory compliance test for both corporate transparency and land ownership.

This system successfully implements two layers of scrutiny: the Constitution's stringent land rule, which restricts non-citizens to a 99-year leasehold, and the Companies Act requirement for all companies to file personal details of any individual with 10% or more control.

Given the severe financial and corporate penalties for non-compliance, it is now an imperative for foreign investors to either invest legally under the leasehold limit or ensure their joint ventures are genuinely structured, as attempts to use nominees or shell companies are now designed for exposure.

How We Can Help You

In an era where the Kenyan government acts as a “Money Detective”, transparency is no longer optional - it is a prerequisite for ownership. At CM Advocates, we specialize in peeling back the corporate veil to ensure your structures are both legal and high performing.

Our Specialized Compliance Services

- 1. Beneficial Ownership (BO) Audits:** We perform the “Who Really Benefits?” test on your current corporate structures to identify if any foreign interest triggers the automatic reclassification of your land tenure to a 99-year leasehold.
- 2. Corporate Secretarial & Filing:** We manage the mandatory filing of your BO register with the Business Registration Service, ensuring all individuals with 10% or more control are accurately documented to avoid initial fines of up to KES 500,000.
- 3. Risk Mitigation for Directors:** To protect your leadership from daily fines of KES 50,000, we provide ongoing compliance monitoring to ensure your company remains in good standing and avoids being struck off the register.
- 4. Joint Venture Structuring:** For investors seeking local partners, we draft and review agreements to ensure they are genuinely structured, preventing the nominee trap that can lead to severe legal penalties.
- 5. Data Privacy & Disclosure:** We handle the sensitive personal details required for filing—including passport numbers and KRA PINs - with the highest level of professional confidentiality.

Protect Your Assets from Exposure

Under the current legal framework, attempting to use shell companies or local fronts is a high-risk gamble. Whether you are operating out of Nairobi, Mombasa, or our regional East African offices, we provide the legal shield your investment deserves.

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