

GFI COMMENTS TO THE BRS-KENYA ON THE REVIEW OF THE BENEFICIAL OWNERSHIP FRAMEWORK



GLOBAL FINANCIAL INTEGRITY

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July 19, 2022

RE: CALL FOR SUBMISSION OF COMMENTS AND PUBLIC PARTICIPATION ON THE REVIEW OF THE BENEFICIAL OWNERSHIP FRAMEWORKGFI

Global Financial Integrity (GFI) appreciates the opportunity to submit comments to the Business Registration Service (BRS) on the review of the Beneficial Ownership Framework in Kenya.

GFI is a Washington, DC-based think tank with offices in Nairobi, Kenya, focused on illicit financial flows, corruption, illicit trade, and money laundering. Through high-caliber analyses and fact-based advocacy, GFI works with partners to increase transparency in the global financial and trade system, and address the harms inflicted by trade misinvoicing, transnational crime, tax evasion, and kleptocracy.

In Kenya, GFI has been working to advocate for beneficial ownership (BO) transparency as a tool for achieving greater corporate accountability to curb illicit financial flows and increase domestic resource mobilization. Of note is GFI's following work and analysis in Kenya:

- [Illicit Financial Flows in Kenya factsheets](#), in partnership with Transparency International Kenya;
- [Beneficial Ownership and Financial Transparency in Kenya video](#), in partnership with Transparency International Kenya;
- [Illicit Financial Flows in Kenya video](#), in partnership with Transparency International Kenya;
- [GFI Comments to the BRS on the Companies \(Beneficial Ownership Information\) \(Amendment\) Regulations, 2021](#).

GFI commends the Kenyan government and the BRS on its consistent efforts to make BO transparency a reality in Kenya by enacting legislation, regulations and conducting outreach for BO transparency. GFI feels privileged to be invited to submit comments in response to this initiative by the BRS to expand the ambit of BO transparency through the following draft legislation and regulations:

- The Business Laws (Amendment) Bill, 2022;
- The Companies (Beneficial Ownership Information) Regulations, 2022;
- The Partnerships (Beneficial Ownership Information) Regulations, 2022; and
- The Registrar of Companies Forms Rules, 2022

In line with this, GFI submits the comments attached in response to the proposed amendments. We offer these comments to highlight our recommendations for an effective and practicable beneficial ownership framework. We also offer our strong support for and endorse the comments submitted by Open Ownership. As the BRS works to improve the beneficial ownership framework, please consider us partners in that effort.

In addition to our specific comments in response to the proposed amendments, GFI would like the BRS to consider the following areas that are critical to strengthening the BO framework and in line with the revised FATF Recommendation 24:

1. Verification: The current legislative framework on beneficial ownership does not provide for a verification mechanism of beneficial ownership data, and neither does The Business Laws (Amendment) Bill, 2022. Revised FATF recommendation 24 requires countries to ensure that beneficial ownership information is accurate, based on verification. To ensure accuracy of BO information and to comply with FATF Recommendation 24, a provision that provides for a verification mechanism should be provided.
2. Direct access for competent authorities: Revised FATF Recommendation 24 requires a timely access to BO information by competent authorities, which means ‘rapid and efficient access to information’ held or obtained by a public authority, in this case the Registrar. FATF Recommendation 24 additionally requires the timely access to BO information in the course of public procurement. Both sub-regulation 13(6) of the Companies (Beneficial Ownership Information) Regulations 2020, as amended by the Companies (Beneficial Ownership Information) (Amendment) Regulations 2022, as well as sub-regulation 14(8) of the proposed Partnerships (Beneficial Ownership Information) Regulations, 2022 provide for access to information by competent authorities, the PPRA, the procuring entity or contracting authority, but only ‘upon written request’. This does not sufficiently ensure a ‘rapid and efficient access to information’. The BRS should therefore consider direct access to BO information for competent authorities and in the course of public procurement.
3. Access to financial institutions and DNFBPs: Financial Institutions and DNFBPs have an obligation under the Proceeds of Crime and Money Laundering Act to conduct customer due diligence for AML/CFT purposes, including the identification of beneficial owners. FATF recommendation 24 urges countries to consider measures to facilitate access to beneficial ownership and control information by financial institutions and DNFBPs undertaking customer due diligence.
4. Cover additional entities under the beneficial ownership framework: GFI commends the BRS for suggesting an expansion of the BO framework to cover LLPs as well as foreign companies registered to conduct business in Kenya. However, this still leaves other legal vehicles that could be used to funnel illicit funds without a requirement to identify their beneficial owner. First, the proposed amendment requiring foreign companies to identify their beneficial owners would only apply to foreign companies registered in Kenya because they are ‘carrying on business’. The holding of real estate and other high-value assets in Kenya by foreign companies presents an additional significant money laundering risk, but may not qualify as ‘carrying on business’ when the company does not conduct any further significant business activity. To adequately address this risk, foreign companies holding assets in Kenya should also be required to register and record BO information. Second, the BRS should consider an amendment to also require foreign LLPs to collect and submit BO information. Third, further amendments are required to include both general partnerships and trusts to collect, submit and disclose BO information.

5. International exchange of information: A provision should be added to The Companies (Beneficial Ownership Information) Regulations, 2022, and The Partnerships (Beneficial Ownership Information) Regulations, 2022 to ensure for the timely access to BO information to foreign competent authorities, similar to the provisions for this access to national competent authorities upon written request. Revised FATF Recommendation 24 requires the 'widest possible range of international cooperation to BO information, including facilitating access by foreign competent authorities to basic information held by company registries, exchanging information on shareholders, and obtaining BO information. Additionally, FATF requires countries to make publicly known the agency responsible for responding to international requests for BO information.

GFI Comment Submission to the Business Registration Service on the review of the Beneficial Ownership Disclosure Framework in Kenya

NAME OF THE BILL/REGULATIONS: The Business Laws (Amendment) Bill, 2022

SECTION	PROPOSED AMENDMENT(S)	COMMENT(S)	RECOMMENDATIONS
2	(d) the particulars of initial beneficial owners in accordance with Section 93A of the Act	The expression “initial beneficial owners” inadvertently creates a second category of beneficial owners, distinct from beneficial owners elsewhere mentioned in the Act. All beneficial owners after registration will be simply beneficial owners. Finally, the term initial beneficial owner is not used within FATF standards and is not referenced elsewhere in Section 93 A and in other amendments	Delete “initial”
3	The Companies Act is amended by inserting the following new section immediately after section 19(e) — (f) the persons named in the statement of <u>initial beneficial owners</u> shall be the beneficial owners of the company.	There already exists 19(f) in the Companies Act. This should be inserted as 19(g). Additionally, the word “initial” should be deleted	. (g) the persons named in the statement of beneficial owners.....
5	Section 93A of the Companies Act is amended by inserting the following new subsections immediately after subsection (4)— “(4A) The Registrar may issue a guide about the giving of notices prescribed in the regulations issued pursuant to subsection (2), including and not limited to the form and content of any such notices and the manner in which they must be given.	It is recommended for the sake of continuity that the section be inserted under sub-section 2 as 2A and not under 4 which deals with an entirely separate issue.	Place the sub-section under (2) as 2A

6	<p>1. Section 854 of the Companies Act is amended by inserting the following new subsection immediately after subsection 1(j) —</p> <p>(k) the contents of a document sent to the Registrar <i>contain</i> any information disclosed in accordance with section 93A.</p>	Rectify grammatical error	Change 'contain' to 'containing'
6	<p>Section 854 of the Companies Act is amended by inserting the following new subsection immediately after subsection 1(j) —</p> <p>(k) the contents of a document sent to the Registrar <i>contain</i> any information disclosed in accordance with section 93A.</p>	This section implies there are no circumstances under which BO information can be made available for public inspection. This contradicts Regulation 13(5) in the Companies (Beneficial Ownership Information) (Amendment), specifying that BO information maintained by the PPRA shall be made publicly available.	A provision should be included to indicate an exception to the prohibition to disclose BO information for the purpose of public procurement disclosures.
6	<p>Section 854 of the Companies Act is amended by inserting the following new subsection immediately after subsection 1(j) —</p> <p>(k) the contents of a document sent to the Registrar <i>contain</i> any information disclosed in</p>	This section implies there are no circumstances under which BO information can be made available for public inspection. This contradicts Regulation 13(7) of the Beneficial Ownership Information (Amendment) Regulations, 2022, which would allow for Competent Authorities to publish any such information if it 'affects the country'.	A provision should be included to indicate an exception to the prohibition to disclose BO information when this is in the public interest.

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	accordance with section 93A.	[insert language for changing 'affects the country' to 'public interest'] We propose replacing the phrase "affects the country" with "is in the public interest". This is to maintain consistency with the drafting language used in the Principal Act (e.g sections 219, 221, and 222). It is also consistent with the spirit and drafting language of the Constitution of Kenya. We would also recommend that this change be applied to the Beneficial Ownership Information Regulations 2022.	
6	Section 854 of the Companies Act is amended by inserting the following new subsection immediately after subsection 1(j) — (k) the contents of a document sent to the Registrar contain any information disclosed in accordance with section 93A.	FATF recommendation 24 suggests that countries could consider facilitating access to BO information. Public access can function as an alternative low-cost and non-technically invasive form of verification, which has the potential of improving BO data quality and increasing the impact of the BO registry.	Consider removing section 6 to comply with suggestions in FATF Recommendation 24.
7	The Companies Act is amended by inserting the following new section immediately after section 973- 973A (1) The provisions of section 93A of the Act shall apply to foreign companies registered under this Part."	Foreign companies 'carrying on business in Kenya' are required to register (section 974(1) Companies Act), but the section 974(2) definition of 'carrying on business' as including but not being limited to 'offering debentures in Kenya' and 'being a guarantor for debentures offered in Kenya is too vague and narrow. The definition of 'carrying on business' should be clarified and	Include an amendment to section 974(2) Companies Act that expands the definition of 'carrying on business'. In line with FATF's "sufficient link" the definition of a foreign company in Kenya should include: "When a company has permanent establishment/branch/agency, has significant business activity or has significant and ongoing business relations with financial

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		<p>widened. The BRS also indicated that further regulations defining the ‘conducting of business’ is required (see footnote 1 at https://brs.go.ke/foreign-company-registration.php#_ftn1).</p> <p>The widened definition of ‘carrying on business’ should comply with FATF’s Recommendation 24, which specifies that competent authorities should be able to obtain BO information of foreign-created companies that present ML/TF risks and have sufficient links with their country.</p>	<p>institutions or DNFBPs, subject to AML/CFT regulation, has real estate/other local investment, employs staff, or is a tax resident, in the country.”</p>
7	<p>The Companies Act is amended by inserting the following new section immediately after section 973-</p> <p>973A (1) The provisions of section 93A of the Act shall apply to foreign companies registered under this Part.”</p>	<p>The holding of real estate and other high-value assets in Kenya by foreign companies presents a significant money laundering risk, but may not qualify as ‘carrying on business’ when the company does not conduct any significant business activity. To adequately address this risk, foreign companies holding assets in Kenya should also be required to register and record BO information.</p>	<p>Include a provision that provides for a registration requirement for foreign companies holding assets, including but not limited to real estate, in Kenya, to ensure that provision 973A(1) also applies to companies that hold assets in Kenya but do not otherwise conduct business.</p>
8	<p>Section 975 of the Companies Act is amended by inserting the following new subsection immediately after subsection 3(g) — (h) a statement of initial beneficial owners of the foreign company.</p>	<p>All requirements of section 93A Companies Act should apply equally to foreign companies. This would be in line with the suggested language under Section 2 of the bill (Section 13(4) (d)) of the Companies Act As recommended above delete “initial”</p>	<p>Add ‘in accordance with section 93A of the Act’ after ‘foreign company’</p> <p>delete “initial”</p>
10	<p>The Companies Act is amended by inserting the following new section immediately after section 992 - 992A. Where a foreign company is struck-off pursuant to sections 991 and 992, it is a duty of the local representative of the</p>	<p>- Section 992 of the Companies Act states that a company may be struck off from the register for not having a local representative. In that case the suggested amendment to 992A would have to require an</p>	<p>In case the company is struck off for not having a local representative, it is recommended that the registrar or another competent officer/authority maintain the records.</p>

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	company as of the date of striking off of a foreign company to maintain all the company records required to be maintained by the company under this Act for ten years from the date of striking off of the company.	<p>alternative mechanism to ensure the retention of records as there would be no local representative available.</p> <p>- Finally, it is suggested that because the term company records is a defined term under this Act, for the sake of ease of drafting the language be simplified as recommended</p>	
11	Section 1006 of the Companies Act is amended by inserting the following new subsection immediately after subsection 2(j) — (2A)	There is no 2(j) in 1006. It is recommended that this be changed to state section 1007	Section 1007 of the Companies Act is amended by inserting the following
14	Section 17 of the Limited Liability Partnership Act is amended in subsection 7(2)(g) by inserting the following words — “a copy of the register of beneficial owners and” before the word “such”.	Requirement of submitting a copy of the register of beneficial owners should have its own sub-section.	Substitute section 17(2)(g) with “a copy of the register of beneficial owners; and”, and move the text “such other information concerning the proposed limited liability partnership as may be prescribed by the regulations” to new subsection 17(2)(h).
15	31A (7) If a limited liability partnership fails to comply with a requirement of this section, the limited liability partnership, and each officer of the limited liability partnership who is in default, commit an offence and on conviction are each liable to a fine not exceeding five hundred thousand shillings	The intended provision is introduced under Part VI - Management of an LLP. All the provisions and under this chapter and the requisite penalty provision are structured differently and target the partner, manager, or the LLP itself for penalties. Officers under the LLP Act are the primary focus in liquidating proceedings which are situated in a different chapter under the LLP Act. To be in line with the intended spirit of the Act, it is recommended that this provision be amended. Furthermore, based on the order of provisions it is recommended that the new provision be inserted	It is recommended that the penalty provision be structured in line with Section 30 and Section 32 of the LLP Act.

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		<p>immediately after Section 32 as Section 32A for greater consistency between the sections and flow of the Part VI</p>	
<p>General concerns</p>			
<ul style="list-style-type: none"> • <u>Verification</u>: Neither the Companies Act nor the LLP Act currently provides for a verification mechanism, and neither does The Business Laws (Amendment) Bill, 2022. Revised FATF recommendation 24 requires countries to ensure that beneficial ownership information is accurate, based on verification. To ensure accuracy of BO information and to comply with FATF Recommendation 24, a provision that provides for a verification mechanism should be provided. 			

NAME OF THE BILL/REGULATIONS: **The Companies (Beneficial Ownership Information) (Amendment) Regulations, 2022**

SECTION	PROPOSED AMENDMENT(S)	COMMENT(S)	RECOMMENDATIONS
3(e)	holds the highest percentage of the issued shares in the company, either directly or indirectly, where no individual person meets the conditions under paragraphs (a), (b), (c) and (d).	It is recommended that this provision be deleted. This provision would invalidate the provision on indirect control and would simply allow the test for beneficial ownership to be highest shareholding which would be a presumption but not an actual determination on who is the beneficial. Furthermore, this places the burden on BRS to investigate each case and demonstrate that there is no indirect ownership and control. This would ultimately weaken the registry and the quality of information within it. If this provision seeks to remedy the requirement that companies provide BO since their time of incorporation, it is recommended that either that requirement be done away with and companies are only required BO since the coming into effect of the BO requirement under the Companies Act. Alternatively, it is recommended that this provision can only be used to provide BO information of companies prior to the enactment of the legislation.	Delete the provision
5	Regulation 4 of the principal Regulations is amended by inserting the following new paragraphs; [...] (5) Any person acting as a nominee shareholder or a trustee	Section 5 amends Regulation 4 by inserting sub-paragraph (5), which requires a nominee shareholder or trustee of a trust holding shares in a company to disclose the nominee or trust status to the company, and maintain relevant ownership and identity information of the beneficial owner. In line with revised FATF Recommendation 24, this should also apply to nominee directors in addition to nominee shareholders.	Add ‘, nominee director’ after ‘nominee shareholder’

	<p>of a trust holding shares in a company shall disclose to the company the nominee or trust status and maintain relevant ownership and identity information set out under regulation 3, and including accounting information, when acting as legal owners on behalf of other persons and ensure that the information is complete and up to date.”</p>		
5	<p>Regulation 4 of the principal Regulations is amended by inserting the following new paragraphs;</p> <p>“(4) The notice under sub-regulation (1) shall be issued by-</p> <p>(a) in the case of a new company, the promoters of the company during the incorporation of a company;</p>	<p>Promoters is a business term and is not defined in legal statute. It is additionally atypical to impose an affirmative legal obligation on a promoter. In fact, the Companies Act only mentions the word promoter once, the Company Act regulation - 3 times and the LLP Act never mentions the word promoter. It is strongly recommended therefore that an affirmative legal obligation written in law not be placed on a promoter. If notice is needed, It is recommended that this be simply placed on an officer or is pro forma issued by the registrar to any company applying to be incorporated.</p>	<p>If notice is needed, It is recommended that this be simply placed on an officer or is pro forma issued by the registrar to any company applying to be incorporated.</p>
6	<p>(4A) (1) Any person who becomes a beneficial owner of a company other than through direct ownership of shares shall notify the Company of their status as a beneficial owner, indicate the date they became a beneficial owner and provide the information set out under regulation 3(2).</p> <p>(2) The duty under sub regulation (1) must be complied with within</p>	<p>This provision places an undue burden on a person for the lifetime of their investment to constantly monitor and guess their beneficial ownership status without the benefit of full information. While it is tangible and feasible to require reporting of information once a determination has been made at a defined point in time. This provision raises the chance and circumstance where someone inadvertently becomes a beneficial owner. The officers of the</p>	<p>Delete this provision</p>

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	30 days of the person becoming a beneficial owner of the company.	company are best positioned to make this judgment and this obligation of ongoing due diligence should not be placed on a shareholder. Furthermore, this would be adverse to business in Kenya and significantly raise business costs without providing the intended benefit.	
-	Suggestion for amending sub-regulation 13(6) of the Companies (Beneficial Ownership Information) Regulations 2020, as amended by the Companies (Beneficial Ownership Information) (Amendment) Regulations, 2022.	Sub-regulation 13(6) provides access to information by competent authorities, as well as the PPRA, the procuring entity or contracting authority 'upon written request' only. This does not sufficiently ensure a 'rapid and efficient access to information', as required by FATF recommendation 24.	Sub-regulation 13(6) should be amended to add the term " rapid and efficient access" to BO information. It is further recommended that rapid and efficient access can be achieved by providing direct access or in the alternative it is suggested that a time limit be prescribed in which the information is to be provided to the entities listed following a written request.

General concerns:

- **Minor-** Currently, there is no restriction on a minor being identified as a beneficial owner. Because minors cannot consent to being beneficial owners, it is recommended that BRS study the situation in the Kenyan context and either prohibit minors as beneficial owners of a company or require that if a minor is a beneficial owner, the identity details of the legal guardian who must be a natural person must also be provided.
- **International exchange of information:** A provision should be added to regulation 13, to ensure timely access to BO information to foreign competent authorities, similar to sub-regulation 13(6) providing for this access to national competent authorities upon written request. Revised FATF Recommendation 24 requires the widest possible range of international cooperation to BO information, including facilitating access by foreign competent authorities to basic information held by company registries, exchanging information on shareholders, and obtaining BO information. Additionally, FATF requires countries to make publicly known the agency responsible for responding to international requests for BO information
- **Verification:** Neither the Companies Act nor the Companies (Beneficial Ownership Information) Regulations provide for a verification mechanism to ensure accuracy of BO information. Revised FATF recommendation 24 required countries to ensure that BO information is accurate, based on verification. The regulations should have a provision providing for such a verification mechanism.
- **Inability to identify beneficial owner:** Regulation 11 currently offers a company the option of simply making note of being unable to identify a BO or to obtain their particulars, when that is the case. However, neither the Regulations nor the Companies Act specify a time limit for how long this declaration may stand. This creates the risk of companies abusing this provision to evade BO disclosure and subsequent penalties for non-

disclosure. The regulations should be amended to specify the time limit for a section 11 declaration, and clarify what this means for incurring penalties.

NAME OF THE BILL/REGULATIONS: THE PARTNERSHIPS (BENEFICIAL OWNERSHIP INFORMATION) REGULATIONS, 2022

SECTION	PROPOSED AMENDMENT(S)	COMMENT(S)	RECOMMENDATIONS
General		The proposed draft regulations use 'partnerships' in reference to 'limited liability partnerships'. The legal regimes for the two are separate, and the rights and obligations of partners under the two regimes also differ. Most importantly, partnerships do not offer the privacy and legal distance of a corporate veil, which is what BO regulations seek to address, but LLPs do.	As these BO regulations are meant to cover LLPs, the wording should be consistent with the principal Act , which refers to 'limited liability partnership' throughout. Alternatively, the following provision can be included as part of the definitions: "Partnership" refers to a limited liability partnership registered under the Limited Liability Partnerships Act, 2011"
	THE PARTNERSHIPS (BENEFICIAL OWNERSHIP INFORMATION) REGULATIONS, 2022	This regulation covers only LLP s and therefore should be named accordingly	The Limited Liability Partnerships Beneficial Ownership Information Regulations, 2022
1.	These Regulations may be cited as the Partnerships (Beneficial Ownership Information) Regulations, 2022.	It is recommended that this section be amended to add the words Limited Liability Partnerships to make clear that this does not cover general partnerships	The Limited Liability Partnerships Beneficial Ownership Information Regulations, 2022
2	"arrangement" refers to an artificial entity, without legal personality, associating one or more natural or legal persons together in an ownership or control relationship, but without implying that the parties to this arrangement have any other form of collective legal identity;	Please read this provision in conjunction with comment on definition on joint arrangement below for reference.	

SECTION	PROPOSED AMENDMENT(S)	COMMENT(S)	RECOMMENDATIONS
2	“joint arrangement” is an arrangement between the holders of a stake in the capital or profits (or rights) in a partnership that they will exercise all or substantially all the rights conferred by their respective stakes (or rights) jointly in a way that is predetermined by the arrangement .	This should be amended to add the word joint arrangement before the word arrangement. Otherwise, it creates an implication that all joint arrangements must be set up in the form of an arrangement which runs counter to the purpose of the definition and subsequent mentions of the term in the legislation	“joint arrangement” is an arrangement between the holders of a stake in the capital or profits (or rights) in a partnership that they will exercise all or substantially all the rights conferred by their respective stakes (or rights) jointly in a way that is predetermined by the joint arrangement .
2	“beneficial owner” means 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;	It should be arrangement and not arrangements	“beneficial owner” means 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 those persons who exercise ultimate effective control over a legal person or arrangement;
2	“joint arrangement” is an arrangement between the holders of a stake in the capital or profits (or rights) in a partnership that they will exercise all or substantially all the rights conferred by their respective stakes (or rights) jointly in a way	should not be in bracket	“joint arrangement” is an arrangement between the holders of a stake in the capital or profits or rights in a partnership that they will exercise all or substantially all the rights conferred by their respective stakes or rights jointly in a way that is predetermined by the arrangement

SECTION	PROPOSED AMENDMENT(S)	COMMENT(S)	RECOMMENDATIONS
	that is predetermined by the arrangement		
2	“relevant interest” means— (a) ownership held by a person in a partnership; (b) voting rights exercised by a person in the partnership; or (c) the right to appoint or remove a partner in the partnership;	this should specifically reference LLP	“relevant interest” means— (a) ownership held by a person in a limited liability partnership; (b) voting rights exercised by a person in the limited liability partnership; or (c) the right to appoint or remove a partner in the limited liability partnership;
2	“ultimately owns or controls” means a situation which ownership is exercised through a chain of ownership or by means of control other than direct control.	add the word “in”	“ultimately owns or controls” means a situation in which ownership is exercised through a chain of ownership or by means of control other than direct control.
3(e)	holds the highest percentage of the share in the capital or profits of the partnership, either directly or indirectly, where no individual person meets the conditions under paragraphs (a), (b), (c) and (d)	It is recommended that this provision be deleted. This provision would invalidate the provision on indirect control and would simply allow the test for beneficial ownership to be highest shareholding which would be a presumption but not an actual determination on who is the beneficial. Furthermore, this places the burden on BRS to investigate each case and demonstrate that there is no indirect ownership and control. This would ultimately weaken the registry and the quality of information within it	Delete provision

SECTION	PROPOSED AMENDMENT(S)	COMMENT(S)	RECOMMENDATIONS
3 (5)	(5) The information on the nature of ownership or control referred to in sub regulation (3)(l) is as specified in regulation 3(2).	For accuracy, section 3(5) should not refer to section 3(l) but to section 3(4)(l).	Change 'sub-regulation 3(l)' sub-regulation 3(4)(l).
4(1)	A partnership shall give notice to a person it knows or has reasonable cause to believe that the person is a beneficial owner of a partnership, requiring the person to provide the particulars set out in regulation 3(3) .	Should be regulation 3(4) referring to the BO information to be collected.	Replace 3(3) with 3(4)
4(4) (a)	(4)The notice under sub regulation (1) shall be issued by- (a) in the case of a new partnership, the promoters of the partnership during the incorporation of a partnership;	Promoters is a business term and is not defined in legal statute. It is additionally atypical to impose an affirmative legal obligation on a promoter. In fact, the Companies Act only mentions the word promoter once and the LLP Act never mentions the word promoter. It is strongly recommended therefore that an affirmative legal obligation written in law not be placed on a promoter. It is recommended that the manager or partners of the LLP therefore issue said notice. The BRS website and the LLP Act refer to registration. It is recommended that it be amended accordingly.	(a) in the case of a new partnership, the manager or partners of the limited liability partnership during the registration of the limited liability partnership
4(4)b	(b) (c) in the case of an existing partnership, the	There is a hanging bullet point (b)	Delete bullet point (c) and change bullet point (b) to: "(b) in the case of an existing partnership, the partners of the partnership

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	<p>partners of the partnership</p> <p>within three months of the coming into operation of this sub-regulation.</p>		<p>within three months of the coming into operation of this sub-regulation.”</p>
4(5)	<p>(5) Any person acting as a nominee partner or a trustee of a trust holding a stake in a partnership shall disclose to the partnership the nominee or trust status and maintain relevant ownership and identity information set our under regulation 3, and including accounting information, when acting as legal owners on behalf of other persons and ensure that the information is complete and up to date.</p>	<p>typo</p>	<p>Replace 'our' with 'out'</p>
4(5)	<p>Any person acting as a nominee partner or a trustee of a trust holding a stake in a partnership shall disclose to the partnership the nominee or trust status and maintain relevant ownership and identity information set our under regulation 3, and including accounting information, when acting as legal owners on behalf of other persons and ensure that the information is complete and up to date.</p>	<p>This should be amended to also include the nominee manager of an LLP in line with FATF's directive on nominee relationships of officers within a legal entity</p>	<p>Any person acting as a nominee partner or nominee manager or a trustee of a trust holding a stake in a limited liability partnership shall disclose to the limited liability partnership the nominee or trust status and maintain relevant ownership and identity information set our under regulation 3, and including accounting information, when acting as legal owners on behalf of other persons and ensure that the information is complete and up to date.</p>

SECTION	PROPOSED AMENDMENT(S)	COMMENT(S)	RECOMMENDATIONS
	No provision currently	For amendment 4(5) to act as a strengthening provision, it would require an enforcement clause in the form of penalties for non-disclosure of the nominee relationship. However, the Business Laws amendment Bill only envisions penalties on the officers of the LLP. Please refer to Section 15 and new amendment Section 31 A (7) and (8). Please refer to additional recommendations on Section 31 A in the sections on The Business Laws Amendment Bill, 2022	
5(1)	(1) Any person who becomes a beneficial owner of a partnership other than through direct ownership of a stake in the capital or profits shall notify the partnership of their status as a beneficial owner, indicate the date they became a beneficial owner and provide the information set out under regulation 3(2).	This provision places the burden on a person for the lifetime of their investment to constantly monitor and report. While it is tangible and feasible to require reporting of information once a determination has been made. This raises the chance and circumstance where someone inadvertently becomes a beneficial owner. The manager, partners, and officers of the LLP are best positioned to make this judgment.	Delete provision
12	The partnership shall note in its register of beneficial owners that it knows or has reasonable cause to believe that there is a beneficial owner in relation to the partnership but— (a) has not identified the beneficial owner;	Regulation 12 offers a partnership the option of simply making note of being unable to identify a BO or to obtain their particulars, when that is the case. However, neither the Regulations nor the LLP Act specify a time limit for how long this declaration may stand. This creates the risk of partnerships abusing this provision to evade BO disclosure and subsequent penalties for non-disclosure.	The regulations should be amended to specify the time limit for a section 12 declaration, and clarify what this means for incurring penalties.

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	<p>(b) has not been able to obtain the beneficial owner particulars;</p> <p>(c) has issued a warning notice which has not been complied with;</p> <p>(d) has issued a restriction notice; or</p> <p>(e) there is a matter pending before court in relation to beneficial ownership.</p>		
14(8)	<p>(8) Information relating to the beneficial owner shall only be made available to a competent authority, the procuring entity, the contracting authority, the Public Procurement Regulatory Authority or the Public Private Partnership Committee upon a written request by the competent authority, the procuring entity, the contracting authority, the Public Procurement Regulatory Authority or the Public Private Partnership Committee to the Registrar.</p>	<p>Revised FATF recommendation 24 requires timely access to information by competent authorities, which means ‘rapid and efficient access to information’ held or obtained by a public authority, in this case the Registrar. It additionally requires the timely access to BO information in the course of public procurement.</p> <p>Sub-regulation 14(8) of these Regulations provides for access to information by competent authorities as well as the PPRA, the procuring entity or contracting authority only ‘upon written request’. This does not sufficiently ensure a ‘rapid and efficient access to information.’</p>	<p>Sub-regulation 14(8) should be amended to add the term “rapid and efficient access” to BO information. It is further recommended that rapid and efficient access can be achieved by providing direct access or in the alternative it is suggested that a time limit be prescribed in which the information is to be provided to the entities listed.</p>
14 (8)	<p>Information relating to a beneficial owner shall only be made available to a competent authority, the procuring entity, the contracting authority, the Public Procurement Regulatory Authority or the Public Private</p>	<p>The highlighted part seems repetitive</p>	<p>Information relating to a beneficial owner shall only be made available to a competent authority, the procuring entity, the contracting authority, the Public Procurement Regulatory Authority or the Public Private Partnership Committee upon their written request.</p>

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	Partnership Committee upon a written request by the competent authority, the procuring entity, the contracting authority, the Public Procurement Regulatory Authority or the Public Private Partnership Committee to the Registrar.		
14 (9)	Notwithstanding the provisions of this regulation, the Competent Authority may seek, publish and publicise any important information regarding a partnership if such information affects the country	Refer to comments under the Business Laws Amendment Bill - Section 6	“...if such information is in the public interest.”
General concerns:			
<ul style="list-style-type: none"> ● <u>significant influence and control:</u> It is recommended because the tests for significant influence and control will require an exhaustive list of examples to help assess indirect ownership and control limiting it to merely a definition. It is recommended that instead a guidance document will be issued. Furthermore, in a court of law this will allow for a more expansive interpretation and the guidance document can be more easily updated. A suggested mechanism from the UK is included for reference. 			
<ul style="list-style-type: none"> ● <u>International exchange of information:</u> A provision should be added to regulation 14, to ensure the timely access to BO information to foreign competent authorities, similar to sub-regulation 14(8) providing for this access to national competent authorities upon written request. Revised FATF Recommendation 24 requires the widest possible range of international cooperation to BO information, including facilitating access by foreign competent authorities to basic information held by company registries, exchanging information on shareholders, and obtaining BO information. Additionally, FATF requires countries to make publicly known the agency responsible for responding to international requests for BO information. 			
<ul style="list-style-type: none"> ● <u>Verification:</u> The Partnership (Beneficial Ownership Information) Regulations, 2022 does not provide for a verification mechanism to ensure accuracy of BO information. Revised FATF recommendation 24 requires 			

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			countries to ensure that BO information is accurate, based on verification. The regulations should have a provision providing for such a verification mechanism.

NAME OF THE BILL/REGULATIONS: **The Registrar of Companies (Amended Forms) Rules, 2022**

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2	section 4A of CR29 - Inclusion of BO information in filing annual returns	The proposed provision seems inadequate as it just requires companies to confirm that the details of the company's beneficial owners has not changed since the last annual return. The phrasing of this statement presumes that BO information has previously been declared as part of the annual returns.	Propose to have a table similar to F3 (list of past and present shareholders) and F4 (shareholders who hold at least 5% of any class of shares), but in relation to beneficial owners.

We thank you again for the opportunity to present these comments. In case you have any questions, or would like additional information on GFI's work in this regard, please reach out to:

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Sincerely,

Lakshmi Kumar

Lakshmi Kumar
Policy Director