

Formation of entities requires thorough research on what a promoter is currently interested in, not forgetting to consider past challenges, if any. Promoter's vital interests, among others, are the ability to enhance limited liability and enhance anonymity. However, attaining limited liability does not necessarily amount to the anonymity of the promoters.

The Companies Act, 2015, as amended in 2017, requires that companies owned through a nominee shareholder to disclose the beneficiaries to the Registrar of Companies.

The Companies (Amendment) Act No. 28 of 2017 defines a beneficial owner as a *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.*

Nominee-Beneficiary Relationship is where Ms. X wants to open a company and does not want her name, including personal information, to appear anywhere as the Shareholder. As a result, Ms. X enters into a confidential agreement with Ms. Y to open the company and be the shareholder as the nominee. Therefore, whoever effects background search at the Companies Registrar will only find Ms. Y's name and personal information.

Even where Ms. X would use a series of companies, she remains the ultimate owner, therefore, the need to be disclosed. However, certain countries restrict disclosure of the beneficiary. In such cases, if the Government is rigorous in applying the law, it is likely to stifle a promoter's operational interest.

As a result, it leaves the promoters with the option of engaging in complex corporate structures. However, these complex structures can equally affect the investment opportunities available based on the aspect

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of local shareholder/investor as per sector-specific laws in Kenya.

A simple Shareholder Anonymity structure is where a Kenyan promoter appoints a Kenyan nominee with unlimited power to appoint a nominee to register a company in a foreign country. The principal Nominee-Shareholder will enter into an arrangement to have the foreign company as its Nominee-Shareholder in Kenya. Therefore, it will register the Kenyan nominee as a beneficiary at Kenya's Companies Registry.

The model is highly favourable to a Kenyan since it may help to possibly retain the local shareholder/investor title through anonymity, which will result in attaining desirable investment models that are reserved to locals.

These corporate structures intertwine with other detailed fields of law such as tax, shareholding, ease of operations and decision making, tactical issues, securities laws if applicable, among others. It is always advisable to seek advice from a professional on such corporate structures.

