

BENEFICIAL OWNERSHIP - CIPC MESSAGING

INTRODUCTION

The Beneficial Owner (BO) messaging from the CIPC has been somewhat mixed! What should have happened is that there should have been more detailed guidance on all the different combinations of getting to the beneficial owner, a human who is the ultimate owner.

To get to the ultimate owner or warm body one has to follow the audit trail of ownership through the shareholdings and control of a company. This is done by drilling down through shareholdings on multiple levels through companies and trusts shareholdings until a warm body is found. The whole purpose of the drill down process exercise is to get to the end beneficial owner who is a warm body to ensure that it complies with the legislation.

I don't want to pick on any regulator or government department in particular but in South Africa we clearly have an issue where government departments develop computer systems, pay an awful amount of money and the systems don't work. We all know this and I certainly as a stakeholder in this particular system and as a taxpayer don't want this to be the case where in two years' time the system is a total failure as we have seen so many times before.

The legislation, the brochure, webinars and everything else including various articles talk about breaking down a company to its warm bodies, but nowhere does it actually tell you how. The recent webinar by the CIPC that I listened to, gave a different view of my understanding of how we get to a **warm body**.

WARM BODY REQUIREMENTS IN PERSPECTIVE

To put it into perspective there are two issues in relation to obtaining this information in terms of the upload of beneficial ownership that needs to be considered; –

1. **Document Uploads** – the upload of a whole lot of documents like the **share register** in a PDF format and the **beneficial ownership register** also in a PDF format and all the other supporting documents like the mandate of the uploader and IDs of the **BOs**. One of the most important documents would be the **Organogram** which will prove the audit trail of how the **BOs** listed are obtained. It is important to note that the uploading of PDFs is not data that can be used to get to the BO data required. All PDF files from different sources can very well be in different display formats making it very difficult to convert into data.
2. **Data Uploads** – more important is the upload of the data of each individual warm body with the data required as indicated on the CIPC website. Each BO must show the percentage

ownership if its 5% or more. In doing the calculations the total of each company's BOs must come to 100%. In many cases there is no link between the share register and the BO register and this is why an organogram is required to prove the linkage.

The whole point of inputting data is that necessary records can be built indicating the beneficial owners across all companies. Why would we want the warm bodies if we can not tie a beneficial owner across a whole lot of entities where money is moving from entity to entity.

It is the data that must be used by the various agencies to track the flow of money. It would be of interest for the CIPC or other regulators to indicate exactly how this data is going to be used so that we as stakeholders know that its going to be used properly and is fit for the purpose required.

QUESTIONS THAT MUST BE ANSWERED BY THE CIPC

How does the CIPC intend taking data that comes in via PDF and cross referencing to the actual data posted and actually verifying that the end result is correct.

Is the CIPC building a database that will link exactly what the warm bodies hold.

CIPC WEBINAR THAT I LISTENED TO

In listening to the recent CIPC webinar there were two answers to questions that I have difficulty with.

1. SIMPLE COMPANY STRUCTURE

In a simple company structure where the shareholders are individuals and all the details appear on the share register which one has to upload then it would not be necessary to complete BO data form with the individuals as these individuals are considered **Known Information**. No where is **Known Information** defined in the legislation. So what is the point of this and how is the data from the shareholder register in a PDF format going to get from that register into a database. The presenter clearly said that **Known Information** does not have to be entered into the BO database. I would point out that no way in the guidance or anywhere else was this ever indicated.

I would go even further to say that this information given is totally wrong. A company with a simple structure with so-called known information needs to be put into this BO database as there appears to be no methodology for moving the known information into the BO register other than the uploader entering this data. Simply a small company may very well be the link in tying up movement of illicit money and conforming with the FATF requirements and the legislation.

It is also important to note that the CIPC does not have any indication of who the shareholders are as up and until now there has been no requirement to upload any shareholder information in a data format.

I submit that this information given on the webinar is clearly wrong and will result in thousands of entities doing the wrong thing.

2. THE SITUATION WITH TRUSTS

The second issue which blew me away was that where a shareholder is a company then we have to break down the shareholding to get to the warm bodies, but we were told that when the shareholder is a trust we just leave it as we don't have to enter the trust information as the trust information is entered on the Masters platform.

The webinar was told that the beneficial owners of the trust need to be entered into the Masters database and that there would be some form of triangulation of that data with the CIPC and one has to assume that this is to get to the warm bodies. It is not necessary to enter any kind of percentage of distribution of beneficiaries in the Masters database so how is this ever going to link up with what's on the CIPC platform.

As mentioned previously my confidence in the fact that there will be a meaningful triangulation of the data which shows a warm body is virtually nil.

I Vehemently disagree with this procedure because firstly if one looks at the natural person owner information on the database there are various types of situations which are indicated including various elements of trusts as follows;-

Settlor, protector, trustee and beneficiary of the trust.

This is clear indication of the fact that a warm body of the trust needs to be entered. If this is not the case then what is the point of the whole exercise as we will never get to a warm body.

Most important is that drilling down through a trust will get to the real owners. Why would they not want this.

THE WEBINAR IN QUESTION

I submit that the webinar in question will be the cause of many issues and the webinar in question needs to be withdrawn with immediate effect and the correct guidance needs to be issued.

HOW MANY LEVELS DOES ONE NEED TO GO DOWN

It is a known fact that trusts are used to disguise distributions for all the reasons mentioned in the documentation by the FATF and FIC. The going down of the different levels in a company, through other companies and trusts until one gets to the warm bodies and is the only way to get to the ultimate owners. This is the only way that this can be done.

The CIPC has at their disposal the opportunity to get it right and produce the required information so that all the right questions can be answered so that we can get the grey listing removed. If we get this wrong then the grey listing stays.

THE SITUATION WITH TRUSTS

Seeing that I have raised the point about going down to the levels until a warm body through a trust is reached this is the way I see it and is really the only way.

In many trusts other than a discretionary trust there is a percentage that the beneficiaries of the trust are going to receive in terms of income and capital distributions and this percentage can be calculated. In fact the beneficiaries in a trust if they are warm bodies are the ultimate owners. Therefore based on this where this percentage is capable of being determined then these percentages must be entered. If the beneficiary is another trust then one should drill down as many levels as it takes to get to a warm body.

If the trust is a discretionary trust where the distributions are determined by the trustees then the trustees should indicate a percentage for the sharing. If this is unable to be done then all the beneficiaries should have an equal shareholding in terms of their level and this is what should be entered.

CONCLUSION

By doing this procedure properly the CIPC should be in a position to build a database of all the beneficial owners that are linked to company shares. So why won't they do it this way.