



Companies and Intellectual
Property Commission
a member of the dtic group

GUIDANCE NOTE 2 OF 2023

BENEFICIAL OWNER FILING REQUIREMENTS

This guidance notice is issued in terms of Regulation 4(1)(a) of the Companies Act Regulations, 71 of 2008, which provides that a Regulatory Agency may issue a guidance document with respect to a matter within its authority, which provides for recommended procedures, standards or forms advising on best practice.

This notice is issued to give effect and provide guidance on filing of Beneficial Owner information as required by the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act 22 of 2022. The Act amended the Companies Act and gave the Commission (CIPC) a mandate to request companies to file and update Beneficial Owner information. The Minister of Trade, Industry and Competition together with the Companies and Intellectual Property Commission (CIPC) have published Companies Amendment Regulations under Government Notice 48648 on the 24th of May 2023.

The beneficial owner in respect of legal persons is defined as follows:

“**beneficial owner**”, in respect of a company, means an individual who, directly or indirectly, ultimately owns that company or exercises effective control of that company, including through—

- (a) the holding of beneficial interests in the securities of that company;
- (b) the exercise of, or control of the exercise of the voting rights associated with securities of that company;
- (c) the exercise of, or control of the exercise of the right to appoint or remove members of the board of directors of that company;
- (d) the holding of beneficial interests in the securities, or the ability to exercise control, including through a chain of ownership or control, of a holding company of that company;

the dtic Campus (Block F - Entfutukweni), 77 Meintjies Street, Sunnyside, Pretoria | P O Box 429, Pretoria, 0001
Call Centre: 086 100 2472
Website: www.cipc.co.za

(e) the ability to exercise control, including through a chain of ownership or control, of— (i) a juristic person other than a holding company of that company; (ii) a body of persons corporate or unincorporate; (iii) a person acting on behalf of a partnership; (iv) a person acting in pursuance of the provisions of a trust agreement; or

(f) the ability to otherwise materially influence the management of that company;”.

The threshold of 5% of ownership and/or control will be applicable for all entities required to file Beneficial Ownership Information.

Filing of a Securities Register for Companies which are not affected companies as per Regulation 32.

A company which does not qualify as an affected company must file their securities register which should include beneficial interest holders of the securities of that company if they are held by one person for the on behalf of another. A securities register of a company which is not an affected company must also include information of its Beneficial Owners (Regulation 32 (3) (b)).

Filing of a Beneficial Interest Register for Companies which are affected companies as per Regulation 30A.

An affected company is defined as follows:

“affected company” *means a regulated company as set out in section 117(1)(i) and a private company that is controlled by or a subsidiary of a regulated company as a result of any circumstances contemplated in section 2(2)(a) or 3(1)(a)”*

An affected company must file its Beneficial Interest register as prescribed in the regulations. The register must confirm with the prescribed requirements.

Entities which are not required to file a register of its Beneficial Owners/Beneficial Interest Holders.

Affected Companies listed on a local stock exchange if such information is already kept at such stock exchange or any institution with the authority of collecting and keeping such records (This will also apply to entities related (i.e.) a subsidiary or an entity controlled by the affected company in question).

Filing Requirements for Non-Profit Companies.

Non-profit companies with members will have to file a register containing details of their members. In line with the definition of “beneficial owner”, persons who exercise effective control of a non-profit company have to be included with the filing.

Transitional Arrangements with regard to the filing of Beneficial Ownership of existing companies.

Entities incorporated after on and after the 24th of May 2023 will be required to file the records of their beneficial owner within 10 days after such incorporation. Entities incorporated before the 24th of May 2023 will have to file their Securities Register or Beneficial Interest Register (whichever is applicable to the entity in line with whether it’s an Affected or Not an Affected entity) as part of its Annual Returns filing process from 24 May 2023 which is the date of publication of the final Amended Companies Regulations. Failure to comply with the provisions relating to the beneficial ownership register requirements /beneficial interest register requirements is an offence in terms of the Companies Act, a compliance notice may be issued in case of non-compliance and an administrative penalty may be imposed.

Filing of Beneficial Ownership Information is available on www.cipc.co.za under e-Services, and additional information on how to file, frequently asked questions is also published on the CIPC website mentioned above.

Yours sincerely,



ADV. RORY W. VOLLER
COMMISSIONER

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