

UNFORTUNATE POSITION OF NO GUIDANCE

Unfortunately, owing to the total lack of guidance there is nothing that we can do that is wrong. If you believe that the way you are doing something is right then its OK and the CIPC has to prove you are doing something wrong. If they refuse to answer questions and not give a legal interpretation nothing in fact can be wrong. Guidance given verbally on a webinar is not proper guidance unless it comes through an official notice.

Currently the only guidance given which sets the principles is 2 of 2023 dated 29 May 2023.

We are currently faced with a situation where the verbal guidance has changed over and over again confusing everyone.

THE POSITION OF AN AFFECTED COMPANY NEEDS TO BE CLARIFIED WHEN IT COMES TO A PRIVATE COMPANY.

The rule for affected companies is that they need not file their Beneficial Ownership (BO) registers if they are listed. Therefore subsidiaries of a listed company also need not file BO Registers. ***If anyone has any doubt then file the beneficial ownership register as it cannot do any harm.***

What about a private company that views itself as a regulated company simply because the MOI says its regulated. Does this make it affected in terms of the BO rules. My view is that this is the case if the MOI says it's an affected company, but must file the BO register. Remember its only listed affected companies that don't have to file because their records are on another system. This will also include subsidiaries of that affected company.

There is another method that a private company can become affected when there is a Fundamental transaction when certain conditions are met. If a private company believes that it is an affected company and does not file, I consider it to be wrong because the guidance says that they must file.

Where there is a ***fundamental transaction*** called a regulated or affected transaction in a private company where within the last 2 years 10% of shares had been sold to an outsider i.e. who is an ***unrelated party***. In this case the company only becomes affected if there is a fundamental or ***affected transaction***, i.e. in terms of s112 s113 and s114. The fundamental transaction is in effect a affected transaction simply in order to take the transaction to the take-over regulation panel. If there is no fundamental transaction, it's not an affected company and beneficial ownership should be filed. Even if its affected it should file BO. It can only be regulated when a fundamental transaction takes place. Even if there is a fundamental transaction which is an affected transaction this is only for the purposes of taking this to the ***Take Over Regulation panel*** and BO registers should be filed.

The purpose of being regulated for this purpose is to ensure fairness as far as outsiders are concerned.

With this rule in place there should be very few private affected companies.