

COMPANIES ACT DEFINITIONS

"beneficial interest", when used in relation to a company's securities, means the right or entitlement of a person, through ownership, agreement, relationship or otherwise, alone or together with another person to-

- (a) receive or participate in any distribution in respect of the company's securities;
- (b) exercise or cause to be exercised, in the ordinary course, any or all of the rights attaching to the company's securities; or
- (c) dispose or direct the disposition of the company's securities, or any part of a distribution in respect of the securities,

but does not include any interest held by a person in a unit trust or collective investment scheme in terms of the Collective Investment Schemes Act, 2002 (Act No. 45 of 2002);

"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;
- (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;

[Definition of "beneficial owner" inserted by s. 55 of Act 22/2022 w.e.f. 31 December 2022]

In these regulations, unless the context indicates otherwise-

- (a) **"certified copy"** means a true copy of an original document certified by a person having authority to do so in accordance with the provisions of the Justices of Peace and Commissioner of Oaths Act 16 of 1963 or electronically certified in terms of the Electronic Communications and Transactions Act, 2002 (Act No. 25 of 2002)

By a person having authority to do so.

Regulation 32 (3) a & b

(3) Where any of the securities of a company that does not fall within the meaning of an "affected company" are held by one person for the beneficial interest of another as contemplated in the Act, that company must also include in its securities register, despite any additional requirements that may be imposed by a central securities depository-

(a) a record of all such disclosures, including the following information for any securities in respect of which a disclosure was made-

(i) the name and unique identifying number of the registered holder of the security; and

(ii) the number, class and in the case of a certificated security, the distinguishing numbers of the security; and

(iii) for each person who holds a beneficial interest in the security, the extent of the person's interest in the security, together with that person's-

(aa) name and unique identifying number;

(bb) business, residential or postal address;

(cc) email address if available, unless the person has declined to provide an email address; and

(b) a record of each beneficial owner of the company, including the following information of such beneficial owner-

(i) the full name, date of birth, identity number (if South African) or passport number and date of birth (if non-South African);

(ii) residential and postal address;

(iii) email address if available, unless the person has declined to provide an email address;

(iv) confirmation as to the scope of participation in and extent of ownership, or effective control of, the company;

[Subs. (3) substituted by GN R3444/2023 w.e.f. 24 May 2023]

(3A) The securities register must be kept up to date and-

(a) a company must as soon as practical, but no later than 10 business days after any change to the information listed under subregulation (1) and (2) in its securities register; and

(b) a company that does not fall within the meaning of an "affected company" must as soon as practical, but no later than 10 business days after receipt of any notification, as to the change of the information listed under subregulation (3) in its securities register,

update its securities register to reflect the changes to such information.

[Subs. (3A) inserted by GN R3444/2023 w.e.f. 24 May 2023]

Section 50 companies act

(3A)

(a) A company that does not fall within the meaning of an "affected company" must record in its securities register prescribed information regarding the natural persons who are the beneficial owners of the company, in the prescribed form, and must ensure that this information is updated within the prescribed period after any changes in beneficial ownership have occurred.

(b) The prescribed requirements referred to in paragraph (a) must be prescribed after consultation with the Minister of Finance and the Financial Intelligence Centre, established by section 2 of the Financial Intelligence Centre Act, 2001 (Act No. 38 of 2001).

[Subs. (3A) inserted by s. 57 of Act 22/2022 w.e.f. 1 April 2023]

In regard to (a) above I think "beneficial owners" should read those shareholders with a beneficial interest because there is no way that beneficial owners can be added to the securities register owing to the fact that on the face of it there could be no relationship between the shareholders and the beneficial owners.

Definition

"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(l)(a);

[Definition of "affected company" inserted by s. 55 of Act 22/2022 w.e.f. 31 December 2022]

(c) "affected transaction" means-

- (i) a transaction or series of transactions amounting to the disposal of all or the greater part of the assets or undertaking of a regulated company, as contemplated in section 112, subject to section 118(3);
- (ii) an amalgamation or merger, as contemplated in section 113, if it involves at least one regulated company, subject to section 118(3);
- (iii) a scheme of arrangement between a regulated company and its shareholders, as contemplated in section 114, subject to section 118(3);
- (iv) the acquisition of, or announced intention to acquire, a beneficial interest in any voting securities of a regulated company to the extent and in the circumstances contemplated in section 122(1);

(c) a private company, but only if-

- (i) the percentage of the issued securities of that company that have been transferred, other than by transfer between or among related or inter-related persons, within the period of 24 months immediately before the date of a particular affected transaction or offer exceeds the percentage prescribed in terms of subsection (2); or

[Subpara. (i) substituted by s. 73 of Act 3/2011]

- (ii) the Memorandum of Incorporation of that company expressly provides that the company and its securities are subject to this Part, Part C and the Takeover Regulations, irrespective of whether the company falls within the criteria set out in subparagraph (i).

- (2) The Minister, after consulting the Panel, may prescribe a minimum percentage, being not less than 10 percent, of the issued securities of a private company which, if transferred within a 24-month period as contemplated in subsection (1)(c)(i), would bring that company and its securities within the application of this Part, Part C, and the Takeover Regulations in terms of that subsection.

Information

Legally the trustee of a trust cannot be a beneficiary at all - conflict of interest.

GUIDANCE

- Documents to be provided in PDF format
- Documents max size of 5MB

Supporting Documentation

- Original Mandate, mandatory
- Certified ID, mandatory
- Certified Passport, optional
- Notarized Passport, mandatory for foreigners
- Securities Register, mandatory
- Beneficial Interest Register
- Disclosure Form
- Any other additional

Affected Company Documentation

- Original Mandate, mandatory
- Certified ID copy of a filer. Mandatory
- Beneficial Interest Register
- Securities Register

Note: Beneficial Interest Register and Securities

Register one must be uploaded or you can submit both

Accountable Institutions Clarification

The term "accountable institution" requires further clarification to prevent overburdening our members who may not need to register under the FIC Act. As per the FATF's recommendations, and as verbally confirmed in Parliament by National Treasury, businesses providing solely accounting, auditing, and tax services, including the completion and submission of tax returns, do not fall under the scope of "operation or management" and hence, do not need to register as accountable institutions.