

BENEFICIAL INTEREST IN SECURITIES

In South Africa there has been a long-standing business practice to register a share where one person holds the shares for the benefit of another person whose name was not entered into the share register. It was a method used to get around the group areas act where certain members of society were not allowed to own property in certain areas.

The new act defines this as a relationship between the **registered holder of a security** and the **holder of the beneficial interest in the security**.

The new act retains the principle that a security may be registered in the name of a person who acts as the **agent or "nominee" for the beneficial owner** of that security. It is a long standing and widely used business practice to register securities in the name of a nominee.

Essentially let's say Mr. A wants to buy a building but he does not want to disclose this. He puts up the money and puts everything in the name of Mr. B. The building is registered in the name of a company and Mr. B is entered into the share register. A and B enter into an agreement to regulate their arrangement.

In terms of Section 57(1) a shareholder means the holder of a share issued by a company and who is entered as such in the **certificated** or **uncertificated** securities register as the case may be. A registered shareholder or the equivalent of a member under the 1973 Act **holder** is not defined. The distinction in the old Act between the shareholder and the member has been replaced by the distinction between the holder of a **beneficial interest** and a **shareholder** as defined in Section 1.

Section 56(1) allows this practice except to the extent that a company's MOI provides otherwise. A company's issued securities may be held by one person for the beneficial interest of another person. The Act retains the right that a company must respect the rights of the shareholder, the owner of a registered security to exercise votes. It is therefore necessary to regulate this relationship.

Beneficial interest when used in relation to a company's securities means the right or entitlement of a person, or ownership, agreement, relationship or otherwise a loan or together with another person to;

- a. Receive or participate in any distribution;
- b. Exercise or cause to be exercised in the ordinary course or all of the rights attaching to a company security, or

- c. Dispose or direct the disposition of a company securities of any part of a distribution in respect thereof.

It is now possible for at least 3 unrelated persons to each have a beneficial interest in a security.

Section 56(2) increases the range of persons who have a beneficial interest in a security issued by a **public company** even further. For the purpose of this discussion we are not going to go into detail, just be aware that you need to look at this section if you are handling the affairs of a public company.

1.1 Disclosure Requirements

S 56 applies to all types of profit companies or a public company.

The person who is registered as the holder of a security in a public company and is not the holder of the beneficial interest in the securities the **registered holder must** disclose the identity of the person on whose behalf the security is held. The number and class of securities held for each such person with the beneficial interest and the extent of each such beneficial interest must be disclosed to the company in writing within five (5) days after the end of every month during which a change has occurred of such information.

If the company knows or who has reasonable cause to believe that securities are held by one person for the beneficial interest of another person, the company **may** request in writing to either of those persons to confirm or deny that fact and provide the necessary particulars. Such information must be provided by no later than 10 business days after receipt of the notice. S 56(5) and S 56(6) apply to every type of company including private companies, the act requiring greater transparency. The new amendment to the companies act changes the word may above to **must**.

S56(9) provides that the holder of a beneficial interest in a share may only vote to the extent that;

- (a) The beneficial interest includes the right to vote on the matter
- (b) The person holds a proxy appointment in respect to that matter from the registered holder of those securities or the person's name is on the company's register of disclosures.

The beneficial holder of a security may demand a proxy appointment in certain instances.

Where you come across these kinds of arrangements it's in the interests of all concerned to have a proper agreement.

The problem with this kind of situation is that the holder of the beneficial interest in the shares **wants to hide** his or her holding so the chances are that they are not going to comply with these provisions.