



Companies and Intellectual  
Property Commission

a member of **the dtic** group

# BENEFICIAL OWNERSHIP TRANSPARENCY

## FAQ'S

MS. LUCINDA STEENKAMP  
SENIOR LEGAL ADVISOR: CIPC



## BACKGROUND

With the anniversary date of 24 May 2024 since promulgation of the Regulations – all entities **MUST** have submitted their beneficial ownership declarations already – compliance. (This is not a deadline – but CIPC will start enforcing compliance).

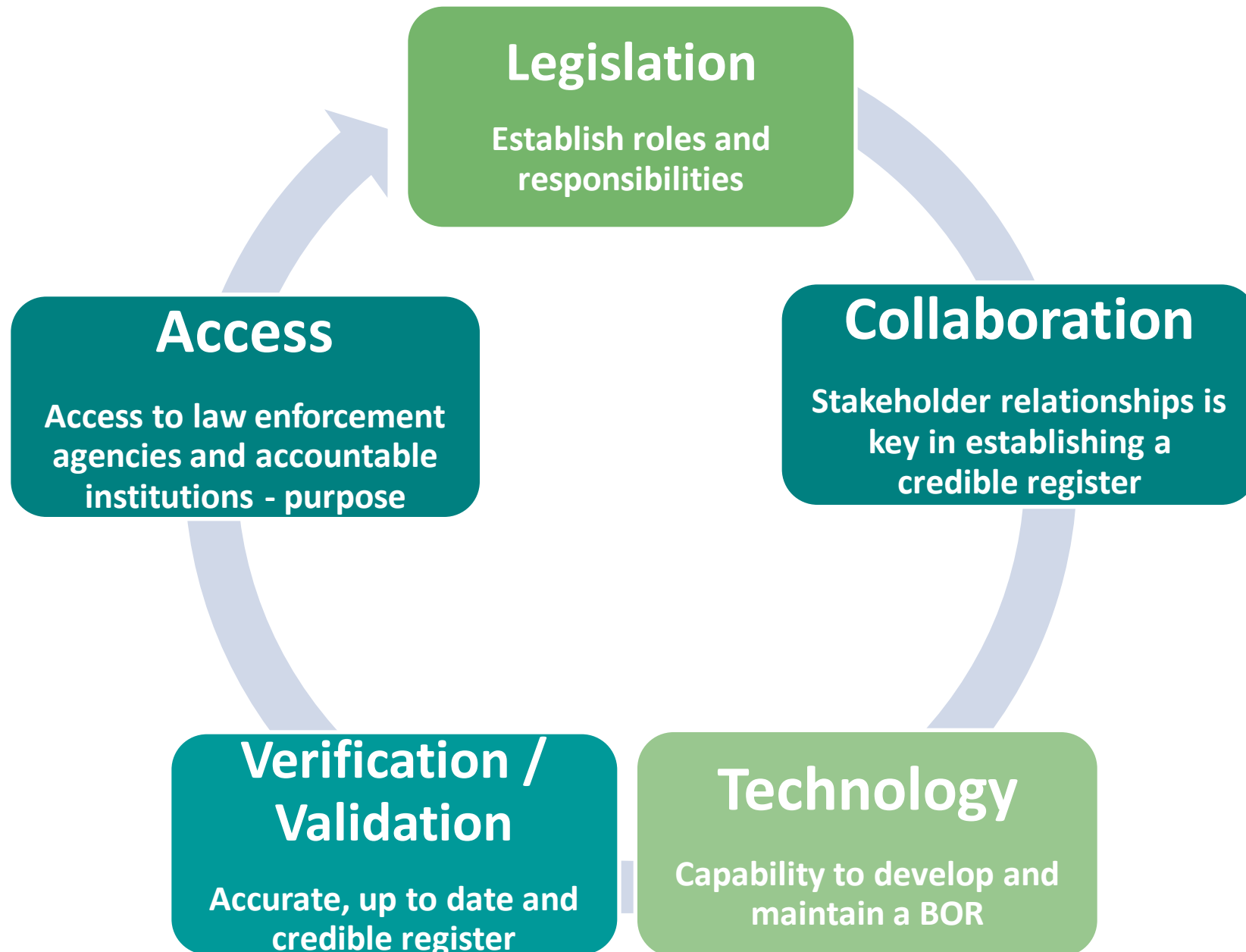
The purpose of the requirements is to ensure that **ALL** companies, external companies and close corporations comply with the beneficial ownership declaration requirements for the current financial year.

## BACKGROUND (CONT...)

AR/BO – Hardstop – **1 July 2024**: Entities who have not complied with the beneficial ownership declarations for the current calendar year (2024) will be prohibited from filing their AR's, until BO has been filed.

Entities that filed BO-declarations during 2023, will be required to “update” their BO-declarations in 2024, and every year thereafter, in line with the anniversary / incorporation date of the entity, even if the information did not change – BO-declaration, securities register, beneficial interest register, etc.

# REGULATORY FRAMEWORK



# ANCILLARY PROCESSES?

## Education and Awareness

Webinars, face to face engagements, user guides, practice notes

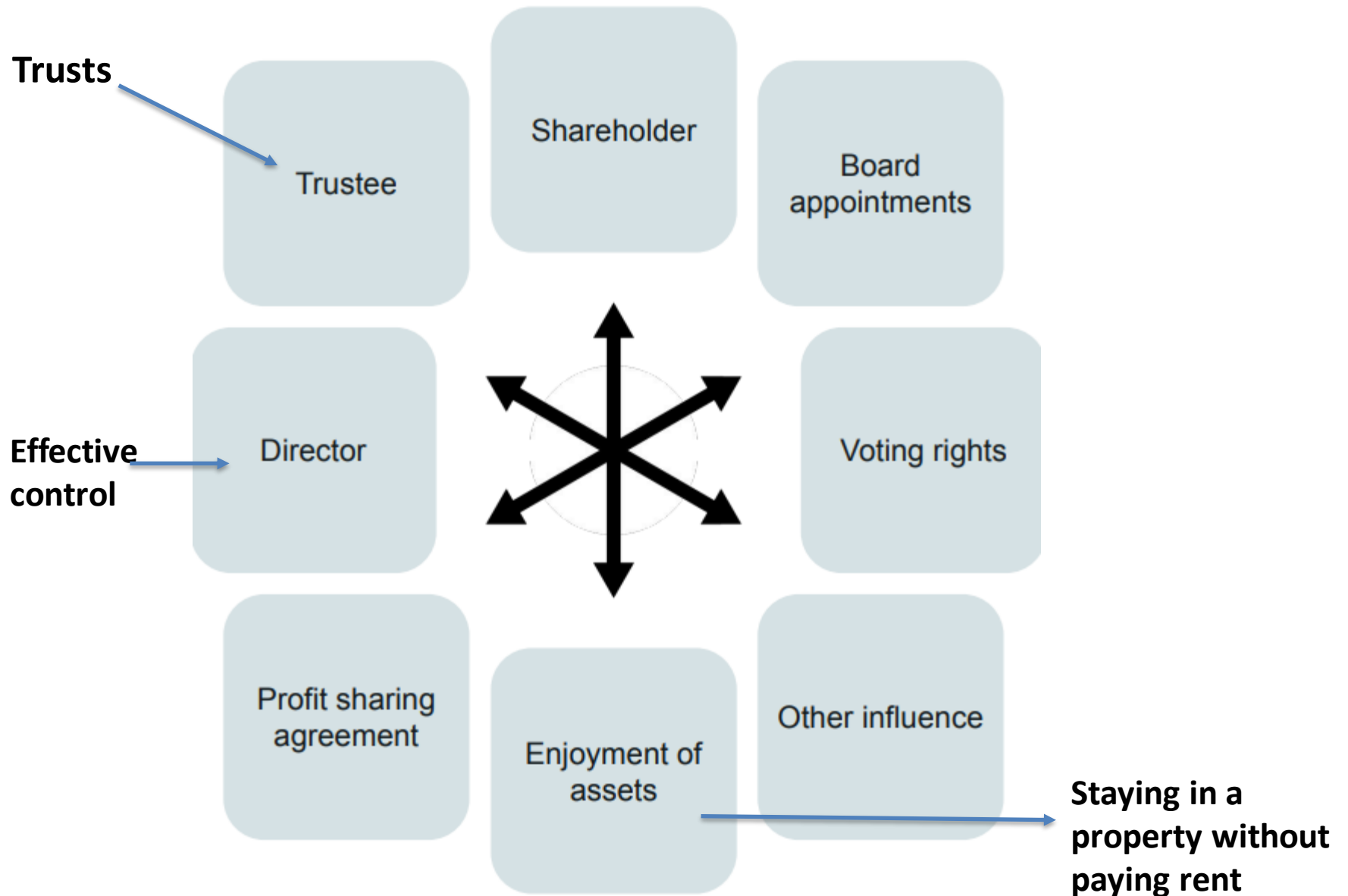
## Privacy

Country privacy laws play vital role in validation and verification of personal information and disclosure of BOR data - POPIA

## Access and use of BO-data

To aid in the purpose of GLAA – not only provide access to the data, but also guide on use of data – investigations and enforcement

# TYPES OF BENEFICIAL OWNERSHIP / EFFECTIVE CONTROL



# BO REGISTER

- CIPC released the Beneficial Ownership Register functionality on its e-services platform on 1 April 2023 and to date **285 676** Beneficial Ownership applications have been received and **252 225** successfully completed.
- The functionality provides for corporate vehicles (companies and close corporations) to submit with the CIPC details regarding its beneficial ownership status (5% and above) in terms of mentioned corporate vehicles.
- Failure to submit the required information is tantamount to non-compliance of the Companies Act, which could result in court ordered administrative fines – sanctions.

# COMPLEX BO STRUCTURES

In terms of legislative requirements, ALL companies, external companies and close corporations, must submit their beneficial ownership declarations at least once annually, or as and when it changes (amendments).

A beneficial owner can ONLY be a natural person – entities are thus required to drill down to the natural person in complex ownership structures that may include juristic persons (companies, Trusts, etc.) and declare the correct information accordingly. Where complex structures exist – make use of the disclosure form (organogram).

Development is underway to enhance the BO-register to provide for the declaration of complex ownership structures through a chain of ownership.



# CONSEQUENCES OF NON-COMPLIANCE WITH BENEFICIAL OWNERSHIP

- Non-compliance with BO-declaration legislative requirements, will result in CIPC commencing an investigation against the company and issue a compliance notice – which if not adhered to, could lead to administrative fines, etc.
- AR/BO – hardstop: force compliance to legislation – penalties incurred due to AR late filings will be for company own account and will not be waived by the CIPC – entities are encouraged to get their houses in order timeously.
- Criminal offence to submit false or incorrect information to the CIPC

# FREQUENTLY ASKED QUESTIONS

- **Why file beneficial ownership declarations?**

BO-declarations are legislatively required – GLAA, which amended amongst others, the Companies Act, 71 of 2008, making the submission of a securities register / beneficial interest register compulsory for ALL companies, external companies and close corporations.

- **Is a beneficial owner a director as well?**

The definition of beneficial owner include the “*exercise of effective control*” of a company. A director therefore can be seen as a beneficial owner, but not always and not necessarily exclusively. **Example:** - non-executive directors may not have enough control over a company to qualify.

# FREQUENTLY ASKED QUESTIONS

- **Can entities file BO-declarations more than once in a year?**

Legislation dictates that entities must file BO-declarations at least once annually, BUT also dictates that the securities register of a company (which includes BO-information) must be kept up to date and file any changes (amendments) with the Commission within 10 business days from the date on which the change occurred.

- **How do you delete or amend an existing BO-declaration?**

BO-declarations cannot be deleted and it is a criminal offence to provide false or misleading information to the Commission. However, should BO-information change – such changes must be filed via an amendment, whereby information can be amended, deleted, added, etc. The original information or filing persist (data history).

# FREQUENTLY ASKED QUESTIONS

- **What is a mandate?**

Compulsory document, wherein the declaring company mandates a filer (natural person) to submit its beneficial ownership declaration on behalf of the company.

Content of mandate –

- Letter / resolution / power of attorney;
- Declaring company letterhead;
- Mandate to individual (natural person);
- Signed by 50% + 1 of directors / all CC members

# FREQUENTLY ASKED QUESTIONS

- **What is the difference between the 3 different categories?**
  - (a) Non-affected company **with** beneficial ownership information – companies that are not classified as “affected companies”, and have beneficial ownership information to declare – standard BO-register requirements;
  - (b) Affected company – companies classified as affected companies, whether beneficial ownership to declare or not – upload mandatory documentation (no BO-information is completed);
  - (c) Non-affected company **without** beneficial ownership information – companies not classified as affected companies with zero beneficial owners – upload of mandatory documentation.

# FREQUENTLY ASKED QUESTIONS

- **What is the securities register?**

'*securities*' means any shares, debentures or other instruments, issued by a profit company (section 1 of the Act). A securities register of a company contains all the information of the securities (including shareholding) issued by the company.

Content of securities register – Regulation 32(3)

- Name and ID (unique identifier);
- Number and class of securities;
- Beneficial interest – extent of interest
  - Name & ID;
  - Business, residential / postal address;
  - Contact info (e-mail)
- Beneficial owner information
  - Full name; d.o.b; ID / passport number;
  - Residential and postal address;
  - E-mail address;
  - Extent of ownership / effective control

# FREQUENTLY ASKED QUESTIONS

- **Does a Trust declare beneficial ownership with the CIPC?**

Trusts (although regarded as juristic persons) are not registered with the CIPC, but with the Master of the High Court and therefore must declare beneficial ownership in terms of Trusts with the Master's office.

However, in instances where a Trust is the owner (member of CC, shareholder of company), in terms of a declaring company the natural persons of these Trusts must be declared, i.e. Trustees (control); beneficiaries (ownership).

.

# SUMMARY AND CONCLUSION

- The CIPC remains committed to the development and enhancement of the BO-register; implementation of legislation; enforcement of compliance and collaboration with ALL stakeholders in terms of SA Inc.
- It remains the responsibility of every entity required to submit beneficial ownership information with the CIPC, to adhere to the legislative and process requirements, and file accordingly.
- Removal of South Africa from the “grey list” by the FATF is a country priority and providing law enforcement agencies (LEA’s) with an accurate, up to date and reliable register of beneficial owners, is paramount in achieving that goal.





**THANK YOU –  
QUESTIONS WELCOME!**