



Companies and Intellectual
Property Commission

a member of the **dtic** group

BENEFICIAL OWNERSHIP

– AFFECTED COMPANIES & DOCUMENTS TO BE FILED

How, What, When?



Companies and Intellectual
Property Commission




AGENDA

1. Who Really Own The Company?
2. Annual BO Filing
3. Company Categories
4. What Is An Affected Company?
5. Determining The Company Category
6. Documents To Be Filed
7. Mandate
8. Certification Of Documentation
 - 8.1 South African Documents
 - 8.2 International Documents



WHO REALLY OWN THE BUSINESS?

Beneficial ownership is not just about names on paper, but rather about beneficial owners behind the scenes. These are the people who truly control the business and benefit from its profits.



So who can be declared as a Beneficial Owner?

Major Shareholder
– people that own a large portion of the company, even through another company or trust.

Ultimate decision makers – people who control the company's actions, even if they are not directors.

Trust beneficiaries
– people who benefit from a trust that owns the company.

Silent partners – investors that are not publicly involved but still profit from the business.

ANNUAL BO FILING



Do you still need to file BO information if nothing changed during the year? Businesses must file BO information every year, whether there were changes or not.



Yearly BO updates assist CIPC to confirm that your BO details are still valid.



Beneficial ownership must be submitted before filing annual returns

COMPANY CATEGORIES

Affected company –

company classified as an affected company, whether they have beneficial ownership to declare or not. Must upload mandatory documentation, but no BO-information is submitted

Non-affected company with

beneficial ownership information – company that is not classified as “an affected company”, and have beneficial ownership information to declare. Standard BO-register requirements apply

Non-affected company without beneficial ownership information – company not classified as an affected company with zero beneficial owners. Mandatory documentation must be uploaded

WHAT IS AN AFFECTED COMPANY?

Affected company means:

- A regulated company as set out in section 117(1)(i); and
- Companies to which *affected transactions and offers and the Takeover Regulations apply, as determined in accordance with section 118(1) and (2).*

An affected company includes-

- ✓ **A public company** whether listed or unlisted
- ✓ **A state-owned company**
- ✓ **A private company** – in terms of the transfer of securities when exceeding the percentage prescribed by the Minister (10%) within a 24-month period
- ✓ **A private company** that is controlled by an affected company (control or exercise the majority of the voting rights; right to appoint or control the appointment of directors who control majority voting rights at board meetings) or is a subsidiary (majority owned) of an affected company.

DETERMINING THE COMPANY CATEGORY – STEP 1

So, how do you select the correct category? One must apply the definitions as a type of checklist and follow 2 steps:

STEP 1: Determine the category. To determine whether it is an “affected company” or not, answer “Yes” or “No” to the following questions.

- Is the company a public company?
- Is the company a state-owned company?
- Did the private company transfer more than 10% of its securities within the 24 months before the declaration?
- Is the private company majority owned or controlled by an affected company?
- Is the private company a subsidiary of an affected company?

If the answer to any one of the above questions is **YES** – then the declaring company is an **affected company**.

If the answer to all of the questions above is **NO** – then the company is a **non-affected company**.

DETERMINING THE COMPANY CATEGORY – STEP 2

STEP 2: One has to establish whether the company has any beneficial owners by answering the following questions

- Does one person hold securities for the beneficial interest of another natural person?
- Is there a person who exercises (or has control over) more than 5% of the voting rights in the company?
- Is there a person with the right to appoint and remove directors of the company?
- Is there a person(s) that have the ability to materially influence the management of the declaring company?

DETERMINING THE COMPANY CATEGORY – STEP 2

If the answer to **ANY** of the above questions is **YES** – then the applicable category is non-affected **with** beneficial ownership.

If the answer to **ALL** of the above questions is **NO** – then the applicable category is non-affected **without** beneficial ownership.

- Please make use of the legislative definitions on Beneficial Ownership and affected companies, as well as the CIPC step-by-step user guides, which provide a breakdown of each type of company, as they will guide you on the required information to be filed. Take note that each company type has its own required documents for uploading.

DOCUMENTS REQUIRED TO BE FILED

Affected companies – with or without BO

- No beneficial ownership is declared on the functionality itself;
- A declaration / mandate is mandatory.;
- The mandate must be signed by 50%+1 of the company directors or 100% of members in CC.
- Certified ID copy of the Filer and captured Beneficial Owners.
- The filing of a Beneficial Interest Register is mandatory.

WHAT IS THE MANDATE THAT MUST BE SUBMITTED?

What is a mandate?

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

Content of mandate –

- ✓ A mandate must be in the form of letter / resolution / power of attorney;
- ✓ On a declaring company's letterhead (no company logo is required);
- ✓ Mandate is given to an individual (natural person);
- ✓ Must be signed by 50% + 1 of company directors / all CC members.

CERTIFICATION REQUIREMENTS FOR DOCUMENTS (PRACTICE NOTE 2 OF 2022)

Certification of documents (including ID documents) filed with the CIPC may not be older than **3 (three)** calendar months.

The Commissioner of Oaths, certifying / affirming any documents **must** state the date of certification.

Only one ID/Passport may appear on a single page and in the case of the SA ID Card, both sides have to be scanned in on the same single page.

Only validly issued passports will be accepted

No asylum seeker / temporary resident document will be accepted as valid confirmation of identity.

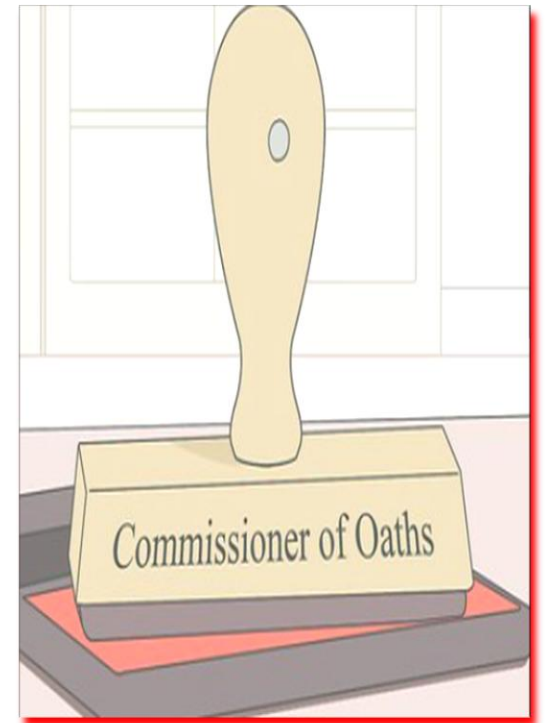
CERTIFICATION REQUIREMENTS FOR DOCUMENTS

South African certified documents

The following information of Commissioner of Oaths must appear on documents:

- ✓ Full name and Surname
- ✓ Business Address
- ✓ Signature
- ✓ Designation
- ✓ Documents certified by police officials also need to indicate the persons rank and rank number.
- ✓ Date of certification

The above information is required to ensure the Commissioner of Oaths is traceable for accountability purposes. CIPC will only accept documents that have been commissioned by a Commissioner of Oaths **in South Africa**.



CERTIFICATION REQUIREMENTS FOR DOCUMENTS

(PRACTICE NOTE 2 OF 2022)

International certified documents

- ✓ If a person is based in another country and has to submit documents to CIPC, a **certificate of authentication** needs to accompany those documents to confirm authenticity.
- ✓ A **Notary Public** is an internationally recognized form of certification or affirmation of documents, and the CIPC will accept both South African and international Notary Public certifications. A Notary Public certified document, must be accompanied by a Notary Public certification seal and/or certificate.

**Certificate of
Authentication**

THANK YOU!

