



Companies and Intellectual  
Property Commission

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# BENEFICIAL OWNERSHIP – “AFFECTED COMPANIES”

**How, What, When?**



Companies and Intellectual  
Property Commission



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# BO REGISTER - OBJECTIVE

Have a register of natural persons who ultimately owns or exercises effective control over legal entities;

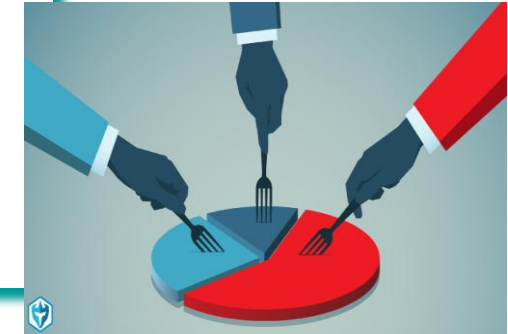
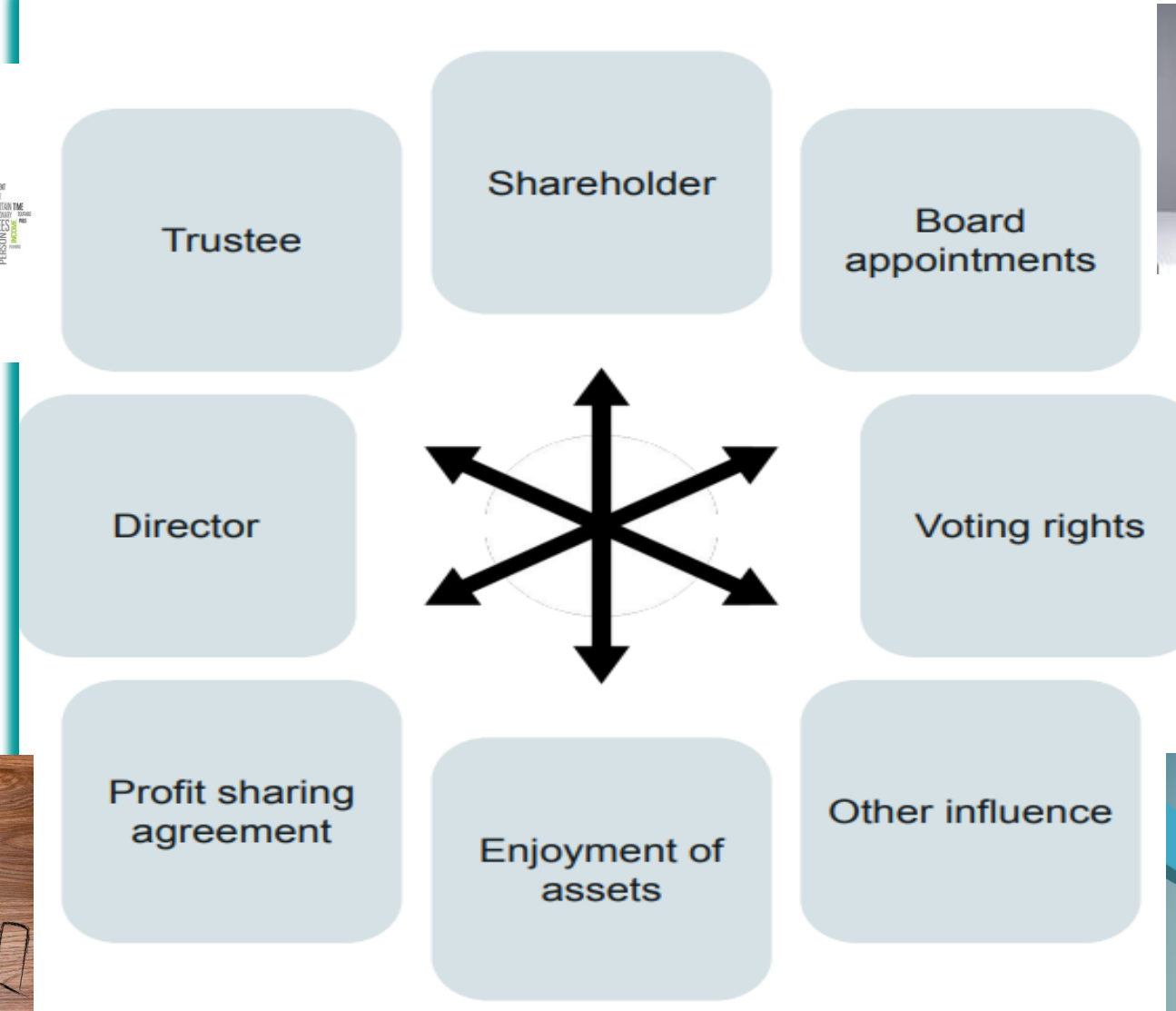
To bring South Africa in line with international best practices – removal from FATF grey-listing;

To provide law enforcement agencies with an accurate, credible and verifiable register of beneficial owners of entities;

To assist law enforcement with relevant information when it comes to their investigations of who the ultimate owners of an entity are and to hold such persons accountable; and

To mitigate the risks identified in the national risk assessment where legal persons were identified as vehicles prone to abuse for money laundering and terror financing activities.

# BENEFICIAL OWNERSHIP – COMPANIES ACT



# WHAT IS AN AFFECTED COMPANY?

*affected company* means a **regulated company** as set out in **section 117(1)(i)** – as well as 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 therefore includes-

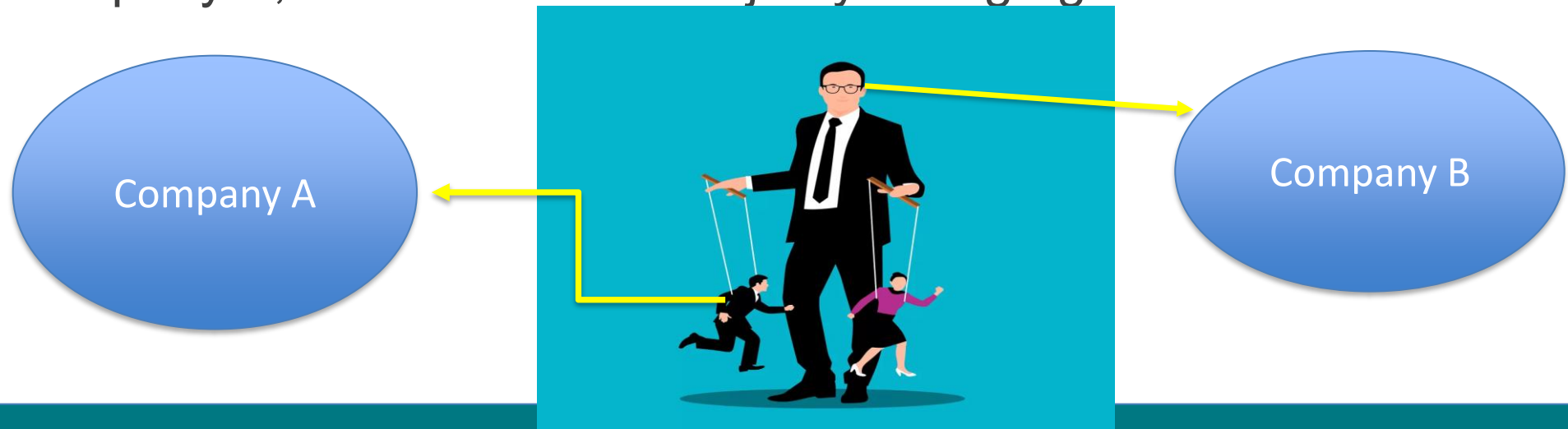
- A **public company** (listed/un-listed);
- A **state-owned company** (except in case of exemption by Minister);
- A **private company** – in terms of the transfer of securities when exceeding the percentage prescribed by the Minister (10%) within a 24-month period;
- A **private company** that is controlled 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.

# WHAT IS AN AFFECTED COMPANY?

*Examples of private companies as “affected companies” –*

*- Company A (declaring private company) is controlled by Company B (affected company) due to B being able to: -*

- ✓ Exercise or control the exercise of the majority voting rights associated with the issued securities of Company A; or
- ✓ Appoint or elect or control the appointment or election of directors of Company A, who control the majority voting rights at a board meeting.





# WHAT IS AN AFFECTED COMPANY?

*Examples of private companies as “affected companies” –*

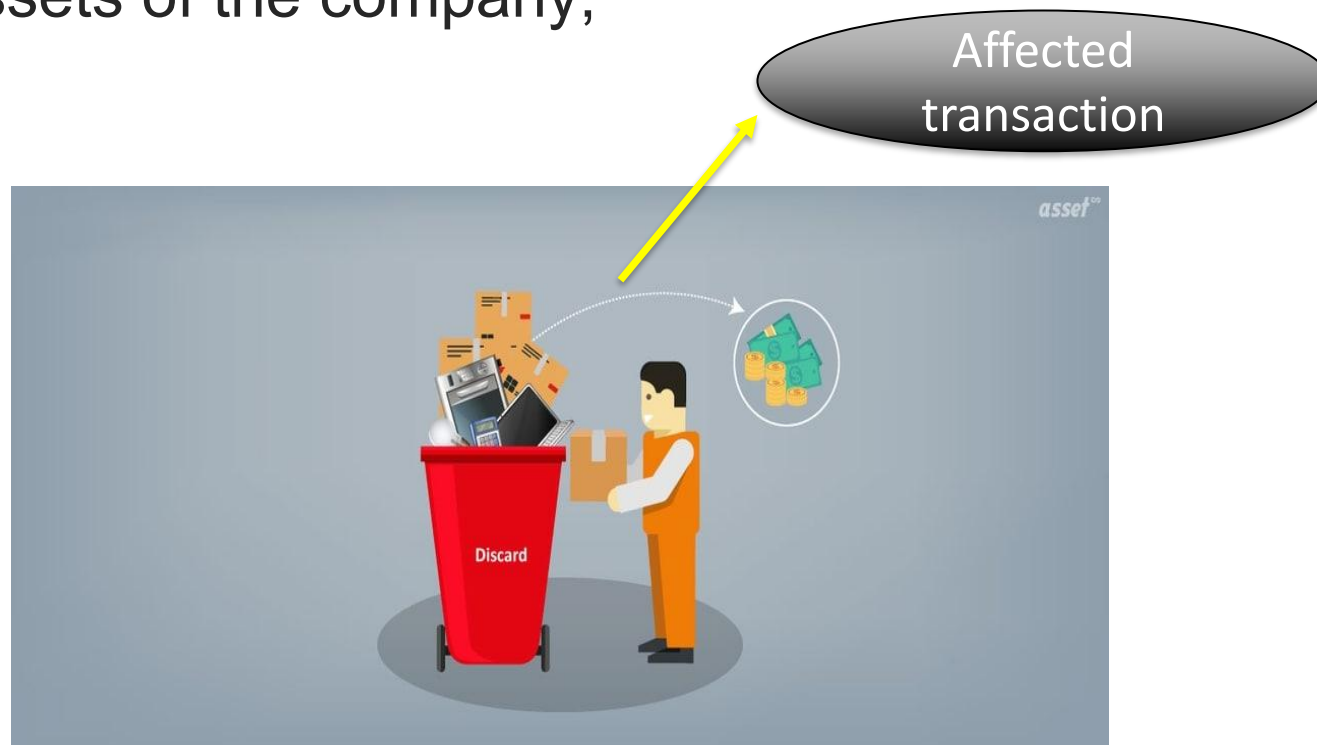
- **Company A (declaring private company) is a subsidiary of Company B (affected company)** – meaning Company B owns 51% of Company A's issued securities.



# WHAT IS AN AFFECTED COMPANY?

## *Examples of being considered “affected companies” –*

- Transaction or series of transactions done by the regulated company (public, SOC, private) amounting to the disposal of all or the greater part of the assets of the company;



# WHAT IS AN AFFECTED COMPANY?

## *Examples of being considered “affected companies” –*

- Amalgamation or merger, where at least 1 regulated company is involved;
- A combination of two or more companies into one entity – affected transaction.

### **Amalgamation**





# WHAT IS AN AFFECTED COMPANY?

## *Examples of being considered “affected companies” –*

- Scheme of arrangement between a regulated company and its shareholders;
- Acquisition or disposal of beneficial interest in the voting securities of a regulated company of 5% or more;
- Announced intention to acquire a beneficial interest in the remaining voting securities of a regulated company, not already held.

*“Billy Buyer (Pty) Ltd announces his intention to buy the remaining shares of ABC Public Company Ltd!”*



# ENTITY TYPES / 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.

# HOW TO SELECT THE CORRECT CATEGORY

1. **FIRST**, a company must ascertain whether it is an “affected” company or “non- affected” company as per the definition in the legislation;
2. **SECONDLY**, once this question is answered, the company must ascertain whether it holds any beneficial owners as per the definition provided for in the Act.

Certain criteria can be applied, when ascertaining whether beneficial ownership is applicable to an entity or not, including:-

- 5% threshold;
- Ownership – members of an NPC, are not necessarily owners; i.e. derives any benefit from the company, etc.
- Board of directors exercises effective control – if the answer is yes, then the board is regarded as beneficial owners and can be declared.

The responses to the above 2 questions will guide any company in filing its BO information with the CIPC correctly.

## BO REGISTER - CATEGORIES

Non-affected company with beneficial ownership to declare

- a) Most applicable category;
- b) Beneficial owners (definition applied) declared;
- c) Complex ownership structures – include “disclosure form”;
- d) Filing of securities / members register – mandatory;
- e) NPC’s without members – list of directors.

## BO REGISTER - CATEGORIES

### Affected companies – whether BO's or not

- a) Public companies;
- b) SOC's;
- c) Applicable private companies (apply the definition);
- d) No BO's declared on the functionality itself (not exempted from declaration);
- e) Filing of beneficial interest register – mandatory.

## BO REGISTER - CATEGORIES

Non-affected companies without any beneficial ownership to declare

- a) Very rare, but does exist;
- b) Sole shareholder, sole director, without any other influence, control, profit sharing agreements or persons deriving a benefit from the company;
- c) Filing of securities register - mandatory;



# 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

## ON BUSINESS LETTERHEAD:

*Include Full Company Name, Registration number,  
Place registered (e.g. South Africa), Registered address, Address of  
place of business, Contact details (phone and email)*

## **MANDATE**

I, ..... (Full Names, Surname and ID number), the undersigned in my capacity as **Director of**  
..... **PTY (LTD) 2016/...../07** hereby **mandate / appoint** ..... (Full  
Names, Surname, ID number) to file the **beneficial ownership declaration (together with mandatory supporting documents)**  
**on behalf of the company.**

To act on the company's behalf in respect of the following matters at CIPC.  
Filing of Beneficial Ownership

**Signature** .....

**Date:** .....

**Add Signatures 50% + 1 of Directors / All CC Members**

### **Notes:**

✓ *Full Names, Surname and ID number of person appointed.*

**THANK YOU!**

