



Companies and Intellectual  
Property Commission

a member of the **dtic** group

# BENEFICIAL OWNERSHIP

**How, What, When?**



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Property Commission



# ENTITY TYPES / CATEGORIES

- (a) **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;
- (b) **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;
- (a) **Non-affected company without** beneficial ownership information – company not classified as an affected company with zero beneficial owners. Mandatory documentation must be uploaded.

# 1. DETERMINING THE COMPANY CATEGORY – STEP 1

Categories of Companies:

- ✓ Affected companies;
- ✓ Non-affected companies with beneficial ownership and
- ✓ Non-affected companies without beneficial ownership.

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? For example: a parent is the shareholder, but the child holds the beneficial interest in the securities.
- Is there a person who exercises (or has control over) more than 5% of the voting rights in the company? For example: each share issued by a company holds one general voting right.
- Is there a person with the right to appoint and remove directors of the company? For example: Billy Beneficial Owner may appoint and remove directors of ABC Shoes (Pty) Ltd and is so named in the MOI.
- Is there a person(s) that have the ability to materially influence the management of the declaring company? For example: business affairs of a company are managed by its board of directors, which has the power to perform any function of the 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 each company type has its own required documents for uploading.

## 2. DOCUMENTS REQUIRED TO BE FILED

### Affected companies – with or without BO

Affected Companies include Public companies, SOC's, and applicable private companies (apply the definition)

Documents required are:

- (a) A declaration / mandate is mandatory.; The mandate must be signed by 50%+1 of the company directors or 100% of members in CC.
- (b) Certified ID copy of the Filer and captured Beneficial Owners.
- (c) The filing of a Beneficial Interest Register is mandatory.

### 3. DOCUMENTS REQUIRED TO BE FILED

#### Non-affected company with beneficial ownership to declare

- Most companies fall within this category;
- Beneficial owners must be declared;
  - (a) 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;
  - (b) In the case of a complex ownership structure the documentation must include a “disclosure form”;
  - (c) It is mandatory for a Company to file a Securities Register and a CC to file a Members Register;
  - (d) NPC’s without members must file a List Of Directors.

# DOCUMENTS REQUIRED TO BE FILED

## Non-affected companies without any beneficial ownership to declare

- These companies have a sole shareholder and sole director. There is no other influence, control, profit-sharing agreements, or persons deriving a benefit from the company.
- Documents to be filed:
  - (a) Filing a declaration / mandate is mandatory;
  - (b) Certified ID copy of the Filer;
  - (c) Filing of Securities Register is mandatory.

## 4. SECURITIES REGISTER - WHY IS IT REQUIRED

The legislation provides for the extent of a shareholder's and/or beneficial owner's interest to be indicated in the Securities register – declaring companies should have this information at hand. Therefore, the information declared in terms of Beneficial Ownership (i.e. natural persons) should coincide with what is indicated in the securities registers.

The securities register is a requirement and must be detailed reflecting the ownership information as per Sec 50(2) of the regulations. It is important to provide the Securities Register and the Beneficial Interest register which will provide the information as required.

# SECURITIES REGISTER – WHY IS IT REQUIRED

- Security register in terms of Section 50(2), read with Regulation 32(3) as amended, require the following information be included in the register:
- (i) **Name and ID number (unique identifying number)**
- (ii) **Number, class and in the case of a certificated securities, the distinguishing number of the security**
- (iii) Each person (**BO**) who holds a **beneficial interest in that juristic person** must be mentioned on the securities register, regulation 32:- the extent
  - (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 **contact information**
  - **Trusts are shareholders and their beneficiaries** must be indicated

# SECURITIES REGISTER - WHY IS IT REQUIRED

If the company has a complex structure, the persons holding interest in that juristic person must be mentioned on the securities register, (regulation 32(A)a).

If the company does not have a securities register, then they will provide either the directors register (in the case of a company) or a member register (in the case of a close corporation), and applies to NPC companies.

It should be noted that although an asset's legal owner and beneficial owner are often the same, they are not always. In some cases, the person who officially holds the title to a business, property, trust, security, or other asset differs from the person who controls it or receives the most benefit from its value. In these cases, a beneficial owner is established in place of the legal owner.

## 5. Where do I find a Securities register template?

A template is available on the CIPC website (under Step-by-step guides).

A Securities register must be drafted and held by each company in terms of section 50 of the Companies Act.

## 6. ORDINARY AND PREFERENCIAL SHARE

- There is no need to provide a breakdown regarding the ordinary & preference shares; the information provided will be that of the natural person. You will select the Interest Type – for example Shareholding, voting interest, etc. – for each Beneficial Owner. In the case of a Company with a complex shareholding structure, this information should be provided on a disclosure form giving the breakdown of the shares.

## 7. WHY MUST A NATURAL PERSON BE COMPLETED AS A BENEFICIAL OWNER IF THE JURISTIC PERSON HAS 100% INTEREST?

Beneficial owners can only be a natural person – a juristic person cannot be the “owner” as there are natural persons, behind the scenes, so to speak, in control of the juristic person, and this information must be declared.

In terms of complex structures and declared juristic persons, we only look at and verify the natural person information. The juristic persons declared cannot be beneficial owners and are only a first tier of ownership – similarly, we can't verify information of Trusts.

## 8. IF A FOREIGN COMPANY OWNS 100% OF A SOUTH AFRICAN ENTITY, HOW MUST THE INFORMATION REFLECT?

If a foreign entity is registered as an external company in terms of the Companies Act, then the Companies Act, Beneficial Ownership requirements apply. You will look at the list filing of the entities register on our records it will be South African and external companies registered on CIPC records.

A juristic person cannot own or run itself and requires natural persons that benefit ultimately in the company. If it's a complex ownership structure, with multiple tiers of ownership, then the declaring company must drill down to the natural persons at the end of the line.

The company must determine who are their Beneficial Owners and these natural persons should be declared (if they hold 5% or more interest, or exercise effective control over the company (i.e., directors, etc.), these would be regarded as the beneficial owners in terms of the definition and such information must be declared.

If there are no beneficial owners having more than 5% interest, then the company must prepare a disclosure form in the form of an organogram, with the layout of the company structure reflecting the ownership control in the company.

## 9. NO SHAREHOLDERS WITH 5% OR MORE SHAREHOLDING. IS THE COMPLETION OF A BENEFICIAL OWNERSHIP REGISTER RELEVANT IN THIS INSTANCE AND WHAT PROCESS SHOULD I FOLLOW?

Beneficial Ownership is much wider than simply shareholding. Control must also be taken into account and the declaring company should declare it accordingly.

The company still needs to submit a Beneficial Ownership declaration, but will select the relevant company type linked to the information. Although they won't capture the natural / juristic persons, it must appear on the company Security register, which they need to attach with the other mandatory documents. The security register will show who has what percentage interest in the declaring company.

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## 10. I RECEIVED A NOTIFICATION WHICH CONFIRMED THAT MY BENEFICIAL OWNERSHIP WAS FILED, BUT IT DOES NOT REFLECT ANYMORE, WHY?

If the Beneficial Ownership declaration was not completed in full by the filer, it will reflect as a “DRAFT” / “PENDING” status, and it will automatically be “discarded” by our system after 30 days, where the filer will be able to file it again.

To see if it reflects or not, log back into the system and click on the “blue hand” under FILE and proceed with the rest of the filing.

If it does not reflect, then kindly click on NEW to file a new Beneficial Ownership declaration as the system automatically “discard” incomplete Beneficial Ownership filings.

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## 11. IF DOCUMENTATION IS EMAIL TO CIPC, CAN CIPC REGISTER THE COMPANY'S BENEFICIAL OWNERSHIP ON THE COMPANY'S BEHALF?

- Our audience must take note the function is only available on e-services and must be filed by the filer (mandated by the company) as there is NO CIPC manual filing system.

## 12. 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.

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# CERTIFICATION REQUIREMENTS FOR DOCUMENTS (PRACTICE NOTE 2 OF 2022)

## 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.

**THANK YOU!**

