



Companies and Intellectual  
Property Commission

a member of **the dtic** group

# **The Companies and Intellectual Property Commission**

## **Beneficial Ownership**

The Companies and Intellectual Property Commission (CIPC) launched its beneficial ownership register for corporate vehicles on 1 April 2023. The aim of establishing the BO register is to have a repository/register of natural persons who own or exercise control over legal 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 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.

## **Background**

The Companies and Intellectual Property Commission (CIPC), responsible for the development of the BO register, has been participating in the mutual and evaluation process conducted by the Financial Action Task Force (FATF). The purpose of the evaluation was to assess the country's laws and measures already in place to combat money-laundering and the financing of terror activities. The mutual evaluation process was then concluded and the mutual evaluation report was published in October 2021. The country as a jurisdiction was expected to take certain measures to address the deficiencies which were highlighted in the Mutual Evaluation report.

One of the eight (8) areas of strategic deficiencies identified by the Financial Action Task Force (FATF) requires South Africa to ensure that competent authorities have timely access to accurate and up-to-date Beneficial Ownership information on legal persons and arrangements and applying sanctions for breaches of violation by legal persons to BO obligations.

The CIPC as the Registrar and Regulator of companies, administers about 2.1 million active entities, comprising of Public Companies, Private Companies; Non-Profit Companies; External Companies and more. Currently, the CIPC holds record of legal owners and management of entities in the form of members (close corporations) and directors (companies). As it stands, no record of company shareholders and beneficial owners is recorded by the CIPC. As such, the CIPC recognises its responsibility as one of the key role players in safeguarding the integrity of our regulatory environment in South Africa and is integrally placed to manage the risks associated with money laundering, proliferation and terror financing activities.

## Regulatory Framework

To give effect to the implementation of the BO register, and the General Laws (Anti-Money Laundering and Combating of Terrorism Financing) Amendment Act (Act No. 22 of 2022), The Companies Act, Act 71 of 2008 as amended, read with the Regulations (promulgated by the Minister of the dtic on 24 May 2023) introduces legal provisions in support of the collection of beneficial ownership information and give the CIPC a mandate to request companies and other legal persons to file and update Beneficial Ownership information, as and when applicable.

The beneficial owner in respect of legal persons is defined as follows:

“**beneficial owner**”, in respect of a company, means an individual who, directly or indirectly, ultimately owns that company or exercises effective control of that company, including through—

- (a) the holding of beneficial interests in the securities of that company;
- (b) the exercise of, or control of the exercise of the voting rights associated with securities of that company;
- (c) the exercise of, or control of the exercise of the right to appoint or remove members of the board of directors of that company;
- (d) the holding of beneficial interests in the securities, or the ability to exercise control, including through a chain of ownership or control, of a holding company of that company;
- (e) the ability to exercise control, including through a chain of ownership or control, of —
  - (i) a juristic person other than a holding company of that company;
  - (ii) a body of persons corporate or unincorporate;
  - (iii) a person acting on behalf of a partnership;
  - (iv) a person acting in pursuance of the provisions of a trust agreement; or
- (f) the ability to otherwise materially influence the management of that company;”.

Filing of Securities Register for Companies which are not affected companies as per Regulation 32.

A company which does not qualify as an affected company must file their securities register which should include beneficial interest holders of the securities of that company

if they are held by one person for and on behalf of another. A securities register of a company which is not an affected company must also include information of its Beneficial Owners (Regulation 32 (3) (b)).

Filing of Securities Register for Companies which are affected companies as per Regulation 30A.

An affected company is defined as follows:

“**affected company**” means a regulated company as set out in section 117(1)(i) and a private company that is controlled by or a subsidiary of a regulated company as a result of any circumstances contemplated in section 2(2)(a) or 3(1)(a)”

An affected company must file its beneficial interest, and/or securities register as prescribed in section 56(7)(aA) of the Act. The registers must comply with the prescribed requirements.

State-Owned companies (SOC) are considered “affected companies” and will be required to file a register of its beneficial owners, unless exempted by the Minister in terms of section 9(2) of the Companies Act.

## **FREQUENTLY ASKED QUESTIONS ON BENEFICIAL OWNERSHIP**

### **1. What is Beneficial Ownership?**

- In respect of a company, means an individual (warm body) who, directly or indirectly, ultimately owns that company or exercises effective control of that company.

### **2. Who is a Beneficial Owner?**

- An individual/ natural person who, directly or indirectly, ultimately owns 5% and more of a company or exercises effective control of a company.

### **3. Who can be declared as a Beneficial Owner?**

- Major Shareholders, Ultimate decision makers (people who control the company's actions, even if they are not the 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).

### **4. Can a company/Trust be a Beneficial Owner?**

- No, only a natural person can be considered a beneficial owner.

**5. How do I declare a Trust?**

- A trust cannot be declared by using the optimized filing system (non-affected company WITH NO beneficial ownership) and must follow the normal process (non-affected company WITH beneficial ownership) to declare, (to ADD the juristic and natural person) of the declaring company.

**5. Who can file Beneficial Ownership information?**

- Any person designated/mandated in writing by a company to file BO information on its behalf.

**6. Does a filer need to present a Mandate in order to file the BO information?**

- Yes, without a valid mandate a filer is not permitted to transact on the BO Register. Filers are required to have a valid CIPC customer code in order to login to the CIPC e-services platform and file BO-information.

**7. Is there a limit on the number of Beneficial Owners I can add into the Register?**

- Yes, the system is designed to accommodate 10 Beneficial Owners in a company, the rest MUST be declared through submission of a "disclosure form" providing the ownership structure.

**8. What is the minimum Threshold before a person can be considered a Beneficial Owner?**

- 5% (five percent) – shareholding, beneficial interest, voting rights, etc.

**9. If the details of the BO changes, can the BO filing be done any time?**

- Yes, whenever there are changes on the BO, a company has 10 (ten) days to update its BO / securities register – Regulation 32(3A) (non-affected companies) AND Regulation 32A (affected companies).

**10. What is an affected company?**

- It is a regulated company as set out in section 117(1)(i) and a private company that is controlled by or a subsidiary of a regulated company as a result of any circumstances contemplated in section 2(2)(a) or 3(1)(a).
- An affected company includes-
  - A **public company** (listed/un-listed)
  - A **state-owned company** (except in case of exemption by the

Minister);

- A **private company** – in terms of the transfer of securities when exceeding the percentage prescribed by 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) (regulated company) or is a subsidiary (major owned) of an affected company.

**11. As a listed company, do I also file BO information with CIPC?**

- A listed company is considered an "affected company"; however, an affected company must file its beneficial interest register and securities register as prescribed in the regulations.

**12. As a listed company, do my subsidiaries file BO Information with CIPC?**

- A subsidiary of a listed company is also considered an "affected company", it has to file its securities register as prescribed in the regulations.

**13. As a listed company, do I file my beneficial interest registers with CIPC?**

- Yes, as prescribed in the Regulations

**14. State Owned Companies (SOC), mostly have a Minister as a shareholder, who do I list as a Beneficial Owner?**

- The Minister in the event of 100% shareholding. However, in circumstances where an SOC has other shareholders and possible beneficial owners, the information must be declared.

**15. Does the filing of the BO information replace the filing of the CoR39 (change of directors) or CK2 (amendment of members)?**

- No, CoR39 deals with directors, and CK2 deals with members, tasked with the day-to-day business and affairs of the company/close corporation, whilst BO deals with unknown owners who ultimately owns a legal entity or exercises effective control of an entity.

**16. How long do I have to file changes to the BO Register after changes take place?**

- 10 business days

**17. From 01 April 2023, how long do we have for all entities to file BO Information?**

- Entities incorporated before 24 May 2023, must file the required information within 30 days from its anniversary date (FYE). Entities incorporated after 24 May 2023, must file their BO-information within 10 (ten) days of incorporation, as applicable.

**18. When must I file Beneficial Ownership?**

- Beneficial Ownership must be filed ANNUALLY even if there are no changes.

**19. What supporting information will be expected to be filed when filing for BO?**

- Mandate of the filer; Securities Register; Beneficial Interest Register (affected companies); Certified ID Copies of the BO's (relaxed) and filer; Certified Passport Copies of the BO's (as applicable); any other supporting document the Commission may demand.

**20. After filing the BO Information, and receiving a confirmation certificate, does it mean the filing is complete?**

- Yes, the filing is complete, and the entity is considered BO-compliant, however, the Commission reserves the right to make further enquiries, validate and verify information submitted and request further documentation.

**21. Why will my BO status show BO non-compliant?**

- Every new year the BO-filing requirements for every company is renewed and will show BO non-compliant (If BO was filed for the previous year), however, the status does not affect the company's compliance, until such time as the AR-filing is due and the BO must then have been filed.

**22. Do all BO filings receive a BO confirmation certificate?**

- No, only non-affected companies WITH beneficial ownership will receive a BO confirmation certificate.

**23. If there are no changes to the BO Information during a financial year, is the company expected to file annually?**

- Yes, every company prescribed to file, must ensure the register is up to date, including making annual filings confirming validity of the filed

information.

**24. Do I get a reference number for every filing?**

- Yes, there is a reference number/ tracking number for every filing.

**25. Will I receive an OTP when filing BO?**

- Yes, filers must ensure that the contact details as per the customer profile is correct and valid PRIOR to starting the BO-declaration – they system will provide a link for the update of this information (if outdate), BUT it will be 48 hours from update before the OTP will be sent to the amended contact information.

**26. How will I receive the OTP?**

- You will receive it by SMS and EMAIL, but you may use either when verifying the filers information at the end of the BO-declaration.

**27. Is the filing processed immediately, real time?**

- The filing is confirmed immediately, provided identity can be verified.

**28. Do I need special software in order to file BO Information?**

- No, this is a web-based form with an embedded upload capability.

**29. Is the BO Information filed with CIPC going to be used by the Public?**

- **No**, unless the country comes to a different policy position, the public will not have access to Beneficial Ownership information.

**30. Who is allowed to have access to the BO Information?**

- Law enforcement agencies and vetted competent authorities.

**31. Why must the BO information be filed with the CIPC?**

- This is a requirement by the Financial Action Task Force, a requirement imposed by the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act 22 of 2022.

**32. Is the BO filing process also possible manually?**

- No, the filing process is fully online, supporting information is also filed online.

**30. How long before Back Office pronounces on the completeness of a process?**

- There is NO requirement for CIPC to assess BO filings, but Back Office will be applying a risk-based approach in its reviews of the filed information and the turnaround times will be published.

**31. What is the format of the supporting information that is filed with a BO filing?**

- Standard PDF format is an acceptable format, and not more than 5MB

**32. What is meant with a members register with regards to non-profit companies?**

- A non-profit company does not have shareholders but has members. Non-profit companies with no members must submit a directors register (control) as BO's of the NPC.

**33. Does BO requirements apply to Co-Operatives registered by CIPC?**

- No, not yet, the current amendments brought about through the General Laws Amendment Act do not cover Co-Operatives.

**34. What is the difference between legal and beneficial ownership?**

- Legal ownership is that which is known, shareholders in a company, members of a CC, etc. Beneficial owners refer to the natural person that is possibly not reflected as a shareholder (for example) but ultimately benefits from the company (receives dividends, control in terms of decision making etc.)

**36. Can Foreign companies be listed as Juristic persons on the BO system?**

- No, only SA Registered companies, external companies, close corporations and Trusts can be listed on the BO system, foreign companies NOT registered with CIPC should include them on the securities register and disclosure form (organogram of the declaring company and its shareholding).

**37. Why will my shares reflect "0" on the BO optimized portal?**

- The reason for the reflection of '0' shares is that the CIPC's data is not updated. To resolve the issue, clients must submit the company information (name and registration number) together with proof (registered MOI – shares) of the valid authorized shares, for us to consolidate and refer to the moiamendments – division for updating.

### 38. Are close corporations also obliged to report on BO

- Close Corporations have been found by the FATF to be one of the corporate vehicles most used for money-laundering activities, etc. and beneficial ownership declaration of CC's is required. The GLAA also amended to the Trust Property Control Act, 1988 which requires trustees of ALL trusts to keep and report information on beneficial ownership of trusts to the Master of the High Court. In the event of CC's having a trust as a member, beneficial ownership declaration requirements apply. Information received on BO will be consolidated between different Regulators and authorized institutions for verification and validation purposes.

### 39. What are the types of Beneficial Ownership / Effective Control (Examples)?

- **Trusts** - i.t.o. the Trust Property Control Act (TPCA) a 'beneficial owner' means a natural person who directly or indirectly ultimately owns the relevant trust property, natural person who benefit from the trust property or a natural person who exercises effective control of the administration of the trust arrangements that are established pursuant to a trust instrument.
- **Founder(s)** of a Trust
- Each **trustee** of a Trust
- Each **beneficiary** referred to by **name**
- **Shareholders, shareholding and voting rights –**
  - **'shareholder'** means the holder of a share issued by a company and who is entered as such in the certificated or uncertificated **securities register of the company**.
  - Includes a person who is **entitled to exercise any voting rights** in relation to a company, irrespective of the form, title or nature of the securities to which those voting rights are attached.
- **Board Appointments** - Section 66(4)(a)(i) of the Companies Act states:
  - 
  - A company's MOI may provide for the **appointment and removal of directors by any person who is named** (or can be determined) in terms of the MOI.
  - The above requirement allows for companies to **name specific persons, OR persons to be determined** (i.e. Chairperson of the board) with the authority to appoint and remove directors of that company – **effective control** and thus beneficial owners to be declared.

- **Directors**
- **Enjoyment of assets**
- **Profit sharing agreements**

#### **40. How will I know what category to select for my company?**

- Depending on the questions that were answered, the system will then direct the filing to either the optimized process or the normal process (where the natural person information is captured).
- The 4 ownership questions are designed to guide the declaring company in terms of whether an entity declaring does have any beneficial ownership to declare or not. If you select **YES** on any of the 4 ownership questions, the system will direct you to the normal BO-processing platform as we know it. In order to make use of the optimized filing platform, the answer to ALL 4 questions must be **NO** (confirming that there is no beneficial ownership within the entity) and then the second question will ask whether the directors or members are less than 10 if it's more, then the normal BO-process ensues.

#### **41. How will I declare BO for a Foreign Company?**

- Foreign companies, registered as external companies on CIPC records, must comply with the Companies Act requirements so far as it is applicable. With regards to beneficial ownership declarations, the declaring external company must declare in accordance with SA law and the Companies Act. Where the ultimate beneficial owner at the end of the chain is a 'foreign state' there **MUST** always be a natural person in control, albeit a responsible Minister, and that natural person must be declared accordingly. It is important to submit a 'disclosure form' which can be in the form of an organogram or table, setting out the different tiers of ownership and how the structure fits together – with the ultimate beneficial owner (natural person(s) at the end.

#### **42. Why are there only two company categories reflecting on the BO system?**

- The company type selection has been reduced to 2 types, namely: -
  - Affected companies (functionality remains unchanged)
  - Non-affected companies.
- Once non-affected companies are selected, the ownership questions will ascertain whether beneficial ownership is applicable or not in terms of the declaration. Where beneficial ownership exists that must be declared, the system will direct filers to the existing beneficial ownership declaration functionality (to ADD a BO), which remains unchanged

- The optimized filing system (non-affected company WITH NO beneficial ownership to be declared), extracts the current active Directors / Members from our current systems, the information allowed to be inserted will be the date of interest issued (select by using the online calendar), number of securities issued and Class (Profit Company), or selected member's type (NPC).

### **Contact Details**

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