BENEFICIAL OWNERSHIP TRANSPARENCY

"A PRACTICAL GUIDE"

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BACKGROUND

It has been a little more than 3 years since the concept of Beneficial Ownership Transparency has been introduced to the world and legal persons made aware of the compliance obligation of beneficial ownership declaration.

A lot of development, enhancement and risk analysis of the CIPC held BO-platform have occurred – aimed at easing the compliance burden and making submission of beneficial ownership declarations as easy and streamlined as possible, while still ensuring compliance and protecting the data contained in the register.

BACKGROUND continue

One such development was the Optimized Beneficial Ownership Declaration platform – which allows for entities (especially smaller and family owned entities) to fulfil their compliance obligation, without having to submit supporting documentation.

The crux of BO-transparency still remains the annual (or as and when it changes) declaration of beneficial ownership of all companies, external companies and close corporations – but it also presented an opportunity for ensuring that the CIPC holds an accurate, adequate and up to date register.

BO OPTIMIZED PLATFORM

The optimized system allows non-affected entities WITHOUT beneficial ownership to declare to comply with the legislative requirement of submitting a securities / members register as easily and quickly as possible and to reduce the burden of red tape for small profit companies, NPC's and CC's **with zero additional ownership, influence or control.**

However, directors / members / shareholders can all be considered beneficial owners and it usually overlaps – which means that it is not ONLY non-affected entities with NO beneficial ownership that can make use of this platform.

BO OPTIMIZED PLATFORM

2. The number of directors / members **MUST** be 10 or less.

    Abe, Boitumelo and Cara constitute 3 directors – BO Optimized system can be used.

3. The number of authorized securities or members interest **MUST** be up to date as per the CIPC's records.

Should any of the above not be applicable the system will automatically divert any filer to the normal BO-declaration platform.

TROUBLESHOOTING – FAQ'S

Various questions and requests for guidance were received from our clients via various platforms and during webinar engagements with the CIPC.

- **First step** – always check on the Step-by-Step Guide for guidance on how to declare beneficial ownership, the reasons for various information requested, etc.
- **Next step** – obtain clarity and guidance from the published FAQ's, Troubleshooting and presentations.
- **Lastly** – submit your enquiry (with screenshots if possible) via the Customer Enquiry Management System (CEMS) – select Corporate Legal and then select the beneficial enquiries sub-category.

FREQUENTLY ASKED QUESTIONS

- **Why must the mandate be on a company / cc letterhead?**

The mandate can be in any format – letter, affidavit, power of attorney, etc. – the crux is the information contained therein. 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 (must contain required info – i.e. name and registration number, registered address, contact details);
- Mandate to individual (natural person);
- Signed by 50% + 1 of directors / all CC members

FREQUENTLY ASKED QUESTIONS

When is a BO-declaration certificate issued?

BO-declaration certificates are ONLY issued to entities that actually declared beneficial owners. Non-affected entities WITHOUT beneficial ownership to declare ONLY receives a notification that the BO-declaration requirement has been complied with. Similarly, affected companies do not declare beneficial owners on the platform itself and thus ONLY receives a notification that the filing requirement has been complied with.

How is a confirmation certificate obtained from the filer?

BO-declarations is a legislative compliance requirement of the declaring entity – filers MUST provide confirmation of declaration, whether certificate or notification to the applicable entity. Should a filing be done the next year by another filer, the entity is in possession of the information required.

FREQUENTLY ASKED QUESTIONS

How do I amend my company's securities when it reflects zero?

The securities register (via the Optimized system) is populated by data as per the CIPC records in real-time. Should the number of authorized securities (reflected on the system) NOT correspond for whatever reason with the registered company information – submit proof of actual securities to MOI amendment division for correction PRIOR to proceeding with the BO-filing.

Are NPO's required to file BO-declarations?

All companies (including non-profit companies) must declare their beneficial ownership annually.

NPC's with members – submit members register

NPC's without members – submit directors register (control)

NPO's are not necessarily registered with the CIPC as an NPC – check with Department of Social Development on requirements.

FREQUENTLY ASKED QUESTIONS

How must companies / cc’s record changes in beneficial ownership?

Entities must declare beneficial ownership at least once annually OR as and when the information changes, within 10 (ten) business days of the information changing. The BO-platform provides for amendments to be filed.

How do I add director contact details to the system?

Director / member / customer contact details MUST be up to date on the CIPC records, PRIOR to submitting a beneficial ownership declaration – if not, OTP’s will not be received and declarations cannot be completed.

FREQUENTLY ASKED QUESTIONS

What is the difference between an affected and non-affected company?

Affected companies relates to regulated entities in terms of the legislation, which includes public companies, SOC’s and private companies in certain instances. (See the guidance material on Affected Companies available on the CIPC website).

USEFUL LINKS

https://enquiries.cipc.co.za/ - CEMS

https://www.cipc.co.za//?page_id=4447 – BO Step-by-Step Guides

https://www.cipc.co.za/?page_id=13979 – Webinars and presentations

https://www.cipc.co.za/?page_id=16055 – Direct link shortcut to everything BO-related.

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THANK YOU – QUESTIONS WELCOME!