

# Unlocking Transparency: Enhancing Beneficial Ownership Through Legal Expertise

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In an effort to bolster transparency and combat financial crimes like money laundering, terrorism financing, and proliferation financing, the Companies and Intellectual Property Commission (CIPC) is introducing a beneficial ownership register. This register is designed to equip law enforcement agencies with crucial insights into the ultimate owners of beneficial interests within companies.

## SIGNIFICANCE OF THE BENEFICIAL OWNERSHIP REGISTER

As part of the global endeavour to combat financial crimes, South Africa recently found itself on the Financial Action Task Force's "grey list." This led to heightened monitoring by the Task Force, prompting South Africa to take proactive measures against money laundering and terrorism financing. One of the key areas for improvement highlighted was the establishment of a beneficial ownership register, providing timely access to accurate ownership information.

## UNDERSTANDING BENEFICIAL OWNERSHIP

The General Laws (Anti-Money Laundering and Combatting Terrorism Financing) Amendment Act 22 of 2022 has introduced the concept of the "Beneficial Owner." In simple terms, a beneficial owner is an individual who either directly or indirectly owns or exercises effective control over a company. This encompasses factors like beneficial interests in company securities, voting rights associated with securities, appointment or removal of board members, and more.

## INCORPORATING BENEFICIAL OWNERSHIP

To address these concerns, the Companies Act was amended to include Section 56(7)(aA), which mandates "affected" companies to establish and maintain a beneficial ownership register. An "affected" company pertains to regulated companies and specific private companies associated with regulated entities.

## APPLICATION AND COMPLIANCE IN PRACTICE

Compliance with the new regulations entails maintaining a beneficial ownership register that captures individuals who own or control 5% or more of a company. Importantly, the beneficial owner might not necessarily be the registered shareholder. Even in scenarios where shares are held through intermediaries or chains of ownership, ultimate ownership is pivotal.

## FILING AND ACCESSIBILITY

Filing the beneficial ownership register is a streamlined process, completed online via the CIPC website. Companies are required to file within five business days of changes occurring or annually in the absence of changes. Entities subject to these regulations have until 1 October 2023 to compile and submit their registers. Crucially, the information within the beneficial ownership register remains inaccessible to the public. Instead, its primary purpose is to empower law enforcement agencies in their efforts to combat financial crimes effectively.

## PRACTICAL ILLUSTRATION OF ULTIMATE OWNERSHIP:

Consider the case of ABC (Pty) Ltd as an illustrative example. This company boasts two equal shareholders, each holding 50% of the issued securities of ABC (Pty) Ltd. The registered shareholders are distinct entities: XYZ (Pty) Ltd and 123 (Pty) Ltd.

Digging deeper, we discover that XYZ (Pty) Ltd's issued shares are exclusively owned by John Smith. Likewise, 50% of the shares in 123 (Pty) Ltd belong to Jack Black. Amid this intricate ownership web, the ultimate ownership breakdown becomes clearer.

In this context, John Smith emerges as the ultimate owner of 50% of the shares in ABC. Simultaneously, Jack Black's ownership accounts for 25% of the shares in ABC. Despite not being the registered shareholders themselves, both John Smith and Jack Black possess a significant stake in ABC (Pty) Ltd.

Therefore, as per the new regulations, both individuals must be recorded in the beneficial ownership register of ABC (Pty) Ltd if it is classified as a regulated company.

Regulated companies encompass a spectrum, from public and state-owned companies to specific private companies, subject to prescribed criteria. These criteria include the percentage of transferred securities and adherence to takeover regulations stipulated in the Companies Act.

#### **ASSISTING YOU THROUGH THE TRANSITION:**

Navigating the intricacies of beneficial ownership regulations requires expertise and meticulous attention to detail. At HBGSchindlers Attorneys, we are committed to guiding you through these changes and ensuring compliance with the new requirements. Our experienced legal professionals specialize in corporate governance, regulatory compliance, and financial law.

#### **Our services include:**

- In-depth analysis of your company's structure and ownership to determine regulatory applicability.
- Preparation and submission of accurate and complete beneficial ownership registers.
- Expert guidance on understanding the new regulations and their implications for your business.
- Tailored advice on maintaining transparency and compliance with evolving legal standards.

As South Africa embraces a new era of financial transparency, HBGSchindlers Attorneys is your trusted partner in navigating the legal landscape. Contact us today to learn how we can assist you in meeting these regulatory demands while maintaining the highest standards of integrity and accountability. Together, we can build a brighter financial future for your company and our nation.



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