

Corporate & Commercial ALERT

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IN THIS ISSUE

CIPC implements a beneficial ownership register to boost transparency and curb money laundering

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CIPC implements a beneficial ownership register to boost transparency and curb money laundering

The Companies and Intellectual Property Commission (CIPC) has established a Beneficial Ownership (BO) register, which will serve as a repository of natural persons who own or exercise control over legal entities registered with the CIPC.

This move is aimed at assisting law enforcement with relevant information during their investigations about who the ultimate owners or controllers of an entity are. Moreover, it is intended to mitigate the risks identified in the national risk assessment, where legal persons were identified as vehicles prone to abuse for money laundering, terrorist financing, tax evasion and corruption.

In 2021, the Financial Action Task Force (FATF) released its Mutual Evaluation Report of South Africa which summarised the effectiveness of South Africa's anti-money laundering and counter-terrorism financing measures. The report identified certain deficiencies that the country needs to address, including the need to ensure that competent authorities have timely access to accurate and up-to-date BO information on legal persons and arrangements and applying sanctions for breaching BO obligations. In response, the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act 22 of 2022 (GLAA) was enacted.

In addition to amending other pieces of legislation, the GLAA has led to the Companies Amendment Regulations, 2023 (Amendment Regulations) which, through the introduction of new sub-regulation (32(3A)) and Regulation 32A, place a duty on companies to "establish and maintain a register of persons who hold beneficial interest equal to or in excess of 5% of the total number of securities ... issued by the company" while also ensuring that the record is kept up to date.

What is BO and who must be identified?

A beneficial owner means the individual (or individuals) who, directly or indirectly, **ultimately** own or exercise effective control of a company. This means the chain of ownership must be followed all the way through to the ultimate holding party (parties) (BO information).

Who must file BO information?

All companies registered with the CIPC are required to file BO information save for certain listed companies (as set out below) and non-profit companies with no members.



The graphic features a gold diagonal stripe across a light blue background. At the top left, it reads 'The LEGAL 500 EMEA'. Below this, the text 'Corporate, Commercial/M&A 2023 Rankings' is displayed in a bold, orange font. Underneath, several categories are listed in bold orange text, each followed by a list of names in a smaller, black font.

Corporate, Commercial/M&A 2023 Rankings

Corporate & Commercial practice is ranked in Tier 1.

CDH Kenya's Corporate & Commercial practice is ranked in Tier 3.

Leading Individuals:
Willem Jacobs | David Pinnock

Recommended Lawyers:
Vivien Chaplin | Peter Hesselting
Justine Krige | Sammy Ndolo
David Thompson | Roxanna Valayathum
Njeri Wagacha

Next Generation Lawyers:
Justine Krige

Hall of Fame:
Ian Hayes

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Although applicable to all companies, the Amendment Regulations distinguish between different types of companies and the corresponding requirements differ between these types of companies as follows:

Affected Company

This is a new definition introduced by the Amendment Regulations.

An **Affected Company** is defined as:

- a **regulated company** that is, a public company, a state-owned company (unless exempted by the Minister of Trade, Industry and Competition in terms of 9(2) of the Companies Act 71 of 2008 (Companies Act)) or a private company if more than 10% of its issued securities have been transferred (other than between related or inter-related persons) within 24 months immediately before the assessment is done, or its memorandum of incorporation expressly provides that parts B and C of the **Companies Act** and the Takeover Regulations shall apply to the company and its securities; or

- a **private company that is a subsidiary of a regulated company** (directly or indirectly).

An Affected Company is required to establish and maintain a register of the persons who hold BO equal to or in excess of 5% of the total number of securities of that class issued by the company, together with the extent of such BO, and to ensure that this register is updated. This is in addition to maintaining its existing security register.

A company that is not an Affected Company

Where a company does not fall within the definition of an Affected Company, the requirement is slightly less onerous, as the company is simply required to keep a record of all of the beneficial owners of the company within its existing securities register.

A non-profit company with members

Non-profit companies with members will have to file a register containing details of their members. In line with

the definition of a beneficial owner, persons who exercise effective control of a non-profit company have to be included in the filing.

Who does not have to file BO information?

An Affected Company that is listed on a local stock exchange will not have to file BO information provided such information is already kept at the stock exchange or any institution with the authority to collect and keep such records.

Supporting information required for filing BO information

When filing for BO, companies must provide the mandate of the filer, securities register, certified ID copies of the beneficial owners, certified passport copies (if applicable), and any other supporting document that the CIPC may demand. It is important for companies to ensure that their register is up to date, including making annual filings to confirm the validity of the information provided.

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Access to BO information

While the BO information will not be made available to the public, law enforcement and competent authorities will have access to the information. The data collected is mainly to allow law enforcement to have timely access to verified, credible, and up-to-date data on beneficial owners. The requirement to disclose BO information is recommended by the FATF and brought into law in South Africa by the GLAA.

Deadline for filing BO information

On 13 June 2023, the CIPC hosted a webinar to address confusion and concerns around the BO registry requirements. Importantly, the previous six-month transitional period that was initially communicated by the CIPC, is no longer applicable and all entities are required to submit their BO information without delay.

Companies also are required to update their records within five days of any future changes that occur. If there are no changes, an annual update is required to confirm that the BO information has not changed, which is submitted with the annual return.

It is imperative that all companies file their BO information as soon as possible. There is no transitional period, nor can companies wait until their annual return's anniversary date to provide the information.

A compliance notice may be issued in terms of section 171 of the Companies Act and an administrative penalty of over R1 million or 10% of the entity's turnover may be imposed in terms of section 175 of the Companies Act in the case of non-compliance.

In summary, the establishment of the BO register by the CIPC is a significant step towards safeguarding the regulatory environment in South Africa. The implementation of

the register will ensure that competent authorities have timely access to accurate and up-to-date BO information on legal persons and arrangements, ultimately mitigating the risks associated with money laundering, proliferation, and terror financing activities.

Companies operating in South Africa must ensure that their BO information has been filed with the CIPC as a matter of urgency as compliance is mandatory and there is no applicable transition period for this new requirement.

BO information can be filed at the CIPC by any person (including an attorney), provided they have been duly mandated to attend to the filing. If you have any inquiries regarding the filing requirements or require assistance with the filing process, please reach out to us.

Vivien Chaplin, Haafizah Khota and Oliver Marshal

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BBBEE STATUS: LEVEL ONE CONTRIBUTOR

Our BBBEE verification is one of several components of our transformation strategy and we continue to seek ways of improving it in a meaningful manner.

PLEASE NOTE

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