

Declaration of Beneficial Owners and Establishment of a Beneficial Owners Register. What you need to know

Preamble

The Finance Act, No. 8 of 2020 which came into effect on 1st July 2020 made some notable changes to the Companies Act Cap 12 R.E. 2002; all with the aim(s) of preserving the integrity of Tanzania's tax system, increasing transparency and information sharing between regulatory authorities and combatting money laundering and terrorist financing.

The Key Amendments.

- i. Introduction of the term **Beneficial Owner** ('BO') which is defined as a **natural person** who, directly or indirectly:
 - o ultimately owns or exercises substantial control over an entity or an arrangement;
 - o who has a substantial economic interest in or receives substantial economic benefit from an entity or arrangement (whether alone or together with other persons);
 - o on whose behalf, an arrangement is conducted; or
 - o who exercises significant control or influence over a person or arrangement through an agreement (formal or informal).

From the definition, it is evidently that a BO is thus only a natural person who effectively owns or substantially controls a legal entity. Hence, a company is not a BO.

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- ii. Amendment of Section 14 (2)(b) by requiring new entities to provide accurate and up to date records of its BOs (i.e. addresses, DOB, ID, place of work, position and contact details) and nature of their interest (i.e. details of the legal, financial, security, debenture or informal arrangement giving rise to said ownership).
- iii. Amendment of Section 85 by restricting the issuance or transfer of a share warrant unless approved by the Registrar of Companies who shall also maintain a share warrant register.
- iv. Amendment of Section 115 by requiring companies having BOs to make entries on their registers on information required under clause ii and in case of any changes on such information to provide them to the Registry within 30 days.
- v. Amendment of Section 129 by requiring submission of records of BOs required under clause ii, if applicable.
- vi. Introduction of Section 451A for the Registrar to establish and maintain a Register of BOs and for Legal Entity Owners' information on their full names, address, identities of directors, shareholders and BOs, their registration certificates and Constitutions/Memorandum and Articles of Association (memarts) as well as other information that is tied to the legal entity's ownership and control.
- vii. Introduction of Section 451B that allows Anti Money Laundering Authorities, Anti-Terrorist Financing Financial Intelligence

Units, Tanzania Revenue Authority and other National Competent Authorities access to the Register of BOs held by the Registrar of Companies.

- viii. Introduction of Section 459A that mandated companies incorporated before 1st July 2020, to comply with the amended Section 14 (2)(b) within 6 months (i.e. by 31st December 2020).

Steps Undertaken Since the Amendments Came into Effect.

- i. Draft Companies (Beneficial Ownership) Regulations, 2020 made under section 483(2) of the Companies Act (as amended) have since been prepared by the Ministry of Industry and Trade together with the Business Registrations and Licensing Agency (BRELA). They are still being fine-tuned to date.
- ii. The draft regulations detail how the amendments shall play out in practice as well as consequences for non-compliance thereto. As they have yet to be passed by the Minister of Industry and Trade, it remains to be seen what the final regulations will look like.
- iii. BRELA then held a national stakeholders' workshop to review the draft regulations on 1st October 2020. During the workshop, stakeholders and all attendees were given a chance to discuss and review the Regulations, *in particular the proposed Companies (Forms) (Amendments) Rules forms* that will eventually replace the ones in play for company registrations as well as the additionally proposed ones being:

- Form 14c – Notice of ceasing to be a BO,
 - Form 14d – Declaration by the registered owners who in actuality are not the end BOs,
 - Form 14e – Declaration by BOs whose names are not in the Members’ register,
 - Form 14f – Change of Particulars of BOs.
- iv. On 12th February 2021, **GN No. 189 of 2021** was then assented into law by the Minister of Industry and Trade to extend the six-month period (see clause viii above) to twelve months from 1st January 2021 to December 2021 respectively.
- v. On 19th April 2021, BRELA issued a press release to the public, confirming the above stance and to further inform company owners that the Registry is in the final stages of finalizing the regulations.
- vi. The regulations are expected to specify the modality of submission and keeping of beneficial ownership information, which once published will allow the Registry to receive the BO information.
- Overall Implications.**
- i. The amendments and draft regulations are silent on the threshold in shareholding or control in respect of which BO information is required, thus whether this will be tied with amendments made to the Income Tax Act (*which has reduced the threshold from 50% to 25%*) remains to be seen.
 - ii. Provision of information of BOs for entities registered pre-July 2020 will be done via the Registry’s ORS system which has yet to set up this particular feature as the Regulations have yet to be passed.
 - iii. The grant of access to the Register of BOs to key national authorities, has in essence pierced the corporate veil. Said authorities esp. TRA can now take into account the economic reality of all corporate arrangements in entities when undertaking tax audits, assessments and investigations.
 - iv. Income tax is now chargeable and payable by the agent/representative of a BO or non-resident where a non-resident person receives income be it directly or indirectly, so long as it accrued or arose in Tanzania from/or through such agent/representative (*this includes any Tanzanian company which is a subsidiary of a non-resident company*).
 - v. Any natural person who owns or controls a foreign parent company with a Tanzanian subsidiary may be considered a BO irrespective of any intermediary companies interposed between that foreign company and the Tanzanian subsidiary. This entails that any income received by such foreign natural person which has accrued or arisen in Tanzania will be subject to income tax, including withholding tax.
 - vi. Given the broad definition of a BO, it remains to be seen how TRA will interpret it in taxing Tanzanian subsidiaries for dividends or other distributions paid by their parent companies to their shareholders.

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Concluding Takeaways.

Given these vital amendments, companies registered prior to July 2020 are advised to carefully consider and review their intracompany arrangements and structures so that they can be prepared for any potential tax implications.

Lastly, long standing companies should start gathering the required information on their ultimate BOs so that they can submit them come the end of the year, so as to avoid being liable for any penalties or other repercussions.

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