

Companies Beneficial Ownership: A new Compliance Horizon under the Companies Act

MAY 2021

COMPANY LAW - COMPLIANCE



INTRODUCTION

The Finance Act, 2020 (Act No. 8 of 2020) had amended several laws in Tanzania including the Anti-Money Laundering Act, Cap. 423, the Companies Act, Cap 212, the Income Tax Act, Cap. 332, the Trustees Incorporation Act, Cap. 318. The amendments aimed at imposing and enhancing business transparency and compliance. *Specifically, these laws were amended to impose and deal with the new concept of beneficial ownership.* Subsequent to these amendments, on 14th May 2021 the Minister for Industry and Trade issued the regulations under the Companies Act, Cap 212 namely the Companies (Beneficial Ownership) Regulations, 2021 (GN No. 341 of 2021) that regulate the application and enforcement of the aspect of beneficial ownership in Tanzania. The publication of these regulations has consequently led to the revision and updating of the Companies forms whereby the Companies (forms) (amendment) Rules, 2021 (GN No. 386 of 2021) was published on 14th May 2021. This update reviews these new regulations to highlight the important new regulatory and compliance features as well as provide necessary general legal information to our clients.

WHAT IS BENEFICIAL OWNER

According to the amendments of the Companies Act, Cap. 212 as well as the new regulations, the Companies (Beneficial Ownership) Regulations, 2021 (GN No. 341 of 2021) *the term Beneficial Owner has been defined as a natural person:*

- Who directly or indirectly ultimately owns or exercises substantial control over an entity or an arrangement;
- Who has a substantial economic interest in or receives substantial economic benefit from an entity or an arrangement directly or indirectly whether acting alone or together with other persons;
- On whose behalf an arrangement is conducted; or
- Who exercises significant control or influence over a person or arrangement through a formal or informal agreement.

It is important to note that the word “*arrangement*” is a legal term that has been defined under the Income Tax Act, Cap. 332. Arrangement includes, an action, agreement, course of conduct, dealing, promise, transaction, understanding or undertaking, whether express or implied, whether or not enforceable by legal proceedings and whether unilateral or involving more than one person. Therefore, for the purpose of anti-money laundering, beneficial owner encompasses not only a person on whose behalf an arrangement is conducted but also a person who exercises significant control over an arrangement whether formal or informal.

KEY POINTS

- Companies must file information about Beneficial Ownership
- The deadline for the filing of the Companies Beneficial Ownership has been extended for a period of 12 months from 1st January 2021
- Access of Beneficial Owners’ information will only be to the Government entities and authorities dealing with Anti-Money Laundering and terrorist financing
- It is the obligation of the Company to report to the Registrar on the Beneficial Owners of the Company and/or any changes made with in the stipulated time.
- Failure to comply imposes a fine of up to TZS 10million

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THE AMENDMENT OF THE COMPANIES ACT, CAP. 212

The amendment of the Companies Act, Cap. 212 *puts a requirement for the Company to deliver to the Registrar of Companies an accurate and up to date records/information of Beneficial Owners of such company.* The Beneficial Owner information required to be submitted to the Registrar of Companies is listed below. Further, any changes to the beneficial ownership must be reported to the Registrar within 30 days of such changes. The new Section 451A and Section 451B have also been added into the Companies Act requiring the Registrar to maintain a register of Beneficial Owners. According to Section 451B, *the Beneficial Owners' information kept by the Registrar of Companies will only be accessible to the Government entities and authorities dealing with Anti-Money Laundering and terrorist financing in Tanzania* such as:

- National competent authorities with designated responsibilities for combating money laundering and terrorist financing
- National competent authorities that have the function of investigating or prosecuting offences related to money laundering and terrorist financing, or of tracing, seizing, freezing and confiscating criminal assets
- The Financial Intelligence Unit (FIU)
- The Tanzania Revenue Authority (TRA)
- Government institution responsible for overseeing or implementing economic empowerment of Tanzanian nationals pursuant to the respective laws; and
- Any other national competent authority, other than the authorities specified in paragraphs (a), (b) and (c) which are responsible for the prevention of money laundering and funding of terrorism.

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THE DURATION FOR IMPLEMENTATION

The amendment of the Companies Act had set the time frame of 6 months from 01st July 2020 to comply with the requirement of the law i.e., provide accurate and up to date information of beneficial owners of the company to the Registrar of Companies.

However, pursuant to the Companies (Extension of Period for Submission of Information of Beneficial Ownership) Notice, 2021 (GN No. 189 published on 12 February 2021), *the Minister for Industry and Trade extended the time for submission of information on Beneficial Owners for a period of 12 months from 1st January 2021* for the Companies registered before 1st July 2020.

BENEFICIAL INFORMATION REQUIRED TO BE SUBMITTED TO THE REGISTRAR

According to Section 14(2) of the Companies Act, Cap. 212 as amended by the Finance Act, 2020 the information to be submitted to the Registrar of Companies includes an accurate and up to date records of beneficial owners, that is:

- Full name, including any former or other name;
- Date and place of birth;
- Telephone number;
- Nationality, national identity number, passport number or other appropriate identification;
- Residential, postal and email address, if any;
- Place of work and position held;
- Nature of the interest including the details of the legal, financial, security, debenture or informal arrangement giving rise to the beneficial ownership;
- Oath or affirmation as to whether the beneficial owner is a politically exposed person²⁴ or not.
- The percentage of shares that persons holds in the company
- The percentage of voting rights

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- Whether that person directly or indirectly holds a right to appoint or remove a majority of the board of Directors of the Company.
- Whether that person directly or indirectly exercises significant influence or control over the company.
- Name of the shareholder holding shares on behalf of the beneficial owner of the Company.
- Name of the Director appointed by the Beneficial Owner.

It is important to note that, Regulation 5(4) requires that the documents submitted to the Registrar of Companies must be certified true copy of the official identification document for every Beneficial Owner.

Moreover, any document to be submitted to the Registrar may be submitted in electronic form and by electronic communication as the Registrar may deem appropriate.

THE COMPLIANCE REQUIREMENTS

The Companies (Beneficial Ownership) Regulations, 2021 (GN No. 341 of 2021) *has introduced new compliance requirements for both existing and new companies registered in Tanzania.* Among others the regulations requires:

- A company to submit to the Registrar particulars of its Beneficial Owners.
- A company to take reasonable steps to identify its beneficial owners and enter their particulars in the register.
- To notify the Registrar of Companies where a person ceases to be a beneficial owner within 30 days. This is effective upon payment of prescribed fee.
- Any transfer or transmission of shares or an increase or reduction of share capital or a restructuring of a company's share capital or changes in the voting rights leading to any change in beneficial interest, the company must in addition to the applicable procedures prescribed in the Act, deliver to the Registrar a notice in a prescribed form indicating whether or not there has been a change in the beneficial ownership of the company.

- It is the requirement of the Regulation that the notices of changes in beneficial ownership to be signed by at least one Director of the company or the Company Secretary

DECLARATION OF BENEFICIAL OWNERSHIP AND INTEREST

A Non Beneficial Owner: is a person whose name is entered in the register of members of a company as the registered owner of shares in that company but who does not hold the beneficial interest in such shares. Such person is required to file a declaration with the company to that effect in a prescribed form within a period of 30 days. Any changes of beneficial interest thereof must be declared to the Registrar of Companies within 30 days in a prescribed form as well as payment of prescribed fee.

Beneficial Ownership: A person who holds or acquires a beneficial interest in shares of a company not registered in his name. Such person must file with the company a declaration disclosing such interest in a prescribed form within 30 days after acquiring such beneficial interest in the shares of the company. Likewise, any changes in the beneficial interest in such shares, the beneficial owner shall, must make declaration in a prescribed form within a period of 30 days as payment of prescribed fee.

PROTECTION OF INFORMATION

The regulations requires companies to protect beneficial owners information. As such, the Regulation prohibit disclosure of Beneficial Owners information unless and on exceptions such as (Regulation 6):-

- For communicating with the beneficial owner concerned;
- in order to comply with any requirement of these Regulations; or
- in compliance with a court order.

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NON-COMPLIANCE AND OFFENCES

The Regulations empowers the Registrar to refuse to register any document of a company which is required to be registered if the beneficial ownership information was not submitted or if the Registrar is not satisfied that the company has provided accurate and up to date information on the beneficial owners of the company (Regulation 9).

Further Regulation 5(3) entitles the Registrar not to register changes on acquisition of shares or any other document relating to changes in issued share capital or voting rights unless the changes or information about beneficial ownership have been complied with accordingly.

The Regulation also creates an offence for any person who fails to keep record of beneficial owners, fails to provide information to the Registrar about a change in beneficial ownership of a company or fails to provide the Registrar with a declaration on the beneficial owners of the company and *imposes a fine of not less than Tanzania Shillings 5 million but not exceeding Tanzania Shillings 10 million (Regulation 10).*

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