



## **The requirement of Disclosure of Beneficial Owner**

### **The Law:**

On 1 July 2020 the Finance Act introduced changes to the Companies Act, the Anti-Money Laundering Act, the Income Tax Act and the Trustees Incorporations Act by establishing beneficial ownership rules.

On 14th May 2021, the Ministry of Industry and Trade through Government Notice no. 391 of 2021 published the Companies (Beneficial Ownership) Regulations, 2021.

The new regulations are in place to implement the beneficial ownership requirement introduced by the Companies Act through amendment made by the Finance Act, 2020.

### **Who is a beneficial owner:**

A beneficial owner is defined under the Companies Act as a natural person (i) who directly or indirectly ultimately owns or exercises substantial control over an entity or an arrangement, or (ii) 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, or (iii) on whose behalf an arrangement is conducted, or (iv) who exercises significant control or influence over a person or arrangement through a formal or informal agreement.

The Regulations put a requirement for companies to identify and register all the beneficial owners of the Companies. The Regulations has four parts i.e. Preliminary provisions which include the Interpretation, Information of Beneficial Owners, Register of Beneficial Owners and Miscellaneous Provisions.

The term beneficial owner has been defined to mean a natural person who directly or indirectly ultimately owns or exercise substantial control over an entity or an arrangement; who has a 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



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agreement.

The Finance Act imposes a mandatory obligation for legal entities to declare their beneficial owners when filing annual returns and notify the Registrar of Companies of any changes to the beneficial owner within 30 days of any such changes. It is important to note that such beneficial owner disclosure is also required to be filed in the Company Registry during the incorporation process.

The Finance Act provided for companies to disclose their beneficial owners by 31 December 2020. However, on 12 February 2021, vide the Companies (Extension of Period for Submission of Information of Beneficial Ownership) Notice 2021, the Minister for Industry and Trade has extended the period for compliance to December 2021.

### **The details to be disclosed**

Filing of the beneficial ownership details is to be made to the Registrar of Companies through the BRELA Online Registration System. Details of beneficial ownership to be filed with the Registrar of Companies include:

1. full name (including any former or other name);
2. date and place of birth;
3. telephone number;
4. nationality;
5. national identity number, passport number or other appropriate identification;
6. residential, postal and email address (if any);
7. place of work and position held;
8. nature of the interest including the details of the legal, financial, security, debenture or informal arrangement giving rise to the beneficial ownership; and
9. oath or affirmation as to whether the beneficial owner is a politically exposed person or no

Moreover, the Registrar of Companies is required to establish and maintain a register of Beneficial Owners of all companies registered in Tanzania. The register will be accessible to



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FIU; TRA; authorities with responsibilities for combating money laundering and terrorist financing as well as the authorities that have the function of investigating or prosecuting offences related to money laundering and terrorist financing, seizing, freezing and confiscating criminal assets.

### **The Process:**

A company incorporated or registered under the Companies Act (the Act) to submit the particulars of its beneficial owners to the Registrar of Companies (the Registrar). Companies are required to identify beneficial owners and enter their particulars in the register of members and beneficial owners.

Once a person ceases to be a beneficial member, to file a notice to the Registrar within thirty days from the date of cessation. In case of default, every members of the company shall be jointly and severally liable to late filing fees.

Persons who are registered as owners of shares but do not have beneficial interest in such shares to file a declaration to that effect with the Company within thirty days from the date on which their names are entered into the register if members of the company. In case of changes in the beneficial interest of such shares, such change should be declared to the Company within thirty days from the date of such change.

A person who holds or acquires interest in shares of a company not registered in his name, is also required to file a declaration disclosing such interest to the Company within thirty days after acquiring such beneficial interest in the shares and in case of change, such change has also to be declared to the Company within 30 days from the date of such change and a company has to file a return with the Registrar in respect of such declaration within thirty days from the date of receipt of the declaration.

Companies are required to lodge the particulars of the change of its beneficial owners with the Registrar within thirty days from the date of change.

Companies are also required to notify the Registrar whether there has been any change in beneficial interest resulting from share transfer or transmission or, increase or reduction of share capital or a restructuring of a company's share capital or changes in the voting rights. Unless this requirement is complied with, the registrar shall not register a notice of acquisition of shares or any other document relating to changes in share capital or voting rights. The notices of changes in beneficial ownership under this regulation, must be signed



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by at least one director or company secretary and the certified true copy of the official identification document of every beneficial owner shall be submitted to the registrar.

### **Offences and Penalties:**

The regulations make the following acts as offence(s);

1. Failure to keep record of beneficial owners;
2. Failure to provide information to the Registrar about a change in beneficial ownership of a company;
3. Failure to provide the Registrar with a declaration containing information on the beneficial owners of the company;

### **Fines:**

The Regulations impose a fine of not less than five million shillings but not exceeding ten million shillings in case one is liable for any of the provided offences

### **Non-Disclosure Of Confidential Information**

When performing the duties under the Companies Act or even after termination of their employment, the Registrar and other officers are obliged to , neither to communicate confidential information obtained in their capacities pursuant to the provisions of these Regulations to persons not entitled to receive it nor to disclose it to the public or make other use of it.

### **Deadline:**

1. The Initial deadline to disclose was 31 Dec 2020
2. The new Deadline now is 31 Dec 2021