

South Africa: Enhanced company disclosure requirements

Important amendments to the Companies Act and Regulations

In brief

Important amendments to the Companies Act, No. 71 of 2008 ("**Companies Act**"), which came into effect on 1 April 2023 and the Companies Regulations, 2011 ("**Regulations**"), which came into effect on 24 May 2023, have implications for companies registered and incorporated in accordance with the laws of South Africa.

In depth

On 1 April 2023, certain sections of the General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act No. 22 of 2022 (GLAA) came into effect. As a result, amendments have been made to the Companies Act and Regulations, which impose enhanced reporting obligations on all South African companies. These amendments align the Companies Act with the purpose of the GLAA, which is to enhance the regulations around anti-money laundering and the combating of terrorist financing in South Africa. The amendments to the Companies Act and the Regulations ("**Amendments**") require companies to file certain information in respect of those persons (juristic and natural) who hold a beneficial interest in, or have effective control over, the company. The Companies and Intellectual Property Commission (CIPC) is mandated through the Amendments to require this information be provided to them, and a failure to provide the required information to the CIPC will constitute non-compliance with the Companies Act and the Regulations.

Impact on businesses

Depending on the form of the company, a business must: (a) file its securities register with the CIPC together with its annual returns; and (b) may also have to file, with its annual return, a separate register containing the details of those persons (both natural and juristic) who hold a beneficial interest in the company equal to or in excess of 5% of the total number of issued securities of any class of securities issued by the company, together with the extent of those beneficial interests ("**BI Register**").

In terms of the Amendments (specifically the amendments to sections 33(1) and 50 of the Companies Act), **all companies** are required, when filing their annual return with the CIPC, to file, in addition to their annual financial statements (where applicable), their securities register.

Further, all **affected companies** (as defined in the Companies Act) are required to file a BI Register with the CIPC. This is a register of all persons (both natural and juristic) who own a "beneficial interest" in the company. Further, in terms of the new section 56(7)(a) of the Companies Act, shareholders of listed companies must disclose to such listed companies the identity of all persons with a beneficial interest in the securities registered, in the name of such registered shareholder. The Companies Act defines a "beneficial interest" as "the right or entitlement of a person, through ownership, agreement, relationship or otherwise, alone or together with another person to (a) receive or participate in any distribution in respect of the company's securities; (b) exercise or cause to be exercised, in the ordinary course, any or all of the rights attaching to the company's securities; or (c) dispose or direct the disposition of the company's securities, or any part of a distribution in respect of the securities".

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An affected company

It is important to note that not all companies are required to file a BI Register with the CIPC. Only companies that fall within the definition of an "affected company" are required to file a copy of the BI register, which is required to be maintained in accordance with the amended section 56 of the Companies Act.

An affected company includes all regulated companies (namely, public companies, state-owned enterprises, and private companies, should such private company meet the requirements set out in section 118(1)(iii) of the Companies Act) **and** any company that is controlled by or the subsidiary of a regulated company. Such requirements in relation to a private company are (i) where such company voluntarily becomes a regulated company in the company's MOI; or (ii) where such company has transferred more than 10% of its issued share capital (other than between or among related or inter-related parties) within the preceding 24 months.

There is no specific exemption for listed companies, and in terms of the amendments, these entities are required to file a BI Register. However, on 29 May 2023 the CIPC issued a guidance note in respect of the Amendments ("**Guidance Note**"), which provided a specific dispensation in relation to listed companies (that are listed on a local stock exchange). This dispensation applies if a listed entity is already required to submit the information that would be contained in the BI Register and securities register to a competent authority in terms of the rules of the exchange. This exemption also applies to the listed entity's related entities. When submitting their annual returns to the CIPC, listed entities should indicate that, although they are affected companies, the information required has already been submitted to the stock exchange or a specific institution (for example, STRATE or Computershare) in compliance with paragraphs 8.63(c), 8.63(e) and 3.83 of the Johannesburg Stock Exchange Listing Requirements (JSE LR). In terms of the JSE LR, JSE-listed companies are obliged to establish and maintain a register of the disclosures of beneficial interests made in terms of section 56 of the Companies Act with the JSE.

Companies not falling within the definition of an affected company

The GLAA amendments, in respect of those companies that do not fall within the definition of an "affected company", actually go further than those that apply to "affected companies". The GLAA amendments require these companies to include the details of the beneficial interest holders (to the extent they have any) in their securities register, as well as to collect, retain and file with the CIPC information in respect of their **beneficial owners**. Therefore, the amendments to sections 50 and 56 of the Companies Act require these companies to record in their securities register information regarding **natural persons** who are the beneficial owners of the company and file a record of this information with the CIPC. For the sake of clarity, a company that does not qualify as an affected company must include information in its securities register regarding its (i) beneficial interest holders of the securities of that company if they are held by one person for and on behalf of another; and (ii) beneficial owners (Regulation 32(3)(b)).

Beneficial owners

A beneficial owner is defined in the GLAA as an individual ("**natural person**") who "directly or indirectly, ultimately owns the company or exercises effective control of the company". In terms of the GLAA definition, a natural person may be seen to exercise effective control of the company if he/she/they: (i) hold a beneficial interest (i.e., 5%) in the securities of a company; (ii) have control over voting rights, or control over the exercise of voting rights associated with securities of a company; (iii) are able to exercise a right to appoint or remove members of the board of directors of a company, or have control over the exercising of a right to appoint or remove board members; and/or (iv) the ability to otherwise materially influence the company (directly or indirectly). The above list is not exhaustive, and if it can be demonstrated that an individual has effective control over the company by reading the legislation purposefully, then the details of such individual must be included in the company's securities register.

Submission of filings

It is important to note that in terms of the Companies Act, a company's securities register and BI Register must be kept up-to-date, and any changes must be filed with the CIPC within 10 business days after such changes have been reflected in the securities register or the BI Register. Entities incorporated before 24 May 2023 are required to file their initial securities register

and/or BI Register, as applicable, as part of their annual return filing process. Entities incorporated on or after 24 May 2023 will be required to file the records of their beneficial owners within 10 days after such incorporation. For future filings, if there have been no changes to the BI Register or securities register during the year, then the same information filed in the preceding year must be re-filed with the CIPC in line with the deadline for the company's annual returns. Failure to comply is an offense in terms of the Companies Act. A compliance notice may be issued in the case of non-compliance, and an administrative penalty may be imposed. For more detail on the information required to be included in the BI Register for affected companies and in the securities register for non-affected companies, please refer to Annexure A.

Access to information

Prior to the Amendments, unless published voluntarily by an entity, the information of a shareholder in a private company was not required to be published on public platforms. According to the Regulations, the CIPC will provide electronic access to any person to view copies of a company's annual return filed with the CIPC. Such access will include the provision of copies of the documents filed together with an annual return with the CIPC as contemplated in Regulation 30. Notwithstanding this seemingly broad access right, the CIPC is empowered to impose conditions on the grant of such access after consultation with the Minister and the Financial Intelligence Centre.

In addition, the CIPC has indicated that the information in relation to beneficial ownership will only be made available to law enforcement and competent authorities (e.g., the South African Revenue Services, the Financial Intelligence Centre and the Financial Sector Conduct Authority) and that the public will not have access to a company's information regarding beneficial ownership. While this is a departure from the CIPC's prior mandate to collect information regarding beneficial owners, this change is understandable as the GLAA Amendments were enacted to assist in gathering the information of shareholders and beneficial owners of a company in an effort to abate money laundering and terrorism in South Africa. The gathering of such information by the CIPC and competent authorities is therefore permissible under the Protection of Personal Information Act, No 4 of 2013. However, with this right comes responsibility and the CIPC is required to have adequate safeguards in place to protect personal information of the individuals submitted through this process. The CIPC has assured the public that such safeguards are in place. Should a data breach occur within the CIPC's database they are obliged to inform those data subjects affected and report same to the Information Regulator of South Africa.

Annexure A | Information required to be submitted to the CIPC

<p>Affected Companies</p>	<p>Beneficial Interest holder information</p> <p>The information required to be recorded by affected companies (with respect to holders of a beneficial interest) includes the following:</p> <ul style="list-style-type: none"> • If the holder of the beneficial interest is a natural person, the (i) full name; (ii) date of birth; and (iii) identity number (if South African) or the passport number, passport's country of issue and country of birth (if non-South African). • If the holder of the beneficial interest is a juristic person, the full name and registration number of the juristic person. • The business, residential or postal address. • Email address, if available. • Confirmation as to the participation and extent of the person's beneficial interest in the total number of issued securities of that class, whether directly or indirectly, ownership of a company or exercising effective control of such company.
<p>Non-Affected Companies</p>	<p>Beneficial owner information</p> <p>The Regulations prescribe the following information, which must be recorded by the company in its securities register in respect of each beneficial owner:</p> <ul style="list-style-type: none"> • The full name. • Date of birth. • Identity number (if South African) or passport number (if non-South African). • Residential and postal address. • Email address if available, unless the person has declined to provide an email address. • Confirmation as to the scope of participation in and extent of ownership, or effective control of, the company.
	<p>Beneficial Interest holder information</p> <p>The register must record the following information regarding each such person:</p> <ul style="list-style-type: none"> • The name and unique identifying number of the registered holder of the security. • The number, class and in the case of a certificated security, the distinguishing numbers of the security. • For each person who holds a beneficial interest in the security, the extent of the person's interest in the security, together with that person's: <ul style="list-style-type: none"> • Name and unique identifying number. • Business, residential, or postal address. • Email address if available, unless the person has declined to provide an email address.
<p>Supporting documents to be filed</p>	
<p>The CIPC filing is made online, through the CIPC's online form. The process further requires the uploading of supporting documents, which include:</p> <ul style="list-style-type: none"> • Board resolution authorizing the individual making the filing to file on behalf of the company (if such person is not a director of the company). • Certified copies of identity documents or notarized copies of passports of the beneficial owners (not older than three months). • A copy of the securities register of the company (or relevant section reflecting the beneficial owners). 	

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