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# **BENEFICIAL OWNERSHIP**

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**Companies  
(Beneficial Ownership)  
Regulations, 2023**

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## INTRODUCTION



On the 21 July 2023, the Minister for Investment, Industry and Trade issued the Companies (Beneficial Ownership) Regulations, 2023 which we will call the new Regulations for purposes of this Article, vide the Government Notice No. 478 of 2023. It is important to note that the new Regulations borrow substantially from Companies (Beneficial Ownership) Regulations, 2021 which we call the old Regulations which have now been effectively revoked. Also, the prescribed Forms for Beneficial Owner (BO) purposes are the same as in the old Regulations.

One of the major changes brought by the new Regulations is that the new Regulations apply only to companies incorporated in Tanzania.

The old Regulations were in contrast applicable to companies incorporated in Tanzania.

The interpretation of the old Regulations left the impression that the same were applicable even to foreign companies that had registered branches in Tanzania. Tanzania introduced the rules requiring the disclosure of beneficial owners through the passing of various legislation, such as the Finance Act Number 8 of 2020, rules on disclosure of beneficial owners were introduced to the Companies Act Number 12 of 2002.

In addition, the Finance Act 2020 amended the Anti-Money Laundering Act, Chapter 423, R. E. of 2019, the Trustees' Incorporation Act, Chapter 318, R.E. of 2002 and the Income Tax Act, Chapter 332, R. E. of 2019 by establishing provisions relating to beneficial ownership rules.

The main aim of disclosing a beneficial owner of an asset or interest in an entity is to prevent offences such as money laundering, tax evasion, and other illegal practices, and to also increase transparency in legal business activities within a particular jurisdiction.

## CONCEPT OF BENEFICIAL OWNERS

A beneficial owner is a person or group of individuals who enjoy the benefits of ownership even though the title thereof belongs to someone else, who, either directly or indirectly, has or have the power to vote or influence the decisions through the an existing arrangement between the parties.

These arrangements are covered under section 3 of the Income Tax Act), include 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.

The Finance Act of 2020 defined a beneficial owner as a natural person who:

- i. Who directly or indirectly ultimately owns or exercises substantial control over an entity or an arrangement;*
- 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;*
- 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 above definition has also been incorporated under section 4 adding to section 3 of the Anti-Money Laundering Act, section 7 adding to section 2 of the Companies Act, section 25 (c) adding to section 3 of the Income Tax Act, and section 76 by adding Section 1A to the Trustees' Incorporation Act.

## BENEFICIAL OWNERSHIP REQUIREMENTS UBDER THE COMPANY ACT.



There shall be delivered a statement in the prescribed form (Company Form 14b found under the Companies (Forms) Rules) containing the subsequent particulars that are accurate and up to date records of beneficial owners as stated under section 8 of the Finance Act which amends section 14 (2) (b) of the Companies Act, of such company which shall include:-

- *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; and*
- *Oath or affirmation as to whether the beneficial owner is a politically exposed person or not.*

## REGISTER OF BENEFICIAL OWNERS



Companies in Tanzania are now required to have a register for beneficial owners and to notify the Registrar of Companies, who shall also establish and maintain a register of beneficial owners at the Companies Registry as stated in section 16 of the Finance Act of 2020. This means that, the information held by the Registrar will be available generally to specific competent authorities in Tanzania and public access to such information is limited unless stated otherwise. The various competent authorities include, the Tanzania Revenue Authority (hereinafter referred to as “the TRA”), the Financial Intelligence Unit, Government institutions responsible for overseeing the economic empowerment of Tanzanian nationals, and any other national competent authority.

Through the register, the TRA can now have more insight into the economic reality of all corporate arrangements in respect of various entities when undertaking tax audits, assessments and investigations. Income tax, including the withholding tax, is now chargeable and payable by both the beneficial owners and/ or non-resident through their agents or representatives who receive income be it directly or indirectly, as long as it derives in Tanzania.



## DIFFERENCE BETWEEN THE NEW AND OLD REGULATIONS



As opposed to the old Regulations, the new Regulations expressly oblige the Registrar to make available to the competent authorities information regarding a company's Beneficial Ownership. The said competent authorities, for Beneficial Ownership purposes, are authorities with designated responsibilities for combating money laundering and terrorist financing; authorities responsible for investigation and prosecution of offences related to money laundering and terrorist financing; the Tanzania Revenue Authority; the Financial Intelligence Unit; and Government institutions responsible for overseeing or

implementing economic empowerment of the Tanzanian nationals pursuant to the respective laws. In so far as the extension of time is concerned, the new Regulations entrust the Registrar with mandate to grant extension of time (not exceeding 30 days) for filing Beneficial Ownership information if satisfied that there were reasonable grounds for failure to do so within prescribed time. It should be noted that the old Regulations were silent on this aspect.

## Consequences of Failing to Make the Requisite Disclosures under the Regulations

It is mandatory for persons seeking to register new companies in Tanzania to ensure that their respective beneficial owners (if any) are identified and their details and are submitted to the Registrar at the time of incorporation. A person who fails to file beneficial ownership detail commits an offence and thus liable to a fine of not less than TZS 5 million but not exceeding TZS 10 million.

The Registrar has the power to refuse to register any document of a company that is required to be registered under the Companies Act if he is not satisfied that the company has provided accurate and up to date information on the beneficial owners of the company, which, in turn, may prevent a company from taking certain essential corporate actions.

## CONCLUSION

The new disclosure regulations are more far reaching and much broader in scope than the previous regulations and it is expected that they will be a lot impactful in taming secrecy and covert business dealings behind the backs of the various regulatory agencies established in the United Republic of Tanzania.

Obscurity, in certain circumstances, enables many illegal activities to be performed or to take place as they may go undetected by law enforcement agencies. Such illegal activities include tax evasion, corruption, money laundering and the financing of terrorism. Thus, there are valid reasons as to why it is important to implement different laws to identify beneficial owners' information that will be available and accessible by certain Government authorities.

## REFERENCES

Anti-Money Laundering Act, Chapter 423,

The Income Tax Act, Chapter 332, R. E. of 2019

The Trustees' Incorporation Act, Chapter 318, R.E. of 2002

The Companies (Beneficial Ownership) Regulations G.N No 478, 2023



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