

REGULATIONS OF BENEFICIAL OWNERSHIP FOR COMPANIES IN TANZANIA



Annadil Burhani Complex, Magore Street
P. O. Box 20345, Dar es Salaam
Contact: +255-22-2151079
Email: info@bac.co.tz
Website: www.bac.co.tz

November, 2021

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On 14 May 2021, the Minister for Industry and Trade announced for the mandatory requirement for companies incorporated or registered under the Companies Act in Tanzania to submit information concerning their beneficial owners under the Companies (Beneficial Ownership) Regulations, 2021 (Hereinafter will be referred to as the Regulations) which imposes an obligation to declare their beneficial owners to the Registrar of Companies (Registrar).

Compliance to the imposed obligation for companies under the directives issued is compulsory to be made by the required persons by the 31st December 2021, which was a grace period given by the government to allow taking the necessary steps to ensure the compliance which failure of amounts to an offence under the law and every defaulting company shall be penalized a defaulting fine of not more than Tsh. 10,000,000 (Tanzanian Shillings Ten Million).

A beneficial owner is defined under the Regulations to mean only a natural person who falls into any of the following categories (whether or not the registered owners are the beneficial owners);

- Directly or indirectly ultimately owns or exercises substantial control over an entity or an arrangement,
- 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

Under Regulation 3 of the Regulations, company incorporated or registered under the Companies Act are required to take reasonable steps to identify its beneficial owners and enter their details in its register of members and the companies are required to submit to the Registrar of Companies particulars of their beneficial owners in the prescribed forms. The forms include:

- **Form 14b** – Particulars of Beneficial owners
- **Form 14c** – Notice of Ceasing to be a Beneficial Owner
- **Form 14d** – declaration by the registered owner of shares but who does not hold the beneficial interest in such shares
- **Form 14e** – declaration by the beneficial owner who holds or acquires beneficial interest in shares but whose name is not entered in the register of members
- **Form 14f** – Change of Beneficial Ownership particulars

When any person holds or acquires beneficial interest in company shares not registered in his name, they are required to file with the company a declaration disclosing such interest within 30 days. Similarly, where a person ceases to be a beneficial owner, the company is required to file a notice to the Registrar within thirty days from the date of cessation.

In the event of a transfer or transmission of shares or when an increase, reduction or a restructuring is made on the company's share capital or voting rights resulting to changes in beneficial interest, the company is required to notify the Registrar whether or not there has been a change in the beneficial ownership of the company.

Where a company receives any declaration, they are required to make a note of such declaration in the register of members and file a return with the Registrar in respect of such declaration within thirty days from the date of receipt of declaration. The Registrar registers and keeps all the information in a register of beneficial owners kept by the Registrar for this purpose.

Company certified documents and a certified true copy of the official identification document for every beneficial owner is required to be submitted to the Registrar for the purposes of such registrations.

The information about beneficial ownership under the Regulation is confidential and thus, Company is not required to use or disclose them except for communicating with the beneficial owner concerned, in compliance with any requirement of the Regulations, or in compliance with a court order affecting the same.

The Registrar or other related officers under the Companies Act are required neither to reveal the confidential information obtained in the course of their duties under the Regulations to any persons not entitled to receive it nor to disclose it to the public. They are also prohibited from making any use of the information even after the termination of their employment.

With the enforcement of the requirement for every company to register the information about their beneficial owners, any person who fails to keep record of beneficial owners, to provide information to the Registrar about any change in beneficial ownership of a company, fails to file the declaration the beneficial owners of the company with the Registrar or contravenes any provision of the Regulations, commits an offence and shall be liable to a fine of not less than five million shillings but not exceeding ten million shillings. Since the regulation covers all kinds of arrangements and agreements, no arrangement is exempted from registration.

There has been no clear application of the Regulations to branches of foreign companies which are registered rather than incorporated under the Companies Act but since the regulation raises some inconsistencies with the Companies Act, it may prima facie be taken to mean that, the application of the regulations, despite stating under regulation 3 to govern both incorporated and registered companies, only applies to companies incorporated in Tanzania.