

What is beneficial ownership?



Who is a beneficial owner?

A beneficial owner is always the living, breathing **human being** who ultimately **profits from the company's activities**, or **controls the company's activities**. It is never a company, other legal entity, or a nominee/proxy.

In the above definition, it is clear that the concept of "ownership and control" is central to the definition of beneficial ownership.

The Companies Act¹ defines a beneficial owner as:

[Beneficial owner] means a natural person who—

- (a) *directly or indirectly, through any contract, arrangement, understanding, relationship or any other means ultimately owns, controls, exercises substantial interest in, or receives substantial economic benefit from a corporate;*
- (b) *exercises ultimate and effective controls over a legal person or legal arrangement; or*
- (c) *effectively controls a legal person or legal arrangement on whose behalf a transaction is conducted;*

and the terms "beneficially own", "beneficial ownership" and cognate expressions shall be construed accordingly [...]



Disclosure of beneficial ownership makes legal entities less attractive for criminals.



Why was the concept of beneficial ownership introduced in the Companies Act?

To encourage and increase transparency (the ownership and control structure) of legal persons and arrangements through disclosure of who ultimately owns, controls, exercises substantial interest in, or receives substantial economic benefit from a corporate.



The concept of beneficial ownership is aimed at curbing the use of corporate bodies for:



MONEY LAUNDERING



BRIBERY AND CORRUPTION



INSIDER DEALING



TAX FRAUD



TERRORISM FINANCING



OTHER ILLICIT ACTIVITIES

¹ No 10 of 2017 as read together with the Companies (Amendment) Act No 12 of 2020

What is control?



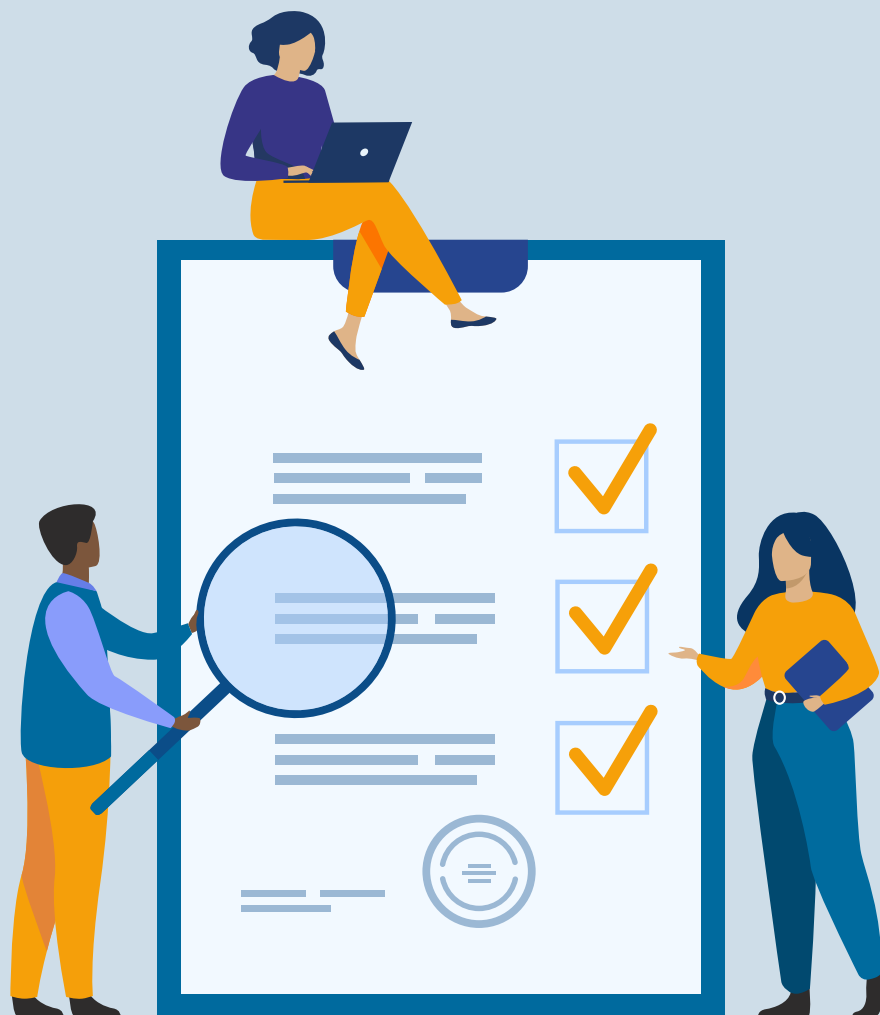
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What is control?

In the case of a company that is a trust, the person has the ability to **control the majority of the votes of the trustees, to appoint the majority of the trustees or to appoint or change the majority of the beneficiaries of the trust.**

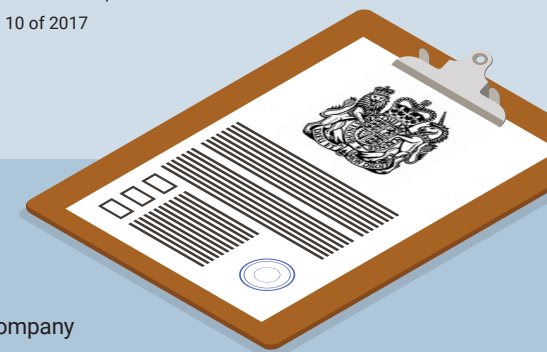
It also means that the person has the ability to **materially influence the management policy or affairs of the company** in a manner comparable to a person who, in ordinary commercial practice, can **exercise an element of control.**



The Companies Act² defines control as:

- "Control" means the control of a company by a person who—*
- (a) beneficially owns more than twenty-five percent of the issued share capital of the company;*
 - (b) is entitled to vote a majority of the votes that may be cast at a general meeting of the company, or has the ability to control the voting of a majority of those votes, either directly or through a controlled entity of that person;*
 - (c) is able to appoint or to veto the appointment of a majority of the directors of the company;*
 - (d) is a holding company and the company is a subsidiary of that company as provided for in this Act;*
 - (e) in the case of a company that is a trust, has the ability to control the majority of the votes of the trustees, to appoint the majority of the trustees or to appoint or change the majority of the beneficiaries of the trust; or*
 - (f) has the ability to materially influence the management policy or affairs of the company in a manner comparable to a person who, in ordinary commercial practice, can exercise an element of control referred to in paragraphs (a) to (e) [...]*

² Section 3 of the Companies Act No. 10 of 2017



What are the most common ways of controlling a company?

Through ownership arrangements:

- ✓ Ownership of shares.
- ✓ Ownership of voting rights.
- ✓ Other ownership arrangements, e.g. nominees, trusts, joint ownership.
- ✓ The right to appoint/ remove the majority of directors in the company (or equivalent management body)
- ✓ Personal connections or contractual associations with individuals in management or Board positions
- ✓ Right to otherwise exert significant influence on the company's activities, e.g. decision rights, voting rights, right to profit, etc.



What are companies and stakeholders required to do?



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What is the role of the Registrar where beneficial ownership information is concerned?

Under section 21 of the Companies Act, the Registrar is required to establish and maintain a Register of beneficial owners in manual or electronic form.

Pursuant to section 124, the Registrar also ensures that the beneficial ownership of shares is known, ascertained and verified before the shares can be registered and transacted in accordance with section 124.

Where necessary to ascertain and verify the beneficial ownership of a share or class of shares of a company, the Registrar may serve a notice to furnish within a period specified in the notice, specified information with regard to the beneficial ownership of the share in accordance with section 124.



In view of the above, the Registrar ensures that there is adequate, accurate and up-to-date beneficial ownership information on legal persons and on legal arrangements that can be obtained in a timely manner by competent authorities.



Which forms are used for submitting or updating information relating to beneficial ownership at PACRA?

1. Application for Incorporation of company (Form 3)
2. Notice of Allotment of Shares (Form 13)
3. Notice of Transfer of shares (Form 18)
4. Notice of Transmission of Shares (Form 19)
5. Notice of Change in Particulars in shareholding and beneficial owner (Form 20)
6. Return of Declaration of beneficial Ownership (Form 22)
7. Application for Registration of a Foreign Company (Form 38)
8. Notice of Alteration of Particulars of Foreign Company (Form 39)

What is the penalty for failure to disclose beneficial ownership information?

According to section 373 of the Companies Act, failure to disclose Beneficial Ownership information attracts a fine of K120,000 upon conviction or to imprisonment for a period not exceeding four years, or to both.



Are there any other regulations issued by the Minister relating to beneficial ownership?

The Minister may, by statutory instrument¹, make additional obligations and procedures for the determination of beneficial ownership and timely access to beneficial ownership information by the public as per requirement Section 375. The Minister may make rules on beneficial ownership, beneficial owners and the identification, verification and disclosure of beneficial ownership as per requirement Section 123(4).

¹ The Statutory Instruments No. 14, 15 and 21 of 2019 provides for rules on beneficial ownership, beneficial owners and the identification, verification and disclosure of beneficial ownership.



Are companies required to declare the beneficial owners of shares at incorporation of a company?

At incorporation companies limited by shares, unlimited companies and public limited companies are required to file a statement of beneficial ownership which shall state, in respect of each beneficial owner:

- ✓ the full names;
- ✓ the date of birth;
- ✓ the nationality or nationalities;
- ✓ the country of residence;
- ✓ the residential address; and
- ✓ any other particulars as maybe prescribed.



Are existing companies required to declare who the beneficial owners of shares are?

Yes. Existing companies are required to notify the Registrar in the prescribed form, within fourteen days of such change, where a change occurs with respect to the particulars of shareholding or beneficial ownership stated in a Register maintained in accordance with this Act.

Pursuant to section 21(2) the Registrar has established and maintains a Register of beneficial owners in manual or electronic form.



Are shareholders obliged to disclose information on the beneficial ownership of all the shares they hold in a company?

Section 123 of the Companies Act states that where the name of a person who is not the beneficial owner, is entered in the register of members as the holder of a share, the person shall make a declaration to the company within such time and in such form as may be prescribed, specifying the name and other particulars of the beneficial owner of the share.