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KEY ASPECTS OF THE NEW 2023 COMPANIES (BENEFICIAL OWNERSHIP) REGULATIONS.

On 21st July, 2023 the Companies (Beneficial Ownership) Regulations, (G.N. No. 478 of 2023) were published and consequently revoked the previous Companies (Beneficial Ownership) Regulations, (G.N. No. 391 of 2021).

The new regulations, made under Section 483(2) of the Companies Act (No. 12 of 2002), have brought about several changes and consider various aspects that were not in the 2021 regulations. Join us as we delve into an explanation of the changes as well as their respective implications on the subject of Beneficial Ownership in Tanzania.

KEY ASPECTS OF THE 2023 REGULATIONS

Definitions

In the previous 2021 Regulations, the interpretation provisions only defined three aspects which were the Companies Act, beneficial owner and Registrar.

The interpretation provisions under Regulation 2 of the new 2023 Regulations have been expanded to include definitions of beneficial interest, direct beneficial owner, indirect beneficial owner, direct ownership & registered owner, among other things.

The new Regulations have changed the meaning of a “Beneficial Owner” to reflect the collective meaning of a Beneficial Owner as found in the Companies Act, (No. 12 of 2002). The new 2023 Regulations have introduced definitions of:

- “Beneficial Interest” to mean a substantial economic interest or benefit or substantial or significant control in a company,
- Direct Beneficial Owner to mean a natural person who holds or acquires a beneficial interest in the company and registered in his name,
- Indirect Beneficial Owner to mean a natural person who holds or acquires a beneficial interest in the company not registered in his name,
- Direct Ownership to mean a direct beneficial ownership and
- Registered Owner to mean any person whose names appear on the Register of Members.

Definitions for "Act" and "Registrar" have remain unchanged.

PARTICULARS OF BENEFICIAL OWNERS

Submission of Particulars for Direct and Indirect Beneficial Owners:

In Regulation 3(1) of the previous 2021 Regulations, filing requirements for a beneficial owner were that a Company would have to submit particulars of all beneficial owners of the Company by way of Form No. 14b [as per the Companies (Forms) Rules] to the Registrar of Companies. In the new 2023 Regulations, there is currently a filing distinction between direct beneficial owners and indirect beneficial owners.

In the new 2023 Regulations, there is currently a filing distinction between direct beneficial owners and indirect beneficial owners. Particulars on direct beneficial owners are to be filed and made known to the Registrar via the Tanzania Beneficial Ownership Portal within 30 days from the date when their names were placed in the company’s register of members and beneficial owners.

Indirect beneficial owners’ particulars are to be filed and made known to the Registrar by way of Form No. 14b [as per the Companies (Forms) Rules] within 30 days from the date when their names were placed in the company’s register of members and beneficial owners.

Notification of Cessation of Beneficial Ownership

The new 2023 Regulations require companies to file a notice of cessation for indirect beneficial owners within thirty days from the date of cessation using Form No. 14c as per the Companies (Forms) Rules. This requirement was more generalized in the previous 2021 Regulations which required any beneficial owner's cessation to be filed within 30 days of cessation via form No. 14c however the new 2023 Regulations do not direct filing requirements for cessation of Direct Beneficial Owners.

Defaults in Filing

Regulation 3(4) of the previous 2021 Regulations held the company and all its officers, shareholders and the beneficial owner (in default of the filing requirements) liable for payment of late filing fees as per the Companies (Fees Payable to Registrar) Regulations. Regulation 3(6) of the new 2023

Regulations holds only the company itself liable for a default in these filing requirements.

DECLARATION OF BENEFICIAL INTEREST

The provisions on declaration of beneficial interest are largely the same between the new and the previous Regulations however the new 2023 Regulations have a change under Regulation 4(2) which require an indirect beneficial owner to file a declaration of beneficial interest to the company within which that person has beneficial interest by way of Form No. 14e as prescribed by the Companies (Forms) Rules. Filing is to be done within 30 days.

The previous 2021 Regulations required the declaration to be filed by any person who held or acquired a beneficial interest specifically by shares in a company not registered in his name within 30 days.

Regulation 4(3) of both the previous and new Regulations are similar in that they require a company, upon receipt of a declaration, to note such declaration in its register of members and beneficial owners, make a payment of prescribed fees and then file the particulars of in a return within thirty days of receipt. The new 2023 Regulations add that the particulars are to be filed by way of Form No. 14b.

CHANGE IN BENEFICIAL OWNERS

Regulation 5 on both the previous and new Regulations on the Change in Beneficial Owners has not seen a major change however the requirements of filing the particulars of change of its beneficial owners in form No. 14f prescribed in the Companies (Forms) Rules within thirty days from the date of change is now placed specifically on indirect beneficial owners rather than beneficial owners as a whole.

The requirements for notification of any transfer or transmission of shares or an increase or reduction of share capital or a restructuring of a company's share capital or changes in the voting rights leading to any change in beneficial interest through Form No. 14f still stand. The company shall also be precluded from registering any notices of those transactions until after complying with the aforementioned requirements of filing Form No. 14f signed by at least one director of the company or a company secretary, along with identification documents for each beneficial owner.

NON-DISCLOSURE OF A BENEFICIAL OWNER'S INFORMATION

Regulation 6 of both previous and current Regulations generally prohibits a company from disclosing information of its beneficial owners. Some exceptions have, however, been added by the new 2023 Regulations.

A disclosure of the information of beneficial owners can now be made where such a disclosure is in compliance with instructions from the respective beneficial owner or in compliance with the requirements of any other written law.

The new Regulations also have changed Regulation 6(b) which previously stated that a disclosure can be made in compliance with the requirements of the previous Regulations. Currently the exception for non-disclosure has been expanded where a company may disclose information of its beneficial owners

in compliance with any requirement of the Companies Act (No. 12 of 2002).

REGISTER OF BENEFICIAL OWNERS

Regulation 7(2) has been introduced in the new 2023 Regulations. The new addition empowers the Registrar to make available information on beneficial owners of a company to competent authorities upon their written request to the Registrar.

For the purpose of reference and clarity, the competent authorities are provided under Section 451B of the Companies Act (No. 12 of 2002, as amended by Section 16 of the Finance Act, 2020) as follows:

The information on the beneficial owners of a company held by the Registrar in the register of beneficial owners shall be accessible to:

(a) national competent authorities with designated responsibilities for combating money laundering and terrorist financing;

(b) national competent authorities that have the function of investigating or prosecuting offences related to money laundering and terrorist financing, or of tracing, seizing, freezing and confiscating criminal assets;

(c) the Financial Intelligence Unit;

(d) the Tanzania Revenue Authority;

(e) Government institution responsible for overseeing or implementing economic empowerment of Tanzanian nationals pursuant to the respective laws; and

(f) any other national competent authority, other than the authorities specified in paragraphs (a),(b) and (c) which are responsible for the prevention of money laundering and funding of terrorism.

NON-DISCLOSURE OF CONFIDENTIAL INFORMATION

The previous 2021 Regulations concluded with Regulation 11 which prohibited the Registrar and other officers performing the duties under the Companies Act (No. 12 of 2002) from communicating confidential information obtained as per the previous Regulations to persons not entitled to receive nor disclose the same to the public or to make any other use of it.

The new 2023 Regulations have expanded this provision by including authorized officers, authorities and units as provided above under Section 451B of the Companies Act (No. 12 of 2002, as amended by Section 16 of the Finance Act, 2020). Regulation 11, however, provides that this prohibition applies against communications with unauthorized persons.

Note: This prohibition applies to officers whether currently employed or no longer employed in their respective departments.

Extension of Time

The new 2023 Regulations have introduced a new provision on extension of time through Regulation 12 of the new 2023 Regulations. The addition allows for companies that were unable to file the required beneficial ownership information within the prescribed time to apply to the Registrar for an extension of time to file the information.

The additional time for extension, however, is limited to not more than 30 additional days.

CONCLUSION

Both Regulations share core requirements and features related to identifying and reporting beneficial owners as well as handling matters on beneficial ownership but differ in specific provisions regarding notification, forms for submission, access to and use of information and the scope of liability for late filing as well as the ability to seek for an extension. Companies in Tanzania should carefully review these regulations to ensure compliance with the applicable requirements.

However, should more explanation and/or advice be needed, do not hesitate to contact Cymbell Attorneys via law@cymbellattorneys.com.

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