



Companies and Intellectual  
Property Commission

a member of **the dtic** group

# SAICA WEBINAR

BENEFICIAL OWNERSHIP  
ANNUAL RETURNS  
FOREIGNER ASSURANCE

16 MAY 2024





# BENEFICIAL OWNERSHIP DECLARATION

# What is Beneficial Ownership Declaration

- Refer to webinar on this topic
    - <https://www.youtube.com/watch?app=desktop&v=2Ts85NJ6nGU>
  - In short, it is the natural person who directly or indirectly owns or through various means controls or influences the affairs of a company, external company or close corporation
- (above is a simplification and should not be seen as the legal definition)

# Objective of Beneficial Ownership Declaration

- Have a register of natural persons who own or exercise control over legal entities;
- To bring South Africa in line with international best practices
- To assist law enforcement with relevant information when it comes to their investigations of who the ultimate owners of an entity are and to hold such persons accountable; and
- To mitigate the risks identified in the national risk assessment where legal persons were identified as vehicles prone to abuse for money laundering and terror financing activities.

# Objective of Beneficial Ownership Declaration

- Beneficial ownership has the following benefits for the country:
  1. The numerous benefits for our economy in knowing who owns whom will make our economy investor friendly, and the cost of capital to be reasonable.
  2. When there are contraventions of the country's laws, law enforcement agencies will be able to easily source information about real/beneficial owners of the relevant entities.

# BO-REGISTER ENHANCEMENTS

- (a) Non-affected company with beneficial ownership information – companies that are not classified as “affected companies”, and have beneficial ownership information to declare – standard BO-register requirements;
- (b) Affected company – companies classified as affected companies, whether beneficial ownership to declare or not – upload mandatory documentation (no BO-information is completed);
- (c) Non-affected company without beneficial ownership information – companies not classified as affected companies with zero beneficial owners – upload of mandatory documentation.

# SELECTION OF CATEGORIES

In order to guide on the correct process to follow, each entity must answer 2 questions-

1. First, a company must ascertain whether it is an “affected” company or “non-affected” company as per the definition in the legislation;
2. Once this question is answered, the company must ascertain whether it holds any beneficial owners as per the definition provided for in the Act.

Certain criteria can be applied, when ascertaining whether beneficial ownership is applicable to an entity or not, including:-

- 5% threshold;
- Ownership – members of an NPC, are not necessarily owners; i.e. derives any benefit from the company, etc.
- Board of directors exercises effective control – if the answer is yes, then the board is regarded as beneficial owners and can be declared.

The responses to the above 2 questions will guide any company in filing its BO information with the CIPC correctly

# Content of the mandate

- May be in the form of a letter, a resolution or power of attorney,
- The mandate must be on a company / close corporation letterhead of the declaring entity;
- Must indicate the natural person (full name, surname and identity number) who must submit the declaration to the CIPC,
- Clearly state the extent of the mandate – to submit beneficial ownership declaration to the CIPC and for what period
- The indicated natural person MUST have a valid CIPC customer code
  - This code must be used during filing – cannot use another code
- Mandate must be accompanied by a certified ID copy of the filer;
- Must be signed by at least 50% +1 of the directors of the company (ordinary resolution requirements), and all of the members of a CC.

# Securities / Member Register

- Every company and external company MUST keep a share register (S 50 of the Companies Act) AT all times of issued shares
- NPC's and CC's – members registers

Content of securities register – Regulation 32(3)

- Name and ID (unique identifier);
- Number and class of securities;
- Beneficial interest – extent of interest
  - Name & ID;
  - Business, residential / postal address;
  - Contact info (e-mail)
- Beneficial owner information
  - Full name; d.o.b; ID / passport number;
  - Residential and postal address;
  - E-mail address;
  - Extent of ownership / effective control

# BENEFICIAL INTEREST REGISTER

## Content of beneficial interest register – Reg 32A

- Natural person – full name; ID / passport; country of issue;
- Juristic person – full name and reg number;
- Business / residential / postal address;
- E-mail;
- Extent of beneficial interest – ownership / control

## Disclosure Form (not mandatory)

- Complex ownership structures – organogram;
- CIPC may at any time require, or cause, the verification of information and documentation – Regulation 5(2).

# STEP BY STEP GUIDES

Step by Step Guides on the BO-register and legislative requirements in the form of a USER GUIDE is available on the CIPC website for download.

The USER GUIDE contains information pertaining to the BO-register and practical implications of how to complete the declarations; high level legislative requirements as well as the reason why CIPC is requesting the information and how it will be used.

# COMPLEX BO STRUCTURES

In terms of legislative requirements, ALL companies, external companies and close corporations, must submit their beneficial ownership declarations at least once annually, or as and when it changes.

A beneficial owner can ONLY be a natural person – in order to drill down to the natural person in complex ownership structures that may include juristic persons (companies, Trusts, etc.) declaring companies need to declare the natural person BO's and thus where complex structures exist – make use of the disclosure form (organogram).

### Paid Annual Returns - 2013 / 169370 / 07

AR Year	Customer Code	Amount Paid	Tracking Number	Date Filed
2014	SWIFT	-150.00	9370769881	2022-08-10
2015	SWIFT	-150.00	9370769883	2022-08-10
2016	SWIFT	-150.00	9370769884	2022-08-10
2017	SWIFT	-150.00	9370769885	2022-08-10
2018	SWIFT	-150.00	9370769886	2022-08-10
2019	SWIFT	-150.00	9370769887	2022-08-10
2020	SWIFT	-150.00	9370769888	2022-08-10
2021	SWIFT	-150.00	9370769889	2022-08-10

### Outstanding Annual Returns - 2013 / 169370 / 07

AR Year	AR Month	AR Non-Compliance Date	Turnover
2022	9	2022-11-10	<input type="text" value="0"/>
2023	9	2023-11-10	<input type="text" value="0"/>

Turnover amount(s) must be a whole number, no decimals.

**CALCULATE OUTSTANDING AMOUNT**



Filing of beneficial ownership declarations is compulsory for all companies and close corporations. Failure to adhere to the requirements may result in administrative sanctions and enforcement. If you wish to proceed with beneficial ownership filing, click NEXT. If you want to file at a later stage click IGNORE [NEXT>>](#).

# How to continue with Annual Return Filing

- Click on Annual Return service via any of the allowed channels

# What is annual returns?



Think of Annual Returns as an annual renewal for your business to conduct business (*not a legal description*)

- Annual Returns is an annual filing of information with the CIPC to confirm the latest information of the company or close corporation (as at the date of filing)
  - Check: Corporate information e.g., directors, auditor, address, financial year end and company name is up to date
  - Check: Financial record keeping and financial information on companies and close corporations (AFS or FAS)
  - Check: Level of compliance with Companies Act
  - **Check: Who is beneficial owners**
  - Check: Operational information e.g., number of employees, active or dormant, main business activity and were conducting business

*All the above to help CIPC to execute its various functions and objectives*

# What is Annual Returns?

- Refer to the following webinar:-
  - <https://www.youtube.com/watch?v=fUhE5QgBxWM>

# Changes on Annual Returns

- As from 11 December 2023, two changes will be incorporated:-
  - (i) Beneficial Ownership Declaration
  - (ii) Validation of turnover with information filed on iXBRL
- It will be implemented in phases across the different channels on which AR can be filed
  - Starting with e-Services
- 1 April 2024 – mandatory on all channels



# WHY IS COMPLIANCE IMPORTANT

# Why important for CIPC to have correct information

- CIPC is the custodian for all registered corporate entities in South Africa
  - CIPC is the source registry of the information
- Public and government uses CIPC information to make decisions
  - E.g., Government wants to know the size and status of the NPC sector, how many external companies are investing in South Africa, is a specific company compliant in order to do business with it (is it legitimate), who may contract on behalf of the company, where do I find the business to do business with it
  - Critical for CIPC to be up to date

# Why important for CIPC to have correct information

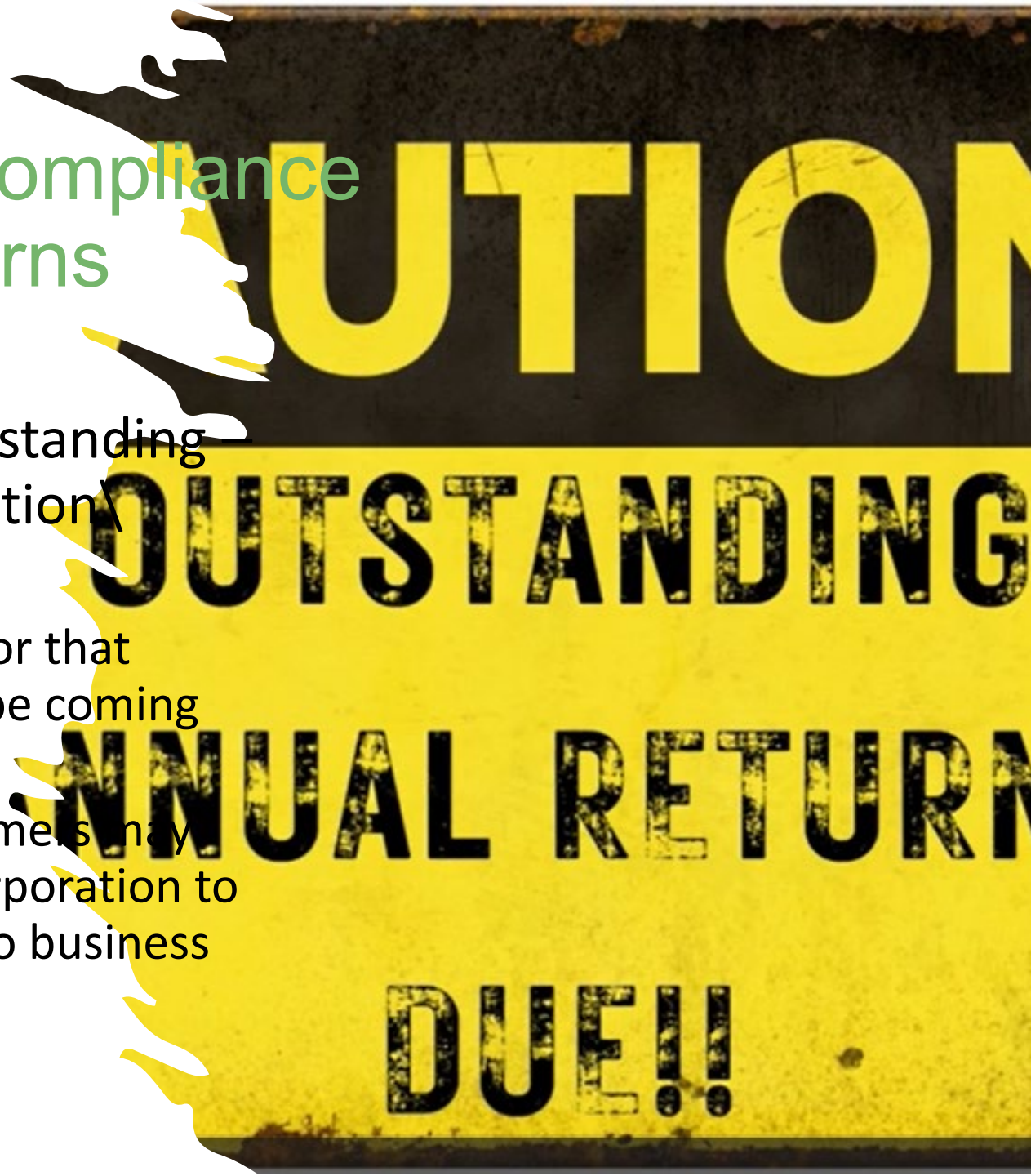
- CIPC mandate to keep an up to date and effective register of all companies, close corporations and co-operatives
  - This also means that companies and close corporations who is not doing business should be removed from the register
    - Can always be re-instated if it had economic value at the time of final deregistration (Registration function)
    - Inactive companies and close corporations that has not been finally deregistered is at risk for being used for fraud, money laundering and terror financing
- Ensuring a reputable corporate environment by increasing compliance with the companies act, promoting a reputable and predictable business environment in South Africa, promoting investment etc.
  - (Regulatory function)

# Why important for CIPC to have correct information

- CIPC information is also combined with various other sources by other private and government organizations
  - E.g.
    - Windeed – combines CIPC corporate and director information with immovable property
    - Banks – to determine the risk profile of companies and close corporations and to make sure they know with whom they are doing business
    - SARS – to know how many prospective corporate taxpayers there are
- CIPC information is used during civil and criminal investigations
- CIPC even uses its own data to take companies to court for noncompliance with the Act, director misconduct

# Consequences of non-compliance with Annual Returns

- 2 + successive Annual Returns outstanding systematically placed in deregistration
  - Can still file
  - Deregistration status is a risk indicator that company, or close corporation may be coming to an end soon
    - Banks, service providers or customers may require the company, or close corporation to file Annual Returns for them to do business
- Continued noncompliance = final deregistration



# Consequences of Deregistration



**Company, or close corporation as a registered business ceases to exist**

Looses benefits of being a registered business

- Perpetual existence
- Limited liability



**Directors can be held personally liable for all debt**



**Banks may freeze your bank account**



**Service providers may stop doing business with you**



**Creditors may refuse to pay**

**Until Re-instatement**

# Consequences of non-compliance with Beneficial Ownership

- CIPC will commence an investigation against the company and issue a compliance notice
- Once BO declaration is mandatory before filing AR, you will not be able to file AR and therefore will be finally deregistered
- Criminal offence to submit false or incorrect information to the CIPC

**CAUTION**  
**OUTSTANDING**  
**ANNUAL RETURN**  
**DUE!!**



# HOW TO FILE ANNUAL RETURNS

# Step by Step Guide

- Step by step guide will be published closer to release date
- Refer to screens above
- For more information on Beneficial Ownership and Annual Returns refer to separate webinars



# FOREIGNER ASSURANCE

# When and Why

- If the BO filing is for a natural person whom is a foreigner national – must be assured first via FAV (Foreigner Assurance Service)
- accurately capturing foreign national details on registry
- Allows for ease of transacting – assured once and core information reusable on other services
- Assists in the correct identification of foreign nationals – crucial in applying security measures relating to foreign nationals
- Assists in the identification of natural persons involved in suspected terror financing, money laundering, and other offences.

**This is of national importance**

# Common Challenges

- Refer to relevant Notice
- Key categories of challenges
  - Quality of capturing of foreign national details; and
  - Quality of examination of foreign identify documents and passports
  - Certification requirements regarding Commissioner of Oaths



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# THANK YOU