**Regulation of Beneficial Ownership in Zimbabwe**

**Beneficial Ownership – An overview**

The Companies and Other Business Entities Act, [*Chapter 24:31*] (hereinafter the ‘’Act’’) defines beneficial ownership under Section 2 *‘’in relation to a company as a natural person who ultimately owns or controls the rights to or benefits from property or a person who exercises ultimate effective control over a legal person’’.* The beneficial owner with regards to companies, is always a living, breathing human being who directly controls and/or profits from the company’s activities. The Act further specifies as to who qualifies to be a beneficial owner by setting a threshold of holding at least 20 per centum of a company’s shares or voting rights. It therefore follows that one may hold less than 20% of the total shares in number but if the voting rights for the shares held is at least 20%, the individual qualifies as a beneficial owner. This is possible in circumstances where the number of shares, economic benefit and voting rights are not aligned. The Act also identifies beneficial ownership where a natural person exercise significant control or influence directly or indirectly such as the right to appoint or remove a majority of directors. Beneficial ownership is therefore regulated by the Act given its significance in companies and other business entities in Zimbabwe.

**Deemed beneficial ownership**

Section 3 of the Act considers actions of a person, other than an employee who acts as per directions, requests, suggestions and/or wishes of another person to be associates or related party even if no formal communication has been made. The individual benefiting from the decisions, suggestions and/or wishes is deemed a beneficial owner. A near relative, partner, trustee of a trust associated with the person, another company controlled by the person and beneficiaries of a trust controlled by such person are all considered to be deemed beneficial owners. In situations where piercing of the corporate veil is required, deemed beneficial owners may be liable for actions taken in their favour on a personal basis, if the court declare an entity not to be a juristic person.

**Maintaining and filing beneficial ownership**

Form CR16 is used to record beneficial owners for filing with the Registrar of Companies. It provides details of the beneficial owner such as full names, residential address, nationality, ID number, email address, number of shares held as well as percentage shareholding. The Registrar has a right to refuse registration of an entity in terms of section 11 of the Act if its beneficial owners are not identified. It is a requirement of every company or business entity to maintain a register of beneficial owners in line with section 72 of the Act. All companies and/or business entities registered in Zimbabwe should nominate a person resident in Zimbabwe who should maintain a register of beneficial owners as well as its members whose responsibility is to maintain an up-to-date register of beneficial owners.

Details of beneficial owners maintained by the Registrar or the company should be available for inspection upon request by the Financial Intelligence Unit (FIU) or law enforcement agency in connection with investigations for Money Laundering and Proceeds of Crime Act [*Chapter 9:24*] as provided by section 72(3) of the Act. Company secretaries and/or those assigned to file details of beneficial owners should do so within seven (7) days of any change. Any member of the public has a right to inspect beneficial owners from the office of the Registrar as provided by section 72(6) of the Act. Records of beneficial owners should be maintained for a period of at least five (5) years by the company’s administrators or liquidators after dissolution or winding up. Failure to file CR16, appoint a person resident in Zimbabwe to maintain the record of beneficial owners and/or avail details of beneficial owners to approved agencies upon request makes a company liable to a fine not exceeding level 14 or imprisonment for a period not exceeding 5 years and/or both fine and imprisonment.

**Conclusion**

Beneficial ownership is also regulated under section 73 of the Act which amongst other things require nominees holding shares on behalf of beneficial owners to disclose details of the actual owners. Concealment of beneficial owners is therefore prohibited even if the nominee enjoys the dividend or other benefits. Registration of shares in any other person who is not a beneficial owner is allowed where the nominee represents a beneficial owner who holds less than 20% shareholding, is a manager or trustee of an investment scheme, executor of a deceased estate, curator or guardian, holder of a licence issued in terms of Part V of the Securities and Exchange Control Act [*Chapter 24; 25*], a central securities depository and/or such other person as prescribed. It is the duty of the company to disclose beneficial ownership and measures such as non-transfer of shares, non-payment of dividends and failure to cast votes at a meeting may be used to ensure that beneficial ownership details are disclosed where required. Non-compliance with provisions regulating beneficial ownership may result in affected shares being vested in the state which can then dispose them in line with section 73(5)(b)(ii). Whilst exceptions exist for certain provisions regulating beneficial ownership, disclosure is key to ensure compliance and avoid unnecessary penalties which include being liable to category 4 civil penalty order at the instance of the Registrar of Companies.