

UPDATE TO CLIENTS

NEW SHAREHOLDING THRESHOLD FOR BENEFICIAL OWNERS' DISCLOSURE



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KEY HIGHLIGHTS:

- ❖ *The Finance Bill, 2022 has proposed changes to the Companies Act, by amending the definition of a Beneficial Owner (BO) and providing that BO will have the meaning ascribed to it under the Anti-Money Laundering Act (as amended) (AML Act);*
- ❖ *The definition of a BO under the AML Act includes a reference to a shareholding threshold of 5% or more; Hence, when disclosing BO information companies should now be guided by the 5% or more direct or indirect shareholding threshold requirement;*
- ❖ *The Finance Bill, 2022 has also introduced penalties for the company and every officer for failure to comply with the BO information disclosures;*
- ❖ *It should be noted that the submission of BO information is still ongoing under the BRELA BO portal and that the deadline is 30th June 2022.*

As it will be recalled, the Companies Act was amended by the Finance Act 2020 to introduce the concept of BOs, and BO Regulations were passed requiring all companies in Tanzania to file prescribed company forms disclosing information about their BOs. This process has been ongoing on the BRELA BO portal and the deadline for submission has been extended to 30th June 2022.

The definition of BO provided under the BO Regulations was silent on the issue of a shareholding threshold for BO disclosure. Initially, BRELA officials had informally communicated that the preferred threshold for BO disclosures would be 25%. However, there was no regulation to confirm this. Now, we have the Finance Bill, 2022 which has removed this uncertainty, because it proposes to amend the Companies Act, by stating that BO will have the meaning ascribed to it under the AML Act.

The AML Act has an expansive definition of a BO which also provides for a shareholding threshold as follows:

- *5% or more in the legal person or ownership interest of 5% or more in the legal person held by a natural person shall be an indication of direct ownership; or*
- *5% or more or ownership interest of five percent or more in the legal person held by a legal person, which is under the control of a natural person, or by multiple legal persons, which are under the control of the same natural person, shall be an indication of indirect ownership.*

Therefore, once the Finance Bill, 2022 has been enacted, all companies making the BO disclosures will be guided by the 5% or more direct or indirect shareholding threshold requirement.

It should be noted that the Finance Bill, 2022 has proposed to amend the Companies Act by introducing penalties when a company fails to keep a register of members including its register of beneficial owners. Under this amendment, the company and every officer of the company who is in default shall be liable to a penalty of one hundred thousand shillings and an addition of ten thousand shillings for every day during which the default continues.

In line with the new proposed changes we would urge our clients and others to ensure compliance as required and REX will be happy to provide any assistance you may need in this regard.

Should you require any assistance please contact our Senior Associate Nancy Tarimo, via email: n.tarimo@rexattorneys.co.tz, web: www.rexattorneys.co.tz

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