



Frequently Asked Questions (FAQs)

BENEFICIAL OWNERS AND BENEFICIAL OWNERSHIP INTEREST

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BENEFICIAL OWNERS AND BENEFICIAL OWNERSHIP INTEREST

➤ **What legal measure has been taken to ensure transparency with respect to beneficial ownership of companies incorporated under the Companies Act Ch. 81:01 (“Act”)?**

With effect from **30th May 2019**, the Act has been amended by the Companies (Amendment) Act, No. 6 of 2019, to mandate that each company on the Register of Companies, disclose all of the beneficial owners holding an interest in the company.

➤ **What does the term “Beneficial Owner” mean?**

The distinction between the **beneficial** owner and the **legal** owner of a company should be noted.

“**Legal owner**” refers to the one **who**, according to legal principles, **owns the company** through, for example, majority shareholding. That person, **on paper**, is legally entitled to exercise control over the management of the company.

The legal owner may be a natural person or another company (a **legal** person).

“**Beneficial owner**” refers to the one **who actually** directs the management of the business and affairs of the company or the person who ultimately **controls the company**.

The beneficial owner is defined in terms of a natural person only

➤ **Why is it necessary to know who the beneficial owner of a company is?**

Where there are vulnerabilities in the financial system, opportunities exist for misuse of the system. It has been determined that a limited liability company is one of the mechanisms used to disguise and convert the proceeds of crime through schemes designed to conceal the beneficial owner of the company. Transparency with respect to the beneficial owner and beneficial interest held in a company is necessary to protect the local and international economic systems against not only the disguising and conversion of the proceeds of crime, but also tax evasion, as well as corruption and unfair business practices

➤ **Has any specific obligation been placed on the company regarding the disclosure of beneficial ownership interest?**

Each company is obligated to:

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1. ascertain and obtain the name, address, occupation and nationality of each beneficial owner holding an interest in the company and the nature of the interest held;
2. maintain a register of the beneficial owners of the company;
3. deliver to the Registrar General a return of the beneficial interest held in the company, within **thirty (30) days** from the receipt of a declaration of beneficial ownership from a beneficial owner or a declaration of non-beneficial ownership from a shareholder of the company;
4. deliver to the Registrar General a return of the issuance or transfer of shares within **thirty (30) days** of the issuance or transfer of the shares;
5. ensure that the return contains current information up to the date of delivery of the return; and
6. annually verify the information on record at the Companies Registry through the filing of its annual return.

➤ **Is there a prescribed form for the return of beneficial interest?**

The return of beneficial interest is a prescribed form - **Form 45**

➤ **Is there a prescribed form for the return of issuance or transfer of shares?**

The return of issuance or transfer of shares is a prescribed form - **Form 46**

➤ **What is the consequence for failure to ascertain and obtain information on the beneficial owners holding an interest in the company?**

Where a company fails to take reasonable steps to ascertain and obtain information on the beneficial owners holding an interest in the company, the company, every director and officer of the company commits an offence and is liable on summary conviction to a fine of ten thousand dollars and to imprisonment for three years and, for every day in which the offence continues, a further fine of three hundred dollars.

➤ **What is the consequence for failure to file a return of the beneficial interest held in the company?**

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Where a company fails to file a return with the Registrar General, as prescribed, the company and any director and officer of the company who knowingly and recklessly fails to file the return commits an offence and is liable on summary conviction to a fine of ten thousand dollars and to three years' imprisonment and a further fine of three hundred dollars for everyday the offence continues.

➤ **What is the consequence for failure to file a return of the issuance or transfer of shares?**

Where a company fails to file a return of the issuance or transfer of shares with the Registrar General, as prescribed, the company, and every director and every officer in default commits an offence and is liable on summary conviction to a fine of ten thousand dollars and to three years imprisonment and a further fine of three hundred dollars for every day the offence continues.

ASCERTAINING AND OBTAINING BENEFICIAL OWNERSHIP INFORMATION

➤ **Does the Act, as amended, include a definition of beneficial owner?**

The Act, as amended, defines “beneficial owner” as:

1. the natural person who ultimately owns or controls the company through indirect or direct ownership or control through other means, other than a company listed on a regulated market that is subject to disclosure requirements which ensure adequate transparency of ownership information; or
2. if no natural person is identified or if there is any doubt that the person identified with the controlling ownership interest is the beneficial owner, the natural person who exercises control through other means; or
3. if no person is identified or if there is any doubt that the person identified is the beneficial owner, the natural person who holds the position of senior managing official.

There is no threshold set in the definition. Therefore, the *ultimate* natural person or persons who exercise effective control over the management and affairs of the company **must** be identified.

➤ **How is this definition to be applied in order to ascertain the beneficial owner?**

To ascertain the beneficial owner, the company must examine its corporate structure to determine who is/are the natural person/s exercising control over the management and affairs of the company, by virtue of:

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- a) **direct ownership** where, for example, the shareholder/legal owner of the company is a natural person (the legal and ultimate beneficial owner are one and the same);
 - b) **indirect ownership** where, for example, the shareholder/legal owner of the company is a legal person (the ultimate beneficial owner is the natural person with beneficial interest in the intermediate holding company);
 - c) **indirect control** where, for example, the shareholder/legal owner of the company acts as agent on behalf of the beneficial owner to appoint senior management (the ultimate beneficial owner is the natural person who exercises such influence or power);
 - d) **control through other means** where, for example, the ultimate beneficial owner uses, enjoys, or benefits from, the assets owned by the company in circumstances where the company defaults on certain payments or the beneficial owner participates in the financing of the business or because of a personal relationship; or
 - e) **holding the position of senior managing official** such as, the chief executive officer, chief financial officer, managing or executive director or president.
- **Does the Act, as amended, prescribe a method by which the company should seek to ascertain and obtain beneficial ownership information?**
- The Act, as amended, states that the company must issue a notice to all shareholders requiring a declaration be submitted to the company. This notice must be issued as follows:
1. upon the commencement of the amendments to the Act, the notice must be issued before the expiration of a period of twelve (12) months; and
 2. on an annual basis thereafter.
- **Is there a prescribed form for the notice to be issued to shareholders?**
- The notice is a prescribed form - **Form 40**

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RESPONSIBILITIES OF SHAREHOLDERS AND BENEFICIAL OWNERS UNDER THE ACT

➤ **What are the responsibilities of shareholders in relation to the disclosure of beneficial ownership interests in a company?**

Every shareholder who is entered in the register of members as the holder of shares, but does not hold the beneficial interest in the shares, is responsible or obligated as follows:

1. In the case of a person who is such a shareholder at the commencement of the amendments to the Act, that person must, within **thirty (30) days**, submit a declaration to the company disclosing the beneficial interest in the company; and
2. subsequently this shareholder must, within **thirty (30) days** of a change in the beneficial interest in the shares held by him, submit a declaration to the company disclosing the nature of the change. For example where:
 - a) the shares held by this **shareholder** are transferred to another shareholder;
 - b) there is a change of the beneficial owner of the shares; or
 - c) there is a change of particulars of this shareholder or the beneficial owner.

➤ **Is there a form approved by the Registrar General for the declaration of non-beneficial ownership?**

There is a form approved by the Registrar General for the declaration of non-beneficial ownership - **Form 41**

➤ **Is there a form approved by the Registrar General for the declaration by the shareholder or former shareholder of a change in beneficial interest?**

There is a form approved by the Registrar General for the declaration by the shareholder or former shareholder of a change in beneficial interest - **Form 43**

➤ **What are the responsibilities of beneficial owners in relation to the disclosure of beneficial ownership interests in a company?**

1. Upon the date of commencement of the amendments to the Act, any natural person who was a beneficial owner of a company, prior to that date, and whose name either (1) was or (2) was

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not on the register of members as the holder of shares, must, within **thirty (30) days** of the issue of a notice by the company, submit a declaration to the company disclosing his beneficial interest in the company;

2. Subsequently, any natural person who acquires beneficial interest in a company but whose name is not entered in the register of members as the holder of shares, must, within **thirty (30) days** of acquiring the interest, submit a declaration to the company disclosing his beneficial interest in the company; and
3. A beneficial owner identified at 1. and 2. above must, within **thirty (30) days** of a change in the particulars of his beneficial interest in the company, submit a declaration to the company disclosing the nature of the change. For example where:
 - a) the beneficial owner ceases to be beneficial owner;
 - b) the beneficial owner is not entered in the register as the holder of the shares in which he holds a beneficial interest and there is a transfer of the shares from one shareholder to another; or
 - c) there is a change of particulars of the beneficial owner or shareholder.

➤ **Is there a form approved by the Registrar General for the declaration of beneficial ownership?**

There is a form approved by the Registrar General for the declaration of beneficial ownership - **Form 42**

➤ **Is there a form approved by the Registrar General for the declaration by the beneficial owner or former beneficial owner of a change in beneficial interest?**

There is a form approved by the Registrar General for the declaration by the beneficial owner or former beneficial owner of a change in beneficial interest - **Form 44**

➤ **What is the consequence for failure by a shareholder or beneficial owner to discharge the responsibilities identified in the Act?**

The failure by either a shareholder or a beneficial owner to file a declaration, as prescribed, is an offence punishable on summary conviction (i.e. in the magistrates' courts) by a fine of ten thousand dollars (\$10,000) and three (3) years' imprisonment and a further fine of three hundred dollars (\$300) per day for every day in which the offence continues.

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BEARER SHARES, BEARER SHARE CERTIFICATES, SHARE WARRANTS AND BEARER SHARE WARRANTS

➤ **Has there been any amendment to the Act regarding the issue of bearer shares, bearer share certificates, share warrants and bearer share warrants?**

Ownership of these types of instruments is transferred without any record of the transfer being kept, and, as a result, the actual owner of the instrument remains unknown. Therefore the Act has been amended to prohibit the issue of any of these instruments.

➤ **What action must be taken by a company which issued a bearer share, bearer share certificate, share warrant or bearer share warrant prior to the commencement of the amendments to the Act?**

1. Where, prior to the commencement of the amendments to the Act, a company issued a share warrant or bearer share warrant the company must, **within six (6) months** of the date of commencement, file a return with the Registrar General of the number of share warrants and bearer share warrants issued by the company.

Note: Before this amendment to the Act the issue of a bearer share or bearer share certificate was prohibited. The Act was amended in this regard to further prohibit the issue of a **share warrant** or bearer share **warrant**.

2. The company must maintain a register of all share warrants and bearer share warrants issued.
3. Where a company notifies the Registrar General of the issue of such an instrument the company must also:
 - a) identify who the owner of the instrument is by issuing a notice requiring the holder of the instrument to bring in the instrument to the company for registration within six (6) months of receipt of the notice;
 - b) enter the name of the holder in the register of members as the holder of the share or shares represented by the instrument; and
 - c) include the particulars of all share warrants and bearer share warrants in its next annual return after the commencement of the amendments.

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➤ **What action must be taken by an external company, registered in Trinidad and Tobago, which issued a bearer share, bearer share certificate, share warrant or bearer share warrant prior to the commencement of the amendments to the Act?**

1. Where, prior to the commencement of the amendments to the Act, an external company registered in Trinidad and Tobago, issued a bearer share, bearer share certificate, share warrant or bearer share warrant in Trinidad and Tobago the external company must, **within twelve (12) months** of the date of the commencement, file a return with the Registrar General of the number of bearer shares, bearer share certificates, share warrants and bearer share warrants issued by the external company in Trinidad and Tobago.

Note: Before this amendment to the Act there was no prohibition against the issue, in Trinidad and Tobago, of a bearer share, bearer share certificate, share warrant or bearer share warrant by an external company.

2. The external company must maintain a register of all bearer shares, bearer share certificates, share warrants and bearer share warrants issued.
3. Where an external company notifies the Registrar General of the issue of such an instrument the external company must also:
 - a) identify who the owner of the instrument is by issuing a notice requiring the holder of the instrument to bring in the instrument for registration within six(6) months of receipt of the notice;
 - b) enter the name of the holder in the register of members as the holder of the share or shares represented by the instrument; and
 - c) include the particulars of all bearer shares, bearer share certificates, share warrants and bearer share warrants, as prescribed, in its next annual return after the commencement of the amendments.