

The Companies (Amendment) Act, No. 6 of 2019

As a result of the passing of the Companies (Amendment) Act, No. 6 of 2019, (“the Act”) with effect from the 30th day of May, 2019 all Companies are *‘inter alia’* required to disclose to the Registrar of Companies the details of all of the beneficial owners holding an interest in a Company.

WHO IS A ‘BENEFICIAL OWNER’?

The Act defines a Beneficial Owner (“BO”) as: a **natural person** only who actually directs the management of the business and affairs of the Company or the person who ultimately controls the Company, that is the person(s) who has(ve) the ultimate beneficial interest of the shares issued in the Company.

The BO of shares that are held directly or indirectly by a company or by trustees, i.e. shares that are under the control of intermediary companies and/or persons such as trustees need to be identified and disclosed to the Registrar on approved forms.

YOUR RESPONSIBILITY REGARDING THE DISCLOSURE OF BENEFICIAL OWNERSHIP INTEREST

Each Company is obligated to:

1. Ascertain and obtain the names, addresses, occupation and nationality of each BO holding an interest in the Company and the nature of the interest held by issuing a notice to its listed shareholders once annually requiring that a declaration be submitted by each shareholder confirming whether the shares registered in his/her or its name are beneficially owned by him/her or it and if not identifying the beneficial owner of the shares
2. Maintain a register of the BOs of the Company;
3. Within thirty (30) days from the receipt of a declaration (Form 40) from a BO or a declaration of non-beneficial ownership (Form 41) from a shareholder of the Company; deliver to the Companies Registry a Return of the Beneficial Interest (Form 45) held in the Company;
4. Ensure that the return contains current information up to the date of the delivery of the Return; and
5. Annually verify the information on record at the Companies Registry through the filing of an annual return (Form 28) as amended.

THE PROCEDURE:

1. Every year, the Company through its company secretary shall communicate to each of its requesting that the shareholders declare whether they are the BO of the shares issued to them on Form 40 – Notice to Shareholders of the Company to declare Non-beneficial Ownership which is not required to be filed at the Companies Registry;
2. If the BO and the listed shareholder (SH) are not the same, the BO shall submit a Form 42 (Declaration of Beneficial Ownership) to the Company and the SH shall



submit a Form 41 (Declaration of Non-Beneficial Ownership) to the Company. This declaration must be sworn before a Commissioner of Affidavits or a Notary Public before being returned to the Company. The sworn declaration is retained by the Company Secretary and is not required to be filed at the Companies Registry;

3. The Company using the particulars contained in the sworn declarations shall complete Form 45 (Return of Beneficial Interest in the Shares of the Company) and file same at the Companies Registry;
4. If the BO and the SH are the same, then the BO is required to submit Form 42 to the Company and then the Company will use the particulars that have been declared to duly complete to Form 45 and file same at the Companies Registry.

Form 45 must be filed at the Companies Registry within thirty (30) days of receipt of Declaration(s) of Beneficial Interest

In this regard we wish to provide you with a revised fee schedule in connection with the new forms as prescribed by the Companies (Amendment) Act, No. 6 of 2019:

FORM	DESCRIPTION	FEE
40	Notice to Shareholders to Declare Non-Beneficial Interest of Shares in a Company	\$500.00
42	Declaration of Beneficial Interest (to be signed in the presence of a Commissioner of Affidavits or a Notary Public)	
28	Annual Return	\$1,000.00
45	Return of Beneficial Interest in the Shares of a Company	\$1,000.00

Please note that our professional fees are subject to Value Added Tax and there will be disbursements of forty dollars (\$40.00) per Forms 28 and 45

To ensure a smooth process, we urge all directors to take the initiative of contacting J.D. Sellier + Co. and provide written instructions (an email will suffice) to instruct its Attorneys-at-Law and after having paid the professional fees plus disbursements, prepare and file the documentation at the Companies Registry.

Please email us at CSSL@jdsellier.com for further information or to commence the process.

Please note that this information is provided for purpose of general information and is not to be considered legal advice.