

# Portfolio Committee on Trade, Industry and Competition

Briefing on response to grey listing of South Africa by the financial action task force (FATF) and the progress on the State Capture Commission Reports

13 June 2023



# Background

- In 1989, the Financial Action Task Force (FATF) was founded, at the initiative of the G7 countries, to develop policies to combat money laundering. Its mandate was later expanded to look at policies to combat terrorism financing. It has close to 40 countries as members. Where a country is not in compliance, it may be blacklisted, which sees financial institutions to shift financial resources and services away from the blacklisted country.
- Following a review of SA laws and processes, a number of deficiencies were identified by FATF, together with recommendations to address these. .
- Based on this, Cabinet requested an Interdepartmental Committee on Anti-Money Laundering and Countering of Terrorism Finance (AML/CTF) to be set up. The Committee comprised of National Treasury and other government departments and enforcement agencies among them being the dtic, Social Development, Justice and Constitutional Development, CIPC and SARS.

# Background

- The objective of the Committee was to co-ordinate actions and make recommendations that ensure that SA addresses the concerns. The standards are also aimed at helping authorities go after money that is the proceeds of crimes like drug dealing, funding of terrorism activities and human trafficking.
- FATF recommended actions in a form of eleven (11) immediate Outcomes (IO). One area focused on the laws dealing with disclosing the beneficial ownership of assets. In relation to shares in listed companies, this falls within the purview of the Companies Act.
- Prior to the FATF report, the dtic had already initiated a process of review of the Companies Act, which led to amendments being proposed in three areas: ease of doing business, disclosure of information on the true owner of shares in a company; and disclosure of information on income differentials within a company. A draft Bill was gazetted for public comment in 2021.
- In 2022, Cabinet decided that given the number of laws affected by the FATF recommendations, an omnibus bill, in the form of the General Laws Amendment Bill, be prepared and approved by parliament.

# Background

- However, on 24 February 2023, SA was placed on a list of countries where enhanced monitoring (commonly known as 'greylisting') is required. This is a first step that may result in blacklisting, if not addressed.
- The General Laws (Anti-Money Laundering and Combating Terrorism Financing) Amendment Act, 2022 was assented into law in December 2022. It amends the Companies Act on matters related to the definition of beneficial owner and the requirement to compile and maintain a register of the "beneficial owners".
- The registers will be accessible to the law enforcement agencies when doing investigations pertaining to money laundering.
- The Companies and Intellectual Property Commission (CIPC) is the regulatory entity in **the dtic** that will enforce the law. Other Departments that were also affected and their laws amended include the Department of Justice and Constitutional Development, National Treasury and the Department of Social Development.
- The Act aims to strengthen South Africa's system of anti-money laundering and combating the financing of terrorism. These laws will strengthen the fight against corruption, fraud and terrorism, and also assist South Africa in meeting the international standards by the Financial Action Task Force (FATF).

# Background

- The concerns addressed by the changes to the law addressed the following:
  - ensuring that competent authorities have timely access to accurate and up-to-date Beneficial Ownership information on legal persons and arrangements; and
  - apply sanctions for breaches of violation by legal persons to beneficial ownership obligations
- In line with commitments made to the Financial Action Task Force and the commitment as South Africa to exit early from the “Increased Monitoring” commonly known as grey listing, CIPC is implementing Phase 1 of a standalone Beneficial Ownership Register. The Data on Beneficial Ownership for all entity types where ownership is 5% and above will be made available to law enforcement, competent authorities and prosecuting authorities to support prosecution through the country’s courts.

# Regulations

- On 24 MAY 2023, the Minister of Trade, Industry and Competition published regulations to require companies to disclose the true owners of shares, as part of strengthening South Africa's anti-corruption and money-laundering legal framework.
- The regulations were developed by a joint team from different departments and follows public consultation.
- The regulations provide for a Beneficial Ownership Register to be kept by companies and the Companies Intellectual Property Commission (CIPC) and will be available for use by law enforcement agencies.
- The publishing of the regulations follow a process that was initiated with proposed reforms to the Companies Act, published in October 2021. Certain provisions of the Companies Act were amended last year through the General Laws (Anti-Money Laundering and Combating of Terrorism Financing) Amendment Act, 2022.
- The publication of the regulations is the first phase of a wider reform to introduce greater transparency in beneficial ownership and interests held by natural persons in companies. Further changes are being considered as part of amendments to the Companies Act being worked on.
- As a consequence of the promulgation, the CIPC is now empowered to collect beneficial ownership information of legal persons, and companies are required to provide information to the CPIC.

# Regulations

- The aim of establishing the Beneficial Ownership register is to have a repository/register of natural persons who own or exercise control over legal entities; to assist law enforcement with relevant information when it comes to their investigations of who the ultimate owners of an entity are; 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.
- The definition of beneficial owner in respect of legal persons as well as further information regarding the filing of, the Securities Register for Companies which are not affected companies, the Beneficial Interest Register for Companies which are affected companies and transitional arrangements with regards to the filing of Beneficial Ownership of existing companies and submission of beneficial ownership information can be found on the CIPC website and e-services platform of the CIPC ([eservices.cipc.co.za](https://eservices.cipc.co.za))
- The regulations will strengthen the fight against corruption and improve the integrity of South Africa's financial system



# Published Guidelines and FAQs



## The Companies and Intellectual Property Commission

### Beneficial Ownership

The Companies and Intellectual Property Commission (CIPC) intends to implement a Beneficial Ownership (BO) register. The aim of establishing the BO register is to have a repository/register of natural persons who own or exercise control over legal entities; to assist law enforcement with relevant information when it comes to their investigations of who the ultimate owners of an entity are; 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.

### Background

The Companies and Intellectual Property Commission (CIPC), responsible for the development of the BO register, has been participating in the mutual and evaluation process conducted by the Financial Action Task Force (FATF). The purpose of the evaluation was to assess the country's laws and measures are already in place to combat money-laundering and the financing of terrorism. The mutual evaluation process was then concluded and the mutual evaluation report was published in October 2021. The country as a jurisdiction was expected to take certain measures to address the deficiencies which were highlighted in the Mutual Evaluation report.

One of the eight (8) areas of strategic deficiencies identified by the Financial Action Task Force (FATF) requires South Africa to ensure that competent authorities have timely access to accurate and up-to-date Beneficial Ownership information on legal persons and arrangements and applying sanctions for breaches of violation by legal persons to BO obligations.

The CIPC as the registrar and regulator of companies, administers about 2.1 million active entities, comprising of Public Companies, Private Companies; Non-Profit Companies; External Companies and more. Currently, the CIPC holds record of legal owners and management of entities in the form of members (close corporations) and directors (companies). As it stands, no record of company shareholders and beneficial owners is recorded by the CIPC. As such, the CIPC recognises its responsibility as one of the key role players in safeguarding the integrity of our regulatory environment in South Africa and integrally placed to manage the risks associated with money laundering, proliferation and terror financing activities.

### Regulatory Framework

To give effect to the implementation of the BO register, and the General Laws (Anti-Money Laundering and Combating of Terrorism Financing) Amendment Act (Act No. 22 of 2022), the Companies Act, Act 71 of 2008 as amended, needs to introduce legal provisions in support of the collection of beneficial ownership information and give the CIPC a mandate to request companies (and other legal persons) to file and update Beneficial Ownership information, as and when applicable.

The beneficial owner in respect of legal persons is defined as follows:

“beneficial owner”, in respect of a company, means an individual who, directly or indirectly, ultimately owns that company or exercises effective control of that company, including through—

- (a) the holding of beneficial interests in the securities of that company;
- (b) the exercise of, or control of the exercise of the voting rights associated with securities of that company;

- (c) the exercise of, or control of the exercise of the right to appoint or remove members of the board of directors of that company;
- (d) the holding of beneficial interests in the securities, or the ability to exercise control, including through a chain of ownership or control, of a holding company of that company;
- (e) the ability to exercise control, including through a chain of ownership or control, of— (i) a juristic person other than a holding company of that company; (ii) a body of persons corporate or unincorporate; (iii) a person acting on behalf of a partnership; (iv) a person acting in pursuance of the provisions of a trust agreement; or
- (f) the ability to otherwise materially influence the management of that company;,”

as per Regulation 32.

A company which does not qualify as an affected company must file their securities register which should include beneficial interest holders of the securities of that company if they are held by one person for and on behalf of another. A securities register of a company which is not an affected company must also include information of its Beneficial Owners (Regulation 32 (3) (b)).

Filing of Securities Register for Companies which are affected companies as per Regulation 30A.

An affected company is defined as follows:

“affected company” means a regulated company as set out in section 117(1) (i) and a private company that is controlled by or a subsidiary of a regulated company as a result of any circumstances contemplated in section 2(2)(a) or 3(1)(a)”

An affected company must file its securities register as prescribed in the regulations. The securities register must comply with the prescribed requirements.

State-Owned companies are considered “affected companies” and will be required to file a register of its beneficial owners, unless exempted by the Minister in terms of section 9(2) of the Companies Act.

## FREQUENTLY ASKED QUESTIONS ON BENEFICIAL OWNERSHIP

### 1. What is Beneficial Ownership?

In respect of a company, means an individual who, directly or indirectly, ultimately owns that company or exercises effective control of that company

### 2. Who is a Beneficial Owner?

An individual/ natural person who, directly or indirectly, ultimately owns 5% and more of a company or exercises effective control of a company

### 3. Can a company/Trust be a Beneficial Owner?

No, only a natural person can be considered a beneficial owner

### 4. Who can file Beneficial Ownership information?

Any person designated/mandated in writing by a company to file BO information on its behalf

### 5. Does a filer need to present a Mandate in order to file the BO information?



# Other steps (Phase 2):

## **MOU's with other registries:**

The Commission has conducted an analysis with regards to external companies registered with us. We have identified jurisdictions in which these companies come from and engagements to conclude MOU's with such jurisdictions have commenced while others were already in place

## **Information Sharing with Other Regulators and Law Enforcement Agencies (LEA's):**

The Commission has been working with other agencies (South African Revenue Service (SARS), Financial Intelligence Centre (FIC), Financial Sector Conduct Authority (FSCA) etc), in developing the system to collect BO information with the objective of ensuring that this information will be triangulated. This will assist in identifying anomalies and investigating areas of non-compliances when identified. The CIPC will also create a platform which will allow for timely access of this BO information to relevant LEA's.

## **Plans for Listed Companies (Defined as Affected Companies in GLAA):**

The Commission is planning on providing a separate dispensation in relation to Affected Companies which are listed on recognised Exchange. The purpose of this is mainly to avoid the duplication of records in that such info is already collect and kept in the records on other Competent Authorities (i.e. STRATE and Computershare). The sharing of this information will be periodically on an Inter-Agency basis. This will however not include Affected Companies which are not listed on exchange.



# State Capture

## State capture recommendation on the Companies Act

The Zondo Commission recommended that Section 162 of the Companies Act to be amended for time bar to permit applications to have directors declared delinquent, to be brought even after two years, on good cause shown.

The dtic has drafted amendments to the Companies Act.

It is being taken through a Cabinet process and is expected to be considered during June 2023. Two options are being considered: either to add the amendments to the current review of the Companies Amendment Bill or to consider this in the next Companies Act legislative review.

# State Capture

The Zondo Commission identified a number of companies implicated in State Capture. The CIPC engaged the Department of Public Enterprises, State Owned Companies that fall within the DPE portfolio and Law Enforcement Agencies during March 2023 regarding potential delinquency applications.

A roadmap was agreed upon by all parties mentioned above.

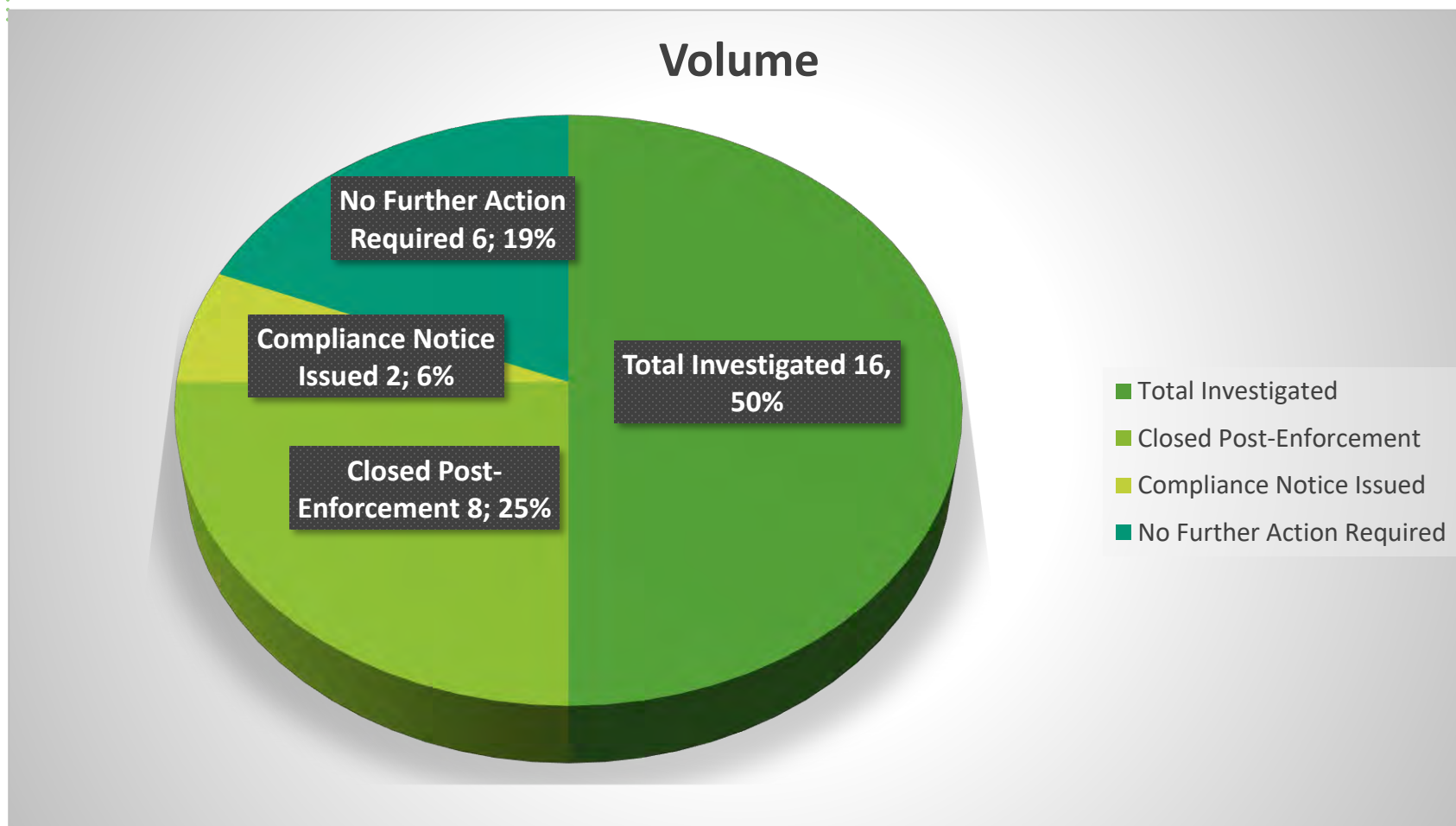
Other actions include referrals of Directors to professional bodies.

As these companies are now the subject of further legal process by DPE, the Committee is requested to engage the DPE on the progress made.

The State Attorney has been instructed to brief Counsel to assist the CIPC in evaluating the merits of specific delinquency applications. As these may be the subject of legal proceedings, the aggregated information are set out in the next slide.

# State capture...continued

CIPC is pursuing private entities and natural persons: Compliance Notices have been prepared (some signed-off for delivery) to cause the companies to provide proof of steps taken to address certain governance matters and the areas requiring attention, per the State Capture report.





# List And Status of Private Entities Investigated

	Entity and Reg. Number	Status
1	LSG Skychefts South Africa 1992/000913/07	Matter closed following satisfactory response received.
2	BidAir Group 1993/004374/07	Matter Closed following satisfactory response
3	BidAir Cargo 2004/019639/07	Matter Closed following satisfactory response
4	JM Aviation South Africa 2015/053564/07	Compliance Notice Issued
5	Swissport South Africa 1992/003624/07	Compliance documents ready to be issued
6	Pricewaterhouse coopers INC 1998/012055/21	Matter resolved and closed
7	Nkonki Inc. 2002/017422/21	Company Liquidated and no further action
8	Air Chefs 1990/006277/30	Compliance Notice to be issued since it has not complied with investigation.

# List And Status of Private Entities Investigated

	Entity and Reg. Number	Status
9	Airbus Southern Africa 1981/003906/07	Matter closed as it has provided a sufficient response.
10	Homix 2012/176951/07	Compliance Notice issued
11	Albatime 2009/021474/07	No contacts were found for this Company Zondo Commission halted investigations and there were no findings
12	Nzunzo Investments 2002/023124/07	The only Director took over ownership after the Zondo Commission completed its work and investigation were stopped and the Director co-operated.
13	Glencore Operations South Africa 1997/017998/07	Matter closed the Company co-operated.
14	Glencore Holdings SA 2008/019942/07	Matter closed the Company co-operated.
15	EOH Holdings 1998/014669/06	The matters is closed as there were no findings of wrong doing by Zondo Commission.
16	Blackhead Consulting B2004/034971/03	The implicated Director resigned from the Company and he is currently facing Criminal charges.

**Thank You**