

NEW BENEFICIAL OWNERS REPORTING FRAMEWORK IN MALAYSIA

In 2020, the Companies Act 2016 (“**CA 2016**”) had introduced provisions relating to beneficial ownership reporting framework with the objective of promoting corporate transparency through a disclosure regime.

Taking into consideration the importance of having a robust reporting framework, a more comprehensive beneficial ownership reporting framework were introduced on **01 April 2024** through the Companies (Amendment) Act 2024 (“**CA 2024**”) in line with the current international standards i.e. the Financial Action Task Force (FATF) and the Organisation for Economic Co-Operation and Development (OECD) as well as current international best practices in the fight against money laundering, terrorist financing, corruption and tax evasion.

The Guidelines for Reporting Framework for Beneficial Ownership of Companies dated 1 April 2024 (“**Guidelines**”) had been issued by the Companies Commission of Malaysia (“**Registrar**”). This Guidelines superseded the “*Guideline for Reporting Framework for Beneficial Ownership of Legal Persons*” issued by the Registrar on 01 March 2020 and 17 December 2020.

Applicability

Beneficial ownership reporting framework is a framework that imposes obligation on companies to obtain, verify and record information of their beneficial owners.

The relevant provisions of the beneficial ownership reporting framework under CA 2024 are applicable to the following legal entities, unless they are exempted:

- > Companies incorporated under the CA 2016
- > Foreign companies registered under the CA 2016

Currently there is no exemption granted to any company from beneficial ownership reporting, although there are provisions allowing the Minister of Domestic Trade and Cost of Living (“**Minister**”) to do so.

Criteria of Beneficial Owners

Section 60A(1) of CA 2024 provides that a person is a beneficial owner of a company if he is a natural person who ultimately owns or controls over a company and includes a person who exercises ultimate effective control over a company. Note that “company” here also includes reference to a “foreign company”.

- > An individual is identified as a beneficial owner of a company limited by shares if he meets one or more of the following criteria, as specified in the Guidelines:

Criteria A	Holds directly or indirectly in not less than 20% of the shares of a company. This situation shall include joint interests, joint agreements and nominees;
Criteria B	Holds directly or indirectly in not less than 20% of the voting shares of a company. This situation shall include joint interests, joint agreements and nominees;
Criteria C	Has the right to exercise ultimate effective control whether formal or informal over the company or the directors or the management of the company;
Criteria D	Has the right or power to directly or indirectly appoint or remove a director(s) who holds the majority of the voting rights at the meeting of directors;
Criteria E	Is a member of the company and, under an agreement with another member of the company, controls alone a majority of the voting rights in the company; or
Criteria F	Has less than 20% of shares or voting rights but exercises significant control or influence over the company.

- > An individual is identified as a beneficial owner of a company limited by guarantee if he satisfies one or more of Criteria C, D or E, as specified above.



Register of Beneficial Owners of a company

- Every company shall keep a register of beneficial owners of the company (“**BO Register**”).
- BO Register must be kept at the registered office, or any other place in Malaysia as notified to the Registrar.
- Supporting documents to verify the beneficial ownership information must be kept together with the BO Register.
- The beneficial ownership information and supporting documents must be kept from the day the individual becomes a beneficial owner and to be retained at least seven (7) years after such individual ceases to be a beneficial owner.
- A company is required to notify the Registrar within fourteen (14) days from the date on which the beneficial ownership information or any change thereof are recorded in the BO Register.

The company and every officer who contravene the above commit an offence and shall, on conviction, be liable to a fine not exceeding twenty thousand ringgit (RM20,000) and, in the case of a continuing offence, to a further fine not exceeding five hundred ringgit (RM500) for each day during which the offence continues after conviction.

Persons responsible for the Beneficial Ownership Information

Every company shall obtain the beneficial ownership information and at all times hold adequate, accurate and up-to-date beneficial ownership information of its beneficial owners. The following parties should be responsible for the beneficial ownership information of companies:

- Board of Directors
- Company Secretaries / Agents
- Members of the company
- Beneficial owners
- Any person other than a member of the company who has received notice under section 60C of the CA 2016

Powers of a company to require disclosure of beneficial owner

- To obtain written beneficial ownership information from its members and any person who is identified as beneficial owner or has information relating to a beneficial owner of the company.
- To seek written confirmation of change of particulars of beneficial owners stated in the BO Register of the company.
- To seek written confirmation whether information on the BO Register of the company is correct.

A company and every officer who contravene the above commit an offence.

Duty of Beneficial Owners of a company to provide information

- It is the duty of an individual to notify the company that he is a beneficial owner of the company, and provide such required information.
- A beneficial owner of a company is required to notify the company of any changes to his particulars in the BO Register.
- A person who ceases to be a beneficial owner of a company must notify the company, as soon as practicable, of the change.

Any person who contravenes the above commits an offence.

Access to Beneficial Ownership Information

The beneficial ownership information is NOT publicly available. However, access is provided to persons or class of persons when they are exercising or discharging their roles and responsibilities under other written laws.

- (i) The following persons would have access to the BO Register kept at the company’s level:
 - Law enforcement agencies and competent authorities in carrying out law enforcement activities based on the respective written laws;
 - Beneficial owner; and
 - Persons authorised by the beneficial owner.
- (ii) The following persons would have access to the BO Register lodged with the Registrar:
 - Law enforcement agencies and competent authorities in carrying out law enforcement activities based on the respective written laws;
 - Beneficial owner;
 - Persons authorised by the beneficial owner;
 - Public authorities; and
 - Reporting institutions gazetted under the CA 2016

Obligations of companies upon enforcement of the new Beneficial Ownership provisions under the CA 2024

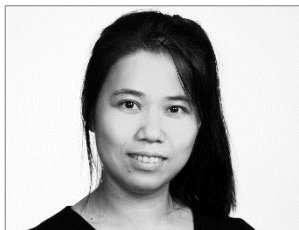
- Companies are given three (3) months period from 1 April 2024 to lodge the latest beneficial ownership information with the Registrar through a newly launched electronic beneficial ownership system (e-BOS).
- Prior to submission of the first annual return, companies shall:
 - (i) obtain and record the beneficial ownership information into the BO Register within sixty (60) days from the date of appointment of the company secretary;
 - (ii) notify the Registrar within fourteen (14) days from the date the beneficial ownership information is recorded in the BO Register.
- Continuing obligation commencing from the submission of the first annual return and subsequently, companies shall:
 - (i) lodge with the Registrar within fourteen (14) days from the date of any changes to the particulars of beneficial ownership information recorded in the BO Register;
 - (ii) lodge annual return together with the beneficial ownership information not later than thirty (30) days from the anniversary of its incorporation date.

Conclusion

The enhancement of the beneficial reporting framework will promote transparency in the corporate sector ecosystem in Malaysia. A comprehensive and complete beneficial ownership information would assist law enforcement agencies in Malaysia in their investigations against serious crimes committed through business entity.



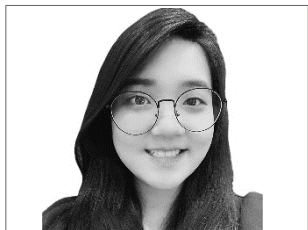
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