

INTRODUCTION TO DISCLOSURE OF BENEFICIAL OWNERSHIP IN COMPANIES

Financial Action Task Force (FATF) is the first international body to set international standards on the beneficial ownership. Recommendations 24 and 25 of the FATF standards provide clarity how countries are to disclosure accurate and up-to-date beneficial ownership information relating to a legal person or legal arrangement.

The rationale for the disclosure of beneficial ownership information is to prevent legal persons from being misused by irresponsible person in a money laundering or terrorist financing activities. At the same time, it is critical to make available accurate information on the beneficial ownership of legal persons to competent authorities and regulatory bodies in a timely manner.

It is statutory duty for companies under Section 68 of the Companies Act (CA 2016) to lodge annual return with the Registrar for each calendar year not later than thirty days from the anniversary of its incorporation date. Hence, by virtue of section 68(3)(j) of CA 2016, the annual return to be lodged with the Registrar shall contain information on beneficial ownership.

In ensuring effective compliance with the disclosure of beneficial ownership information requirement, the company may exercise its powers under section 56(1) of the CA 2016 by issuing notice in writing to its shareholders for them to disclosure the beneficial ownership information for the shares held by them.

Pursuant to section 562 of the CA 2016, the requirement to provide beneficial ownership information is also applicable to foreign companies. A foreign company during the registration of the branch must through its agent submit the beneficial ownership information with the Registrar. A foreign company is also required to submit the beneficial ownership information at the stage it lodges its annual return. The information of the beneficial ownership lodged with the Registrar must be up-to-date and if there any changes occurred, the company must submit the latest changes of the information with the Registrar.

In the near future, SSM will be issuing a Public Consultation on Beneficial Ownership Reporting framework to guide companies towards better understanding of the beneficial ownership concept and how the reporting obligations are met.

Practicing Certificate holders are encouraged to provide feedback on the Public Consultation towards ensuring a viable Beneficial Ownership Reporting framework in Malaysia.