



PROPOSED COMPANIES (AMENDMENT) BILL 2021 & LIMITED LIABILITY PARTNERSHIPS (AMENDMENT) BILL 2021 ON BENEFICIAL OWNERSHIP

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- Company Registry's Role
- Legal framework on Beneficial Ownership in Malaysia
- Guideline for the Reporting Framework for Beneficial Ownership of Legal Persons
- Proposed Amendments to the Companies Act 2016 & Limited Liability Partnerships Act 2012
- Lessons Learnt
- Frequently Asked Questions

COMPANY REGISTRY'S ROLE



Registers & Regulates
Legal Persons



- Companies
- Limited liability partnerships
- Partnerships
- Sole proprietors



Keeps facility to supply
corporate information

Publicly available



Limited only to
Law Enforcement
Authorities



BASIC INFORMATION &
other corporate information

BENEFICIAL OWNERSHIP
INFORMATION

COMPANIES ACT 2016 [ACT 777]

Enforced on 31 January 2017

Definition	Reporting framework	Submission of BO information
<ul style="list-style-type: none">▪ Sec. 2 to be read together with sec. 8▪ Ultimate owner of shares▪ Interest & control in shares	<ul style="list-style-type: none">▪ Secs. 51 & 56▪ Power to request BO information from shareholders▪ To record the BO information as part of Register of Members▪ Keep at registered office	<ul style="list-style-type: none">▪ Sec. 68▪ Declaration in annual return▪ BO information must be lodged if shares are held by trustees or nominees

GUIDELINES FOR THE REPORTING FRAMEWORK FOR BENEFICIAL OWNERSHIP OF LEGAL PERSONS

Effective on 1 March 2020

Objectives

- To assist companies in complying with the BO reporting requirements
- To establish parameters for reporting requirements and continuous reporting obligations

Coverage Area

- Application & exemption
- Main principles and obligations
- Criteria to identify a BO
- Reasonable measures to be taken in identifying a BO
- Transitional period

APPLICATION & EXEMPTION



- The guidelines is applicable to all companies and limited liability partnerships unless exempted
- Exempted companies are:
 - (a) Companies licensed by the Central Bank of Malaysia
 - (b) Companies regulated under the securities laws
 - (c) Companies whose shares are quoted on a stock exchange
 - (d) Companies whose shares are deposited in the central depository
- Exempted LLPs are:
 - (a) Companies licensed by the Central Bank of Malaysia
 - (b) Companies regulated under the securities laws

MAIN PRINCIPLES & OBLIGATIONS UNDER THE GUIDELINES



Identify, obtain & verify the BO Information



Record the BO Information



Keep the BO Information accurate & updated



Update changes to the BO Information & notify the Registrar



Keep the BO Information at the registered office or where the ROM/ ROP is kept



Give access to law enforcement agencies, the BO & authorized persons

CRITERIA TO IDENTIFY A BENEFICIAL OWNER (COMPANY)



2

Has interest, direct or indirect:
not less than 20% shares of the company / a right to share in not less than 20% capital contribution of the LLP

3

Has direct or indirect right or power to:
appoint or remove a director(s) who holds majority of the voting rights / appoint or remove the majority of those involved in the management

4

Has the right to exercise ultimate effective control whether formal or informal:
over the company; or the directors or the management of the company / over the LLP; or the partners of the LLP

1

Holds direct or indirect:
not less than 20% of the voting shares in the company / not less than 20% of the rights to vote in the LLP

5

Under an agreement with another member of the company, controls majority of the voting rights in the company



REASONABLE MEASURES TO IDENTIFY A BENEFICIAL OWNER



Consider interest in the entity held by individual/ corporate entity/trust



Review all documents/ information available at the entity's level



Sending out notices under subsection 56(1), (2) or (3)



Consider any evidence to show interests or rights held through variety of means



Internal policy to require shareholders/ partners to notify the entity



Any other actions that can be taken depending on the entities

TRANSITIONAL PERIOD



BO REPORTING TIMELINE

Transitional Period

Entity to obtain, verify & keep the BO information at its level

Post Transitional Period

Registrar will invoke his power under section 56(6) of the CA 2016 & companies will have 14 days to submit the BO information

***CURRENT STAGE** – the transitional period of 31 December 2020 has been extended to coincide with the implementation of the proposed Companies (Amendment) Bill & the Limited Liability Partnerships (Amendment) Bill (via announcement made on 17 December 2020)

AMENDMENT TO THE COMPANIES ACT 2016 & THE LIMITED LIABILITY PARTNERSHIPS ACT 2012



Register of BO

- Requirement for companies/LLPs to keep a separate register of beneficial owners
- Notify the Registrar of any changes in the register

Additional Powers

- To request BO information from any person who knows the identity of the BO
- To request information from BO when there is changes
- To request BO to correct information

Obligation of BO

- If a person believes that he is BO, he is required to inform the company/LLP & provide the relevant information accordingly
- A BO must inform the company/LLP on changes of his particular including when he ceases to be a BO

FREQUENTLY ASKED QUESTIONS



- #1** What is the difference between criteria (a) and (b) in the Guideline i.e., 20% of **shares** and 20% of the **voting shares** of the company?
- #2** Whether a company can apply for an exemption under the Guideline?
- #3** Will a subsidiary of an exempted company be exempted as well?
- #4** Is it a compulsory requirement to have an internal policy that will require shareholders/partners to notify the company/LLP of the BO information?
- #5** Who shall be named as BO for GLCs?



THANK YOU